

SENATE JOURNAL

EIGHTY-SEVENTH LEGISLATURE — THIRD CALLED SESSION

AUSTIN, TEXAS

PROCEEDINGS

FOURTH DAY

(Monday, October 4, 2021)

The Senate met at 7:14 p.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Alvarado, Bettencourt, Birdwell, Blanco, Buckingham, Campbell, Creighton, Eckhardt, Gutierrez, Hall, Hancock, Hinojosa, Huffman, Hughes, Johnson, Kolkhorst, Lucio, Menéndez, Miles, Nelson, Nichols, Paxton, Perry, Powell, Schwertner, Seliger, Springer, Taylor, West, Whitmire, Zaffirini.

The President announced that a quorum of the Senate was present.

President Pro Tempore Campbell offered the invocation as follows:

Gracious heavenly Father, the Lord of Abraham, Isaac, and Jacob and Jesus Christ of Nazareth, it is a new day for us, but for You, whether it's a new day or an old day, You're the same yesterday, today, and tomorrow. We ask for Your favor in Jesus' name, Lord. Thank you. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of the previous day be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

INTRODUCTION OF BILLS AND RESOLUTIONS POSTPONED

The President announced that the introduction of bills and resolutions on first reading would be postponed until the end of today's session.

There was no objection.

CONCLUSION OF MORNING CALL

The President at 7:20 p.m. announced the conclusion of morning call.

COMMITTEE SUBSTITUTE SENATE BILL 4 ON THIRD READING

The President laid before the Senate **CSSB 4** by Senator Huffman at this time on its third reading and final passage:

CSSB 4, Relating to the composition of districts for the election of members of the Texas Senate.

The bill was read third time and was passed by the following vote: Yeas 20, Nays 11.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Hinojosa, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Springer, Taylor, Zaffirini.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Johnson, Menéndez, Miles, Powell, Seliger, West, Whitmire.

REASON FOR VOTE

Senator Eckhardt submitted the following reason for vote on **CSSB 4**:

CSSB 4 perpetuates the state's failure to uphold the legal and moral principle of "one person one vote" by willfully ignoring our history of suppressing minority voting strength and rushing through a map with a slim window for input which strategically removed race from consideration just as many parts of the state approach or obtain crossover, coalition or even single racial majority strength. I vote against CSSB 4 today and will continue to work with my colleagues for a future that reflects the present and future reality in Texas.

First, we will not meet the legal and moral principle of "one person one vote" by maintaining conscious indifference to our history or our present. The Texas Legislature has never produced districting maps that resulted in representation at the state or U.S. Congressional level that is accurately reflective of the State's diversity. This explains why we have been in almost continual litigation since the passage of the Voting Rights Act.

At the local level, we see positive signs of change with growing instances of crossover, coalition and single-race voting strength selecting candidates of their choice. Other members of this body will attest to this in their own areas. In Central Texas a cross-over coalition in Travis County elected State Senator Gonzalo Barrientos (a Hispanic born in Bastrop County) despite Travis County being approximately 21% Hispanic at the time. Cross-over coalitions in both counties within the current Senate District 14 have elected African American County Judges (the chief executive officer of the county) in recent history despite Travis County being 8% African American at that time and Bastrop County being 7.3% African American at that time. The cross-over coalitions of black, white, Hispanic and Asian voters that produced these results have been predominantly Democrats but not exclusively. The African American former Bastrop County Judge Ronnie McDonald was elected and reelected in a county that was and continues to be predominantly Republican. I am a Democrat, but, as a Travis County Commissioner, Travis County Judge and now as a State Senator for both Travis and Bastrop counties, I routinely win many Republican precincts.

Under CSSB 4 (Plan 2130), the existing voting coalitions of SD 14 have been packed, cracked and tacked to reduce their influence on State House, State Senate and U.S. Congressional contests. The black, white, Hispanic and Asian coalition has been packed as tightly as possible into the new SD14- at 74.4% for Biden, tight packing will reduce the overall voting strength of SD 14. The Hispanic majority in Eastern Travis County has been cracked by being assigned to SD 21 where it is paired with

Laredo Hispanics. Although these constituencies share race (which was purportedly not considered in the creation of the map) the Central Texas and South Texas constituencies share little common experience or understanding of each other's needs or preferences for transportation, reproductive healthcare, and border security just to name a few. The Bastrop coalition of white, black and Hispanic voters capable of electing an African American chief county executive is tacked onto SD 5 which is overwhelmingly white and Republican and anchored outside of the Austin MSA, sharing little common experience or understanding of Bastrop's stake in the Austin MSA economy, groundwater preservation, maintaining downstream water interests in the Colorado River, SH 71 improvements, or urban/wildland fire mitigation.

