

# SENATE OF VIRGINIA

RICHARD L. SASLAW  
Majority Leader  
35th Senatorial District  
Post Office Box 1856  
Springfield, Virginia 22151



Committee Assignments:  
Chair, Commerce and Labor  
Education and Health  
Judiciary  
Finance & Appropriations  
Rules

November 8, 2021

Ms. Muriel-Theresa Pitney  
Clerk of Court  
Supreme Court of Virginia  
100 N. 9th St, 5th Floor  
Richmond, VA 23219

Dear Ms. Pitney:

On behalf of the Senate Democratic Caucus, I write to advise the Court of the significant, disqualifying conflicts of interest of the three special master nominees offered by the minority caucuses of the Senate and House of Delegates. Section 30-399(F) of the Virginia Code and this Court's Redistricting Rule 2(b) provide that "[t]he persons appointed to serve as special masters should have the requisite qualifications and experience to serve as a special master and should have no conflicts of interest." Consistent with these requirements, the statute authorizes each caucus to nominate neutral special masters who will operate as an extension of this Court, not partisan operatives to act on behalf of their respective caucuses' naked political interests. But that is who the minority has nominated.

We urge the Court to reject the minority's nominees and direct the submission of new, unbiased nominees. We do not send this letter lightly, but these three nominees cannot lawfully serve and their mere nomination undermines public confidence in these critical, once-a-decade proceedings to redraw Virginia's electoral maps. This is the first opportunity this Court has to apply the Redistricting Amendment and draw fair, nonpartisan maps, and the precedent set now will govern future redistricting cycles in the event of Commission deadlocks. The Court should set a precedent ensuring that it will be assisted by neutral, nonpartisan masters, not one encouraging the nomination of partisan political operatives whose advice the Court cannot trust.

As detailed below, all three of the Republican nominees are partisan political operatives who have personal and financial interests in creating maps that will unduly favor the Republican party, in violation of Virginia law. Briefly:

- Adam Kincaid is the President of the National Republican Redistricting Trust (NRRT), an overtly partisan organization that describes itself as the "GOP's hub for coordinating a national redistricting strategy." Ex. 1. Mr. Kincaid has publicly

touted the Republican Party’s creation of a coalition “capable of dominating American politics for years to come.” Ex. 2. A federal court found that Mr. Kincaid engaged in partisan gerrymandering in Ohio during the 2010 cycle. *See Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 999 (S.D. Ohio), *vacated and remanded*, 140 S. Ct. 101, 205 L. Ed. 2d 1 (2019).

- Thomas Bryan recently received \$20,000 in “Consulting fees” from the Virginia Senate Republican Caucus. Ex. 3. Yet the Senate Republican Caucus’s letter to this Court failed to disclose that it had recently retained Mr. Bryan as a consultant. For Mr. Bryan, this recent engagement by Virginia Republicans continues a long record of his work supporting Republican-aligned parties in redistricting matters.
- Adam Foltz was “one of the primary drafters” of Wisconsin’s egregiously gerrymandered state legislative maps in 2010. *Whitford v. Gill*, 218 F. Supp. 3d 837, 858 (W.D. Wis. 2016), *vacated and remanded*, 138 S. Ct. 1916. A federal court found that Mr. Foltz’s sworn testimony about his maps was not credible and indeed “almost laughable,” and that his maps illegally “cracked” Wisconsin’s Latino population in violation of the Voting Rights Act. *Baldus v. Members of Wisconsin Gov’t Accountability Bd.*, 849 F. Supp. 2d 840, 851, 860-61 (E.D. Wis. 2012).

None of these nominees is capable of serving as a disinterested special master to assist this Court in proceedings that should, by law, be nonpartisan. For these and the reasons that follow, we respectfully ask that the Court disqualify all three of the minority’s nominees.

## **I. The Redistricting Amendment and Implementing Legislation Were Designed to Ensure Fair, Unbiased Maps Through Transparent, Nonpartisan Proceedings**

The people of Virginia approved the Redistricting Amendment, Va. Const. Article II, Section 6-A, to end partisan gerrymandering. Multiple aspects of the amendment reflect this goal, but in particular its requirement that any maps receive supermajority support from the Commission, including support from the legislative representatives of both parties.

This goal is further reflected in the Redistricting Amendment’s procedures for resolving deadlocks at the Commission: the Constitution provides that this Court, not the political branches, draw the maps if the Commission cannot agree on bipartisan maps. Va. Const. Art. II, § 6-A(g). The framers intended for the Court, as the organ of state government most dedicated to impartial rule of law and apolitical justice, to serve as a refuge from partisanship. After all, Virginia’s judiciary is charged with maintaining “public trust and striv[ing] to enhance and maintain confidence in our legal system.” Virginia Canons of Judicial Conduct § III, Preamble.

The goal of nonpartisan map-drawing is likewise embodied in the legislation implementing the Redistricting Amendment, which the General Assembly passed with bipartisan support. Section 24.2-304.04 of the Virginia Code flatly forbids partisan gerrymandering: “A map of districts shall not, when considered on a statewide basis, unduly favor or disfavor any political party.” In other words, Virginia law forbids manipulating district lines to advantage one party any more than would occur under a map-drawing process that did not consider partisanship or prior elections.

In light of these provisions of law, the special masters chosen to assist this Court in drawing the maps cannot be partisan advocates acting on behalf of a political party, or recognized partisan political operatives. The special masters instead must act as unbiased experts who can assist the Court in drawing fair, nonpartisan maps that comply with Virginia law. To this end, the statute and this Court’s rules provide that “[t]he persons appointed to serve as special masters shall have the requisite qualifications and experience to serve as a special master and shall have no conflicts of interest.” Va. Code Ann. § 30-399(F); *see also* Va. Redistricting Rule 2(b) (same). This mandate mirrors Canon 2.B of Section III of the Virginia Canons of Judicial Conduct, which provides that “[a] judge shall not allow ... political ... relationships to influence the judge’s judicial conduct or judgment.”

Beyond the fact that the goal of the Redistricting Amendment is to ensure fair, nonpartisan maps, the term “special master” in Va. Code Ann. § 30-399(F) alone sweeps in requirements of impartiality, neutrality, and lack of bias. A special master is a “judicial officer[] and a *neutral* arbiter [who] ha[s] no stake in the outcome” of the matter they are adjudicating. *In re Search Warrant Issued June 13, 2019*, 942 F.3d 159, 181 (4th Cir. 2019) (emphasis in original). Special masters are extensions of the court they serve, appointed to assist the court in lending some technical or other matter requiring specialized expertise. For this reason, special masters are held to the same ethical standards as judges. F.R.C.P. 53(a)(2) (“A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge.”). Like judges, under federal law a special master is disqualified from overseeing a matter if an “informed observer” would “reasonably ... question [their] impartiality.” *See In re Brooks*, 383 F.3d 1036, 1046 (D.C. Cir. 2004). This standard is reinforced in ethical rules promulgated by the Academy of Court Appointed Masters. *See, e.g.*, Rule 4A, *Appointing Special Masters and Other Judicial Adjuncts: A Handbook*, Academy of Court Appointed Masters (2020 ed.) (“A conflict of interest arises when a master knows that the master or a close relative might be so personally or financially affected by a matter that a reasonable person with knowledge of the relevant facts would question the adjunct’s ability to properly perform the assigned responsibilities.”).

## **II. The Democratic Special Master Nominees Are Leading Experts in Their Field Who Have Worked for Courts and Who Are Not Beholden to Any Political Party**

Consistent with the letter and spirit of the Redistricting Amendment and its implementing legislation, the Democratic caucuses nominated three highly qualified, nationally respected, impartial experts to serve as a special master to the Court. First, Dr. Bernard Grofman “is one of the world’s leading experts in the study of redistricting and voting rights.” *Wright v. Sumter Cty. Bd. of Elections & Registration*, 979 F.3d 1282, 1299 (11th Cir. 2020). He has extensive experience serving as a special master to courts in redistricting proceedings, including as a special master to Virginia federal courts in redrawing Virginia’s House of Delegates and congressional districts. *Bethune-Hill v. Virginia State Bd. of Elections*, 368 F. Supp. 3d 872, 873 (E.D. Va. 2019); Letter from Sen. Saslaw to the Court (Nov. 1, 2021) (attaching Grofman Resume). Confirming his impartiality and universal recognition as a leader in the field, Dr. Grofman has been engaged by both Republicans and Democrats to serve as an expert witness in redistricting cases. *Id.* Second, Dr. Nathaniel Persily has been appointed by numerous state and federal courts around the country to serve as a special master in redistricting proceedings, including in Pennsylvania, North Carolina, New York, Connecticut, and Georgia. *Id.* (Persily

Resume). Third, Dr. Bruce Cain has been appointed to serve as special master to a court in a redistricting proceeding and as a redistricting consultant to the U.S. Department of Justice during the George H.W. Bush administration. *Id.* (Cain Resume).

These nominees' extensive record of nonpartisan, unbiased work for state and federal courts in redistricting matters, combined with their sterling academic credentials, establishes that all three have the "requisite qualifications and experience" and "have no conflicts of interest." Va. Code Ann. § 30-399(F); Va. Redistricting Rule 2(b). Their nominations represent a good faith effort on the part of the Democratic caucuses to ensure that this Court's deliberations over the new maps are aided by leading national experts free of partisan advocacy or influence.

### **III. The Republican Special Master Nominees Have Disqualifying Conflicts of Interest**

In sharp contrast to the Democratic nominees, all of the nominees put forward by the minority are Republican political operatives whose conflicts of interest foreclose their appointment to assist the Court here. Allowing a partisan political operative to serve as a special master to this Court would "impair public confidence in the judiciary and the administration of our legal system." *Jud. Inquiry & Rev. Comm'n of Virginia v. Taylor*, 278 Va. 699, 725, 685 S.E.2d 51, 67 (2009). This is particularly true where, as here, the special masters appointed by the Court will assist with a redistricting process specifically designed to eliminate partisan influence or bias.

The following summarizes each Republican nominee's disqualifying conflicts of interest:

**Adam Kincaid.** Mr. Kincaid is a self-described Republican operative. As his resume reveals, Mr. Kincaid has devoted his entire professional career to Republican Party politics, without even a single nonpartisan engagement. He is currently the head of the NRRT, an overtly partisan organization that coordinates the Republican Party's "nationwide redistricting strategy." Ex. 1. Mr. Kincaid has publicly touted the Republican Party's creation of a coalition "capable of dominating American politics for years to come"—a goal that is flatly incompatible with this Court's impartial role in drawing fair maps that do not "unduly favor" any political party. Troublingly, earlier this year in Virginia's redistricting process, NRRT drew a map that was submitted to the Redistricting Commission without disclosure of NRRT's involvement. *See* Ex. 5, M. Flynn, *GOP group's apparent influence on Virginia redistricting map stirs mistrust on commission*, Wash. Post (Oct. 18, 2021).<sup>1</sup> It is obvious that an individual whose day job is to coordinate redistricting to favor Republicans across the country cannot serve as a neutral, nonbiased special master to aid this Court in approving nonpartisan maps in Virginia.

