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Redistricting Rumble

by [Cameron Joseph](#)

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Democrats have the Justice Department. Republicans have many statehouses. Conflict is all but guaranteed.

At cross-purposes? Majority-minority districts help Republicans.

The once-a-decade effort to redraw states' political maps always triggers high-stakes battles across the country. This year, however, the combatants are in unfamiliar positions. Republicans have the edge in statehouses, while Democrats control the Justice Department.

Big gains in down-ballot races last November provided Republicans with total control over the political mapmaking in 20 states with a combined 196 congressional districts. That's the reverse of 20 years ago, when Democrats predominated in state legislatures. Even 10 years ago, Democrats still held the advantage in states.

Conversely, the Justice Department is in Democratic hands during the redistricting process for the first time since the Voting Rights Act was passed in 1965. That could set the stage for a conflict of constitutional proportions between GOP lawmakers eager to use their clout to draw districts that favor their party and an Obama administration looking to protect minority rights—in part because those voters tend to support the president's party.

Demographics could heighten the confrontation because ballooning minority populations have spurred most of the growth in the states gaining seats. "The people who are making these places grow may not have the same [voting] proclivities as those who already live there," said William Frey, a demographer at the Brookings Institution.

A major factor will be the strategies that civil-rights groups and the Justice Department pursue to protect minority interests. If rights organizations push to maximize the number of districts where minority voters constitute a majority, they could develop a coalition of convenience with Republican legislators, as happened in the post-1990 round of redistricting. Concentrating minority voters in that way can produce whiter districts elsewhere, and those voters often lean toward the GOP. On the other hand, if minority groups and Justice are willing to disperse nonwhite voters across more "minority-influence" districts, that could benefit Democrats overall—but reduce the number of districts likely to elect minority legislators. How the coalitions break down will likely vary by state, based partly on growth patterns.

Rosalind Gold, senior director of the National Association of Latino Elected and Appointed Officials, said that case-by-case considerations make it hard to predict what alliances will form. "We think it's still too early to tell about whether there'll be any collusion between Republicans and underrepresented groups," she said. "A lot is going to depend on the political dynamics of the numbers." Gold said that the association would look to create majority-minority districts where it could get them, minority-influence districts where it can't.

The Justice Department's powers come from the Voting Rights Act, a 45-year-old civil-rights law designed to protect minorities against the kinds of political intimidation and manipulation that, for a century before the civil-rights era, kept minority voters from the ballot box and minority politicians out of office. Section 5 of the act requires states with a history of voter discrimination to submit their congressional and legislative district maps to the Justice Department or the U.S. Court of Appeals for the D.C. Circuit for "preclearance," or approval. Section 4(b) of the law defines the areas, most of which are in the South, that must obtain preclearance based on their history of violations.

Because Republicans now control so many state legislatures and governorships, some Democrats believe that court challenges based on the Voting Rights Act may represent the party's best option to influence the redistricting. "The

legal strategy becomes even more important if you don't have the political tools at your disposal," said Brian Smoot of the National Democratic Redistricting Trust, a group that seeks maps favorable to Democrats.

Implicit in Smoot's strategy is an acknowledgment that the Voting Rights Act—intended to protect minority communities—is often used for strictly partisan purposes, by both parties.

In 1991 and 1992, the Justice Department under President George H.W. Bush strongly enforced the act in Southern states, which Democrats then controlled, forcing them to create as many majority-minority districts as possible. The result was to "bleach" the surrounding districts of minority voters; that, in turn, helped Republicans capture many of those seats in their 1994 congressional landslide. Under President George W. Bush, the Justice Department was much more hands-off in the last round of redistricting: It cleared almost every proposed map, infuriating both Democrats and minority groups; they felt that their voting rights were being trampled.

Rep. John Lewis, D-Ga., a civil-rights icon who helped lead the charge for reauthorization of the Voting Rights Act in 2006, said that during the last round of redistricting, Justice was preoccupied with other concerns and did not vigorously defend the law. "During the time that Attorney General [John] Ashcroft served, they were not that quick and hot on enforcing the Voting Rights Act," he said.

Redistricting fights have historically led to some odd bedfellows. In particular, during the redistricting that followed the 1990 census, alliances formed between African-American and Republican state legislators who saw a mutual benefit to carving up white Democrats' districts in such states as Florida, Georgia, and Virginia.

The consensus among political scientists is that these alliances cost Democrats at least a dozen House seats in the early 1990s. In the two elections that followed the 1991 remapping, Republicans picked up 25 Southern seats in districts where the elder Bush had won at least 60 percent of the vote.

Latino voting-rights organizations have also worked with Republicans in the past. "When I directed [the Mexican American Legal Defense and Education Fund's] redistricting program in 1991, I was really amazed at how helpful the Republican redistricting operation wanted to be to us," Arturo Vargas, NALEO's executive director, said. "Redistricting is one of those places where odd bedfellows are created."

