

Legislative redistricting: Who will do it when?



As I See It

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Because it's among our favorite forms of mayhem, let's ruminate today about potential legislative mayhem, made all the better because it involves perhaps the most important thing the Texas Legislature has to do this year but maybe won't.

It's a little thing called redistricting and it involves what our state Senate and House districts will look like and who will represent them for the next 10 years. Seems important, right?

Redistricting requires numbers, specifically the ones provided by the decennial Census that tells us how many people live where. This year, due to delays at the federal level, those numbers were not ready in time for our state legislators, during the current regular session, to crunch them and do the computer-aided, politically-motivated voodoo that carves us into districts, inevitably in-



Texas House Redistricting Committee Chairman Todd Hunter, R-Corpus Christi, seen here at his desk, says, "Right now, I'm not going to discuss the redistricting procedure because I haven't done it with all the members yet." KEN HERMAN/AMERICAN-STATESMAN

cluding some that look like sea urchins.

So I, and some others of my ilk, have been writing that redistricting will be done in a to-be-called special legislative session, dates to be set by Gov. Greg Abbott.

Maybe. Maybe not.

Someone who's been around the Texas Capitol for many years and too many redistrictings called me recently to insert a caveat into the conventional wisdom that says the Texas Legislature will draw

the districts in a special session sometime after the regular session ends May 31.

The caveat is a little (actually not so little, coming in a shade under 87,000 words — thing called the Texas Constitution. (Only Alabama has a longer one at about 390,000 words. C'mon Texas! We can get there.)

Let's focus on Article 3, Section 28 of our state constitution and see if you can find the important words:

"The Legislature shall, at its first regular session after the publication of each United States decennial census, apportion the state into senatorial and representative districts, agreeable to the provisions of Sections 25 and 26 of this Article. In the event the Legislature shall at any such first regular session following the publication of a United States decennial census, fail to make such apportionment, same shall be done by the Legislative Redistricting Board of Texas."

Good for you for noting the Constitution says "its first regular session" after

See HERMAN, Page 3B

Herman

Continued from Page 1B

a census. That would be the current session that ends May 31. After that, any session called prior to the 2023 regular session would be special. And special isn't regular. So now you're asking this: What and who is this Legislative Redistricting Board of Texas? And does Article 3, Section 28 mean the LRB would do the drawing of legislative districts if the regular session doesn't?

There's certainty about the LRB, and it's really good news if you're a Republican. The LRB, the constitution says, "shall be composed of five members, as follows: The Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts and the Commissioner of the General Land Office, a majority of whom shall constitute a quorum."

You, being a keen observer of state government, immediately noticed something about the current LRB members: Republicans, each and every one. Lt. Gov. Dan Patrick, Speaker Dade Phelan, Attorney General Ken Paxton, Comptroller of Public Accounts Glen Hegar and Land Commissioner George P. Bush. (Note: As of now, Paxton is the only one of those under criminal indictment.)

Back to Article 3, Section 28: "Said Board shall assemble in the City of Austin within 90 days after the final adjournment of such regular session. The Board shall, within 60 days after assembling, apportion the state into senatorial and representative districts, or into senatorial or representative districts, as the failure of action of such Legislature may make necessary."

Seems pretty clear, right? And please remember this applies only to Texas House and Senate districts. The redrawing of U.S. House districts can be done by the Legislature in special session. The LRB has nothing to do with those districts.

Review: Back in February, the U.S. Census Bureau said it would have redistricting data to the states by Sept. 30. Numbers released last month show Texas will gain two U.S. House seats. We now have 36. Nothing, of course, changes about the number of seats in the state Senate (31) or House (150).

For some clarity, let's head to the Texas House floor to chat with House Redistricting Committee Chairman Todd Hunter, R-Corpus Christi. Hunter, known to colleagues as "The Man in Black" because that's the only color he wears, including gloves, is a friendly man

who's usually helpful to reporters seeking information and clarity.