In his prior role as Redistricting Coordinator for the National Republican Congressional Committee, Mr. Kincaid collaborated in drafting Ohio legislative maps that a three-judge federal court later found were an extreme, illegal partisan gerrymander. *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 999 (S.D. Ohio), *vacated and remanded*, 140 S. Ct. 101, 205 L. Ed. 2d 1 (2019). In finding that those maps were drawn with partisan intent to advantage Republicans, the court relied on Mr. Kincaid's statements that his maps had "shore[d] up Republican advantage" and taken three districts "out of play." *Id.* at 1103-04. In drawing the

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<sup>1</sup> Available at <https://www.washingtonpost.com/dc-md-va/2021/10/18/virginia-congressional-redistricting/>

Ohio maps, Mr. Kincaid worked closely with Tom Hofeller, *id.* at 998, who drew countless Republican gerrymanders and surreptitiously urged the Trump administration to add a citizenship question to the 2020 decennial census in order to facilitate redistricting that “would be advantageous to Republicans and non-Hispanic whites.” Ex. 6, M. Wines, *Deceased G.O.P. Strategist’s Hard Drives Reveal New Details on the Census Citizenship Question*, N.Y. Times (May 30, 2019).<sup>2</sup> Mr. Kincaid also appears to be receiving regular \$5,000/month payments from the Republican National Committee, most recently on September 15, 2021. Ex. 4.

Mr. Kincaid has argued in the past that people with “political bias” cannot be trusted to manage nonpartisan redistricting processes. Ex. 7, A. Kincaid, *Independent redistricting panels don’t really end gerrymandering*, USA Today (Oct. 21, 2021).<sup>3</sup> With respect to his own role in these proceedings, he is correct.

**Thomas M. Bryan.** Mr. Bryan received \$20,000 in “Consulting fees” from the Virginia Senate Republican Caucus on September 3, 2021. Ex. 3. The Senate Republican Caucus of course knew of Mr. Bryan’s recent consulting work for them, yet their letter to this Court nominating Mr. Bryan as a special master failed to disclose it, contrary to established standards. *See* Rule 4B, *Appointing Special Masters and Other Judicial Adjuncts: A Handbook*, Academy of Court Appointed Masters (2020 ed.) (“Before an appointment a judicial adjunct should disclose to the appointing court and the parties ... any actual or potential conflict of interest or relationship or other information of which the adjunct is aware that reasonably could lead a person to question the adjunct’s impartiality.”). Mr. Bryan’s recent work for Senate Republicans would disqualify him from serving as a special master to a federal court. *See* Fed. R. Civ. P. 53(a)(2) (“A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge under 28 U.S.C. § 455.”). It should likewise preclude his appointment as a special master to this Court in this proceeding.

Beyond his recent paid engagement by Senate Republicans, Mr. Bryan’s resume shows that he has consistently worked as an expert supporting Republican-aligned litigants and interests in voting-rights cases. *See, e.g., Mays v. Thurston*, No. 4:20-cv-341 (E.D. Ark.) (providing litigation support to the Republican-controlled state government of Arkansas in defending a voting-rights case brought by groups represented by the NAACP); *State of Alabama v. U.S. Dep’t of Commerce*, No. 3:21-cv-211 (N.D. Ala.) (providing litigation support to a Republican member of Congress and the Republican-controlled state government of Alabama); *Harding v. Cty. of Dallas, Texas*, 336 F. Supp. 3d 677, 681 (N.D. Tex. 2018) (providing litigation support to plaintiff who was seeking to elect “Anglo Republicans”). In *Evenwel v. Abbott*, 578 U.S. 54 (2016), Mr. Bryan supported Republican-aligned litigants who sought to require that districts be drawn based on registered-voter population rather than total population, a practice that “would be advantageous to Republicans and non-Hispanic whites” and harmful to Democratic and minority voters. M. Wines, *Deceased G.O.P. Strategist’s Hard Drives*, *supra* (quoting a commissioned

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<sup>2</sup> Available at <https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html>.

<sup>3</sup> Available at

<https://www.usatoday.com/restricted/?return=https%3A%2F%2Fwww.usatoday.com%2Fstory%2Fopinion%2Ftoday%2F2021%2F10%2F20%2Fgerrymandering-politics-dominate-redistricting-panels%2F8519888002%2F>

study authored by Dr. Hofeller); *see also* Ex. 8, L. Hurley, *U.S. top court rejects conservative challenge in voting rights case*, Reuters (Apr. 4, 2016).<sup>4</sup>

**Adam Foltz.** Mr. Foltz has a long record of engaging in partisan gerrymandering, the very practice that Virginia’s Redistricting Amendment was designed to prevent. In the 2010 cycle, Foltz was responsible for drawing a map in Wisconsin that illegally “cracked” the state’s Latino population in violation of the Voting Rights Act. *Baldus v. Members of Wisconsin Gov’t Accountability Bd.*, 849 F. Supp. 2d 840, 860-61 (E.D. Wis. 2012). In drawing that map, Mr. Foltz “had meetings about redistricting with every single Republican member of the State Assembly” “under a cloak of secrecy,” but he did not meet with any Democratic members. *Id.* at 845. The federal court later found Mr. Foltz’s testimony that he was “not influenced by partisan factors” to be not credible and indeed “almost laughable.” *Id.* at 851. The court also found that Mr. Foltz had deleted files from the state’s redistricting computer immediately after the court ordered him to produce documents. Pls.’ Interim Status Report at 2-3, *Baldus v. Members of Wisconsin Gov’t Accountability Bd.*, No. 11-CV-562 (E.D. Wis.) (filed Apr. 18, 2013). One of those deleted files was named “Hispanic amendment”—a highly suggestive title, as Mr. Foltz was then accused of illegally diluting Latino voting strength. *Id.*; *see also* Order, *Baldus v. Members of Wisconsin Gov’t Accountability Bd.*, No. 11-CV-562 (E.D. Wis. May 15, 2013) (“To this point, the investigation appears to confirm that many files were indeed deleted from the computers, but has not yet conclusively turned up any evidence of bad faith.”). Separately, a federal court found that the map drawn by Mr. Foltz was intended to “entrench[] the Republicans’ control of” Wisconsin’s state legislature. *Whitford v. Gill*, 218 F. Supp. 3d 837, 898 (W.D. Wis. 2016), *vacated and remanded*, 138 S. Ct. 1916 (2018). “There [was] no question that [Foltz’s map] was designed to make it more difficult for Democrats, compared to Republicans, to translate their votes into seats.” *Id.*

According to his resume, Mr. Foltz was most recently engaged by the Republican-controlled Texas House Redistricting Committee for a salary of \$120,000 per year, where he has been identified in press reports as a “secretive Republican operative.” Ex. 9, A. Ura, *Texas appears to be paying a secretive Republican political operative \$120,000 annually to work behind the scenes on redistricting*, Texas Tribune (Sept. 29, 2021).<sup>5</sup> The new Texas congressional map, released in September, “aims to lock in the [Republican Party’s] advantage in Washington over the next decade by building on the map previously gerrymandered in 2010.” Ex. 10, N. Corasaniti, E. Koeze, & D. Lu, *How Texas Plans to Make Its House Districts Even Redder*, N.Y. Times (Oct. 3, 2021).<sup>6</sup> The maps are also the subject of a lawsuit brought by the Mexican American Bar Association of Texas, among others, alleging that they weaken Latino voting strength. *Mexican American Bar Association v. Abbot*, No. 3:21-cv-259 (W.D. Tex.).

\* \* \*

Here, there can be no doubt that the records and prior conduct of the minority’s special master nominees “create in reasonable minds a perception” that their ability to carry out their responsibilities “with integrity and impartiality is impaired.” Va. Canons of Judicial Conduct

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<sup>4</sup> Available at <https://www.reuters.com/article/usa-court-voters/u-s-top-court-rejects-conservative-challenge-in-voting-rights-case-idUSL2N1770OI>.

<sup>5</sup> Available at <https://www.texastribune.org/2021/09/29/texas-redistricting-adam-foltz/>.

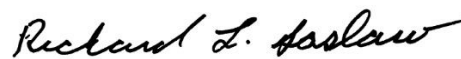
<sup>6</sup> Available at <https://www.nytimes.com/interactive/2021/10/03/us/politics/texas-redistricting-map-2022.html>.

§ III, Commentary to Canon 2.A. What reasonable person could expect Mr. Kincaid or Mr. Foltz—both of whom have been found by courts to have engaged in extreme gerrymandering to advantage Republicans—to be impartial here? What reasonable person could expect Mr. Bryan—who recently worked as a paid consultant to Virginia Senate Republicans—to be disinterested? What reasonable person could expect Mr. Kincaid—who is on the payroll of the Republican National Committee and whose job is to coordinate gerrymandering in favor of Republicans across the country—to propose a map that does not “unduly favor” Republicans?

The Court, with its proud tradition of apolitical administration of justice and preservation of the public trust in government, is now responsible for drawing fair, nonpartisan maps. The minority is attempting to frustrate this process by forcing partisan political operatives on the Court as special masters. Allowing any of these three nominees to serve as a special master to the Court would interfere with the transparency and appearance of fairness necessary for this important map-drawing enterprise.

For the foregoing reasons, we respectfully ask that the Court disqualify the three nominees put forward by the minority and direct the prompt submission of new nominees.

Sincerely,



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Senate Majority Leader Richard L. Saslaw

CC: Speaker of the House of Delegates Eileen R. Filler-Corn  
Senate Minority Leader Thomas K. Norment  
House of Delegates Minority Leader C. Todd Gilbert

Enclosures: Exhibit 1 (NRRT Mission Statement)  
Exhibit 2 (Kincaid tweet)  
Exhibit 3 (Virginia Senate Republican Caucus Campaign Finance Report)  
Exhibit 4 (RNC Schedule B)  
Exhibit 5 (October 2021 Washington Post article)  
Exhibit 6 (May 2019 New York Times article)  
Exhibit 7 (Kincaid op-ed)  
Exhibit 8 (April 2016 Reuters article)  
Exhibit 9 (September 2021 Texas Tribune article)  
Exhibit 10 (October 2021 New York Times article)

# **EXHIBIT 1**



[DONATE](#)

# *The National Republican Redistricting Trust is the GOP's hub for coordinating a national redistricting strategy.*

## WHAT IS REDISTRICTING

### *Constitutional*

The United States Constitution mandates that state legislatures redraw districts every decade to adjust for population changes.

