The Shape of Things to Come

Redistricting the Louisiana Way, Past and Future

Presentation by Robert Travis Scott, President of the Public Affairs Research Council of Louisiana, at the Louisiana Redistricting Summit on January 19, 2018

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Words….
Union. Confidence. Justice.
Boundaries … Precincts … Voting rights … Incumbency.
Contiguous. Continuity. Compliance. Compactness. Competitiveness.
Community …. Communities with common interests.
Partisan. Racial. Gerrymander.
Fairness.

What do these terms mean to you, or to the person sitting next to you?

With redistricting, what is fair? -What is a fair outcome, or perhaps as importantly, what is a fair process?

I will tell you, for starters --- Geography isn't fair.
And, geography isn't necessarily compact for redistricting purposes; especially in Louisiana.
Do bayous, rivers, lakes and bridges divide communities, or define them?
What if you are drawing a district and you encounter a swampy basin – where's the next place to go? Where's the contiguous community of common interest? Over it?

These are among the many questions and perspectives we will address today.

Thank you Marie Centanni, Jenee Slocum and the Reilly Center for dedicating such a large effort to such an important issue. And a thanks to the many people in attendance and tuning in now and later online. As president of the Public Affairs Research Council of Louisiana, I am honored to begin this event, and launch this important conversation in Louisiana.

It is a complicated issue, plagued with a lot of misperceptions. -- I once thought I heard someone imply, "If we didn't have partisan gerrymandering, the United States Senate wouldn't be so politically polarized." Remember, U.S. Senators represent states, not districts, and we still have a high degree of political polarization in that chamber.

At a minimum, to begin, we might ask, what is legal?

At the Public Affairs Research Council, I can tell you that our organization has had a long history of endorsing elections based on strong and evolving legal principles. And here's a Louisiana story that illustrates a lot of valuable lessons --

An important bit of history

In 1971, the question of "what is legal for redistricting" came down on Louisiana very hard. And PAR was there to step in.

During the 1960s, we saw passage of The Voting Rights Act. We also saw court decisions that established the principle of one-man, one-vote. We'd might call it now, one-person one-vote. This meant state legislative districts within a state ought to have about the same population. The same went for seats in Congress.

These actions in the 1960s changed the way we did business with redistricting. You see, many states, including Louisiana, would allow their legislative district maps to remain the same even if the census showed changes and shifts in population. Louisiana also allowed multiple representatives in a single district.

When the Louisiana Legislature drew its new maps after the 1970 census, it continued the same pattern. The one-person one-vote principle was not the Louisiana way.

So, in 1971 U.S. District Judge E. Gordon West ordered a new set of maps. The Legislature went back to the drawing board, and the U.S. Justice Department rejected the gerrymandered plan. It was getting to be mid-year, with elections scheduled for the fall. So that left Judge West in a difficult place: He was about to let all state senators and representatives run at-large statewide ---

When the judge had lunch one day in the old Picadilly Cafeteria on Third Street – the PAR president at the time, Ed Steimel, was there and offered to help. Be careful what you ask for. Steimel, or PAR, became the Special Master for redistricting in 1971.

It was a landmark event. It brought a new approach to redistricting -- backed by the force of federal law. And PAR was given only 30 days to pull it off. It conducted hearings, and consulted with legislators.

John Maginnis's history book about PAR – called *The Politics of Reform* -- relates the story very well, and I'll lift and paraphrase from his text:

"But the real work came down to maps and numbers. To say the redistricters started from scratch was no exaggeration. PAR staff member Emogene Pliner began urgent calls to clerks of court for maps showing precinct lines. In more than one case, the only such record hung on the wall in the courthouse. Pliner had to persuade clerks to take down the maps and mail them special delivery.

The task would go beyond drawing new lines. Though it was not specifically mandated by the court, Steimel determined that single-member districts would replace a system that included some multi-member districts in large parishes. The old system gave a big political advantage to labor unions, which could concentrate their votes to elect slates of labor candidates in larger parishes. At that time, business interests were not as organized to win elections.