Oh good, there he is at his back-row desk in the House. Mr. Chairman, help us sort this out:

"Here's the deal and you can quote me," Hunter told me. "Right now, I'm not going to discuss the redistricting procedure because I haven't done it with all the members yet. And so I feel like when I start discussing it, I'll be open to the media and the membership at the same time."

OK, I guess. But what about Article 3, Section 28?

"I understand all the law. We are going to follow everything," Hunter said, which is good. "I won't discuss the issues right now because I feel like when we do we have to be open to the public, the media and the members at the same time."

Let's try again. Will the full 181-member Legislature or the five-member all-GOP LRB be drawing state House and Senate lines?

"We're looking at everything and visiting with everybody," Hunter said. "Visiting and talking is good but sometimes, given the specifics, we're not there yet."

He offered no projection on when we might get there, where there is and who might be there when we get there. But thanks anyway.

"Every day we're looking at things," Hunter assured me. "We're talking with people."

I pushed for confirmation of a reality known from past redistrictings: Regardless of who draws the districts and when, the process will produce maps that will produce billable hours for years to come for lawyers hired to challenge the maps in court.

"I'm sure that we are going to have a lot of folks involved," Hunter said with a knowing laugh.

Let's pause here to sum up what Hunter cleared up for us about who will draw the districts and when: Nothing.

So let's check in at Texas Democratic Party headquarters, where Glen Maxey, a former state rep and now a party official, has seen enough redistrictings to make him a self-professed nonexpert with some thoughts on where this is headed.

Maxey's plain reading of Article 3, Section 28 focuses him on the words that say the Legislature shall draw the lines "at its first regular session after the publication of each United States decennial census." The 2023 Texas Legislature will be the first regular session after the anticipated September (or so) publication of the most recent decennial census.

So does that mean the 2022 legislative elections could be held under the current, undrawn districts that are way out of whack with current popula-

tion realities and very likely would be more favorable to Democrats than any new districts the GOP-dominated Legislature or all-GOP LRB would draw?

Could be. That's another big ol' maybe, good buddy.

Fortunately, Maxey knows a guy who really knows this stuff. So I called Austin lawyer Chad Dunn, general counsel for the long-suffering Texas Democratic Party. I asked him about Article 3, Section 28 and told him about Hunter's nonanswer answer.

"The reality is that because we've never faced this circumstance before we don't have the kind of court decisions that we would need to have some firm belief of how this would happen," he said.

"But one understanding that I think is the most compelling is that if the Legislature doesn't take it up this regular session, then it will be required to take it up in its next regular session," Dunn speculated with the advantage of subject-matter expertise.

So no chance it would go this year to the Legislative Redistricting Board?

"The statutes that empower the LRB say once the Legislature has failed to do it, the LRB kicks in," Dunn said. "That won't have been the case here."

Some, he added, might argue that the courts have to draw interim lines for the 2022 election until the 2023 regular session can draw permanent ones (that inevitably will wind up back in court).

And Dunn wasn't done.

"I suspect there are folks that will argue that the Legislature can take up the matter in special session in the fall and redistrict then," he said. "Then there's some question about whether or not they would need to or still be required to come back and address the issue again in January 2023. But my opinion is the least likely scenario is that the LRB will be empowered to do it."

Bottom line for the 2022 elections?

"It's hard to imagine any authority getting it done timely," Dunn said. "So it's anybody's guess at this point how all that will sort out."

Bottom line for how permanent new districts will be drawn:

"Well," Dunn said. "We'll have to stay tuned."

And he wants us to remember this:

"Texas hasn't passed a redistricting plan since the 1960s that wasn't found to be racially discriminatory in intent and effect," Dunn said. "So the courts have unfortunately had to be the safe harbor of last resort for minority voters in Texas, and I suspect that they will be again."

Regardless of who draws the lines when.