### *Necessary*

State legislative and congressional districts are redrawn every decade to adjust for population changes. Redistricting guarantees a more efficient distribution of Americans per district.

## WHAT WE DO

The NRRT coordinates the GOP's 50-state redistricting effort.

## WHY IT MATTERS

The district lines drawn in 2021 and 2022 will be in place for ten years. The legislators and members of Congress elected from those districts will set the policies of our states and our nation for decades to come. How lines are drawn now will matter for the preservation of our shared conservative values for future generations.

## WHY WE'RE DIFFERENT

The NRRT focuses on the unique legal and data demands of redistricting and coordinates a nationwide redistricting strategy with the Republican Party's national and state committees and conservative organizations around the country.

## WE NEED YOUR HELP

The National Republican Redistricting Trust needs your help. The district lines drawn over the next couple of years will have a lasting effect on our national and state politics and policies for decades to come. Democrats want to use redistricting to gerrymander their way into permanent majorities so they can enact their radical left-wing agenda unchecked.

[CONTACT](#)[DONATE](#)

# **EXHIBIT 2**



Follow

**Adam Kincaid**

@AdamPKincaid

Joined December 2008

353 Following 683 Followers



Followed by Dave Wasserman

Tweets

Tweets & replies

Media

Likes



**Adam Kincaid** @AdamPKincaid · Nov 3

...

A suburban reversion to Republicans combined with continued rural dominance while running even with Latinos and continuing to grow support with African Americans = an emerging coalition capable of dominating American politics for years to come.



1



# **EXHIBIT 3**

**Virginia Senate Republican Caucus, Inc.**  
**(PP-14-00250)**

Reporting Period: 07/01/2021 Through: 09/30/2021  
Page: 9 of 15

Schedule D: Expenditures Person or Company Paid and Address	Item or Service	Name of Person Authorizing Expenditure	Date of Expenditure	Amount Paid
Monumental Consulting LLC 3810 Solebury Place Midlothian, VA 23113	Consulting fees	John G. Selph	09/01/2021	\$5,000.00
EastCoast Entertainment PO Box 73210 North Chesterfield, VA 23235	Band for event	John G. Selph	09/02/2021	\$625.00
Google 1600 Amphitheatre Parkway Mountain View, CA 94043	Software fees	John G. Selph	09/02/2021	\$96.00
Bryan, Thomas M. 13106 Dawnwood Terrace Midlothian, VA 23114	Consulting fees	John G. Selph	09/03/2021	\$20,000.00
Constant Contact 122 Hudson St 3rd Floor New York, NY 10013	Email services	John G. Selph	09/13/2021	\$235.00
Forest Consulting Services PO Box 71596 Richmond, VA 23255	Accounting, reporting and consulting services	John G. Selph	09/13/2021	\$3,000.00
Ryer, Jeffrey A. PO Box 468 Williamsburg, VA 23187	Consulting fees	John G. Selph	09/15/2021	\$6,000.00
Verizon PO Box 660720 Dallas, TX 75266	Telephone service	John G. Selph	09/20/2021	\$144.44
i360, LLC PO Box 37046 Baltimore, MD 21297	Voter data	John G. Selph	09/24/2021	\$1,500.00
i360, LLC PO Box 37046 Baltimore, MD 21297	Voter data	John G. Selph	09/24/2021	\$1,500.00
Anedot 5555 Hilton Avenue Baton Rouge, LA 70808	Credit card processing fees	John G. Selph	09/30/2021	\$110.60
Bank of America 3901 Stillman Pkwy Glen Allen, VA 23060	Banking services	John G. Selph	09/30/2021	\$21.00
Premier Global Services Inc. 3280 Peachtree Rd Ne #1000 Atlanta, GA 30305	Conferencing services	John G. Selph	09/30/2021	\$13.72

# **EXHIBIT 4**

Spender	Recipient	State	Description	Disbursement date ▼	Amount —
REPUBLICAN NATIONAL COMMITTEE	KINCAID, ADAM	VA	LEGAL AND COMPLIANCE SERVICES	09/15/2021	\$5,000.00
REPUBLICAN NATIONAL COMMITTEE	KINCAID, ADAM	VA	LEGAL AND COMPLIANCE SERVICES	08/11/2021	\$5,000.00
REPUBLICAN NATIONAL COMMITTEE	KINCAID, ADAM	VA	LEGAL AND COMPLIANCE SERVICES	07/14/2021	\$5,000.00
REPUBLICAN NATIONAL COMMITTEE	KINCAID, ADAM	VA	LEGAL AND COMPLIANCE SERVICES	06/16/2021	\$5,000.00
REPUBLICAN NATIONAL COMMITTEE	KINCAID, ADAM	VA	LEGAL AND COMPLIANCE SERVICES	05/18/2021	\$5,000.00
REPUBLICAN NATIONAL COMMITTEE	KINCAID, ADAM	VA	LEGAL AND COMPLIANCE SERVICES	04/07/2021	\$5,000.00
REPUBLICAN NATIONAL COMMITTEE	KINCAID, ADAM	VA	LEGAL AND COMPLIANCE SERVICES	03/17/2021	\$5,000.00
REPUBLICAN NATIONAL COMMITTEE	KINCAID, ADAM	VA	LEGAL AND COMPLIANCE SERVICES	02/17/2021	\$5,000.00
REPUBLICAN NATIONAL COMMITTEE	KINCAID, ADAM	VA	LEGAL AND COMPLIANCE SERVICES	01/27/2021	\$5,000.00

Source: fec.gov

# **EXHIBIT 5**



# GOP group's apparent influence on Virginia redistricting map stirs mistrust on commission

By [Meagan Flynn](#)

October 18, 2021 at 6:13 p.m. EDT



Trust broke down further on the bipartisan Virginia Redistricting Commission on Monday after one member revealed the National Republican Redistricting Trust had been working behind the scenes to help a former Virginia congressman submit his own congressional map proposal — one that now closely resembles the map that the commission is debating.

The discovery by Del. Marcus B. Simon (D-Fairfax) sent the meeting into a tailspin as Democratic members feared the GOP group had managed to push through what Simon called a “Republican dream map,” while Republicans accused Democrats of bias as well. Simon wanted the map scrapped.

“I’m sure the National Republican Redistricting Trust was just popping champagne when they saw this map go out,” Simon said.

The commission was meeting Monday to debate the proposed congressional map that combined facets of both the Republican and Democratic proposed maps. The commission must meet an Oct. 25 deadline to submit a congressional map to the General Assembly for approval, with the possibility of an extension, or else the redrawing of districts will be left to the state’s Supreme Court. But disagreement about even a starting point puts a swift resolution in doubt, as some Democrats did not want to even tinker with a map partly mirroring one drawn by the NRRT.

The political makeup of the map under consideration Monday offered five seats considered safely blue, five safely red and one purple competitive district anchored in Virginia Beach, now held by U.S. Rep. Elaine Luria (D). As is, the proposal would represent a gain for Republicans, who now only hold four of the state’s 11 seats.

The commission accepts map submissions from members of the public to serve as a resource for its Republican and Democratic map-drawers — but one citizen map in particular, submitted by former Republican congressman Tom Davis, got the spotlight.

“It seems like the only citizen who had his map considered was Congressman Davis,” Arlington resident Sam Shirazi said during the public comment period.

Following up on Shirazi’s concerns, Simon said he asked staff to look into how Davis’s map was submitted, and learned that the NRRT, the GOP’s main redistricting arm, helped draw it for Davis. The NRRT’s Jason Torchinsky submitted the map to the redistricting commission on Davis’s behalf, and it appears online under Davis’s name. The commission’s GOP lawyer Bryan Tyson said Torchinsky asked via email for assistance uploading it, but that he and the Republican consultants had no other communication with him.

He said Republican map-drawers reviewed Davis’s map and others, but the close resemblance to Davis’s was largely a

coincidence.

“We looked at the citizen maps that were there. And there’s not a whole lot of ways you can draw Southwest Virginia,” Tyson said. “The idea that we conspired with the NRRT to come up with this secret map is just patently untrue.”

Reached by phone Monday, Davis said he contacted the National Republican Redistricting Trust and asked them for help drawing a map because he was not savvy at using the map software himself. “Frankly because I’m an analog guy in the digital age,” he said.

Though the group’s stated goal is to “fight back against the Democrats’ nationwide power grab,” Davis said he trusted the group to create map that avoided partisanship based on criteria he provided: more compact districts that didn’t take into account protecting incumbents.

“They were helpful in getting me some options to do that. That’s how I arrived at it. I didn’t know who else to call,” said Davis, the former chairman of the National Republican Congressional Committee, who represented the 11th district until 2008.

He said he planned to present his map on Friday and take questions — but doubted the commission would be able to break its political impasse and reach a deal on any map.

Simon ultimately said he accepted Tyson’s explanation for what happened, though he argued that doesn’t change the fact that a heavy NRRT footprint remains on the map that the commission is now considering.

“I think that if their goal was to get as much of their map into the commission process as possible, with as few changes as possible, they’ve got to feel like they did a successful job of that,” Simon said in an interview. “Even if it was a relatively benign process, if it’s just a coincidence that the Republican map-drawer picked Tom Davis’s map to draw the three southwest districts, the result is the same.”

Republicans on the commission brushed aside Simon’s concerns and urged commissioners to view the proposed map as merely a starting point. “I don’t think we get anywhere trying to impugn the motivations of those we can’t really know about,” Richard Harrel said.

A spokeswoman for the NRRT declined to comment.

Like many aspects of the bipartisan commission, its chosen process for drawing the maps seemed primed for disagreement.

The Democratic map-drawers were put in charge of the three districts in Northern Virginia considered safely blue — the 8th, 10th and 11th districts — while Republicans took the three red districts in the southern and western parts of the state, the 5th the 6th and 9th. Both sides agreed to leave the Democratic 3rd and 4th districts largely intact, with minimal adjustments for population changes, since those districts were approved by a federal court to protect majority-minority voting populations under the federal Voting Rights Act.

That left the map-drawers to stitch together the remaining battleground 7th and 2nd congressional districts, plus the coastal 1st district represented by Rep. Rob Wittman (R).

Some of the most significant changes from the current congressional map were made in the proposed 7th and 5th districts and in the western Richmond suburbs, where historically red areas such as Chesterfield and Henrico counties have been trending blue.

