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# **LOUISIANA REDISTRICTING: A 2011 PROGRESS REPORT**

## **EXECUTIVE SUMMARY**

The Louisiana Legislature is redrawing the state's political representation maps this year to adjust to population changes recorded in the 2010 Census. A task mandated every 10 years, the job of redistricting is more challenging than usual this time because the state is losing a seat in Congress, Hurricane Katrina has shifted parts of the population and the fall legislative elections have compressed the deadlines for completing the maps and gaining clearance from federal officials.

This critically important work is both complex and inherently political because the elected officials drawing district lines often have a vested interest in the outcome. Redistricting is likely to be filled with clashes around issues of incumbency, race, regionalism and party politics.

Citizens have compelling reasons to understand the process and evaluate whether it is being conducted fairly. The decisions will be lasting and significant for political activity in Louisiana.

The redistricting process should be graded on its openness, integrity and fairness. Priorities should be placed on the best interests of the electorate and their communities rather than on the protection of incumbents and partisan influence.

PAR previously has recommended that an independent commission be created to perform redistricting every 10 years. While it is too late to create a new authority to oversee the current round of redistricting, the state should move sooner rather than later to establish an independent commission to redraw the lines after the next Census in 2020.

This progress report provides a basic guide to the redistricting process and updates PAR's recommendations from a 2009 in-depth study. It identifies potential problems and opportunities as Louisiana remaps its political geography in 2011.

For a full explanation of PAR's recommendations, please see page 11. This report makes the following recommendations:

**Recommendation 1. Legislators should draw districts in the best interests of voters and communities, not to protect political parties or incumbents.**

**Recommendation 2. The Legislature should fully and publicly document the current redistricting process in anticipation of the 2020 redistricting cycle and accommodate broad public input.**

**Recommendation 3. The redistricting committees, as well as the full House and Senate, should establish, prioritize and adhere to a set of guiding principles throughout the process. Members should publicly debate any changes to the rules that embody those principles.**

**Recommendation 4. Amendments to redistricting bills should be clearly and carefully explained. Amendments should be posted in advance of votes so that lawmakers and the public have time to review them. Proposed amendments should be accompanied by maps delineating the impact on all districts affected by the change.**

**Recommendation 5. The Legislature and the Judicial Council should use comprehensive data to look at the composition of the state Courts of Appeal and the number of appellate judges. In the event this cannot be done thoughtfully in the redistricting special session, PAR recommends that a moratorium on new judgeships be implemented until such work can be done on a statewide basis in calendar year 2011. This would allow changes to be implemented prior to the 2012 elections for some judgeships.**

**Recommendation 6. After the special session, the state should take decisive steps toward forming a new redistricting method that is not reliant on legislators drawing their own district maps. Ideally this would take the form of an independent commission overseeing redistricting of congressional and state legislative seats, though other systems should be considered. A new way of redistricting – implemented for the 2020 Census – should be debated, designed and approved in the near future, not later in the decade when incumbent pressures are likely to block real reform.**

## MAJOR CHANGES ON A SHORT DEADLINE

In December 2010, the U.S. secretary of commerce reported the state population levels from information gathered from the national Census conducted earlier in the year. Detailed population and demographic numbers for local areas were released in early February 2011. The new data will be the basis of Louisiana's next set of political maps.

With a 1.4 percent population increase since 2000, Louisiana was among the states experiencing the slowest growth in the decade. Louisiana's population was 4.47 million in 2000 and 4.53 million in 2010. At a growth rate of nearly 21 percent, neighboring Texas added about as many people during the decade as the entire population of Louisiana. Another trend has been the shifting of some populations in Louisiana, with declines in New Orleans and growth in many communities along the Interstate 10 and 12 corridors.

The most significant impact of the new Census is that Louisiana will lose one of its seats in the U.S. House of Representatives. In the 2012 election, Louisiana's new congressional map must reflect six congressional districts instead of its current seven. Although each state is guaranteed two of the 100 U.S. Senate seats and at least one U.S. House seat out of the total of 435, the remaining 385 House seats are redistributed or "reapportioned" each decade to reflect population changes among the states. The state Legislature will redraw the congressional district lines.

As specified in the Louisiana Constitution<sup>1</sup> and statutes, the state Legislature has responsibility for drawing voting district lines for the state House and Senate, the Louisiana Supreme Court, the Board of Elementary and Secondary Education,

and the Public Service Commission. In an unusual move, the Legislature also has decided to consider the composition of the state's Courts of Appeal and the number of appellate judges<sup>2</sup>. All these matters will be taken up in a special legislative session that begins March 20 and concludes no later than April 13. The proposed maps will be presented in the form of bills to be voted on by the Legislature. If the bills are passed, the governor can veto them if he disagrees.

The House and Senate Governmental Affairs committees will draft the initial redistricting bills, and they have scheduled a series of joint regional hearings to receive feedback from the public in advance of drawing new maps. The current district maps overlaid with the updated Census data will be shared at the meetings, along with other data such as baseline statistics. This approach will highlight the areas that have gained or lost population since 2000 and allow citizen comment on how the new plans should be drawn. In addition, committee members will consider any alternative redistricting plans proposed by fellow legislators or the public before making a final decision.

Once the maps have been approved by the Legislature, they will be sent to the U.S. Department of Justice for preclearance in accordance with Section 5 of the Voting Rights Act. That section requires all changes in Louisiana voting laws and redistricting plans to be approved by the federal government before taking effect. If for some reason the Legislature fails to adopt a redistricting plan, an elector can petition the Louisiana Supreme Court to complete the redistricting process.

After Louisiana submits its redistricting plans, there is no certain deadline for a federal decision on preclearance. The Justice Department typically has 60 days to respond once it is satisfied its questions are answered and it has enough information to complete a review. But it is largely up to the Justice Department to determine when its requests are

sufficiently fulfilled and when the official review period begins.

According to the Louisiana Constitution, the state has until the end of 2011 to complete legislative redistricting. States must redistrict once a decade if new population figures indicate districts are malapportioned, although states may redistrict more often if they wish.

Louisiana is one of a few states holding regular statewide elections in 2011. The next election for state legislative seats, as well as for governor and all statewide elected offices, is the Oct. 22 primary followed by the general election on Nov. 19. The qualifying period for candidates to sign up for those elections is Sept. 6-8. For the Legislature and BESE to be included on the fall ballot, the Louisiana secretary of state must receive notice of federal preclearance by Aug. 29 (see Appendix A). A failure to meet that deadline would cause the legislative and BESE elections to shift to a February 2012 primary and a March runoff, assuming a plan has preclearance and no pending litigation. Meanwhile, incumbent lawmakers and BESE members would retain their seats.

