

## **Case Study: Texas' Twenty-Third Congressional District (2000s)**

***Executive Summary:*** *In 2003, the Texas Republican legislature redrew congressional districts to protect Republican incumbents and strengthen the party's position. Court rulings in LULAC v. Perry found that although incumbency may be considered, it cannot come at the expense of denying Latinos equal opportunities to elect their candidates of choice in violation of Section 2 of the Voting Rights Act.*

Following the 1990 Census, Texas Latinos became one of the focal points of efforts by both major parties to maximize their seats in Congress, spurred by the Republican Party's threat to the Democratic Party's longstanding dominance in state politics. Texas had gained three seats in Congress, increasing to a total of 30 congressional representatives.

Redistricting commenced in 1991, when Democrats held the governorship and had majorities in the Texas House and Senate. At that time, Republicans were competitive statewide, receiving 47 percent of the statewide vote in 1990 elections compared to 51 percent for Democrats. The Democratic Party drew a congressional redistricting plan that favored Democrats in an effort to prevent the Republican Party from capturing a majority of the congressional seats over the next decade. Heavily Republican suburban areas were packed together into a small number of districts.

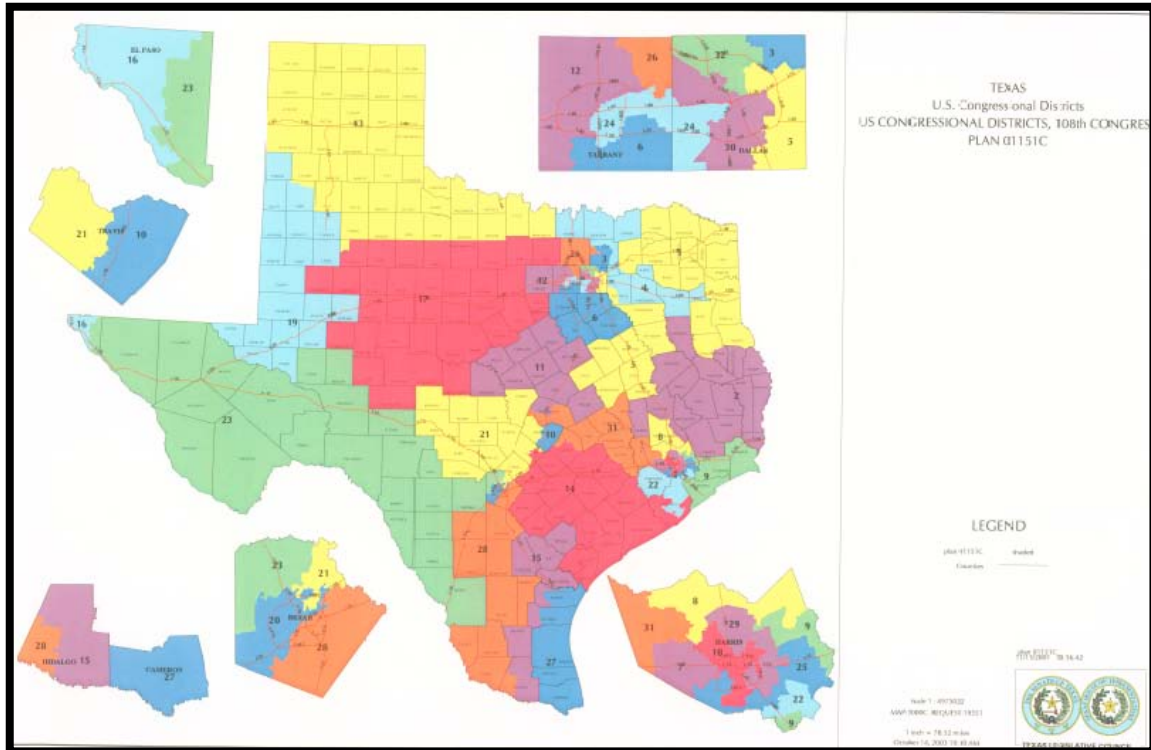
The Democratic congressional redistricting plan accomplished its goal. By 2000, Republicans won 59 percent of the statewide vote, but won only 13 congressional seats compared to the Democratic Party's 17 seats.