The 5th district, represented by Rep. Bob Good (R), currently stretches from the North Carolina border to as far north

as Warrenton, flirting with Northern Virginia while anchored in Southside. To make the district more compact, the proposed map only takes the 5th district as far north as Fluvanna County. But the 5th would also stretch eastward to into the Richmond suburbs, picking up southern parts of Henrico County and the western half of Chesterfield County that are now represented by Rep. Abigail Spanberger (D) in the 7th. Northern parts of Henrico would also be in the 1st district.

The 7th, in turn, would move dramatically north and completely out of the Richmond suburbs, making it largely unrecognizable and far more friendly to Republicans. The 7th would stretch from the northernmost tip of Virginia, in Frederick County, east to Stafford County and parts of Prince William County. According to the nonpartisan [Virginia Public Access Project](#), Donald Trump would have won the district by 16 points in 2016; President Biden won the current 7th district by one percentage point last year.

A number of Henrico residents urged commissioners to rethink splitting the county into so many different districts, as it is also already part of the 4th district as well. One said she feared map-drawers were trying to gerrymander Spanberger, who faces a tough campaign for reelection next year, out of her seat.

The 2nd district, which is also expected to be hotly contested, would not change drastically under the proposal. But according to VPAP it would lean Republican under the proposed map.

“It’s a terrible map for Democrats, and it’s probably a nonstarter for the commission’s Democrats,” said Dave Wasserman, the U.S. House editor at the Cook Political Report who tracks redistricting. “Democrats are not going to vote essentially for a 5-5-1 map in a state that they believe has become blue. The choices that this map makes, to put Charlottesville in with the Shenandoah Valley, to essentially dismantle the current 7th district, that is the very opposite of what Democrats would support.”

While Republicans on the commission said they hoped to fiddle with the edges of the proposal, co-chair Greta Harris said she believed much larger changes would be necessary. But because there was no quorum at the meeting Monday, commissioners could not vote or direct the map-drawers to do anything ahead of the next meeting Wednesday.

## More on the 2021 Virginia election

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# **EXHIBIT 6**

## Deceased G.O.P. Strategist's Hard Drives Reveal New Details on the Census Citizenship Question

By Michael Wines

May 30, 2019

WASHINGTON — Thomas B. Hofeller achieved near-mythic status in the Republican Party as the Michelangelo of gerrymandering, the architect of partisan political maps that cemented the party's dominance across the country.

But after he died last summer, his estranged daughter discovered hard drives in her father's home that revealed something else: Mr. Hofeller had played a crucial role in the Trump administration's decision to add a citizenship question to the 2020 census.

Files on those drives showed that he wrote a study in 2015 concluding that adding a citizenship question to the census would allow Republicans to draft even more extreme gerrymandered maps to stymie Democrats. And months after urging President Trump's transition team to tack the question onto the census, he wrote the key portion of a draft Justice Department letter claiming the question was needed to enforce the 1965 Voting Rights Act — the rationale the administration later used to justify its decision.

Those documents, cited in a federal court filing Thursday by opponents seeking to block the citizenship question, have emerged only weeks before the Supreme Court is expected to rule on the legality of the citizenship question. Critics say adding the question would deter many immigrants from being counted and shift political power to Republican areas.

The disclosures represent the most explicit evidence to date that the Trump administration added the question to the 2020 census to advance Republican Party interests.

*[Inside the Trump administration's fight to add a citizenship question to the census]*

In a statement issued on Thursday evening, the Justice Department said the accusations in the filing were baseless and amounted to “a last-ditch effort to derail the Supreme Court's consideration of this case.” It said Mr. Hofeller's 2015 study had “played no role in the department's December 2017 request to reinstate a citizenship question to the 2020 decennial census.”

In Supreme Court arguments in April over the legality of the decision, the Trump administration argued that the benefits of obtaining more accurate citizenship data offset any damage stemming from the likely depressed response to the census by minority groups and noncitizens. And it dismissed charges that the Commerce Department had simply invented a justification for adding the question to the census as unsupported by the evidence.

Opponents said that the Justice Department's rationale for seeking to add a citizenship question to the census was baldly contrived, a conclusion shared by federal judges in all three lawsuits opposing the administration's action.

But a majority of the Supreme Court justices seemed inclined to accept the department's explanation the question was needed to enforce the Voting Rights Act, and appeared ready to uphold the administration's authority to alter census questions as it sees fit. The justices are expected to issue a final ruling before the court's term ends in late June.

The filing on Thursday sought sanctions against the defendants in the lawsuit, led by Commerce Secretary Wilbur L. Ross Jr., who were accused of misrepresentations “on the central issues of this case.” Judge Jesse M. Furman of United States District Court in Manhattan set a hearing on the issue for Wednesday.

In nearly 230 years, the census has never asked all respondents whether they are American citizens. But while adding such a question might appear uncontroversial on its face, opponents have argued that it is actually central to a Republican strategy to skew political boundaries to their advantage when redistricting begins in 2021.

*[How the Supreme Court's decision on the census could alter American politics.]*

Until now, Mr. Hofeller seemed a bystander in the citizenship-question debate, mentioned but once in thousands of pages of lawsuit depositions and evidence. Proof of his deeper involvement surfaced only recently, and only after a remarkable string of events beginning after his death in August at age 75.

Mr. Hofeller was survived by a daughter, Stephanie Hofeller, from whom he had been estranged since 2014. In an interview, Ms. Hofeller said she learned of her father's death by accident after searching for his name on the internet, and returned to her parents' retirement home in Raleigh, N.C., to see her mother, Kathleen Hofeller.

Sorting through Mr. Hofeller's personal effects, looking for items she had asked her father to save for her, Stephanie Hofeller came across a clear plastic bag holding four external hard drives and 18 thumb drives, backups of data on Mr. Hofeller's Toshiba laptop. Her mother gave Ms. Hofeller the backups, which turned out to hold some 75,000 files — family photographs and other personal data, but also a huge trove of documents related to Mr. Hofeller's work as a Republican consultant.

Late last year, Ms. Hofeller said, she contacted the Raleigh office of the advocacy group Common Cause, seeking its help in finding a lawyer unconnected to her father to help settle his estate. Only after several conversations with a staff member there did she mention the hard drives in passing, she said, remarking almost jokingly that an expert on gerrymanders might find a lot in them that was of interest.

"My understanding was that anything that would be on these hard drives was duplicative of things that had already been hashed out" in court challenges to Mr. Hofeller's maps, she said.

#### Redistricting at a Glance

Every 10 years, each state in the U.S is required to redraw the boundaries of their congressional and state legislative districts in a process known as redistricting. Following the 2020 census, several states are set to gain or lose seats in Congress.

- **What Is Gerrymandering?** Gerrymandering happens when governing parties try to cement their power through strategic redistricting, redrawing boundaries so that the party's candidates are more likely to win seats.
- **In Texas:** The state's Republican leadership aims to lock in the party's advantage in Washington over the next decade by building on the political map previously gerrymandered in 2010.
- **In Illinois:** Democrats in Illinois proposed highly gerrymandered congressional maps that would consolidate their power and cut the number of Republican seats

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In fact, Common Cause had recently filed a new lawsuit in state court, challenging gerrymandered maps of North Carolina's legislative districts drawn by Mr. Hofeller himself. When the staff member told her of the lawsuit, Ms. Hofeller said, she thought, "Wow — this might be of use."

Lawyers for Arnold & Porter, the law firm representing Common Cause in the North Carolina suit, subpoenaed the drives in February. By happenstance, the same firm was representing private plaintiffs pro bono in the principal lawsuit opposing the citizenship question, in Federal District Court in Manhattan.

The documents cited in the Thursday court filing include an unpublished August 2015 analysis by Mr. Hofeller, who was hired by The Washington Free Beacon, a conservative news outlet financially backed by Paul Singer, a billionaire New York hedge fund manager and major Republican donor. Mr. Hofeller's charge was to assess the impact of drawing political maps that were not based on a state's total population — the current practice virtually everywhere in the nation — but on a slice of that population: American citizens of voting age.

At the time, the study's sponsor was considering whether to finance a lawsuit by conservative legal advocates that argued that counting voting-age citizens was not merely acceptable, but required by the Constitution.

Mr. Hofeller's exhaustive analysis of Texas state legislative districts concluded that such maps "would be advantageous to Republicans and non-Hispanic whites," and would dilute the political power of the state's Hispanics.

The reason, he wrote, was that the maps would exclude traditionally Democratic Hispanics and their children from the population count. That would force Democratic districts to expand to meet the Constitution's one person, one vote requirement. In turn, that would translate into fewer districts in traditionally Democratic areas, and a new opportunity for Republican mapmakers to create even stronger gerrymanders.

The strategy carried a fatal flaw, however: The detailed citizenship data that was needed to draw the maps did not exist. The only existing tally of voting-age citizens, Mr. Hofeller's study stated, came from a statistical sample of the population largely used by the Justice Department to verify that the 1965 Voting Rights Act was ensuring the voting rights of minority groups.

"Without a question on citizenship being included on the 2020 Decennial Census questionnaire," Mr. Hofeller wrote, "the use of citizen voting age population is functionally unworkable."

Roughly 16 months later, as President-elect Trump prepared to take office, Mr. Hofeller urged Mr. Trump's transition team to consider adding a citizenship question to the census, the transition official responsible for census issues, Mark Neuman, said last year in a deposition in the Manhattan census lawsuit.

Activists rallied outside the Supreme Court in April. The justices are expected to issue a final ruling on the census citizenship question before the court's term ends in late June. J. Scott Applewhite/Associated Press

Mr. Neuman testified that Mr. Hofeller told him that using citizenship data from the census to enforce the Voting Rights Act would increase Latino political representation — the opposite of what Mr. Hofeller's study had concluded months earlier.

Court records show that Mr. Neuman, a decades-long friend of Mr. Hofeller's, later became an informal adviser on census issues to Mr. Ross, the commerce secretary. By that summer, a top aide to Mr. Ross was pressing the Justice Department to say that it required detailed data from a census citizenship question to better enforce the Voting Rights Act.

The court filing on Thursday describes two instances in which Mr. Hofeller's digital fingerprints are clearly visible on Justice Department actions.

The first involves a document from the Hofeller hard drives created on Aug. 30, 2017, as Mr. Ross's wooing of the Justice Department was nearing a crescendo. The document's single paragraph cited two court decisions supporting the premise that more detailed citizenship data would assist enforcement of the Voting Rights Act.

That paragraph later appeared word for word in a draft letter from the Justice Department to the Census Bureau that sought a citizenship question on the 2020 census. In closed congressional testimony in March, John M. Gore, the assistant attorney general for civil rights and the Justice Department's chief overseer of voting rights issues, said Mr. Neuman gave him the draft in an October 2017 meeting.