If the plans submitted to the Justice Department contain unresolved problems and are not approved in time for the fall elections, several options could be used to rework the maps. In the past, the federal courts have redrawn the lines in some states. (In 1971 a federal judge assigned the job of Louisiana redistricting to the Public Affairs Research Council.) Depending on the specific situation, the state or federal courts or the Louisiana Legislature could be involved in determining how to proceed if the state's redistricting plans fail to achieve federal preclearance.

## SPECIFIC REDISTRICTING PLANS

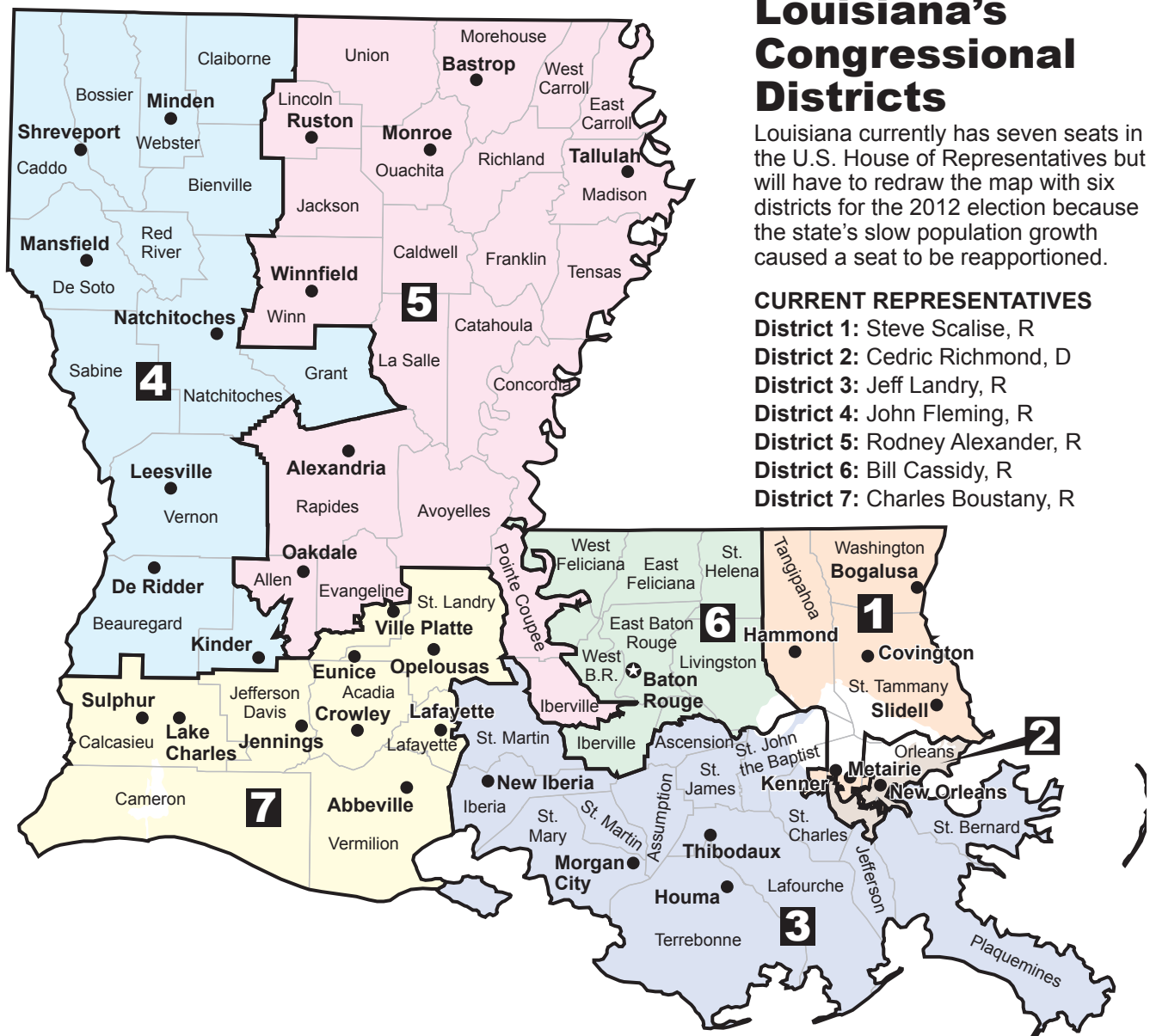
### *U.S. Congressional Districts*

The Louisiana Legislature is responsible for redrawing the voting district map for the state's members of the U.S. House of Representatives, although state lawmakers are expecting guidance from the congressional delegation. That guidance already has proven to be varied and conflicting because the number of seats will shrink from seven to six and at least one of the incumbent representatives will not be back in office after 2012. (Candidates running for Congress are not required to reside in their chosen districts but they rarely run from outside.) Well before the regional public hearings, members of Congress advanced plans and discussed them with legislative leaders, according to media reports. The process of congressional redistricting as of early February indicated that much of the planning and discussion was taking place privately. This pattern of decision making could discourage the public's interest and confidence in the process.

This is the second House seat Louisiana has lost since the 1980 Census. As the districts have become fewer, the district population sizes have increased. The ideal district size is determined by taking the entire state population and dividing it equally across the number of available seats. In 1980, the state's ideal district size for a U.S. House seat was 525,738 people, and Louisiana had eight U.S. representatives. In 2000 the ideal district size was 638,425 people for each of the seven U.S. representatives. As a result of the latest Census, the ideal district size will be 755,562 people in each of six districts. All districts must be as nearly equal as practicable.

In redrawing the voting district lines, legislators must pay careful attention to maintaining the state's only minority congressional district, which is now

Figure A. Louisiana's Congressional Districts



District 2 (see Figure A). That district covers the predominantly African-American population areas in New Orleans and Jefferson Parish. With the loss of population in New Orleans after Katrina and the need to increase the size of the districts, District 2 must expand in some direction while still maintaining a large proportion of minority voters. One scenario has it following a similar path as the Public Service Commission's minority district,

which stretches from New Orleans up the Mississippi River through Donaldsonville and into Baton Rouge.

This plan could create potential rivalries between Baton Rouge and New Orleans candidates for office and could decrease the proportion of African-American voters in other districts in the greater Baton Rouge region. For example, African-American voters in District 6 in the Baton Rouge



area helped a Democratic candidate win a 2008 special congressional election, although Republicans regained the seat in the regular election. With African-Americans accounting for almost a third of Louisiana's population, an argument could be made that the state should have two minority congressional districts instead of one. The problem, however, is the wide distribution of the state's African-American population outside of New Orleans. After the 1990 Census, legislators tried to create a second minority congressional district, but the courts ultimately rejected two different designs as racial gerrymandering.

One of the most fundamental questions arising during the congressional remapping is whether North Louisiana will keep its general design with two districts: something similar to the current District 4 in the east and District 5 in the west. That plan appears to be supported by most members of the delegation, the governor and the Senate and Governmental Affairs Committee chairman. An alternative proposal would create a district across the north of the state along Interstate 20. The choice of plans for the north could have impacts on the other districts in the south. Lake Charles could become part of the same district as Shreveport, or it could be in a district stretching farther east along the coast. Some have proposed a coastal district. Louisiana residents have much at stake in these regional and political rivalries.