As a result of the 2000 Census, Texas gained two more seats in Congress, increasing its total to 32. When Texas received its redistricting data in 2001, Republicans controlled the governorship and the state Senate, while the Democratic Party controlled the state House of Representatives. As a result, the legislature was unable to pass a congressional redistricting plan before it adjourned at the end of May 2001. Several lawsuits were filed in state court challenging the 1991 redistricting plan as malapportioned.

In April 2001, a separate lawsuit was filed before a three-judge federal court in *Balderas v. State*. The federal court initially took no action, deferring to Texas state courts to give them an opportunity to adopt a congressional redistricting plan. On October 19, 2001, the Texas Supreme Court overturned a state court ruling adopting a congressional plan, leaving the state without a lawful redistricting plan to use for the 2002 elections. Consequently, on October 22, 2001, a trial began before the three-judge federal court in *Balderas*.

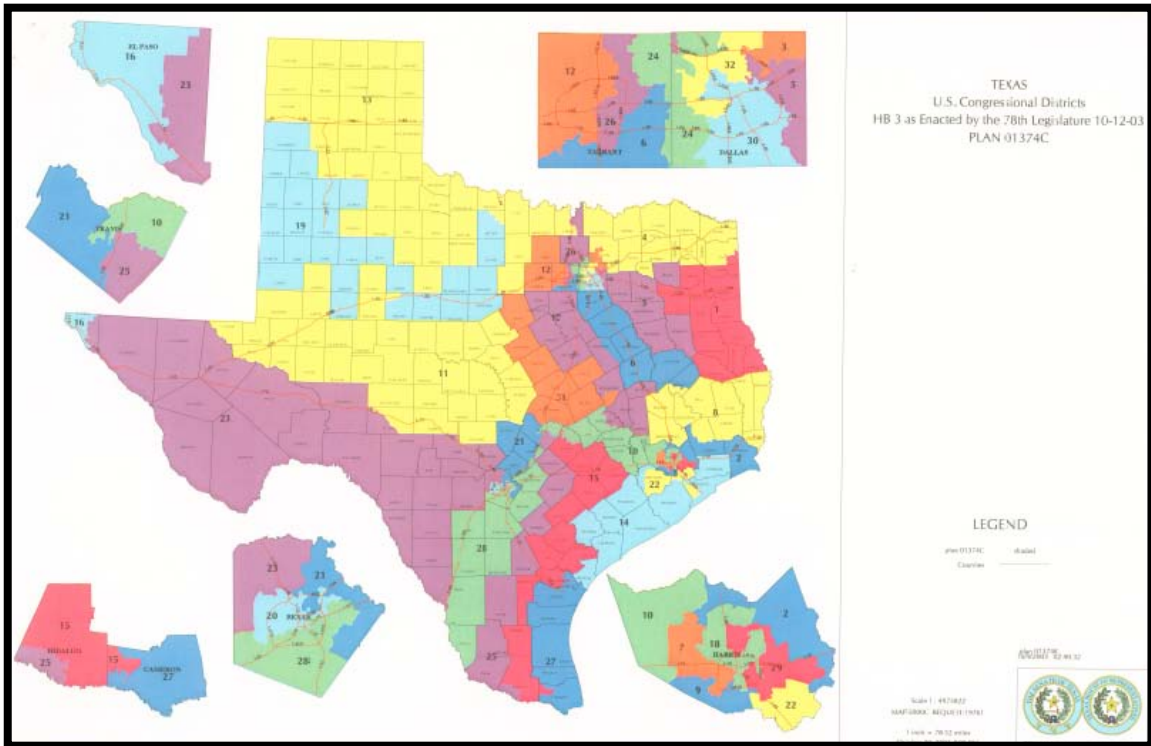
The federal court in *Balderas* adopted a congressional redistricting plan, known as Plan 1151C. The court recognized that redistricting was primarily a state function, and declined to "undo the work of one political party for the benefit of another." The court applied "only 'neutral' redistricting standards" that largely left the existing 1991 redistricting plan intact, except for changes needed to make the districts equally

populated and to account for the two new congressional districts. The court placed the two new districts “in high-growth areas, following county and voting precinct lines, and avoiding the pairing of incumbents.” Under Plan 1151C, the Democratic Party retained its 17 seats, while the Republican Party picked up both of the new seats to increase its total to 15.