The author of CSSB 4 (Plan 2130) has claimed color blindness to race. However, one cannot unsee what has been provided by the Texas State Demographer and the U.S. Census Bureau. As predicted by the State Demographer and corroborated by the 2020 Census, Texas added 3,999,944 residents, an increase of 15.91%. Texans of color accounted for 95% of the state's growth. Hispanic Texans increased from 37.6% to 39.3%. Black Texans increased from 11.5% to 11.8%. Asian Texans increased from 3.8% to 5.4%. Non-Hispanic white Texans now make up just 39.7% of the state's population — down from 45.3% in 2010. Even though the 2020 Census was fraught with issues leading to a probable undercount of Hispanics due to the perceived threat of the proposed citizenship question as well as the coronavirus, Hispanics may already be or will soon become the majority race in Texas.

By far the fastest growing Metropolitan Statistical Area in the country, the Austin MSA is now of a size and sustained growth so as to merit multiple representatives at the Texas House, Texas Senate and U.S. Congressional level anchored in the Austin MSA. But, CSSB 4 (Plan 2130) draws only SD-14 anchored in the Austin MSA. SD-21 is intended to be anchored in Laredo/Webb County. SD-5 comprises a majority of non-Austin MSA counties. SD-25 is anchored in the San Antonio MSA. And SD-24 is anchored in Bell County.

It is also noteworthy that a good part of the rapid growth of Central Texas is in our Asian communities. Statewide, the Asian community accounts for about 5% of the population but they are the fastest-growing ethnic group in the state. Over the last decade, the Asian population of Travis County was the only racial group that gained in overall percentage in the county's population. In the last decade, Travis County's Anglo population declined ~2% to 47%, the Hispanic population declined 3% to 32.5% of population, the Black population declined by 1% to 7%, while the Asian population increased from 6% to 9% of population. 33% of Travis County children under 18 are Anglo, and 67% are Non-Anglo. This growth has been driven by Asian children and multiracial children, while there has been a drop in Hispanic and Black children from 2010-2020. The packing, cracking and tacking of Central Texas Asians greatly reduces the probability of Asians successfully collaborating with other interest groups to elect candidates of their choice. Additionally, the cracking and tacking of the Austin MSA Asian population reduces the likelihood of accessing services or influencing issues specific to Asian communities regarding healthcare, education, immigration, language access, and Asian targeted crime or discrimination.

Second, the Senate Special Redistricting Committee process itself evinces continuing conscious indifference to our changing demographics. At the opening of the September 24, 2021 Senate Select Committee on Redistricting's hearing on CSSB 4, it's author stated their goals and priorities in drawing the map. Specifically, CSSB 4's author listed their goals and priorities in the following order: abiding by all applicable law, equalizing population across districts, preserving political subdivisions and communities of interest wherever possible, preserving the cores of previous districts to extent possible, avoiding pairing incumbent members, achieving geographic compactness when possible, and accommodating incumbent priorities when possible. However, CSSB 4's author did not commit to or reveal any priority among these goals, the measure of achieving these goals or any balancing test for competing goals. Other than the bare assertion by the author of compliance with the Voting Rights Act, no other analysis has been provided to support the assertion. But the Princeton Gerrymandering Project did analyze SB 4 (Plan 2101) and gave the proposed Senate Map an "F" overall as well as for Compactness, Competitiveness, Geographic Features, and County Splits.

This failing grade may have been avoided had the committee process allowed for adequate time to analyze, make comment on and craft amendments to the proposed map. But the process was rushed. This important once-in-a-decade decision was assigned to a Special Session limited to 30 days. The Texas Constitution states, "The Legislature shall, at its first regular session after the publication of each United States decennial census, apportion the state into senatorial and representative districts." Texas Constitution Art. III, § 28. Regular Session would afford 140 days. The Texas Legislature does not have the authority to District until the next regular legislative session in 2023. This question is currently being litigated.

The only time there were regional hearings was before the 2020 Census results were returned. So, not only were there no maps, there weren't even any official numbers to comment on. When a map was finally available on which to comment, the time from publishing the draft map, to analyzing it, and providing comment was just 1 week. Assuming all committee members saw the full map for the first time on 9/18, committee members had just 10 days to deliberate and decide on a committee recommendation to move to the floor.

Finally, I urge an independent redistricting commission to prioritize the rights of voters over the interests of incumbent or parties. As evidence of this need I note my own reluctance as an interested party to ask the tough questions regarding extreme political gerrymandering for the benefit of some of my colleagues. That reluctance was in all probability the same reason that none of the bills proposing such a commission received a single hearing in the Senate during the 87th Regular Session.

In closing, I am respectfully voting against CSSB 4 today because I cannot legally or morally participate in continued conscious indifference to minority voting strength and certainly not when that minority has become or is rapidly becoming the majority.