In some states the loss of seats in the U.S. House is creating battle lines between Republican and Democratic members who want to keep their offices. In Louisiana, with the exception of District 2, all members of the current House delegation are Republican, setting up a potential intra-party rivalry.

### *Louisiana House and Senate Districts*

The Louisiana Constitution provides for 39 state senators and 105 representatives. The Legislature has until Dec. 31 to

redraw its district lines, or any elector can petition the Louisiana Supreme Court to do so in the event the Legislature does not adopt a plan. While congressional districts are expected to have almost perfectly equal population sizes, legislative districts have more leeway. After the latest Census, the ideal population size is 43,174 people for a Louisiana House seat and 116,240 for Senate districts (see Table 1). There is no requirement that House district lines be "nested" within Senate districts. That is, the House districts do not have to fit within or correspond to Senate district lines.

One of the challenges of legislative redistricting is the population shift resulting from the depopulation of New Orleans after Katrina. The city almost certainly will lose some of its legislative seats, but the Legislature must be mindful of federal oversight that will assess the impact of redistricting on minority voters. The Justice Department will consider many factors, including changes to the number of minority districts, the proportion of minorities in those districts, voting patterns and election history. Meanwhile, areas of substantial growth are expected to gain legislative seats, such as St. Tammany, Livingston, Ascension and Lafayette parishes.

### *Other Redistricting*

The Legislature is responsible for drawing the lines for the Louisiana Supreme Court. The Supreme Court districts were not redrawn after the 2000 Census. In addition, lawmakers will redraw the voting district lines for the state Public Service Commission (PSC), the state Board of Elementary and Secondary Education (BESE) and the Courts of Appeal. Here again, although state lawmakers are ultimately responsible for the new lines, legislators likely will look for guidance from the governing bodies for input on a remapping plan. The next regularly scheduled elections for the Supreme Court and the PSC are in 2012. Elections for some BESE seats are scheduled for this fall.

**Table 1. Ideal District Population for 2011**

Body	Districts	Ideal Population
U.S. House of Representatives	6	755,562
Louisiana House of Representatives	105	43,174
Louisiana Senate	39	116,240
Louisiana Board of Elementary & Secondary Education (BESE)	8	566,671
Louisiana Public Service Commission (PSC)	5	906,674
Louisiana Supreme Court	7	647,624

*Note: The figures in Table 1 indicate the ideal population size for the voting districts of the various governing bodies. These data are derived by dividing the entire population of the state of Louisiana by the number of designated seats for each entity. The Louisiana Courts of Appeal are not included because the district sizes have not been defined.*

### *Parish and Local Jurisdictions*

Local voting districts are drawn by local legislative bodies, such as parish and city councils, police juries and school boards. Politicians in these elected offices will take the lead in drawing their own districts. Generally, redistricting on the local level is expected to take place over the next year. School boards have longer to redistrict. There is no requirement that local districts match legislative district lines.

### **UPDATE ON PAR'S PRIOR RECOMMENDATIONS**

Recommendations in PAR's 2009 report on redistricting included (1) assigning the task of congressional and state legislative redistricting to an independent commission instead of to state legislators and (2) requiring all commission meetings, documents, communications and work product to be open to the public and archived on the Internet. These recommendations sought to increase the public's knowledge of and confidence in an objective redistricting process.

**1. Independent Commission:** An independent commission was not created, thus continuing the reliance on legislators for redistricting. Proponents

of independent commissions argue that this model brings less potential for conflicts of interest and political manipulation. At least one component of the plans created by the Louisiana Legislature has been successfully challenged with each redistricting cycle in the past 40 years. From 1971 to 2001, each redistricting attempt has resulted in some aspect of one of the state's plans being redrawn, in some cases because the plans reduced minority voting strength. Yet even if a redistricting plan stands up to legal tests, it still may lack the integrity and fairness that citizens deserve. For example, incumbent and partisan gerrymandering are not explicitly illegal under federal or state law even though the practice should be discouraged. An independent commission properly constructed could bring a better process. PAR stands behind this recommendation for future redistricting plans.

**2. Transparency and Access:** Some promising efforts at transparency and citizen involvement have been made. Comprehensive redistricting documents have been available via the Legislature's website. The scheduled public hearings were announced early and made accessible via the Internet. Citizens have an opportunity to share comments at the hearings. The hearings

also are to be archived for additional viewing. Citizens can submit written comments to the committees during or after the public hearings. Notable efforts have been made by the House and Governmental Affairs Committee. This committee published and accepted rules early in the process as well as hosted numerous educational presentations.

## **CHALLENGES OF THE CURRENT REDISTRICTING CYCLE**

While a tremendous opportunity to elevate the redistricting process in Louisiana has been missed by the decision not to create an independent commission, Louisiana citizens still deserve a transparent, principled and successful redistricting process from legislative leaders. There are several aspects of the current process that will influence whether legislators achieve these goals. Some of these aspects bring risks to the redistricting process while others are simply realities that will shape the redistricting work.

### *Minority Districts*

A major factor influencing the redistricting process is how newly drawn lines might affect current minority districts, especially in the U.S. House and the Louisiana Legislature, in the face of shifting populations within the state (see Figure B). Federal law attempts to prevent disenfranchisement of minority voters, but questions often are raised about how the law should be applied and what proportion of minorities is necessary to categorize an area as a minority voting district.

The 1965 Voting Rights Act is an important law affecting voting and redistricting practices in the states. Section 2, which is permanent and applies to all states, provides that jurisdictions cannot be drawn in such a way that minorities are given less opportunity than other voters

to participate in the political process or to elect candidates of their choice.

Section 2 prohibits voting practices that result in discrimination. For example, a geographically cohesive African-American community might be splintered among majority-white districts to reduce minority voting power, a practice called minority vote dilution. Such maps may be subject to a “Section 2 challenge” in the courts. A court could require districts to be recast so that the single black community can anchor a single district. The community must be compact and large enough to form the majority of the population in the reworked district. States may choose to create what is known as a “crossover district” composed of minorities and other voters with similar voting patterns. But a crossover might not substitute as a minority district if there is greater than 50 percent minority voting age population in an area. The U.S. Supreme Court addressed crossover districts in a 2009 ruling.

Section 5 of the Voting Rights Act, which was renewed by Congress in 2006, applies to Louisiana and eight other states (Alabama, Alaska, Arizona, Georgia, Mississippi, South Carolina, Texas and Virginia) plus local areas in a few other states. The jurisdictions covered by Section 5 must have their voting and redistricting laws reviewed by the U.S. Justice Department or a federal court to assure that new plans meet the Section 5 standard in two key areas: First the jurisdiction must establish that the plan was finalized without any discriminatory purpose, and second the jurisdiction must show that the new plan will not have a discriminatory or “retrogressive” effect on the ability of minority voters to elect their preferred candidate.