The second instance involves the official version of the Justice Department's request for a citizenship question, a longer and more detailed letter sent to the Census Bureau in December 2017. That letter presents nuanced and technical arguments that current citizenship data falls short of Voting Rights Act requirements — arguments that the plaintiffs say are presented in exactly the same order, and sometimes with identical descriptions like "building blocks" — as in Mr. Hofeller's 2015 study.

In their court filing on Thursday, lawyers for the plaintiffs said that "many striking similarities" between Mr. Hofeller's study and the department's request for a citizenship question indicated that the study was an important source document for the Justice Department's request.

The filing also says flatly that Mr. Gore and Mr. Neuman "falsely testified" under oath about the Justice Department's actions on the citizenship question.

In an interview on Thursday, Mr. Neuman denied the charge, and said he had worked for years to increase Hispanic representation in public office. "I gave complete and truthful testimony in my deposition," he said. "My mother immigrated to this country from Central America. Any reference that I would advocate actions that harm the interests of the Latino community is wrong and deeply offensive."

The Departments of Justice and Commerce had no immediate comment on the filings. Common Cause, which first obtained the hard drives, said the revelations on them were a wake-up call to supporters of the American system. "Now that the plan has been revealed, it's important for all of us — the courts, leaders and the people — to stand up for a democracy that includes every voice," said Kathay Feng, the group's national redistricting director.

Ms. Hofeller said her decision to open her father's files to his opponents was a bid for transparency, devoid of personal or political animus. Although she believed he was undermining American democracy, she said, their estrangement stemmed not from partisan differences, but a family dispute that ended up in court. Ms. Hofeller described herself as a political progressive who despises Republican partisanship, but also has scant respect for Democrats.

Her father, she said, was a brilliant cartographer who was deeply committed to traditional conservative principles like free will and limited government. As a child, she said, she was schooled in those same principles, but every successive gerrymandered map he created only solidified her conviction that he had abandoned them in a quest to entrench his party in permanent control.

“He had me with the idea that we are made to be free,” she said. “And then he lost me.”



# **EXHIBIT 7**

*'Independent' redistricting panels don't really end gerrymandering; Opposing View:  
Even when redistricting commissioners are genuinely nonpartisan, biased voices  
aren't shut out entirely.*

South Bend Tribune (IN)

October 24, 2021 Sunday

SBN-Tribune Edition

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Section: NEWS; Pg. A14

Length: 419 words

Byline: Adam Kincaid, SPECIAL TO USA TODAY

## Body

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In politics, it's sometimes difficult to separate fact from fiction, which is precisely the case with independent redistricting commissions.

These so-called independent commissions promise voters that new maps can be drawn fairly and in a nonpartisan spirit. While they operate under a veneer of independence, in reality commissions are dominated by partisan actors.

Commission members often don't bother hiding their political bias, like the Michigan commissioners who donated to numerous left-wing causes.

Even when members are genuinely nonpartisan, biased voices aren't shut out entirely: California's commission heard public comment from numerous sources who failed to disclose their partisan affiliations.

There's also no guarantee that commissions will operate in the kind of nonpartisan spirit promised by reformers. Just look at the Virginia Redistricting Commission, where Democratic members walked out after failing to persuade Republicans to vote for legislative maps that clearly favored Democrats.

But while commissioners can be as partisan as legislators, legislators are much more accountable to the people. Legislators must stand for reelection, and therefore can be removed from office.

Commissioners, on the other hand, can act without worrying about what voters think, just as the Michigan commission is forging ahead without replacing its clearly biased "independent" members.

John Swanson

'Independent' redistricting panels don't really end gerrymandering; Opposing View: Even when redistricting commissioners are genuinely nonpartisan, biased voice....

Even in states like Colorado, where commissions are legally required to get public feedback, there is no guarantee the voices they listen to will be representative of their states.

Finally, advocates sell independent commissions as a cure-all for gerrymandering, but minimize the fact that redistricting requires a complex balancing of competing priorities. For example, independent commissions must usually create maps that "neither favor or disfavor" a political party and do not unduly split the communities and jurisdictions of a state.

Commissioners quickly realize that political geography does not make fully adhering to both of those criteria possible. To reach a proportional, partisan outcome, commissioners must split the communities and jurisdictions they were created to keep intact. Independent commissions end up doing the very thing they were created to end – gerrymandering.

Independent commissions are not a cure for gerrymandering. All they really do is shift gerrymandering from one part of government to another.

Adam Kincaid is executive director of the National Republican Redistricting Trust.

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# **EXHIBIT 8**



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## U.S. LEGAL NEWS

APRIL 4, 2016 / 10:26 AM / UPDATED 6 YEARS AGO

## U.S. top court rejects conservative challenge in voting rights case

By Lawrence Hurley



WASHINGTON (Reuters) - The U.S. Supreme Court on Monday unanimously upheld the method all states use to draw their legislative districts, rejecting a conservative challenge that could have given more clout to white, rural voters.

The eight justices rebuffed a case spearheaded by a conservative legal activist brought against the state of Texas over the manner in which it carved out voting districts for its state Senate, based on a count of every resident rather than just eligible voters.

They ruled that Texas, in drawing the districts, did not violate the long-established legal principle of “one person, one vote” endorsed by the Supreme Court in the 1960s during the era of the U.S. civil rights movement.

Thousands rally in cold, damp Glasgow for COP26 climate action

Writing for the court, liberal Justice Ruth Bader Ginsburg stated that elected legislators “serve all residents, not just those eligible or registered to vote.” Ginsburg said non-voters, including children, have “an important stake in many policy debates,” including education, and sometimes need help navigating government bureaucracy.

A victory for the conservative challengers in the case *Evenwel v. Abbott* could have shifted influence in U.S. state legislative races away from urban areas that tend to be racially diverse and favor Democrats to rural ones predominantly with white voters who often back Republicans.

The policy of counting all residents and not just those who are eligible voters boosts the electoral influence of locales, typically urban and heavily Hispanic, with significant populations of people ineligible to vote. People ineligible to vote include legal and illegal immigrants as well as children and certain convicted criminals.

Nina Perales, vice president of litigation with the Mexican-American Legal Defense and Education Fund, described the ruling as a “clear and important victory” that “protects the right of all people across the U.S. to be represented by their officials and be counted when electoral maps are drawn.”


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Two of the court's conservatives, Clarence Thomas and Samuel Alito, concurred only in the judgment and did not sign on to Ginsburg's opinion. The court is one justice short following the Feb. 13 death of conservative Justice Antonin Scalia, but the unanimous vote suggested his presence would not have substantially affected the outcome.

At issue in the case was whether equality of legislative representation necessitates equal numbers of all residents in voting districts regardless of whether they are eligible to vote or equal numbers of eligible voters.

Adopting a new approach "would upset a well-functioning approach to districting that all 50 states and countless local jurisdictions have followed for decades, even centuries," Ginsburg wrote. The ruling does not foreclose states trying different approaches in future.

**LEGAL A** Thousands rally in cold, damp Glasgow for COP26 climate action

Two Texas voters, Sue Evenwel and Edward Pfenninger, were recruited by conservative legal activist Edward Blum to file the lawsuit. Evenwel was a member of the Texas Republican Party's executive committee and Pfenninger worked as a security guard. Both lived in rural voting districts.

"We are disappointed that the justices were unwilling to re-establish the original principle of one-person, one-vote for the citizens of Texas and elsewhere," Blum said in a statement.

The challengers said the state Senate redistricting map signed into law by a Republican governor in 2013 failed to equally distribute voters, improperly expanding the voting power of urban areas. They asserted that the state's system violated the guarantee of equal protection under the law under the Constitution's 14th Amendment.

Caroline Fredrickson, president of the liberal American Constitution Society, said the court "wisely rejected an effort to dilute the political representation of minorities and children."

She added that it was important for the court to endorse voting rights at a time when Republican states have enacted new restrictions, including identification requirements, that Democrats say disproportionately affect minorities.

The dispute did not involve U.S. congressional districts. The Constitution requires seats in the U.S. House of Representatives to be distributed based on a state's total population, not just eligible voters.

The Obama administration supported the Texas plan.

Blum's group, the Project on Fair Representation, also orchestrated a lawsuit from Shelby County, Alabama that in 2013 led the high court to invalidate a portion of the 1965 Voting Rights Act mandating federal approval for election law changes in states with histories of racial discrimination.

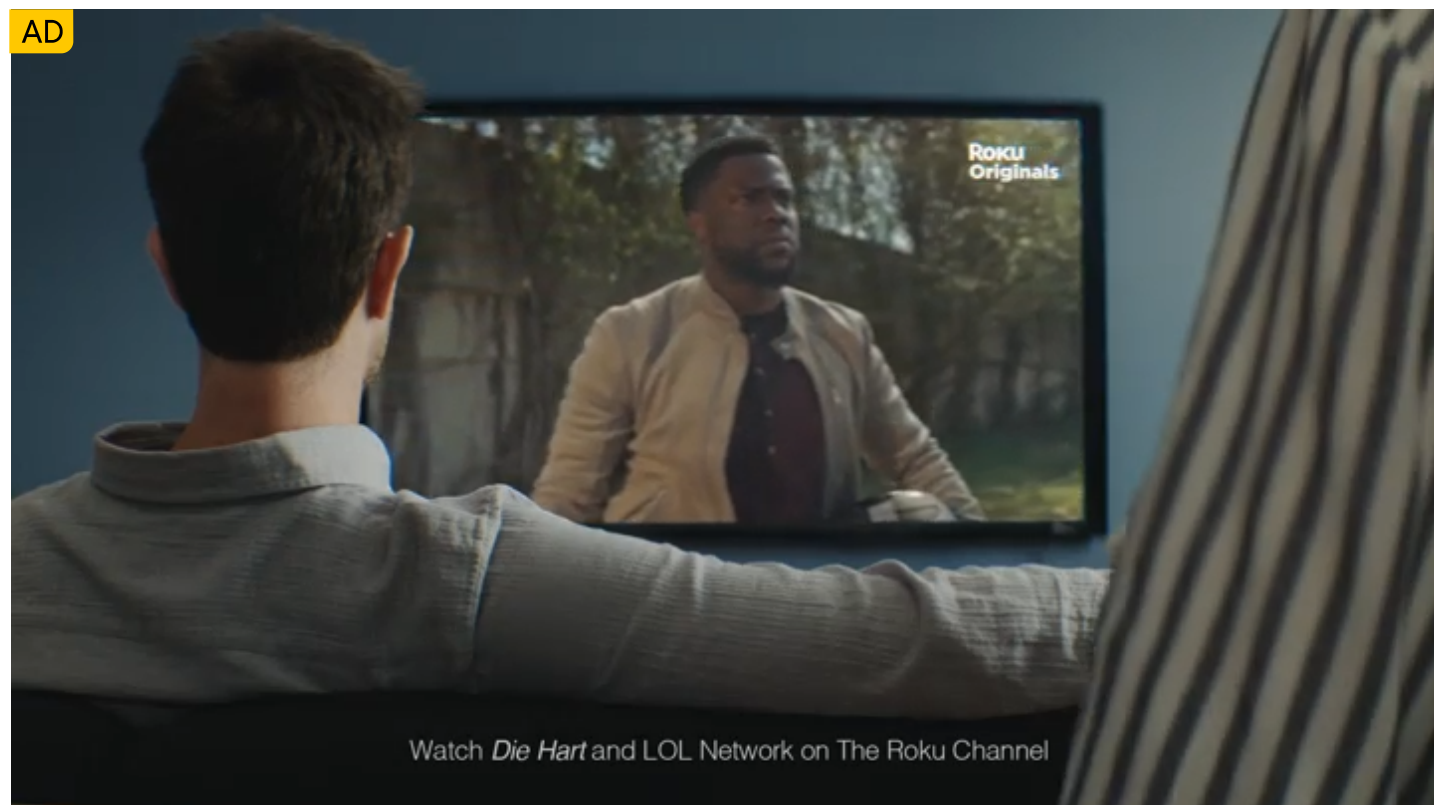
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woman's challenge to a University of Texas admissions policy that considers an applicants' race



among other factors in an effort to enroll more minority students. The court has not yet ruled in that case.