In 2003, the Republican Party won a majority in the state House of Representatives, which when combined with its majority in the Senate and a Republican governor gave the Party complete control over the redistricting process. Tom DeLay, the Republican Majority Leader in the U.S. House of Representatives, sensed an opportunity to undo the Democratic Party’s 1991 congressional plan largely left intact by the federal court in *Balderas*. In April 2003, DeLay encouraged the Texas legislature to pass a new redistricting plan. Throughout the summer of 2003, Democratic members in the Texas House and Senate left the state to block the quorums necessary to enact a new plan in the first and second special legislative sessions.

In September 2003, after a third special legislative session was called, Democratic senators returned to the state. In October 2003, the Texas legislature enacted a mid-decade congressional redistricting plan for the first time in its history. Plan 1374C accomplished its goal. In the 2004 congressional elections, Republicans gained 6 seats from their 2002 total, winning 21 seats to the Democratic Party’s 11 seats.



Congressional District 23 experienced some of the most significant changes. As originally drawn by the federal court in 2001 (Plan 1151C), District 23 had a Latino citizen voting-age population (that is, U.S. citizens who are aged 18 and older and are eligible to vote unless disqualified by state law) of 57.5 percent. Although the Republican incumbent, Henry Bonilla, won reelection in 2002 with 51.5 percent of the vote under the court-drawn plan, he was not the Latino candidate of choice. Voting was strongly polarized along ethnic lines, with 92 percent of Latinos voting against Bonilla and 88 percent of non-Latinos voting for Bonilla in the 2002 election. Facing a growing Latino electorate that was likely to control the results of future elections and thereby defeat Bonilla, Republicans in the legislature redrew District 23.

Plan 1374C (the 2003 plan) fragmented the Latino community in District 23. Webb County and the city of Laredo, which were on the Mexican border and had a population that was 94 percent Latino, previously had been entirely in District 23. Under Plan 1374C, both Webb County and Laredo were divided, moving approximately 100,000 Latinos in Webb County from District 23 into District 28. The Republican legislature replaced the Latino voters with predominately Anglo areas from counties in the central part of the state. Although the Latino voting-age population in District 23 remained just above 50 percent, the Latino citizen voting-age population dropped by 11.5 percent down to just 46 percent. The projected results in the revised District 23 showed that “the Anglo citizen voting-age majority [would] often, if not always, prevent Latinos from electing the candidate of their choice in the district.”

Latino populations in other districts were significantly altered to make the fragmentation of the Latino community in District 23 possible. For example, a third district was added to the east, District 25, extending from the Mexican border in a narrow strip north to Austin, 300 miles away. Over three-quarters of District 25's population came from split counties in the northern and southern ends. Although District 25 had a Latino citizen voting-age population of 55 percent, it was drawn from "Latino communities at the opposite ends of [the] District" that had "divergent 'needs and interests, owing to differences in socio-economic status, education, employment, health, and other characteristics.'"