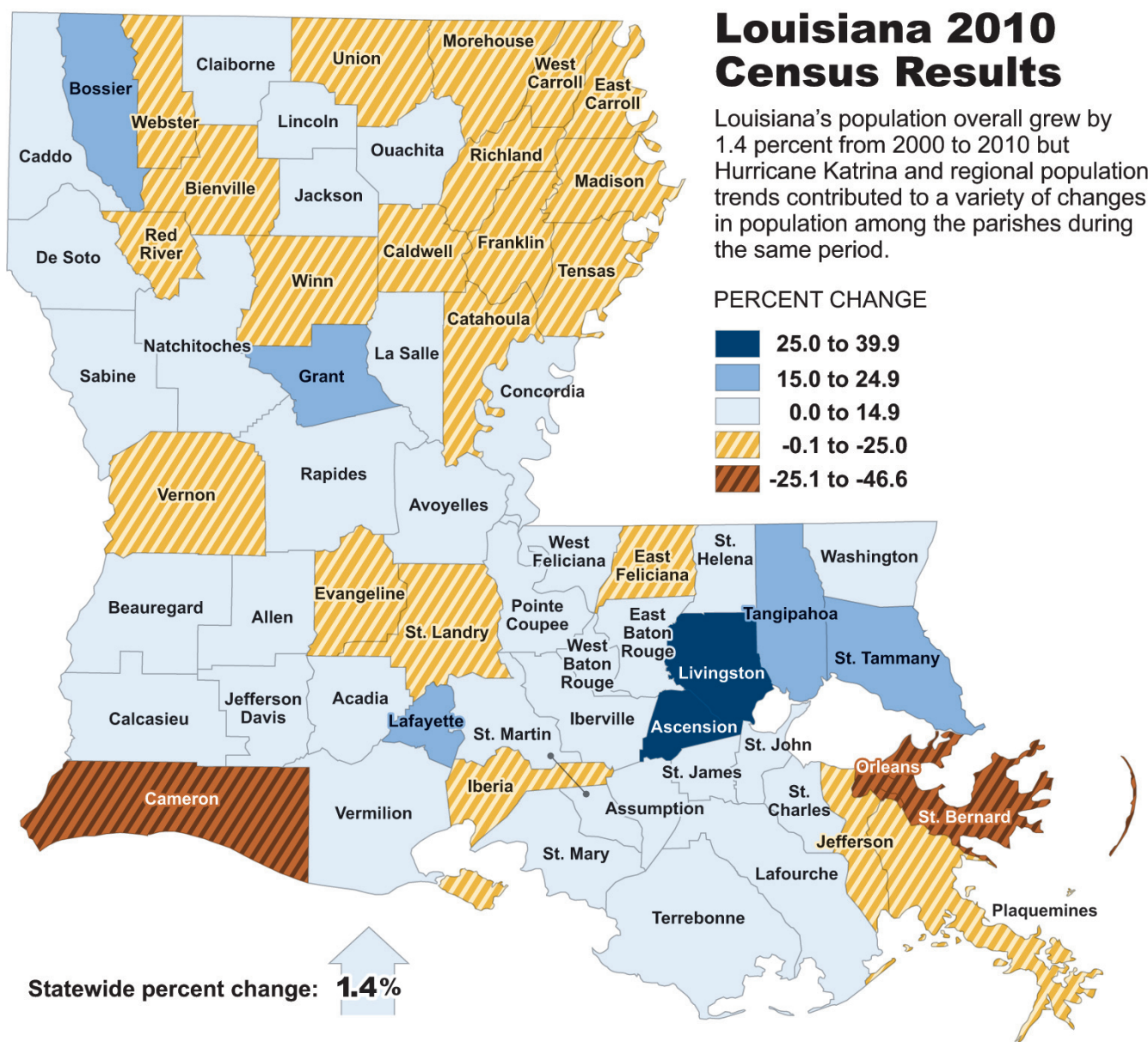
In the current redistricting cycle, the new and former redistricting plans will be examined closely to compare the number of minority districts and their proportions of minority population. Other



considerations will be weighed as well. A recently issued Department of Justice guidance<sup>3</sup> lists factors that the courts have considered in assessing Section 5 compliance. These factors include “whether minority voting strength is reduced by the proposed redistricting; whether minority concentrations are fragmented among different districts; whether minorities are overconcentrated in one or more districts; whether alternative plans satisfying the jurisdiction’s legitimate governmental

interests exist, and whether they were considered.” The Justice Department also will consider whether a proposed plan “ignores other relevant factors such as compactness and contiguity or displays a configuration that inexplicably disregards available natural or artificial boundaries; and whether the plan is inconsistent with the jurisdiction’s stated redistricting standards.”

**Figure B. Louisiana’s Shifting Population**



What percentage of minorities is required to constitute a “minority district”? In general, there has been agreement among the courts that minorities must make up 50 percent plus one of the voting age population in a district to constitute a majority. According to the redistricting plan that followed the 2000 Census, there were 27 minority districts in the Louisiana House of Representatives. The African-American population in those districts ranged from 57.5 percent to 92.9 percent. When Louisiana’s new plan is assessed in its entirety, it may not be obligated to maintain the same number of minority districts or the same percentage of minorities in those districts as in the prior plan. The essential point is that the state must demonstrate the protection of the voting interests of minorities to obtain federal preclearance.

Some lawmakers might want certain minority districts to have a high percentage of African-American population. This desire could be one of the more significant variables in the 2011 redistricting process, especially for state legislative seats. Higher concentrations of minorities in some districts would necessarily mean fewer minorities in others. Placing large numbers of African-Americans into their own districts could help ensure that an African-American politician could be elected but it also could reduce the number of minority seats in the Legislature and dilute the impact of African-American voters in majority-white districts. The public should watch this trend during the redistricting process to monitor whether the new state maps will create starker political polarization and less competitive elections in Louisiana.

### *Incumbency and Partisan Politics*

Legislative redistricting remains an incumbent-led process in Louisiana, so it is likely that significant efforts will be made to protect the districts of sitting legislators. They have many tools at their disposal to help them identify favorable

voters, including data on precinct voting patterns and party affiliations. The best principles of redistricting require that legislators represent real communities and not geographically varied pockets of voters selected for an incumbent’s advantage. If politicians choose their voters, instead of the other way around, the public is not well served.

Incumbent protection is sometimes more than a matter of maintaining current district lines. Lawmakers can try to pull communities into their districts that are favorable to their re-election bid or even exclude areas where potential opponents reside. At its worst, incumbent protection can create gerrymandering, in which a district made up of highly selective precincts snakes through a multitude of different areas to pick up favorable voting populations without regard to designing a compact shape or keeping traditional communities intact. On the other hand, oddly shaped districts are not always a sure sign of gerrymandering. Louisiana’s geography and water bodies complicate the process. Some communities with common interests might be logically linked by awkwardly shaped districts.