Multi-member districts also posed barriers for blacks and Republicans running for the Legislature. Vic Bussie of the AFL-CIO would argue that, under PAR's plan, blacks might gain representation but would lose broader influence over white legislators who had to respond to minority constituents. The minorities did not buy it. The NAACP and the state Republican Party intervened in a federal lawsuit on the side of plaintiffs demanding single-member districts.

PAR, meanwhile, had a deadline to meet. Working with Census maps obtained from Louisiana Tech, cross-referenced by parish maps showing wards and precincts, 23-year-old researcher Reilly Stonecipher began putting together the pieces of the political jig-saw map. Besides heeding the court-ordered maximum deviation of 2 percent, Stonecipher took extra pains not to divide districts by large natural barriers, like rivers and swamps. He also tried to avoid putting a small section of one parish into a district dominated by voters in a larger neighboring parish.

Of less concern was placing two or more incumbents in the same district, which was all but unavoidable. 'It wasn't part of my job to protect incumbents,' said Ed Steimel.

Unlike in future court-supervised redistricting, the racial mix of districts was not taken into account. Yet, simply drawing logical single-member districts offered the first opportunity for black voters in Baton Rouge, Shreveport and Monroe to send their own representatives to the State Capitol. In 1968, Ernest 'Dutch' Morial of New Orleans had become the first African American elected to the Legislature since Reconstruction. After the 1971 redistricting, eight black representatives would enter the Legislature in 1972, joined by another emerging minority, four Republicans.

After 14 days of intensive work, PAR staffers piled bundles of maps and documents into the back seat of a car and delivered them to Judge West at the federal courthouse. Judge West signed off, …. and the historic remap of the Legislature was complete.

Legislators, predictably, were outraged, though the ones who were the maddest, of course, were those least likely to return.

'We were roundly condemned,' recalled Ed Steimel. 'But I told our staff that as soon as the election was over we would have a lot of friends,' namely, the legislators elected in PAR-drawn districts.

The move to single-member districts marked a fundamental change in Louisiana politics, one that brought the House of Representatives closer to the people."

Thank you John Maginnis ---

Lessons the hard way

And so, that's one of the important lessons as we consider change: You can be sure that if we were to change our method of redistricting, the status-quo would crow loudly, and the new elected regime would think it was great.

Another lesson: Anyone who draws political maps – whether it be a legislature or a commission or a special master – They need a set of guiding principles, good population information, strong legal direction and practical rules – all to perform the task well. The presence and the enforcement power of the courts, and the evolution of laws, have been absolutely essential. More essential, even, than the particular type of redistricting body.

Measured over the long haul – especially over the decades of the 20th century -- the process of redistricting in the United States was reformed and improved and became much more inclusive of minorities. Mixed in with this, were steps backwards or sideways.

After the 1990 Census, the Louisiana Legislature tried to create a new congressional district favorable to black representation in Congress.

The new 4th district was known for its Z shape --- It covered the north rim of the state like hanging stalactites, hugged the Mississippi River down to Baton Rouge and spread out like a Chinese character to Alexandria, Lafayette and elsewhere. It survived for two terms. The courts struck it down – It's since been cited as an example of extreme gerrymandering.
And Congressman Cleo Fields, who held the seat, was basically redistricted out of a job.

After the 2000 Census, the Legislature met in the fall of 2001. This was right after the 9-11 tragedy, and the public was not keenly focused on the redistricting process. At that session, incumbent legislators were asked to conceive their own best district, and it was a strongly incumbent-based process.

The 2011 Redistricting

And then came the redistricting session in 2011 --
Positive developments during the session should be noted. Public participation and input were invited and accommodated. House Speaker Jim Tucker and committee chairman Rick Gallot oversaw the most open and public redistricting process for the House in the state's history.

Now, I realize that talking about transparency measures is a lot more boring than talking about racial and partisan gerrymandering. But hear me out, cause this stuff is essential and should not be taken for granted.