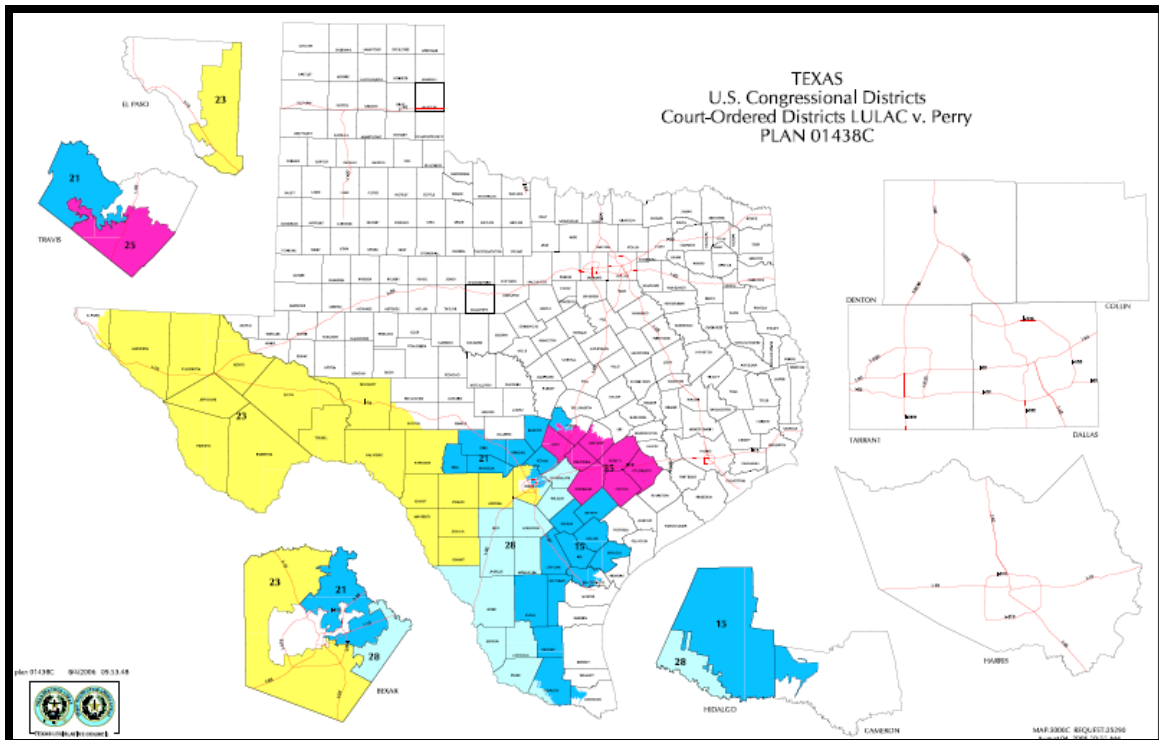
In late 2003, the League of United Latin American Citizens (LULAC), the Mexican-American Legal Defense and Education Fund (MALDEF), and other civil rights groups filed a lawsuit in federal court challenging Plan 1374C. They alleged that Plan 1374C was unlawful for four reasons: (1) Texas could not redistrict mid-decade; (2) the Plan unconstitutionally discriminated on the basis of race and Hispanic origin; (3) the Plan was an unconstitutional partisan gerrymander; and (4) some of the districts in the Plan, including District 23, diluted Latino voting strength in violation of Section 2 of the Voting Rights Act.

After a trial, the federal court denied their claims. The federal court reached that conclusion despite making the following finding: "The change to Congressional District 23 served the dual goals of increasing Republican seats in general and protecting Bonilla's incumbency in particular, with the additional political nuance that Bonilla would be reelected in a district that had a majority of Latino voting-age population – although clearly not a majority of citizen voting-age population and certainly not an effective voting majority." The federal court further concluded that the Texas legislature had redrawn District 25 in an effort "to avoid retrogression" under Section 5 of the Voting Rights Act by trying to account for the reduced Latino voting strength in District 23.

In October 2004, [the United States Supreme Court reversed](#), directing the three-judge federal court to reconsider its holding in light of an earlier political gerrymandering decision. The three-judge court again ruled in favor of the State of Texas.

LULAC, MALDEF, and the other plaintiffs appealed to the U.S. Supreme Court. On June 28, 2006, the Supreme Court agreed with the plaintiffs in their Voting Rights Act claim in District 23. In [League of United Latin American Citizens v. Perry](#), the Court found that District 23 violated Section 2 of the Act and directed the lower court to adopt a remedial plan.

In the fall of 2006, the federal three-judge court restored the predominately Latino areas removed from District 23, including Webb County and the city of Laredo. The three-judge court's remedial redistricting plan, Plan 1438C, is included below.