Some term-limited state House and Senate members likely will decide to run for election in the opposite chamber, and so they, too, will have a strong interest in the shape of the legislative districts. Traditionally, the House and Senate have accepted the lines proposed by the opposite chamber. Term limits may test this tradition.

This is also the first redistricting session since legislative term limits started turning members out of office. Only a few of the current state lawmakers were in office during the 2000 redistricting cycle. Members face a substantial learning curve.

Currently, Republicans hold a slight majority in the Louisiana House of Representatives. With the recent party switching and a number of vacated seats, the Democratic majority in the Senate

has been dwindling. While each party may seek to strengthen its position during the remapping, the prevailing party will have an edge in shaping districts to its advantage.

Minor changes in the member assignments to the various House and Senate committees are not unusual as a new session begins and new members arrive to fill recently vacated seats. But special attention should be given to any changes on the committees that will be handling the redistricting bills. A serious debate erupted last year over reassignments to the House and Governmental Affairs Committee, which as of early February 2011 had a Democratic chairman overseeing a predominantly Republican panel. Officials with the Justice Department have said that the overall redistricting effort should be generally inclusive, but that specific details of the process are to be determined by the legislators. Once a plan is submitted or should a plan be challenged, details such as the partisan makeup of the redistricting committee could be part of a federal review.<sup>4</sup> An inclusive and transparent redistricting process not only aligns with good government principles, it also could support the state should a challenge to the lines occur.

The dynamics of committee assignments could have a lasting impact on Louisiana redistricting. Any changes should be fully explained by the House or Senate leadership, which should strive foremost to develop a consensus within their bodies about appropriate reassignments. A sudden or dictatorial process for reassignments at this point will not foster public confidence.

### **RECOMMENDATIONS TO IMPROVE REDISTRICTING IN LOUISIANA**

After assessing the current redistricting outlook and conducting further research, PAR makes the following recommendations as good redistricting practices and principles:

#### **1. Legislators should draw districts in the best interests of voters and communities, not to protect political parties or incumbents.**

Legislators should not yield to pressure to maneuver district lines to fit the interests of an incumbent (incumbent-protection gerrymandering) or a political party (partisan gerrymandering). There is inherent risk of such gerrymandering in Louisiana as redistricting remains an incumbent-driven process for state legislative seats. In cases across the country, these self-serving practices have not, however, been the sole basis of a plan being rejected by the judiciary. Nonetheless, partisan and incumbent gerrymandering muddle the good governance principles that should drive redistricting, such as creating compact and competitive districts. Legislative leaders should commit not to gerrymander for these self-serving purposes. Leaders and citizens should be attuned to this issue throughout the line-drawing process.

#### **2. The Legislature should fully and publicly document the current redistricting process in anticipation of the 2020 redistricting cycle and accommodate broad public input.**

Given the historical challenges Louisiana redistricting has faced, PAR recommends that hearings, work products and proposed plans be archived for documentation purposes and made available in document or video form on the Internet. The House and Senate Governmental Affairs committees have made positive steps in this direction. The House committee, in particular, has taken a lead in posting material on the Legislature's website. The public hearings will be carried online. The times and places for those hearings are listed in this report. Policymakers



should evaluate the effectiveness of this redistricting process and aim to improve upon it in advance of the redistricting cycle that will begin with the 2020 Census. While these early steps are encouraging, it is recommended that such efforts be maintained and expanded to include all redistricting work in the full House and Senate, as well as both committees.

**3. The redistricting committees, as well as the full House and Senate, should establish, prioritize and adhere to a set of guiding principles throughout the process. Members should publicly debate any changes to the rules that embody those principles.**

When drawing the new lines, lawmakers must follow the federal and state constitutions and laws for equal protection mandates. Beyond these broad guidelines, the Legislature also should set principles and priorities to guide its actions. Having clear and consistently followed principles is especially important in the event of a court challenge to a redistricting plan.

The House committee took important steps in this direction by proposing a set of principles last spring and holding a hearing in January to adopt them as a body of rules guiding the process. (See the rules on page 20.) Some of the adopted rules are useful, common-sense restrictions, such as making districts contiguous and keeping individual precincts whole. Splitting a local precinct into multiple political districts can be confusing for voters and difficult to administer at the polls. The House rules also say redistricting plans shall respect the recognized political boundaries and natural geography of the state to the extent practicable. Some worthwhile principles used in other states – such as drawing districts as compactly as possible and preserving communities with common interests – are not found in the House rules.

The House committee rules also address the critical issue of how districts will

compare in size. State and federal laws direct the state to draw districts with populations that are roughly equal. For congressional seats, this means districts must be as mathematically equal as possible and any deviations must be defended. However, state districts must only be “substantively equal.” Although the U.S. Supreme Court has not specified what this means, some case law suggests that generally there can be no more than a 10 percent population difference between the smallest and the largest districts. The House committee rules go a step further by striving to keep all remapped districts within a 5 percent range of population difference.

The House and Senate rules are not enforceable should they be broken or ignored. In addition, they can be changed easily during the process with minimal notice and discussion. Lawmakers and the public should draw attention to instances when the rules are being broken. Any changes or additions to the rules should be clearly described and publicly debated. As in many other states, the House’s principles have not been ranked in order of importance or preference. As PAR has stated previously, a lack of prioritization is problematic because it does not identify what principles should be considered before others.

The Senate redistricting committee, as well as the entire House and Senate, should adopt principles for redistricting. Conflicts between House and Senate rules should be noted.

**4. Amendments to redistricting bills should be clearly and carefully explained. Amendments should be posted in advance of votes so that lawmakers and the public have time to review them. Proposed amendments should be accompanied by maps delineating the impact on all districts affected by the change.**

During the special session, redistricting plans for each elected body will be contained in separate bills that must pass



through the usual legislative process. Amendments can be introduced in the committees or on the House and Senate floors. Amendments hold great potential for confusion and for subversion of good redistricting principles if they are not fully explained and examined before being adopted. To maximize transparency and scrutiny of amendments, it is recommended that all amendments be required to include a printed map delineating the proposed changes. Amendments normally express the proposed changes in the form of numerical lists of precincts. This information is critical but by itself is difficult for lawmakers and stakeholders to grasp immediately. Moreover, the oral explanations offered by an amendment sponsor might not reveal the true impact of a proposal.

The House committee has recognized these concerns and has established a rule requiring that amendments come with maps showing the statewide impact of proposed changes. This rule could complicate citizen efforts to advance ideas for revisions in their local areas. But the rule will ensure order and clarity in the amendment process and on balance it is beneficial. The rule should be followed by the full House and Senate, as well as the Senate and Governmental Affairs Committee.