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# **EXHIBIT 9**

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## REDISTRICTING TEXAS

# Texas appears to be paying a secretive Republican political operative \$120,000 annually to work behind the scenes on redistricting

Adam Foltz, now on the Texas payroll, played a key role in Wisconsin's redistricting last decade. A federal court threw out some of the maps and called the effort Foltz was involved in "an all but shameful attempt to hide the redistricting process from public scrutiny."

BY **ALEXA URA** SEPT. 29, 2021 4 PM CENTRAL

[COPY LINK](#)

Texas lawmakers are currently in session in Austin to redraw the state's legislative and congressional maps to reflect a decade's worth of population growth. The census showed people of color were behind 95% of the state's growth since 2010. Miguel Gutierrez Jr./The Texas Tribune

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A Republican redistricting operative whose clandestine work helped drag Wisconsin into a legal morass last decade appears to now be on the payroll of the Texas Legislature as lawmakers work to redraw maps that will determine the distribution of political power for years to come.

The operative, Adam Foltz, was part of the team that helped craft Wisconsin's legislative maps after Republicans took control of that state Legislature in 2010. Foltz played a key role in a tight-lipped and questionable redrawing process that shut out Democrats and drew the condemnation of federal judges who described it as "needlessly secret," according to court records.

Foltz may now be playing a behind-the-scenes role in Texas. The Capitol's internal staff directory, to which The Texas Tribune obtained access, shows Foltz is working for the House Redistricting Committee. His office and phone number in that directory match those of the committee's staff office in the Capitol basement, but at least one Democrat on the committee said they had not been advised of his involvement. Foltz has not been a visible part of the committee's public-facing work.

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Though Foltz is assigned to the House Redistricting Committee, state employment records [show that Foltz is actually on the payroll of the Texas Legislative Council](#), a nonpartisan state agency that supports the Legislature in drafting and analyzing proposed legislation — and manages the internal mapping tool lawmakers use to redraw political maps. During the redistricting process, the council also plays a crucial role in providing demographic and election results for lawmakers' proposed maps.

Records show Foltz was hired by the agency under the title of "legislative professional" on May 17 at a \$120,000 annual salary. But Kimberly Shields, the

council's assistant executive director, said in an email that Foltz reports to state Rep. [Todd Hunter](#), the Corpus Christi Republican who chairs the redistricting committee.

"While Mr. Foltz is on the legislative council payroll, he is considered an employee of the House Redistricting Committee, and his hiring and duties are entirely within the purview of Chairman Hunter," Shields said in an email. "The council provides support on request to the house and senate in many situations, including occasionally covering the salary of a staff member. We don't have any other committee employees on our payroll."

Hunter did not respond to questions about Foltz's involvement in the mapping process.

"The work of redistricting is never easy, but I am fully committed to a fair process and I look forward to working with my fellow members of this committee on the task at hand," Hunter said in a February statement when he was first appointed to chair the committee by House Speaker [Dade Phelan](#), R-Beaumont.

A request for comment to the staff email assigned to Foltz also went unanswered. A spokesperson for Phelan declined to comment and referred questions to Hunter.

Texas lawmakers are currently in session in Austin to redraw the state's legislative and congressional maps to reflect a decade's worth of population growth. The census showed [people of color were behind 95% of the state's growth since 2010](#) — about 4 million new residents — with Hispanic Texans responsible for half of that growth.

The redistricting process has always been complex and contentious in Texas, requiring repeated federal intervention to protect Hispanic and Black voters. In each of the last four redistricting cycles, either a federal court or the U.S. Department of Justice determined that Texas did not comply with federal protections for those voters. This year's effort will mark the first time in decades that Texas lawmakers — Republicans are again in full control of the process — [will be allowed to redraw maps without the federal supervision](#) that prevented states with discriminatory track records from enacting new maps until they were reviewed to ensure they didn't pull back on the voting rights of people of color.

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Foltz's involvement in Wisconsin's 2011 redistricting was shrouded in controversy. He was hired as a staff member for the Speaker of the Assembly to help redraw the state's maps following the 2010 census. Though he was an aide to the speaker, Foltz and another staffer worked out of a law firm that was also brought on to help with the process.

He held meetings there under what a federal court called a "cloak of secrecy" with every Republican member of the State Assembly — but no Democrats — who were each required to sign confidentiality agreements that bound them from discussing what was said. Despite Republican efforts to keep them secret, documents released during the litigation over the maps Foltz helped draw showed that he was also asked to help witnesses prepare their public testimony in support of them.

A federal court that considered the state's maps eventually found violations of the Voting Rights Act in two assembly districts where map drawers improperly diluted the vote of Latinos. In that [ruling](#), the court said the drafting of the maps was "needlessly secret, regrettably excluding input from the overwhelming majority of Wisconsin citizens."

As the case dragged on over legal squabbles about emails Republicans had not initially turned over, the court [criticized the secretive process in which Foltz was involved](#) while he worked on the maps from the offices of the private law firm.

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"Without a doubt, the Legislature made a conscious choice to involve private lawyers in what gives every appearance of an attempt — albeit poorly disguised

— to cloak the private machinations of Wisconsin's Republican legislators in the shroud of attorney-client privilege,” the court said in a 2012 ruling. “What could have — indeed should have — been accomplished publicly instead took place in private, in an all but shameful attempt to hide the redistricting process from public scrutiny.”

*The [2021 Texas Tribune Festival](#), the weeklong celebration of politics and policy featuring big names and bold ideas, wrapped on Sept. 25, but there's still time to tune in. Explore dozens of free, on-demand events before midnight Thursday, Sept. 30, at [tribfest.org](#).*

**Correction, Sept. 29, 2021:** A previous version of this story misspelled the name of the Texas Legislative Council's assistant executive director. She is Kimberly Shields, not Kimberley Shields.

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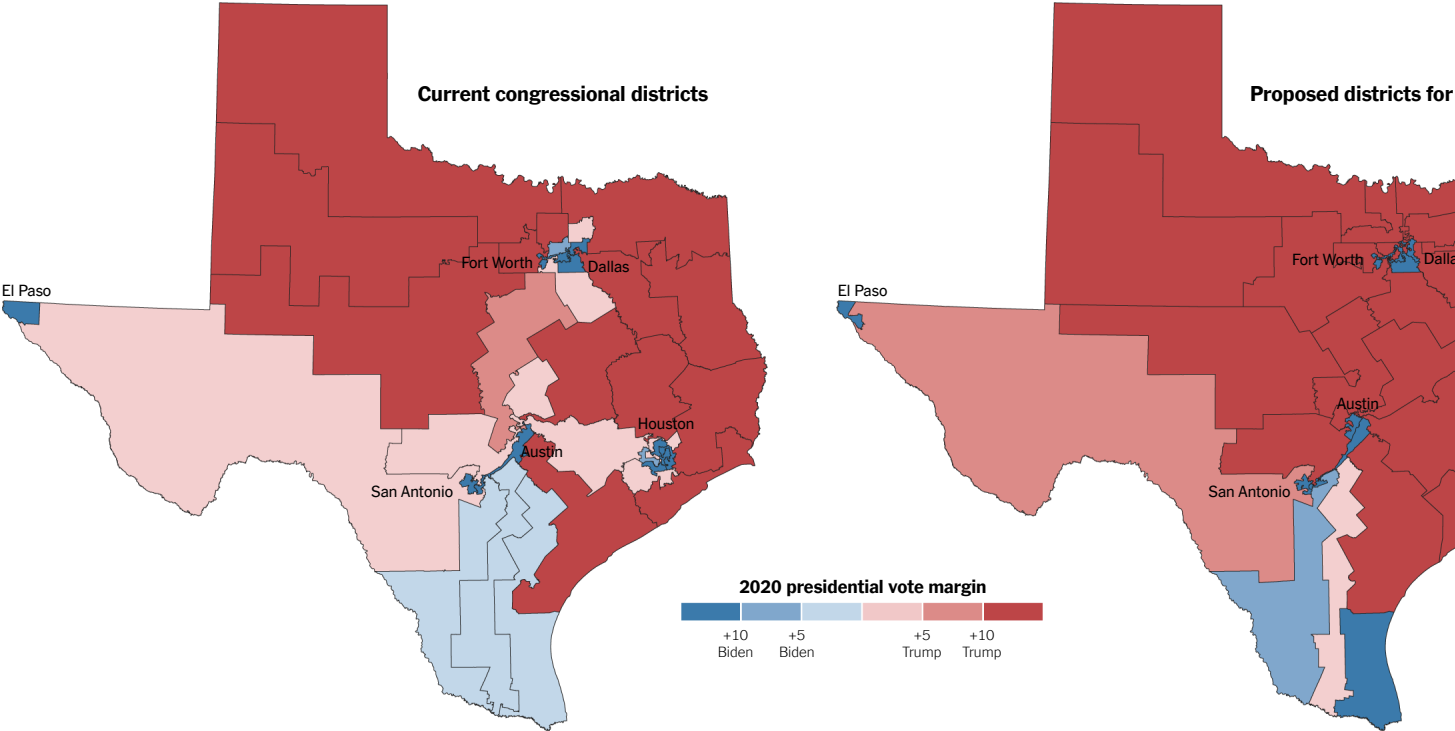
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# **EXHIBIT 10**



# How Texas Plans to Make Its House Districts Even Redder

By Nick Corasaniti, Ella Koeze and Denise Lu Oct. 3, 2021



The new congressional map released last month by Texas Republicans aims to lock in the party’s advantage in Washington over the next decade by building on the map previously gerrymandered in 2010. The proposed district lines also offset recent population growth spurred by communities of color, diminishing the voting power of those groups.