Texas' Twenty-Third Congressional District provides several important lessons for Latinos seeking to obtain fair representation in the redistricting process:

***Mid-Decade or “Mid-Stream” Redistricting is not per se Unlawful:*** In *LULAC v. Perry*, some of the plaintiffs argued that mid-decade redistricting that is motivated by partisan objectives should be presumptively unconstitutional. The United States Supreme Court rejected their argument. There may be many legitimate reasons why a redistricting body may want to redistrict more than once in a decade. Although it was apparent that Plan 1374C (the 2003 state-drawn plan) was motivated primarily by efforts to increase the number of Republican-leaning and safe districts, the Court noted the difficulty in second-guessing political decisions made by a redistricting body. [The Court continues to allow political gerrymandering cases](#) to be brought, but the Court has not articulated a clear standard for proving those cases.

***Mid-Decade Redistricting May Deny Latinos Equal Voting Opportunities:*** Although not *per se* unlawful, mid-decade redistricting raises red flags for Latinos who have been moved between districts. Often, such movement results in reduced opportunities for Latinos to elect their candidates of choice. That is precisely what happened in District 23 under Plan 1374C (the 2003 state-drawn plan). Henry Bonilla, the Republican incumbent in District 23 who narrowly won reelection in 2002 with just eight percent of the Latino vote, was vulnerable to losing in the next election to the Latino candidate of choice. To stop that from happening, the Republican-controlled state legislature significantly reduced the number of Latino voters in District 23.

***Compact Latino Populations should not be Fragmented or “Cracked”:*** Latinos often live in geographically compact communities of interest that are capable of electing their candidates of choice. Under the 1991 congressional redistricting plan and the 2001 court-drawn congressional redistricting plan (Plan 1151C), the Latino community of interest in southwestern Texas was kept together to offer voters in those communities voting opportunities equal to those of non-Hispanics in other districts. The deliberate fragmentation of that community of interest, especially Webb County and the city of Laredo, was accomplished in the 2003 state-drawn plan (Plan 1374C), to ensure that the Latino candidate of choice would be defeated and to virtually guarantee the continued reelection of Republican incumbent Henry Bonilla. This cracking of the geographically compact Latino community is similar to the deliberate division of the Latino Core in Los Angeles County that a federal court struck down in *Garza v. County of Los Angeles*.

***Officials’ Intent does not matter under Section 2 of the Voting Rights Act:*** Section 2 of the Voting Rights Act focuses on whether the effect of a voting or redistricting practice provides Latino voters with less opportunity to participate in elections than non-Latino voters. The intent of the redistricting officials does not matter. Therefore, regardless of whether the redistricting officials intended to deny Latino voters with equal opportunities to elect their candidates of choice in District 23, their actions in fragmenting the compact Latino community of interest in Webb County and Laredo clearly had that effect. That resulted in a violation of Section 2.

***Protection of Incumbents does not justify denying Latinos Equal Voting Opportunities:*** Jurisdictions like Texas often give strong consideration to the impact that redistricting plans may have on incumbents, with some even providing for incumbency protection as a redistricting criterion. Although incumbency may be considered, it cannot come at the expense of denying Latinos equal opportunities to elect their candidates of choice in violation of Section 2 of the Voting Rights Act. That is especially true in districts such as Texas Congressional District 23, where Latinos were an emerging majority that was about to achieve the fruits of their growing voting power. As the Supreme Court observed in *LULAC v. Perry*, incumbency protection, “whatever its validity in the realm of politics, cannot justify the effect on Latino voters.”

***A Section 2 Violation in one Part of the State typically cannot be remedied by creating a non-compact Latino Opportunity District in another Part of the State:*** Texas Republican legislators argued that the 2003 state-drawn congressional plan (Plan 1374C) did not violate Section 2 because despite fragmenting the Latino community in District 23, they created District 25 as an offsetting Latino opportunity district. The Supreme Court rejected their argument. The Court explained that it had rejected “the premise that a State can always make up for the less-than-equal-opportunity of some individuals by providing greater opportunity to others.” Instead, a State may “use one majority-minority district to compensate for the absence of another only when the [minority] group in each had a Section 2 right and both could not be accommodated.” In addition, “the creation of a noncompact district does not compensate for the dismantling of a compact opportunity district.”