**5. The Legislature and the Judicial Council should use comprehensive data to look at the composition of the state Courts of Appeal and the number of appellate judges. In the event this cannot be done thoughtfully in the redistricting special session, PAR recommends that a moratorium on new judgeships be implemented until such work can be done on a statewide basis in calendar year 2011. This would allow changes to be implemented prior to the 2012 elections for some judgeships.**

Just as new population data warrant a look at current political districts and needed representation, a review of the

state's court system and the resources allocated is warranted as well. Adjusting judicial caseloads could save resources and, more importantly, assure that justice is accessible and responsive to the needs of the population. (See page 16.)

**6. After the special session, the state should take decisive steps toward forming a new redistricting method that is not reliant on legislators drawing their own district maps. Ideally this would take the form of an independent commission overseeing redistricting of congressional and state legislative seats, though other systems should be considered. A new way of redistricting – implemented for the 2020 Census – should be debated, designed and approved in the near future, not later in the decade when incumbent pressures are likely to block real reform.**

The current system in which state legislators control the process of mapping their districts should be relegated to a place in Louisiana's political antiquity. An independent redistricting commission or some form of more objective decision making would better serve the broader interests of the public and improve the state's image as a place where serious political reforms have replaced an old and tarnished reputation for cronyism and self-dealing. The American Bar Association has recommended that all states adopt independent commissions for redistricting.

While there are valid reasons why lawmakers ought to be involved in the process – for example, their intimate knowledge of their communities and their ability to defend their constituents – the current system is too heavily driven by motives of self-preservation and fraught with potential conflicts of interest. As the new voting district maps are drawn this spring, the public should weigh whether the process is serving the politicians at the expense of the electorate and the communities of this state.

Louisiana's Constitution does not specify a method for redistricting. It only indicates

that the Legislature “shall reapportion” the state’s legislative representation in each house and do so “as equally as practicable” on the basis of the official 10-year Census. A move to an independent commission that would redraw state legislative maps without the Legislature’s approval would require a constitutional amendment, which would need a two-thirds majority vote in both the House and Senate and a simple majority vote in a statewide referendum. At a minimum, the change in the Constitution would have to allow or require that change of authority. Details of a new procedure could be placed in statute.

A constitutional amendment might not be required if a new commission or system were created to draw legislative maps that then would be subject to approval by the Legislature. For example, some models allow an independent authority or legislative staff to draw the maps and submit them to the Legislature for an up or down vote, without changes. Another method would allow legislators to make minor changes in an independent commission’s plans. If the Legislature repeatedly rejected a commission plan, the map-making process could shift to the state Supreme Court, which currently is the backup redistricting authority anyway.

Whether a constitutional amendment is used, the details of a new system should be placed in statute and enumerate such a commission’s powers and duties, membership restrictions, transparency requirements and the redistricting principles to be followed. The statute should clearly describe how the new maps can be put into force and whether the governor would have veto power. The commission should be constructed with a tiebreaker so that it could not become deadlocked. Funding of the initiative would have to be made secure. The goal of moving toward a more independent system is a good one; that goal could be subverted by inadequate or ill-intentioned provisions in an amendment or statute.

According to the Louisiana Constitution, state statutes are required to change districts for the Public Service Commission, BESE and the Supreme Court. The state Constitution does not address the redistricting of U.S. congressional seats, which is determined by the Legislature. These various redistricting tasks raise the question of how many elected bodies an independent commission should handle. A commission charged with redrawing U.S. House and state legislative seats would be a major step forward for Louisiana. Even if a commission only handled legislative seats, real progress would have been made.

A majority of the states have implemented or at least tested proposals for various forms of commissions or redistricting systems, ranging from strong legislative control to processes largely removed from the political sphere. Of the 23 states with some form of redistricting commission, most were begun between 1964 and 1982<sup>6</sup>.

Currently, six states use independent commissions with varied appointment authority by the Legislature for some commission members. Seven states use commissions overseen by a panel with nominees made by state politicians or legislators. Five states have commissions serving only a secondary or backup role, and four states use commissions in an advisory capacity. In Iowa, district maps are drawn by legislative staff members and voted up or down by lawmakers. Michigan is not counted among the states with a redistricting commission, but it has used a system to attempt to create a more bipartisan result. Its Legislature codifies its redistricting principles and then chooses a plan that most satisfies those goals.

Even with strong political support, creating an effective new redistricting process will not be easy. A redistricting system that works well in one state might be unfit for another. Some systems have proven to be successful and popular. In some cases the results have been disappointing or have produced maps that were struck down in the courts or failed to create a competitive

political environment. But shortcomings elsewhere should be used as lessons for Louisiana, not as reasons to maintain the status quo.

A central goal of a new redistricting model should be to reduce partisan and incumbent gerrymandering and to encourage candidate competition. As PAR research has reported previously, public service is encouraged and new candidates are more likely to enter the political arena in states where commissions draw the political boundaries.

A move toward an independent system should be made soon. Members of the current Louisiana House and Senate and those winning seats in the fall election will either be out of office or in their last term when the 2021 redistricting process is under way. That means the window of opportunity for change is open much wider in the near future than it likely will be later in this decade, when freshly seated lawmakers may be more inclined to retain a system of control and incumbent preservation. After the 2020 Census, the next congressional election will be in 2022, and the next state legislative election will be in 2023, allowing ample time for a new and untested redistricting system to get on its feet and produce quality maps.

Under the current system, the quality of the maps is greatly dependent on staff expertise, including demographers, mapping software specialists and lawyers assigned to assist in the task. The same would be true for an independent commission, which must be afforded these vital nuts and bolts resources to perform the work.

Term limits in Louisiana could result in a knowledgeable resource to help a new process along. Former lawmakers or those serving their last eligible term potentially could be effective and helpful members of an independent commission or a new redistricting advisory system. Efforts to involve the Legislature, while assigning the actual task of mapping to another body, could balance the need for legislative expertise and public confidence in the process.

A more independent process would not have to be wiped clean of all politics in order to be an improvement over the current system. Eliminating political and partisan input from the process entirely may be unnecessary and unworkable. In particular, an independent commission should be in tune with the concerns of local communities and their sense of identity. Consideration should be given to how local governments and community representatives could assist an independent commission by helping to create new redistricting plans for their areas.

An independent commission should not be oversold as a cure-all for Louisiana's political problems. It is a good step in the right direction. It would be most fair and effective if it were rooted in broad support by Republicans, Democrats, independents and, especially, minorities. Based on experiences in other states, any one faction that aggressively pursues redistricting reform without first building a broad base of support likely will raise suspicion among the others and end in failure.

By pursuing an independent redistricting process and a better political system, Louisiana has a great opportunity to improve its status as a state willing to shake off its past negative image and demonstrate leadership on a national level.