Rather than create more Republican congressional districts, the Texas legislature chose to bolster incumbents with even safer districts; there are far fewer toss-up or competitive districts in the proposed map, dealing a blow to any Democratic hopes of flipping a competitive seat or two in Texas during the 2022 midterm elections, and risking deeper polarization through pumped-up primaries.

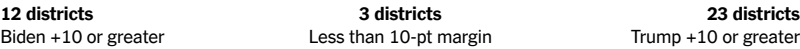
The result: just one district — the 15th — where the 2020 presidential margin of victory would have fallen within 5 percentage points under the redrawn map.

Texas congressional districts by 2020 presidential vote margin

Current districts		
9 districts	14 districts	13 districts
Biden +10 or greater	Less than 10-pt margin	Trump +10 or greater



Proposed districts



15th



For example, seats that were listed as toss-ups by the Cook Political Report in 2020 will now have significant double-digit margins: The 10th Congressional District will see the presidential margin grow from a 2-point Republican advantage to 20, and the 21st District’s margin will rise from 3 points to 20 points, according to a New York Times analysis. More than a dozen proposed districts will have a Republican vote share of at least 60 percent.

This defensive redistricting strategy, some election experts argue, could become more prevalent this year in other states.

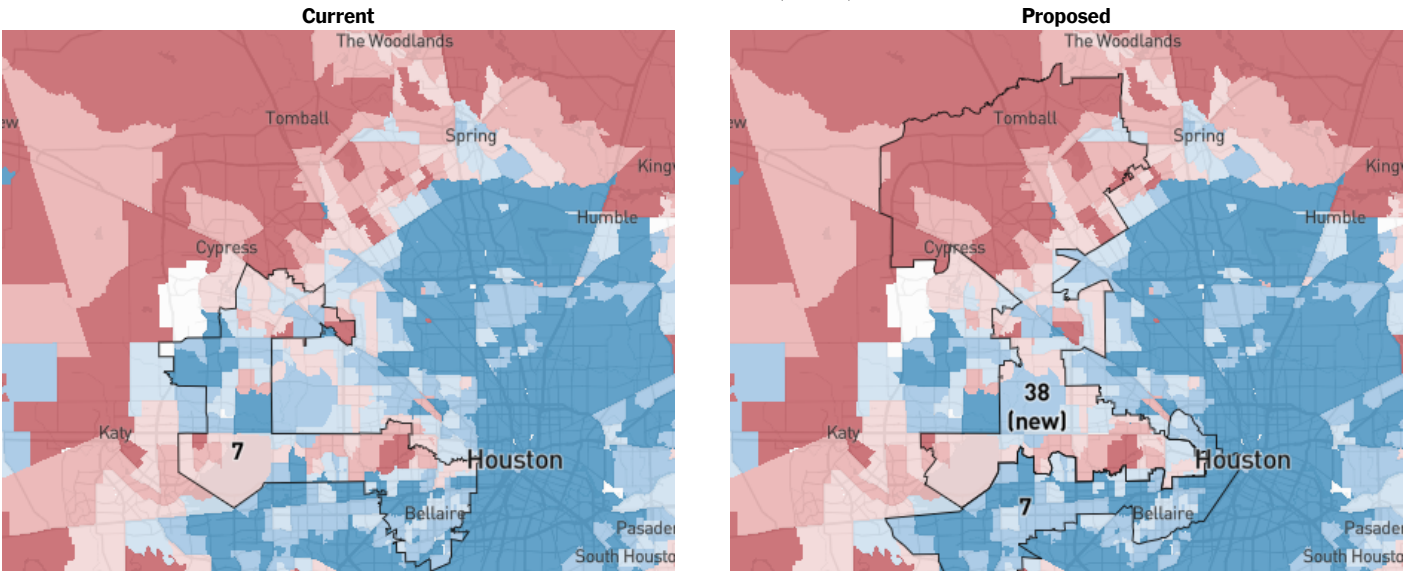
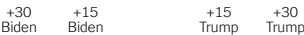
“It’s defensive in the way in which these maps are already strong Republican gerrymanders,” said Michael McDonald, a professor of political science at the University of Florida. “So when we’re talking about protecting incumbents, we’re talking about baking in what was already Republican gerrymandering.”

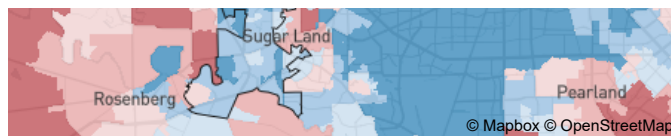
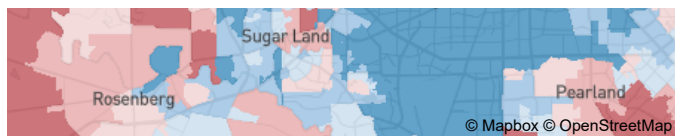
Of course, this is the first draft of Texas’ map, and it is subject to changes throughout the process. But legislators on both sides of the aisle do not expect many significant alterations, and redistricting in Texas carries national implications — as it was the only state to gain two additional congressional seats through reapportionment.

Here are four ways the Republicans further gerrymandered the map.

1. Adding a Republican district in Harris County

2020 presidential vote margin by precinct





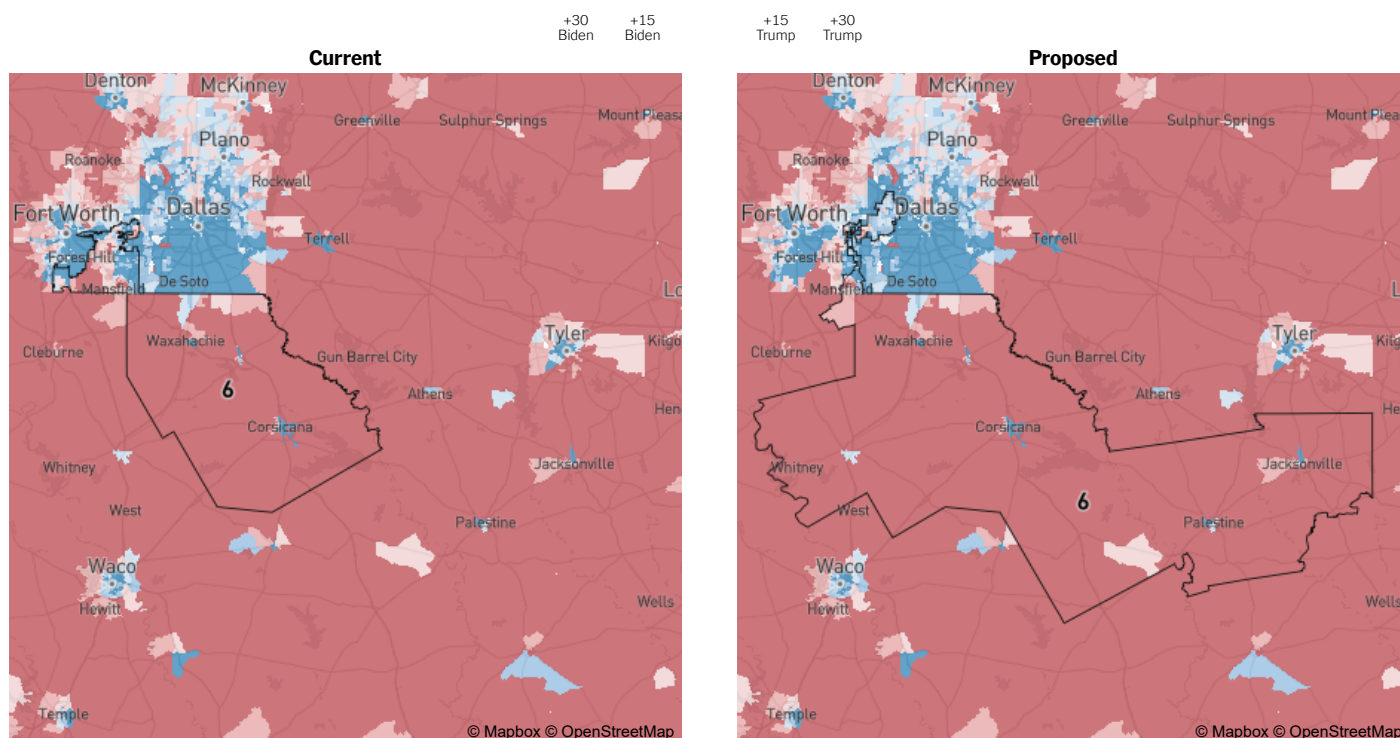
The Texas legislature didn't just consolidate Republican support; already safe Democratic incumbents will have even safer districts. For example, the 7th District in the Houston area grew from a margin of 8.5 percentage points for Democrats to a 30-point margin.

By compacting the district, home to Representative Lizzie Fletcher, a Democrat, and other Democratic districts in the area, Republicans were able to draw a new, safely Republican district in northwest Harris County, where a large part of the booming county's white population lives.

Mr. Trump would have carried the new 38th District by 18 percentage points.