Still, the Republican-minority coalitions of the past may not be as likely this time around. For one thing, Republicans no longer need to strike deals with minority legislators to draw maps, because the GOP now holds supermajorities or majorities in many of the state legislatures where they once reached across the aisle.

Also, the so-called WD40s—Southern, moderate, white Democratic legislators over age 40—are nearing extinction these days. Many have retired or lost their seats as white voters in the South have shifted heavily toward the GOP. In the 2010 election alone, 20 Southern House districts held by white Democrats flipped to Republican control. Because of this, there is less territory for African-American and GOP legislators to divvy up, and blacks have come close to maxing out on majority-minority districts.

"There are no new African-American districts to draw," said Mark Braden, a Republican redistricting lawyer. "In fact, it will be hard to preserve some of those that already exist."

Many state Democratic parties in the South have essentially become nonwhite parties. In Texas, for example, there are 42 nonwhite Democrats in the state House and only seven white Democrats. To shore up their 2010 gains, Republicans will have to pack minorities into fewer districts or spread their numbers to the point where they will not be able to influence elections, something that civil-rights groups say infringes on black and Latino voters' rights.

"You have the Democratic Party, which is a multiracial party, and you have the Republican Party, which is a white party," said David Bositis, an analyst at the Joint Center for Political and Economic Studies. "So long as you have a situation where the parties are segregated, it's always going to be in the interest of the white party to keep minority voters from participating."

Republicans sought common cause with minorities out of necessity in 1991, when Democrats controlled most of the maps. Today, the shoe is on the other foot. Democrats will likely seek an aggressive interpretation of the law, because protecting minority communities will have the ancillary effect of tweaking maps drawn to protect Republicans. This happened during Texas's mid-decade redistricting the last time around: When Republicans redrew the state's congressional lines to weaken Democrats, the GOP also made enemies of civil-rights groups. Although most of the redistricting withstood extensive court attacks, the one case Republicans lost was a Voting Rights Act challenge.

All stakeholders are now focusing on the Obama Justice Department, which issued new guidelines this week on preclearance and has promised to closely monitor whether states comply with the Voting Rights Act. Republicans' dominance in the South means that the department will be looking mostly at GOP-drawn maps.

African-Americans are, by and large, confident that the law will be aggressively enforced. "The Obama Department of Justice and the attorney general in particular have made an oral commitment to make sure the Voting Rights Act is enforced," Lewis said. "The attorney general has been to Alabama, been to Selma, and he understands it, he gets it."

Leaders at a few Latino rights organizations expressed some trepidation about the upcoming process. "They've been very clear to us that they intend to be very vigilant and very active in this redistricting process. However, this is the same Justice Department that approved the Georgia voter ID law, which we thought was really problematic," NALEO's Vargas said. "The track record isn't necessarily there, but the rhetoric is."

Conservatives have the opposite fear: that the Obama Justice Department will seek political gain by strictly enforcing preclearance on Republican-drawn maps in such states as Georgia, South Carolina, and Texas.

Republicans privately say they plan to try to circumvent the department by submitting many maps to the D.C. Circuit Court, an alternative under the voting law. That process is generally slower and more expensive, but it puts the Justice Department in the role of opposing attorney rather than judge and jury.

"The concern by some folks is simply that the Department of Justice has people in charge of the voting-rights section that have a long history in the redistricting process in very partisan roles," Braden, the GOP lawyer, said.

The biggest confrontation may come in Texas. It is set to gain four House seats from reapportionment, more than any other state. The Justice Department has compelled Texas to redraw its legislative maps after every redistricting since the Voting Rights Act's passage. Since 2000, Hispanics have accounted for most of the state's population growth, and Latino groups have said they want at least two, and possibly three, of the new districts to be Hispanic-majority; state Republicans have suggested creating just one new Hispanic seat.

Gerry Hebert, a former Justice Department official who is now a Democratic redistricting lawyer, referred to Texas as the "perfect storm" for legal battles because of the Republican supermajorities in both legislative chambers, the state's history of racial polarization, and the Hispanic population's rapid growth there. "I think that Republicans, like Democrats, are aware of what the legal requirements are," he said. "Oftentimes, however, achieving one's political goals can be a little bit inconsistent with those legal requirements."

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Justice Department: New Congressional Maps Must Not Dilute Minority Vote

by [Cameron Joseph](#)

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Assistant Attorney General Tom Perez, the Justice Department's lead watchdog to ensure states' compliance with the Voting Rights Act during redistricting, said that the burden of proof will be on those drawing new congressional and state legislative lines to prove that the maps do not dilute minority voting power and should not draw a veto from his department.

Perez's appearance before the National Association of Latino Elected and Appointed Officials on Tuesday, and his message about the importance of enforcing civil-rights law, underscored what could be a key factor in the redrawing of the nation's political maps: For the first time since the Voting Rights Act was enacted in 1965, the Justice Department is in Democratic hands during a redistricting process.

Perez made it plain that he does not consider the 45-year-old law a quaint relic of a bygone era.

