

An Analysis of Congressional Plan C185 and Texas House of Representative Plan H283 Enacted by the Texas Legislature in August 2011

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I submitted analyses of Congressional Plan C185 and Texas House of Representatives Plan H283 to the federal court in San Antonio addressing the issue of whether the legislative approved maps violated Section Two of the Voting Rights Act. I concluded both clearly did. My review of these plans also leads me to conclude that both plans are retrogressive with respect to the voting rights of protected minorities, and that the effect of both maps, as well as *the process utilized in creating these maps*, provide strong evidence of intentional discrimination against black and Hispanic voters in Texas. Let me briefly discuss some specific aspects of each plan that support these conclusions.

Congressional Plan C185

The report I prepared for the San Antonio court dated August 7, 2011 on Congressional Plan C185 provided a contextual analysis of the enacted map and its effect. Let me expand on one element of that report that, in my opinion, supports the conclusion that C185 is retrogressive. I focus here on the effect of C185 on protected minority voting opportunities in the two largest metropolitan areas of Texas, Dallas-Fort Worth and Houston. These areas had the greatest population growth in Texas, growth that greatly contributed to the state gaining four new congressional districts.

As Table One shows, virtually all of the total growth in the core counties of Harris and Fort Bend in the Houston area, and Dallas and Tarrant in Dallas/Fort Worth was driven by Hispanic and African American population increases.

Table 1: Population Change in Harris/Fort Bend and Dallas/Tarrant Counties

	<u>Harris/Fort Bend Counties</u>		
	<u>2000</u>	<u>2010</u>	<u>Change</u>
Non-Hispanic Whites	1,596,052	1,561,506	- 34,546
Hispanics.....	1,194,622	1,810,507	+615,885
Non-Hispanic Blacks	702,806	902,181	+199,375
Asian/Other.....	261,550	404,820	+143,270
	<u>Dallas/Tarrant Counties</u>		
Non-Hispanic Whites	1,878,560	1,721,828	- 156,732
Hispanics.....	948,019	1,388,917	+440,898
Non-Hispanic Blacks	644,136	808,882	+164,746
Asian/Other.....	194,593	257,546	+ 62,953

Source: 2000 and 2010 U.S. Census

If one combines the two sets of data, we find that the overall Anglo (Non-Hispanic White) population in these four urban counties declined by 191,278 while the Hispanic and Non-Hispanic Black populations grew by 1,420,904. Given that enormous difference, one would expect that a new congressional map would *increase* the opportunities for protected minorities to elect candidates of their choice in these large metropolitan counties. Map C185 does not do that. Under the baseline congressional map enacted by the Texas Legislature in 2003, four effective minority districts were created in Dallas/Tarrant and Harris/Fort Bend Counties. The 30th District in Dallas has been a performing district for Black voters as has the 9th and 18th Districts. The 29th District in Harris County has been a performing opportunity district for Hispanic voters.

Table Two: Minority Populations in the Four Large Urban Counties in 2000 and 2010 and the Number of Opportunity Congressional Districts for Protected Minority Voters: 2003 Plan Compared to C185

<u>Year</u>	<u>Total Population</u>	<u>Black + Hispanic Population</u>	<u>%</u>	<u>Number of Cong. Districts in 4 Counties</u>	<u>Opport. Districts</u>	<u>%</u>
2000	7,420,338	3,489,583	47.02	11.39	4.0	35.12
2010	8,855,007	4,910,487	55.45	12.67	4.0	31.57
Change	+1,434,669	+1,420,904	+ 8.43	+1.28	0.0	- 3.64

Source: Population data are from 2000 and 2010 censuses. Under the 2003 Plan an ideal district would have 651,619 people based on the 2000 census. An ideal district under C185 would have 698,486 people based on the 2010 census.