## CONCLUSION

The 2011 redistricting cycle is significant for Louisiana. Slow population growth combined with population shifts within the state and the need to hold fall elections will force legislative leaders to make tough decisions within a tight time frame. It is imperative that members of the public and representatives of local communities become involved, offer input and track decisions as they are being made. Transparency, fairness, courage and leadership will be needed to make the best decisions for the state, its communities and its residents.

## **COURTS OF APPEAL**

In a somewhat surprising move, the Legislature decided that its special session on redistricting should include bills defining the composition and numbers of judges and election districts for the state Courts of Appeal. This review is significantly different from the other redistricting tasks, which are based on the “one man, one vote” principle. The state Constitution does not specify a certain number of appellate judges, and their districts can overlap with at-large seats. The new Census numbers are not relevant for Courts of Appeal districts or the number of judgeships.

PAR commends the Legislature for examining such a complex and politically explosive topic. Although it is timely for the Legislature to review the entire allocation of judgeships due to the even-year elections of some appellate court judges, there is some concern given the short time frame as to how well this task can be accomplished.

Just as new population data warrant a look at current political districts and needed representation, a review of the state’s court system and the resources allocated to it is warranted as well. Adjusting judicial caseloads could save resources and, more importantly, assure that justice is accessible and responsive to the needs of the population.

New judgeships at the appeal, district and city/parish levels are routinely requested by judicial districts in Louisiana. A periodic review by the Judicial Council, a research arm of the state Supreme Court, includes guidelines and methodologies to determine the need for new judgeships<sup>7</sup>. Even when clear and compelling data on the number of judgeships needed have been presented, action has not necessarily been taken. For example, the Legislature has received reports from the Judicial Council since 2007 on the need for trial court judgeships. It is recognized that more analyses would be needed to make a final determination of the number of judges actually needed, taking more information into account including geography and data derived from site visits. The most recent report indicated that a significant number of judgeships could be considered “surplus,” but the Legislature has taken no action yet to adjust the judgeships<sup>8</sup>.

Louisiana needs an ongoing review process and methodology to assess the overall number of Courts of Appeal judges and to determine where allocations may need to be adjusted upward or downward. Much of the data that could be used to assess the appropriate number and location of judges is already available. The Judicial Council should work to provide comprehensive and useful data to equip the Legislature to make these decisions in partnership with the court system. The Courts of Appeal Reporting System (CARS) electronically receives case information from all the appellate courts and is already used to analyze time standards and workload<sup>9</sup>. These data would be helpful to assist the Legislature in this task.



State	Number of Judges	Number of Citizens per Appellate Court Judge	Incoming Cases per 100,000 Population	Grand Total Incoming Cases and Qualifying Footnotes	Caseload per Judge
Alabama	10	466,200	76	3,538	353.80
Kentucky	14	304,928	57	2,425	173.21
<b>Louisiana</b>	<b>53</b>	<b>83,226</b>	<b>176</b>	<b>7,778</b>	<b>146.75</b>
South Carolina	9	497,777	36	1,628	180.88
Tennessee	24	258,958	40	2,496	103.87

Number of Judges is from Figure G, Court Statistics project, State Court Caseload Statistics: An Analysis of 2008 State Court Caseloads (National Center for State Courts, 2010)

Grand Total Incoming Cases and qualifying footnotes is from Table 11: Reported Grand Total State Appellate Court Caseloads, 2008

Comparisons could be made with other states in the South with similar demographics and population sizes. The National Center for State Courts collects state-level information from courts and is a data source for such comparisons.

In looking at the caseloads per appeal court judge in 2008, an average appellate Louisiana caseload was 146.75 cases per judge<sup>10</sup>. Tennessee was lower, with about 104 cases per judge, but other comparable Southern states had much higher caseloads. Alabama appeal court judges carried 353 cases per judge, South Carolina 180 cases per judge and Kentucky 173 cases per judge. Another way to consider the number of appeal court judges is to analyze the number of judges per capita. In analyzing these data, Louisiana appears, at face value, to have more appellate judges per capita than its Southern counterparts.

However, other data points using population data from the National Center for State Courts show that Louisiana has a high appeals caseload given the entire population of the state, with 176 appeals cases per 100,000 population. This was exceeded only by the District of Columbia with 297 cases per 100,000 population. This caseload could be explained partially by the Louisiana Courts of Appeal's "ability to review matters of both law and fact in civil cases. This is in contrast to most state appellate courts, which are permitted to review matters of law only,"<sup>11</sup> according to the center.

None of these data points alone indicates whether more or fewer judgeships are warranted in Louisiana. But a systematic, comprehensive review is timely. Based on Judicial Council records dating back to the 1980s, no judicial districts have been combined and no record of a request for a combination of judicial districts has ever been made to the Judicial Council.

One possible outcome of the special redistricting session is that the Legislature could decide to trim some appeal court seats but arrange for them to be phased out in a manner that would allow sitting judges to retain their offices until retirement age. The public should evaluate this part of the redistricting session on the basis of fairness and court efficiency.

## Endnotes

- 1 LSA-Const., Art. III, §6; LSA-Const., Art. XIV, §27; LSA-Const., Art. V, §4; LSA-Const., Art. VIII, §3(B)(1); LSA-Const., Art. IV, §21.
- 2 Louisiana Legislature. (2011). Retrieved February 8, 2011 from <http://www.legis.state.la.us/archive/111es/call.pdf>
- 3 Guidance Concerning Redistricting under Section 5 of the Voting Rights Act. (2011, February 9). U.S. Department of Justice.
- 4 Barrow, B. (2010, May 5). Redistricting details will be up to lawmakers, President Barack Obama's civil rights lawyer says. *The Times-Picayune*.
- 5 Louisiana House of Representatives. Retrieved on January 18, 2011. [http://house.louisiana.gov/H\\_Redistricting2011/2011\\_RedistrictingTimelineAsOf12-1-2010.pdf](http://house.louisiana.gov/H_Redistricting2011/2011_RedistrictingTimelineAsOf12-1-2010.pdf)
- 6 Levitt, J. (2010). *A Citizen's Guide to Redistricting*. Brennan Center for Justice at New York University School of Law.
- 7 Louisiana Supreme Court. Retrieved January 11, 2011 from [http://www.lasc.org/la\\_judicial\\_entities/Judicial\\_Council/NewJudgeshipGuidelines.pdf](http://www.lasc.org/la_judicial_entities/Judicial_Council/NewJudgeshipGuidelines.pdf)
- 8 Louisiana Judicial Council. (2010). *Report of the Judicial Council to the Louisiana State Legislature In Response to Senate Concurrent Resolution No. 91 of the 2001 Regular Session Regarding the Determination of Judgeships*.
- 9 The Supreme Court of Louisiana. (2007-2008). *The State of Judicial Performance in Louisiana*. Retrieved January 5, 2011 from [http://www.lasc.org/press\\_room/annual\\_reports/reports/2007\\_08\\_jp.pdf](http://www.lasc.org/press_room/annual_reports/reports/2007_08_jp.pdf)
- 10 Court Statistics Project. (2010). *State Court Caseload Statistics, An Analysis of 2008 State Court Caseloads*. National Center for State Courts.
- 11 LaFountain, Schaffler, R., Strickland, S., Raftery, W., Bromage, Lee, C. & Gibson, S. (2008). *Examining the Work of State Courts, 2007: A National Perspective from the Court Statistics Project* (National Center for State Courts).