Of course, public interest in the 2011 redistricting was heightened by the high-stakes loss of a Louisiana congressional seat. We went from seven to six congressional districts. And we had to deal with the post-

Katrina population shifts. The redistricting committees held regional hearings, recorded many hours of public testimony, and collected scores of opinions and documents from elected officials, organizations and citizens throughout the state. Civic and business groups mobilized on regional or political fronts to express their views.
This citizen input became a regular part of the committee and floor discussions during the session, and the debate was richer for it. Although, granted, citizen comments sometimes were cited by legislators in self-serving ways.

Also on a positive note, the House Speaker and Senate President released redistricting first-draft proposals for their legislative bodies before the session began, offering a head start on the proceedings.

During the hearings many lawmakers took the time to explain their voting preferences, forming a useful public record and contributing to an important record of intent.

As amendments were proposed to redistricting bills – and this is very important -- each plan usually was accompanied by a statewide map and demographic charts detailing the changes. This was an exceptionally good practice.

By and large the Legislature made admirable steps toward better transparency.

So, let's build on these advances that we experienced in 2011.

Testing our values

That's not to say the 2011 session was easy. A fundamental challenge of the redistricting process is that lawmakers are selecting from a large menu of priorities when deciding how to draw the maps.

Do you want your districts to be compact AND competitive? Well, you might not be able to get both. Many demographers will tell you, society has self-selected into communities of like-thinking people. This is not the case in every square mile in Louisiana, but there is a lot of truth to that.

Foremost, legislators must design districts that are contiguous and balanced with near-equal populations. This is the firm set of directions:

- Same size population for legislative districts;
- Don't split precincts (for legislative seats);
- Keep within your state boundaries (obvious, but we sometimes forget about that constraining factor);
- Contiguous districts;
- No multiple representative districts.

Do you follow existing political lines, such as parish and municipal boundaries? Yes, would like to, but can't always. Remember, geography is not fair.

Districting also needs to be in compliance with the U.S. Constitution and the Voting Rights Act, among other laws and court guidance. In 2011, we had to meet standards for preclearance from the Department of Justice – and that wasn't easy, because sometimes Justice Department guidance was not in sync with guidance from the courts. The lesson here is that Department of Justice oversight – along with the

department's communication with state officials before, during and after the process -- was a major factor.

Then we get into the more vague areas of redistricting values:

They might strive to make the districts geographically compact, electorally competitive and inclusive for so-called communities of common interest. The definitions of these concepts are greatly malleable, and that adds complexity -- and opportunities for deliberate distortions -- during the legislative debates.

And what is racial balance and fairness, or party balance and fairness? Is 80/20 fair? Is 60/40 fair?

You sometimes hear people say Republicans, with their party and governor in power in 2011, worked the system to dominate the number of GOP legislative and congressional seats. The real story is more complicated. The Black Caucus also worked successfully to increase and ensure safe districts. In fact, black legislative leaders over the years have been skeptical of districting changes and processes that they cannot control, and justifiably so given the history of southern voting.

2011 was not a one-party power game. However, it should be noted, that the majority of the Legislature scuttled attempts by some members of the Black Caucus to create a second congressional seat favorable to blacks, and another design to create a stronger minority representation in a northern congressional district.

Here's another value: Incumbency – Do we really want incumbent protection to be the first and foremost value of redistricting? On the other hand, there is a lot to be said for incumbency and continuity of representation. Seniority has its rewards, and a district can benefit from

a senior legislator. In 2011, among the various priorities in the map designs, incumbent protection was a major focus. The legislators were surprisingly unabashed with their admissions and accusations on this theme and so provided plenty of evidence of this fact.

When drawing new lines for other elected bodies, like Congress, they tended to defer to the wishes of incumbents in those seats. As a whole, the federal system of oversight and case law provides little if any deterrent for this practice of incumbent protection.

Another ambiguous priority is whether a particular city, parish or region should be served by a single elected representative or segmented by multiple districts. What's better, cohesive representation or multiple politicians for greater clout? The answer to that question can be subjective and genuinely difficult to determine. But during the session the answer frequently seemed to be whatever was to the advantage of a particular politician at the time. We hope the process in the future will solicit more clear expressions of local community preferences on this issue.