Plan C185 does not increase this number as shown in Table Two. And, because the four counties population growth increased the number of congressional districts the four counties were allocated based on ideal population (651,619 from the 2000 census and 698,488 from the 2010 census) from 11.38 to 12.67 districts, the percentage of congressional seats where protected minority voters in these four counties will have the opportunity to elect candidates of their choice declined from 35.13% under the 2003 plan to 31.57% with Plan C185. So while the protected minority population percentage in these counties rose from 47.02% to 55.45%, their share of congressional representation declined by 3.66%. In my opinion, these data confirm that Hispanic and Black voters in these urban areas are worse off under Plan C185 than was the case under the baseline map – which means that the enacted map is retrogressive in the counties that contain over one-third of the state’s population.

Turning to the issue of intent, the record in the San Antonio case of *Perez v. Perry* provides ample evidence that minority representatives like Congressman Henry Cuellar and State Representative Sylvester Turner were shut out of the effective map drawing, even when Texas Republicans like San Antonio Congressman Lamar Smith tried to

fashion maps that gave protected minorities some share of representation that reflected their huge population gains over the last ten years.¹ Even compared to the Tom Delay orchestrated redistricting efforts of 2001 and 2003, the entire 2011 redistricting process was distinguished by an extreme secretiveness and total disregard for protected minority voting interests that had to be intentional.

The effects of Congressional Plan C185 also provide strong evidence of intentional discrimination as we see most readily in Dallas and Tarrant Counties. As we saw in Table 1, these two counties have very similar racial/ethnic populations to Harris and Fort Bend Counties and are both rapidly trending minority. However, while Harris/Fort Bend has had three effective minority opportunity districts since 2003, Dallas and Tarrant County have only one such district. Candidates supported by protected minority voters receive about one-half the votes in these two counties, whose combined populations are sufficient to draw six congressional districts, yet only one – the 30th – provides minority voters the opportunity to elect a candidate of their choice. Achieving this result through C185 required an extremely aggressive racial/ethnic gerrymander that packed as many African American and Hispanic voters into the 30th District as possible, then sliced and diced the sizeable remaining urban minority populations among ten districts that brought suburban Anglos with a history of polarized voting against minority-supported candidates into the core urban counties. This had to be intentional, in my opinion.

And while C185 at least preserved the short-term ability of the incumbent African American members to likely win reelection in Districts 9 and 18 in the Houston area, the unnecessary alterations (both districts were over-populated) stripped out vital economic assets and also created the potential for future black/Latino tensions by adding areas that could undermine the long-term viability of these effective black opportunity districts.

The net effect of Congressional Plan C185 is thus retrogressive in that it leaves black and Hispanic voters in the Dallas/Fort Worth and Houston areas in worse shape than they were under the base map enacted in 2003. And, this effect was clearly intentional.

State Representative Map H283

In adding to my earlier report on Texas House of Representative Plan H283 enacted by the state legislature, I focus on area – the districts in Harris County – to illustrate how this map reduced performing minority opportunity districts compared to the existing configuration of districts.

The 2001 Texas House map was draw by the Texas Redistricting Board (TRB) after the legislature failed to pass a plan during the 2001 regular session. That map was pre-cleared by the Department of Justice and upheld by the federal courts. The map was used in the elections of 2002, 2004, 2006, 2008, and 2010.

¹ Congressman Smith's failed efforts to work with minority representatives on congressional maps are the detailed in David Wasserman's article "'Perryinander': Redistricting Map that Rick Perry Signed Has Texas Hispanics Up in Arms." *National Journal*, August 19, 2011.

The 2001 map created 11 minority opportunity districts out of a total of 25. Districts 131, 139, 141, 142, 146, and 147 had black voting age populations between 45.5% and 51.9% and all six were effective opportunity districts for African Americans voters in the last five General Elections. Districts 137, 140, 143, 145, and 148 had Hispanic voting age populations ranging from 50.6% to 75.3% and all five were effective opportunity districts for Latino voters in the same recent elections.