## **Appendix A. Redistricting 2011 Schedule<sup>5</sup>**

### ***FEBRUARY 2011***

15th – 1:30 p.m. – House and Governmental Affairs Committee to review redistricting data, Louisiana State Capitol, Baton Rouge

16th – 3:30 p.m. – Senate and Governmental Affairs Committee to review redistricting data, Louisiana State Capitol, Baton Rouge

17th – 10 a.m. – Joint House and Senate Governmental Affairs committee meeting, Fuhrmann Auditorium, Greater Covington Center, 317 N. Jefferson St., Covington

17th – 6 p.m. – Joint House and Senate Governmental Affairs committee meeting, Dillard University, Professional Schools and Sciences Building, Georges Auditorium (Room 115), 2601 Gentilly Blvd., New Orleans

21st – 10 a.m. – Joint House and Senate Governmental Affairs committee meeting, Houma-Terrebonne Civic Center, 346 Civic Center Blvd., Houma

21st – 6 p.m. – Joint House and Senate Governmental Affairs committees meeting Baton Rouge Community College, Louisiana Board Room, Louisiana Building, Community College Drive, Baton Rouge

22nd – 10 a.m. – Joint House and Senate Governmental Affairs committee meeting, Lake Charles Civic Center, Buccaneer Room, 900 Lakeshore Drive, Lake Charles

22nd – 6 p.m. – Joint House and Senate Governmental Affairs committee meeting, Acadiana Center for the Arts, Moncus Theatre, 101 W. Vermilion St., Lafayette

28th – 6 p.m. – Joint House and Senate Governmental Affairs committee meeting, Louisiana State Exhibit Museum Auditorium, 3015 Greenwood Road, Shreveport

### ***MARCH 2011***

1st – 10 a.m. – Joint House and Senate Governmental Affairs committee meeting, Monroe Civic Center, Bayou Room, 401 Lea Joyner Memorial Expressway, Monroe

1st – 6 p.m. – Joint House and Senate Governmental Affairs committee meeting, Alexandria Convention Hall, City Hall, 915 Third St., Alexandria

17th-18th– Committee hearings on draft plans (tentative)

20th – Extraordinary Session of the Legislature begins

### ***APRIL 2011***

13th – Conclusion of Extraordinary Session

### ***AUGUST 2011***

29th – Deadline for secretary of state to receive notice of preclearance of plans for legislative & BESE voting districts so races can be included on fall ballot

### ***SEPTEMBER 2011***

6th-8th – Qualifying dates for legislative & BESE elections

### ***OCTOBER 2011***

22nd – Primary Election

### ***NOVEMBER 2011***

19th – General Election

## **Appendix B. Louisiana House of Representatives Committee on House and Governmental Affairs, Rules for Redistricting**

*Jan. 19, 2011*

To promote the development of a constitutionally acceptable redistricting plan, the committee adopts the following rules for itself, declaring the same to constitute minimally acceptable criteria for consideration of any plan redistricting the House of Representatives, Congress, the Supreme Court, the Public Service Commission, and the Board of Elementary and Secondary Education.

### **I. CRITERIA**

A. All redistricting plans shall provide for single-member districts.

B. All redistricting plans for the House of Representatives, Supreme Court, Public Service Commission, and the Board of Elementary and Secondary Education shall provide for districts that are substantially equal in population among the various districts. Under no circumstances shall any redistricting plan for the House of Representatives, Supreme Court, Public Service Commission, or the Board of Elementary and Secondary Education be considered if the redistricting plan has an absolute deviation of population which exceeds plus or minus five percent of the ideal district population.

C. All redistricting plans for Congress shall provide that each congressional district shall have a population as nearly equal to the ideal district population as practicable.

D. All redistricting plans shall comply with the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment to the U.S. Constitution; Sections 2 and 5 of the Voting Rights Act of 1965, as amended; and all other applicable federal and state law.

E. All redistricting plans shall contain whole election precincts established pursuant to R.S. 18:532 and 532.1.

F. All redistricting plans shall provide that each district is composed of contiguous geography.

G. All redistricting plans shall respect the recognized political boundaries and natural geography of this state, to the extent practicable.

H. In order to minimize voter confusion, due consideration shall be given to traditional district alignments.

I. Each redistricting plan submitted to the committee for consideration shall be submitted electronically in an ASCII, comma delimited block equivalency import file which complies with the section 5 submission requirements of the U.S. Department of Justice and an electronic shapefile of the plan.

J. The committee shall not consider a plan that is not a whole plan which assigns all of the geography of the state.

### **II. POPULATION DATA**

The P. L. 94-171 data released by the United States Bureau of the Census, as validated through the data verification program of the designated staff of the House and Senate, shall be the population data used for evaluation of proposed redistricting plans.

### **III. PUBLIC PARTICIPATION**

The committee seeks active and informed public participation in all of its activities. The committee intends to provide for the widest range of public information about its deliberations and full opportunity for citizens to make suggestions and recommendations to the committee, all in accordance with the policies of the House of Representatives and the provisions of law relative to open meetings and public records.



**Appendix B. Louisiana House of Representatives  
Committee on House and Governmental Affairs, Rules for Redistricting (cont.)**

**IV. HEARING PROCEDURE**

- A. All speakers shall conduct themselves in a decorous manner.
- B. Persons speaking are encouraged to limit their presentations to three minutes each, unless other time limitations are set by the chairman and in such case, persons speaking shall adhere to such limitations.
- C. It is within the discretion of the chairman to entertain motions while testimony is pending.
- D. These rules shall supplement the applicable Rules of Order of the House of Representatives and the applicable committee rules of the Committee on House and Governmental Affairs.

*(These rules were adopted by the Committee on House and Governmental Affairs at a hearing on Jan. 19, 2011.)*

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**Primary author of this report is Alison K. Neustrom, Ph.D., PAR Research Director.**

*The Public Affairs Research Council (PAR) is a private, nonprofit, non-partisan public policy research organization focused on pointing the way toward a more efficient, effective, transparent and accountable Louisiana government. PAR was founded in 1950 and is a 501(c)(3) tax-exempt organization supported by foundation and corporate grants and individual donations. PAR has never accepted state government funds.*

Robert Travis Scott, President  
robertscott@la-par.org

Alison K. Neustrom, Research Director  
alison@la-par.org