And what about the values of voter participation, and voter confidence? You don't hear enough about those factors in the redistricting context, but maybe we should.

These days, with ongoing court cases, we have more terms to deal with in our redistricting vocabulary, such as: *discriminatory intent; historically large partisan asymmetry; durable asymmetry; unjustified partisan asymmetry; and efficiency gaps.*

Warning – this debate isn't going to get any simpler.

But let's really expand our minds and look to the future. With advancements in voting technology, you no longer have to vote in your precinct, and your ballot won't necessarily have to be defined by your precinct. With cultural transformations through the Internet and social media, we can reinvent what we mean by communities of common interest – in fact we've already reinvented that. People have strong associations to various types of communities unrelated to geography and where they live – And they can continually carry on their communication and relationship with those communities. One day – it wouldn't surprise me – if California, say, might open the door to alternative compositions of state legislatures. The House of Representatives could be based on traditional geographic districts, while the Senate could be based on, well, something entirely different. But that's another talk for another time.

Back to the future: The next redistricting

What's going to be different about 2021? It's going to be a whole new ballgame. Don't fight the next war the way you fought the last war.

- First, we have a collection of new court decisions – some that have happened and some expected to happen.

  In Arizona, the courts didn't see the state's independent redistricting commission as something unconstitutional, not that it made an endorsement of independent commissions. But the rulings were significant.

  For Alabama in the famous Shelby case, the Supreme Court did not say that pre-clearance under the Voting Rights Act was unconstitutional, but it did reject the old formula deciding which states and areas had to seek pre-clearance from the Justice

Department for any voting changes. This is a big deal. If conditions hold, in 2021 Louisiana won't have to seek pre-clearance for its redistricting. Of course, we will still have to comply with the Voting Rights Act. For better or worse, the Shelby decision has removed a layer of the redistricting process for Louisiana.

In late spring the U.S. Supreme Court will likely weigh in on a Wisconsin case that challenges the concept of partisan gerrymandering. While back in 2011 we had to consider court guidance on racial gerrymandering, we didn't have firm guidance from the courts on partisan gerrymandering. We may get that now.

We also have several other cases in the courts – dealing with both racial and partisan gerrymandering in Maryland and North Carolina and other states – and the impact of these could be significant. For 2021, there might be a whole new set of rules for redistricting, layered on all the other requirements.

- In 2021, we will have population increases and shifts in Louisiana. We are not expecting a change in the number of Louisiana congressional seats – that's quite different from 2011. But there will be changes in population and it will not be evenly distributed. Maybe those changes will be marginal. We're looking at maybe 190,000 more people in the census statewide, about a 4% increase. A lot of that growth will be in the southeastern part of the state. New Orleans will grow probably in the 15% range. If existing congressional districts in that area bulge with relatively more people – and that does look like that's going to happen -- then those districts will have to change those lines and give it up somewhere else.

- Will Congressman Cedric Richmond want to hold on to northern Baton Rouge with his elongated District No. 2? That will be a key question in 2021 for the Legislature and him (or for whoever holds that seat).

- In 2021, unlike in 2011, we will be deep into the impact of legislative term limits. With term limits, we are now expecting a turnover of about 1/3 of the legislature every four years. This phenomenon adds different meaning to incumbency concerns, and our distress over protecting incumbents in the redistricting process.

- In 2021**,** we don't know who the governor will be, but it's entirely possible we might have a Democratic governor and a Republican Legislature, not at all like in 2011. Remember, that redistricting is accomplished with bills in the Legislature, and a governor can veto a bill. What if there's a stalemate, and the Legislature can't get the job done by the end of 2021? Well then, the Louisiana Supreme Court inherits the redistricting job (or more likely assigns instructions to the Legislature or names a special master). The political chemistry in 2021 might be quite different than last time.

- Next – Louisiana is a red state – but with large numbers of registered Democrats. In fact, in the latest secretary of state records, 44% of registered voters in Louisiana are Democrats, compared with 30% Republicans. Yes, and that means 26% are with some other party or no party. Still, we are usually a Republican-voting state.