The Supreme Court found that Plan 1374C's District 25 could not replace District 23. First, it was apparent from the court-drawn 2001 congressional plan (Plan 1151C) that a compact district that kept the Latino community of interest in Webb County and Laredo together could be drawn. Second, District 25 joined together two distinct Latino communities which, unlike the Latinos in Webb County, did not form a single cohesive community of interest. As a result, Plan 1174C's District 25 was not compact. In its place, Plan 1151C's District 23, or a comparable district that preserved the Latino community of interest in the Rio Grande Valley, was necessary to comply with Section 2.

***Compactness under Section 2 Focuses on the Close Proximity of a Minority Community of Interest, Not the Smoothness of District Boundaries:*** The reliance of Texas Republicans on Plan 1374C's District 25 to replace Plan 1151C's District 23 because of the smoothness of the new district's boundaries was based upon an incorrect understanding of compactness. Section 2 of the Voting Rights Act requires looking at "the compactness of the minority population, not to the compactness of the contested district." The compactness "inquiry should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries.... Compactness is, therefore, about more than 'style points'; it is critical to advancing the ultimate purposes of Section 2, ensuring minority groups equal 'opportunity... to participate in the political process and to elect representatives of their choice.'"

As explained above, Plan 1374C's District 25 was not compact. In contrast, the Latino community of interest in Plan 1151C's District 23 was clearly compact. A large core of the District's voters came from Webb County and the city of Laredo, which were 94 percent Latino. The 2003 state-drawn plan (Plan 1374C) broke up this compact community of interest and placed 100,000 Latino voters from Webb County in District 25 with Latino voters 300 miles away in Travis and Hidalgo Counties and Austin who had little in common with them.

***A Section 2 Violation is Not Remedied by Creating a District Combining Two or More Latino Communities with Different Interests:*** For the reasons discussed in the previous two paragraphs, a district intended to avoid or to remedy a Section 2 violation typically must meet the compactness requirement by including Latino voters with a shared community of interest. Plan 1374C's District 25 could not replace District 23 in the 2001 court-drawn plan (Plan 1151C) because the Latinos in the northern part of the district in Austin had little, if anything, in common with Latinos in the southern part of the district in Laredo and the Rio Grande Valley.

***The Appropriate Population Measure Must be used to Provide Latinos with Equal Voting Opportunities:*** In some communities, Latinos may have an equal opportunity to elect their candidates of choice in districts in which Latinos do not comprise a majority of the voting population. But often, that is not the case. Factors impacting the population measurement to use for the Latino community to provide equal opportunities are discussed here in the Redistricting Fundamentals presentation in the Toolkit section of [www.latinosdrawthelines.org](http://www.latinosdrawthelines.org)

Texas Republicans argued that Plan 1374C's District 23 remained a Latino opportunity district because Latinos remained a bare majority of the voting-age population. The Supreme Court rejected their argument, explaining: "Plan 1374C's version of District 23... 'is unquestionably not a Latino opportunity district.' Latinos, to be sure, are a bare majority of the voting-age population in new District 23, but only in a hollow sense, for the parties agree that the relevant numbers must include citizenship. This approach fits the language of Section 2 [of the Voting Rights Act] because only eligible voters affect a group's opportunity to elect candidates."

Consequently, it is especially important to ensure that Latino opportunity districts are drawn based upon the local realities of Latino eligibility to vote, Latino voter participation, and the amount of cross-over voting and support by non-Latino voters for the Latino candidates of choice.

***The Proportion of Districts Statewide in which a Majority of the Citizen Voting-Age Population is Latino is Relevant to Whether Latinos Have Equal Voting Opportunities:*** The Supreme Court also held that in assessing whether Latino voters have achieved proportionality under Section 2 of the Voting Rights Act – that is, whether Latinos have equal opportunities to elect their candidates of choice in proportion to their percentage of the citizen voting-age population – that assessment must be done on a statewide basis. In *LULAC v. Perry*, the Latino plaintiffs were able to show a lack of proportionality to support their Section 2 claim. The Supreme Court found that although Latinos comprised at least 22 percent of Texas' citizen voting-age population, there were only "five reasonably compact Latino opportunity districts" that amounted to "roughly 16 percent of the total" number of congressional districts.