"We have made a lot of progress in the road to equal opportunity," Perez said. "But we see, time and time again, in the enforcement that we do that we still have a long way to go." Perez joked that his phone rings with as many complaints as a Toyota mechanic's.

The fact that Perez, who heads Justice's Civil Rights Division, is a member of one of the minority groups that he is charged with protecting won him a warm welcome at NALEO.

"Isn't it great, y'all, that one of our own is there to watch out for us?" asked NALEO President Sylvia Garcia.

In his address, delivered the day before the Justice Department is set to release its redistricting guidelines, Perez invited community groups to help make the case whether proposed new congressional districts should be approved or rejected. He urged activists to submit as much data and information to his department as possible. His basic message: Help us to help you.

"You can't sit around and do nothing and then complain about the result after the fact," Perez cautioned.

A onetime aide to the late Sen. Edward Kennedy, D-Mass., Perez said he considers enforcing the Voting Rights Act "a solemn responsibility." The 1965 law, designed to end a history of discrimination that kept minorities from the ballot box and out of office, requires more than 2,700 jurisdictions -- from school boards to state legislative districts to U.S. House districts -- to submit their proposed new political maps to the Justice Department or a federal judge for preclearance.

Perez said that his division had received more new resources than any other in the Justice Department so that it will be ready to strongly enforce the law during redistricting.

A transparent process is the only way for mapmakers to meet preclearance standards or avoid court challenges, he said.

NALEO Executive Director Arturo Vargas said he was "heartened" by Perez's speech. "He made it clear this this Justice Department would be very vigilant in the way it will with preclearance," Vargas said. "I was hopeful with what he had to say, and we hope he will in fact be true to his word."

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Justice Department Issues Civil Rights Guidelines for Congressional Mapmakers

by [Cameron Joseph](#)

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A law inspired by civil-rights marches like this one, in 1965, will be at the heart of battles over congressional redistricting this year and next.

An advance copy of the Justice Department's redistricting guidelines sends a strong signal that the Obama administration will be zealous in enforcing the 45-year-old civil-rights law, and that stance could trigger big battles over congressional district lines.

"A covered jurisdiction has the burden of establishing that a proposed redistricting plan 'neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color,'" the new guidelines state, the first update since 1987 in the Justice Department's interpretation of how the Voting Rights Act should be enforced.

The guidelines, to be released on Wednesday, could have a profound impact on reshaping the political maps -- and parties' political fortunes -- in areas that are required under the act to have their new district lines preapproved by Justice or a federal judge. The 1965 law was aimed at ending discrimination in areas where minorities had been systematically barred from the voting booth and political office.

The guidelines will complicate the redistricting process, under way this year, to make congressional and state legislative districts conform with 2010 census numbers. In most states, the legislature controls the process -- good news for Republicans, who won sweeping victories in statehouses last November.

But this is the first time since the Voting Rights Act passed in 1965 that Democrats have controlled the Justice Department -- which enforces the Voting Rights Act -- during the once-a-decade redistricting process.

Written by Assistant Attorney General Tom Perez, a former aide to the late Sen. Edward Kennedy, D-Mass., the new guidelines make it clear that the onus is on states to prove that their maps have not watered down minority voting strength and have no discriminatory intent. The Justice Department will object to any map if it "determines that the jurisdiction has failed to show the absence of any discriminatory purpose," the guidelines state.

Perez, who heads the Civil Rights Division, also asserts flexibility for the Justice Department in determining whether a redistricting plan is discriminatory. Census data alone may not be enough to determine whether a map is "retrogressive," or waters down minority strength in comparison with district lines created 10 years ago, the guidelines say. Perez says that the Justice Department can and will take into account election history, voting patterns, and voter registration and turnout in its assessment.

That language reassured civil-rights advocates, who believe that different communities in different parts of the country need different levels of protection. Even if the Justice Department doesn't object to a map, civil-rights groups have the right to sue under the Voting Rights Act. They might so do, because, under the Perez guidelines, a map doesn't have to provide the maximum possible minority voting opportunities to avoid an objection from the Justice Department; it simply has to be as good as the last map. That's a low bar, in the view of some activists, who contend that President George W. Bush's administration was lax about enforcing the Voting Rights Act.

But in covered areas that have lost minority populations, such as New Orleans after Hurricane Katrina, Perez seems ready to hold the maps to a tougher standard. Where minority voting strength has to diminish, the guidelines say, it is up to the jurisdiction to prove that it has done all it can to limit the impact.

State-level Republicans worry that the Justice Department will use its power to unfairly target their maps for partisan purposes. They have indicated that they plan to submit many maps to the D.C. District Court instead to try to get a friendlier hearing. These guidelines are unlikely to assuage their worries.

Initial reaction from one Hispanic leader, however, was positive. Arturo Vargas, the executive director of the National Association of Latino Elected and Appointed Officials, said that the guidelines are a positive step, showing that the Justice Department intends to be aggressive when it comes to enforcing the Voting Rights Act.