  So, if Louisiana has new guidance from the courts about partisan gerrymandering, how will we navigate that? How would you form so-called competitive districts if most of your white Democrats

are really Republicans? Whereas in other states, we might see a clearer Democratic-Republican dichotomy, here in Louisiana the voting patterns have become more of a black-white voter analysis. And when we look at how voting analysts are dissecting patterns in other states, they often look at which precincts voted for Hillary Clinton versus Donald Trump --- Instead of looking at registered Democrats versus Republicans. This is all to say, it's gonna get complicated.

- In 2021, we will see even more intense special interest focus and money. Whereas in 2011 we saw planned strategies by both parties in many states to rule the districting process, in 2021 this trend will be on hormones.

  By the way, in 2011, you didn't see many traditional lobbyists – the usual suspects – hanging out in the chambers during the redistricting sessions. Not like you would in a regular session. The lobbyists kept a safe distance. But you will see a new breed of lobbyists – backed by a lot of money from outside Louisiana – haunting the capitol this time around.

- In 2021, we will see more fruits of the advancement of technology and software that affect redistricting. The data manipulation will be more facile, more sophisticated, and yet at the same time more democratized, allowing more citizen groups to propose and analyze their preferred versions of new districts. The detailed public input to the legislature will be more intense.

- In the last few years, we have seen, in Louisiana and nationwide really, a big drop in voter turnout in elections. And I mean for state and local elections. This is a whole discussion in and of itself, but it might have some bearing on the redistricting debate and

whether voters are feeling disaffected. At the same time, given the controversy in Washington, maybe voters will become re-energized by 2021. We'll see.

- In 2021, we will be two years away from the next gubernatorial and legislative election, coming in 2023. Last time, we were redistricting in 2011 for an election in 2011. The 2011 timeframe, combined with the need for Justice Department pre-clearance, created a pressure-cooker. We'll still be under the clock in 2021, just not as intense.

- In 2021, we ought to redistrict the Louisiana Supreme Court. We didn't do it after the 2010 census, and guess what, we didn't do it after the 2000 census either. The last time a bill tinkered with Supreme Court seats was in 1997. The Supreme Court has seven seats, and six of the justices are white, and the districts are substantially mal-apportioned. -In the last census the smallest district had about 440,000 citizens and the largest had about 790,000. Court districts don't have to follow the one-person one-vote principle. And so they don't. A Supreme Court statement to PAR in 2011 said simply, "It was the collective preference of the justices to leave the districts as they are." So the question is going to come up in 2021, is the Louisiana Supreme Court blocking a redistricting that might put another African American on the bench? I don't know where this will go, but the conversation needs to start sooner rather than later.

- And lastly, in 2021**,** the public interest in the subject of redistricting will be much higher than it was in 2011. There will be more public attention. Citizens don't have to wait until election day to express themselves to the Legislature. Citizens who want to communicate their views on redistricting can do so in the

legislative process – and they can organize and articulate their views.

So what's next?

So, in wrapping up, yes, redistricting and elections should be fair. But we need to develop a consensus in Louisiana about what fair means.

Again, geography and population distributions aren't fair, and the politicians are necessarily fair. But the process should be.

There are a lot of forms of decision-making bodies. There's the current legislative process, or an independent commission, or an intentionally balanced political commission like they do in Washington state. Or maybe a process with more formal input by non-legislators. Whatever the form, we should keep in mind that change for change's sake probably will not produce more favorable results.

Purpose and design. What is the purpose of our redistricting body? And what is the design of the process? The type of redistricting body may be less important than the mission and the rules by which any legislature or redistricting body plays. State legislatures in the South have come a long way in allowing minority representation in Congress, and establishing the one-person one-vote principle, among others, largely because the rules of federal laws and court decisions moved them in that direction.

So as we look to 2021, let's be realistic and optimistic. And most of all let's be brave in the face of change and backlash. As PAR's Ed Steimel said, if you make changes with new districts, as soon as the election is over, you'll have a lot of friends.