In addition to these 11 majority minority districts drawn by the TRB, a 12th district – the 149th – became an effective opportunity district for a coalition of minority voters over the course of the last ten years. This was definitely *not* the intent of the TRB, which was dominated by conservative Anglo Republicans in 2001. Their intent was to leave the 149th as a safe seat for longtime incumbent Talmadge Heflin, chair of the powerful House Appropriations Committee. However, the TRB was apparently not aware of the rapid decline of the Anglo population occurring in this part of Harris County. The 2000 census showed the area had an Anglo voting age population of 40.7%, with the remainder about equally divided among Hispanics, non-Hispanic blacks, and Asian/others. But over the decade the Anglo VAP fell to 26.5% while the black VAP increased by 4.7% and the Hispanic share by 9.1%.

Since this part of Harris County has a history of sharply polarized voting along racial/ethnic lines, these shifts had major electoral consequences. As we note in Table 3, Talmadge Heflin did win reelection in 2002, but his margin (55% to 45%) over an underfunded opponent, Andrew Tran, showed this was becoming a competitive district. Tran's vote base was a coalition on black, Latino, and Asian voters, a combination often seen in local school board elections in this part of Harris County. The potency of this coalition became more clear in 2004 when Hubert Vo defeated Heflin by 32 votes out of a total of more than 41,000 cast ballots. Vo repeated his victory over Heflin in 2006, and defeated Anglo opponents in 2008 and 2010 with the same coalition of minority voters.

Table 3: General Election Results in House District 149: 2002-2010

2002	Heflin (Rep)	13,144	55.5%
	Tran (Dem)	10,530	44.5%
2004	Heflin (Rep)	20,662	49.96%
	Vo (Dem)	20,694	50.04%
2006	Hefline (Rep)	10,632	45.7
	Vo (Dem)	12,621	54.3%
2008	Meyers (Rep)	19,809	43.7%
	Vo (Dem)	25,562	56.3%
2010	O'Connor (Rep)	14,302	47.8%
	Vo (Dem)	15,641	52.2%

Voting in the district tracked racial/ethnic lines. Anglo dominated voter precinct 095 (80.2% non-Hispanic white in 2000, 74.1% in 2010) supported Heflin and the other Anglos by margins ranging from 67.8% to 80.8%, while the heavily minority precinct 556 (combined black/Hispanic VAP of 72.5% in 2000 and 75.4% in 2010) supported their opponents by margins ranging from 70.3% to 86.1% (data from HarrisVotes! website).

These election results show that District 149 clearly became an effective coalition district for minority voters after 2004. So what happened to this district in Plan H283? It disappeared, with its number shifted to a heavily Anglo suburban area in Williamson County.

The State of Texas contends that Harris County had to lose one of its 25 house districts in 2011 because the county's population of 4,092,459, when divided by 167,637 – the ideal for a house district – only yielded 24.41 seats and this should be rounded *down* to 24 seats. However, in 2001, the same calculation yielded just 24.46 seats and the LRB rounded *up* to 25 seats. Why the difference? In 2001 the LRB was trying to protect an Anglo incumbent. In 2011, the reduction set the stage for eliminating an effective minority coalition district.

The elimination of District 149 is especially interesting because its 2010 population was 169,836 – slightly above the ideal size. The district was also in the western half of Harris County which grew an good deal more rapidly than the eastern half after 2000, yet Plan H283 eliminated District 149 while preserving four Anglo-dominated districts on the eastern side of the county.

The effect of this was to give Anglo voters with a history of opposing candidates supported by protected minority voters control of 13 of 24 districts (54.2%) of the total, compared to 52.0% (13 of 25 districts) under the existing map. The Anglo-controlled district percentage increased despite the fact that their share of the Harris County VAP dropped from 42.1% in 2000 to 33.0% in 2010. This combination shows, in my opinion, the retrogressive effect of H283.

A handwritten signature in black ink, appearing to read "Robert M. ...", with a horizontal line underneath.

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