## 2. Splitting Dallas into more large and rural areas

2020 presidential vote margin by precinct



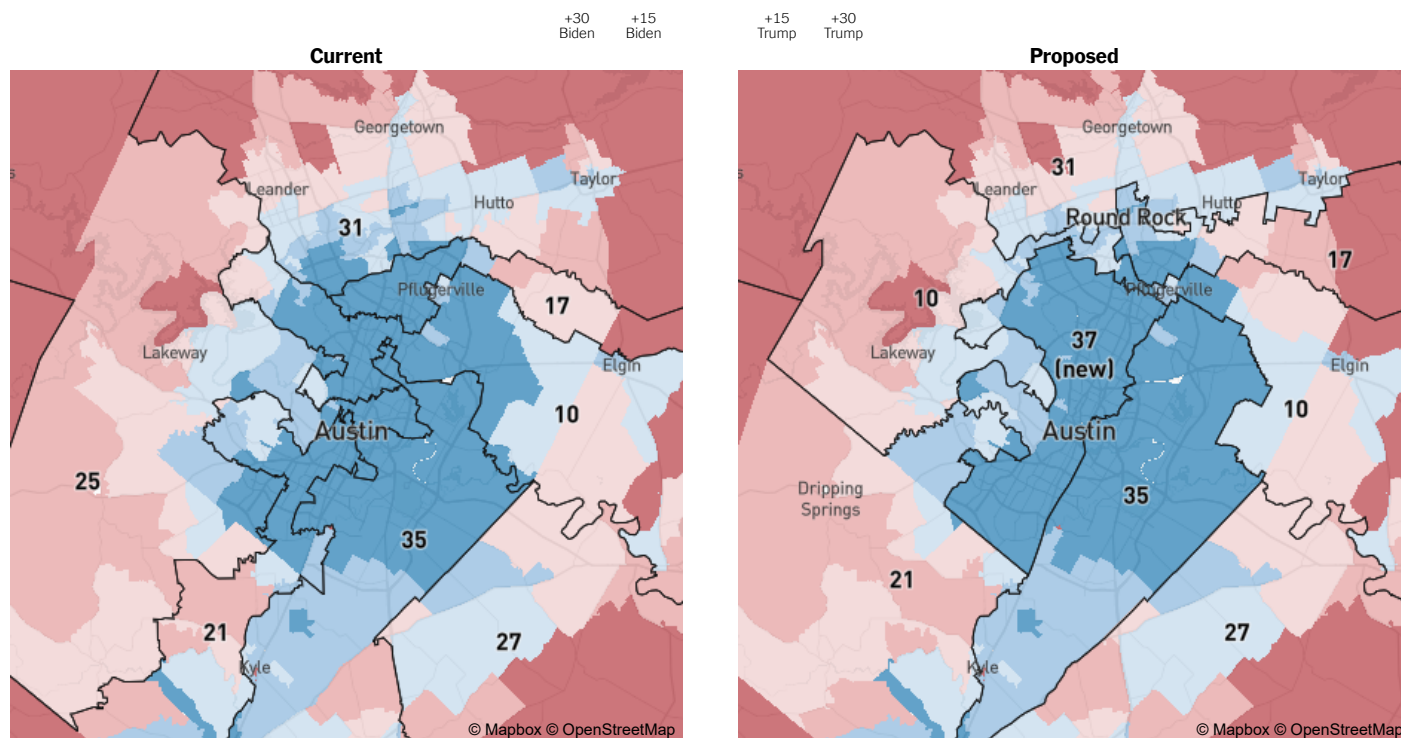
The Dallas-Fort Worth metropolitan area and surrounding suburbs, in particular, drifted Democratic in 2020. So the new map extends districts from the Dallas area to the broadly rural surrounding parts.

The 6th District, for example, which was home to Republican Representative Ron Wright, went for Donald J. Trump by 3 points. It now extends much farther to the southeast to add more rural and Republican-leaning voters, increasing the vote margin of Trump voters to 20 percentage points.

A similar transformation occurred for the 25th District held by Representative Roger Williams, a Republican. The redrawn district was expanded significantly to the west, out of the Fort Worth suburbs and into rural areas, fortifying his advantage.

### 3. Consolidating Democratic growth in Austin

2020 presidential vote margin by precinct



Austin is the most decidedly blue city in the state. In 2011, Democrats saw their power diluted as Austin was split into six congressional districts, becoming the only U.S. city of less than 1 million people spread out across so many districts — and after the 2020 election, Republicans controlled five of them.

But Democratic growth in Austin over the past decade meant some of those districts were growing more competitive.

Now, Texas legislators have created the state's second new district, the 37th, which President Biden would have carried by roughly 50 points. This is what election experts refer to as a “vote sink.”

By giving Democrats one new district, with most of the Democratic voters in the city packed into it, the surrounding districts that extend into the suburbs and rural areas can remain safely Republican.

### 4. Spreading out the Latino vote

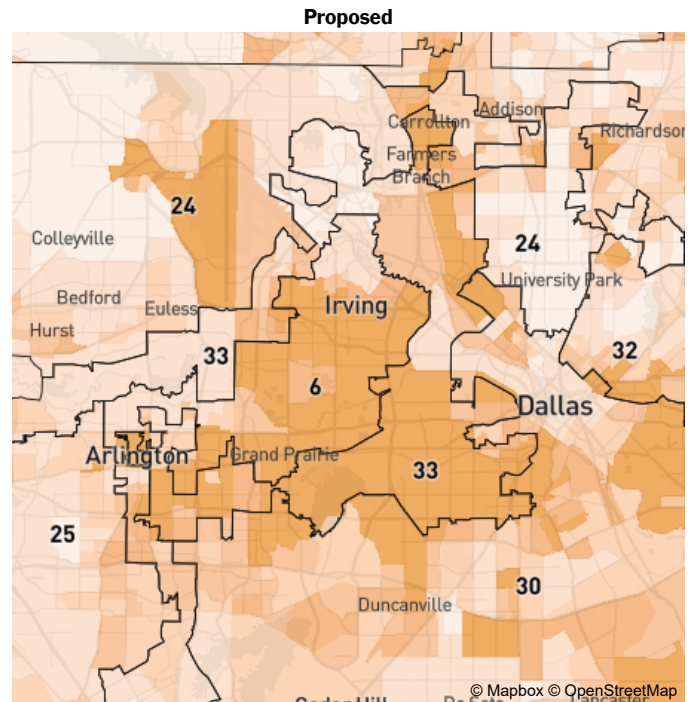
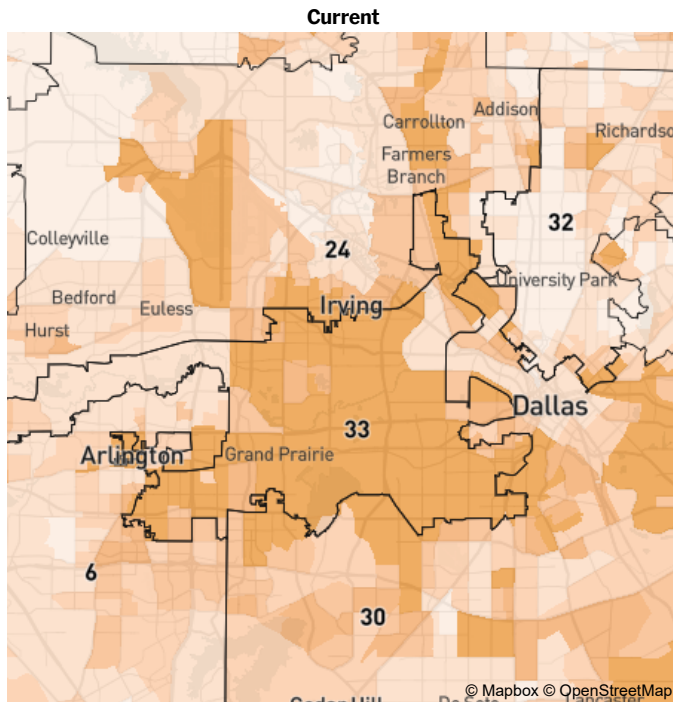
The explosive growth in Texas was, in large part, the result of a booming Latino population. But despite that growth, Republican legislators avoided drawing a new Latino-majority district.

“That is fairly incredible, considering that the Hispanic population grew by 1.98 million since the last census, enough to drive nearly all of Texas’ population growth,” said Samuel S. Wang, the director of the Princeton Gerrymandering Project.

For example, the Republican legislature split the dense Latino areas in western Dallas and eastern Irving across four districts — the 6th, 24th, 25th and 33rd — all with contorted geographic lines.

Hispanic share of 2020 population by census tract

10% 20% 30% 40% 50%

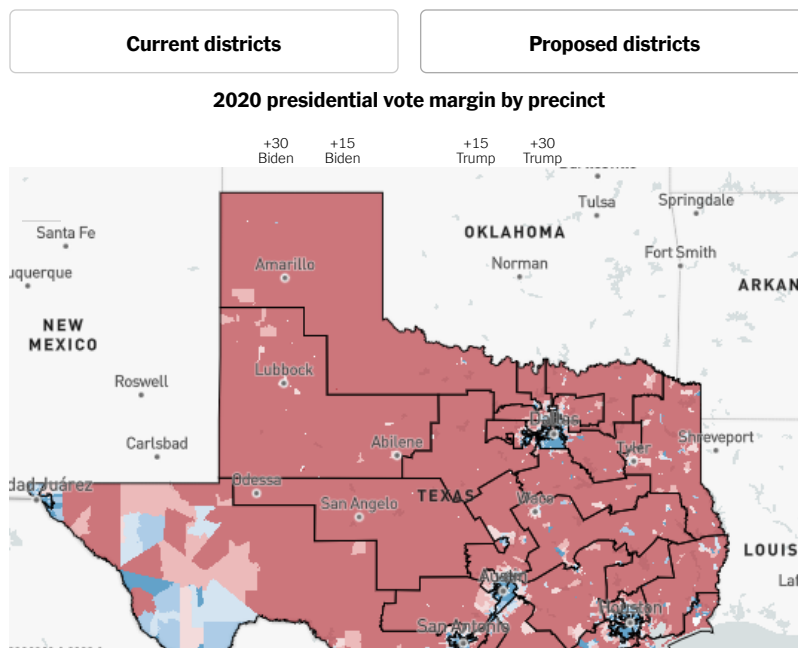


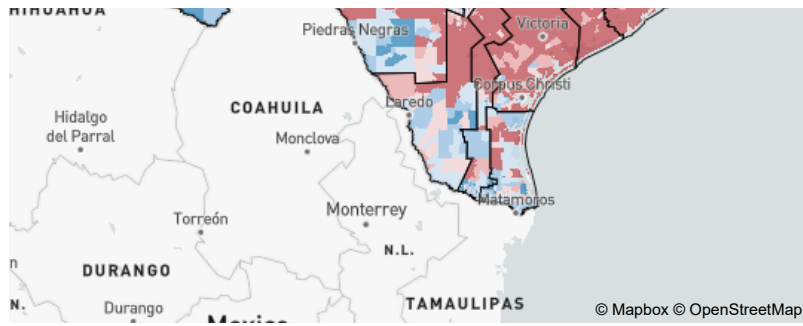
While it is unclear exactly what partisan advantage could be gained by not adding a new Latino district, especially as Mr. Trump made large gains with Latino voters in Texas in 2020, the lack of a new majority-minority district attracted immediate attention, especially in the Rio Grande Valley and in the Dallas area, as potentially violating the Voting Rights Act.

But even if there is legal action to challenge those district lines, it is unlikely that any maps passed this year would be changed or knocked down before the 2022 midterm elections.

“With redistricting, and really with many election laws, there’s very little moral hazard because it takes time to build the evidence for a court to review the constitutionality or the state statutes regarding redistricting,” Mr. McDonald said. “So, you may get one or two elections, sometimes even more, before you will see a map overturned.”

Take a look at the maps below to see how the proposed districts compared with the existing ones.





Sources: U.S. Census Bureau, Texas Legislative Council