ECKHARDT

REASON FOR VOTE

Senator Johnson submitted the following reason for vote on **CSSB 4**:

The proposed maps under CSSB 4 do exactly what they were expected to do: they make districts more partisan, and – if not invalidated by a court challenge – they effectively eliminate a Democratic seat.

The result is bad for everyone (other than for, perhaps, incumbents). The intensified partisan composition of districts means that primary elections, not general elections, will dictate final outcomes. Productive bi-partisan collaboration in the Legislature will be discouraged; partisan rhetoric and intransigence will be encouraged. We can expect next session to be as partisan and rancorous as the last; maybe more.

To make matters worse, the elimination of a Democratic senate seat renders the Senate even less representative of the state than it was before.

Legislators should not draw legislative maps. Enabling the majority party to draw maps with the aim of ensuring their continued grip on power – irrespective of how their policies may increasingly diverge from the majority of Texas voters – creates a structural conflict of interest. And it undermines the legitimacy of the democratic process.

It's mind-boggling, really, that we continue to adhere to this antiquated re-districting approach. It's long past time to take legislators out of the map-drawing process. It will take an act of sober courage for the majority party to do what so many Democratic legislators have sought to do by filing (as I have) bills to create non-partisan or bi-partisan redistricting commissions. Out of respect for the value of democracy, they should.

JOHNSON

REASON FOR VOTE

Senator Alvarado, joined by Senators, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Lucio, Menéndez, Miles, Powell, West, Whitmire, and Zaffirini, submitted the following reason for vote on **CSSB 4**:

Each of us represents majority-minority districts in which minority citizens have demonstrated the ability to elect their candidates of choice. We recognize and accept our special responsibility to protect the voting rights of the minority citizens we represent as well as minority citizens in every part of Texas. In light of this, we want to make clear that any vote by any of us to suspend rules or a vote in support of CSSB 4, either on passage to engrossment or on final passage, should not be interpreted as endorsement of the configuration of the plan in all parts of our state. To the contrary, we unanimously oppose specific aspects of the plan, most notably, the decimation of Senate District 10.

According to the 2020 Census, Texas gained nearly four million new residents. Notably, persons of color accounted for 95 percent of this growth, including nearly two million Hispanics. Non-Hispanic white Texans now comprise only 39.7 percent of the state's population—down significantly from 45.3 percent in 2010. In contrast, the Hispanic population increased from 37.6 percent to 39.3 percent, the Black population increased from 11.5 percent to 11.8 percent, and the Asian population increased from 3.8 percent to 5.4 percent.

The CSSB 4 proposed plan fails to reflect this growth and, in fact, dilutes the number of minority opportunity districts. In the proposed plan, 19 of the 31 Senate districts, or approximately 60 percent, in effect would be controlled by Anglos, who comprise less than 40 percent of our current population. If the racial and ethnic makeup of the body reflected that of the state, we would have 12 districts in which Hispanic voters could elect candidates of their choice, four districts in which African American voters could elect candidates of their choice, and at least one district in which Asian Americans could elect candidates of their choice. In total, the Senate would have 17 districts in which Texans of color elected candidates of their choice. CSSB 4 falls far short of this bare minimum mark.

The redistricting process should be an accurate reflection of who lives in our state. In spite of the growing number and proportion of persons of color, if this plan is enacted, our state will go potentially 30 years without adding a Hispanic opportunity district. Worse yet, rather than expanding the opportunity for these growing minority populations, this proposal does the opposite by either slicing them up and placing the pieces in majority Anglo districts or packing them together in fewer and fewer districts. Such actions are deliberate, they are illegal, and they are discriminatory.

Given these deliberate actions, it is no surprise that CSSB 4 does not comply with the requirements of the Voting Rights Act. While the Voting Rights Act requires additional minority opportunity districts to be drawn, CSSB 4 does the opposite by dismantling Senate District 10 (SD 10) in north Texas. The current SD 10 has evolved over the last two decades into an effective coalition crossover district in which minority citizens have demonstrated the ability to elect their candidate of choice, as was intended by the Legislative Redistricting Board when the lines were developed in 2001. Additionally, under the current Senate District 10 benchmark, some Anglo voters have joined with politically cohesive minority voters to elect a candidate of choice.

Under CSSB 4, the voting strength of minority citizens in SD 10 are intentionally destroyed, and rural Anglo voters are installed as the controlling majority in the district. Not only would minority voters in SD 10 no longer have an effective opportunity to elect a candidate in the district, they would have no voice at all.

While claims that this new configuration of SD 10 is required due to population changes in the region, amendments offered by members of this body demonstrate that is simply false. SD 10 can be drawn to maintain its ability for minorities to elect their candidates of choice while also more closely preserving the current geographies of nearby districts.

In addition to the dismantling of SD 10, this map systematically diminishes the ability of African Americans, Hispanics, Asians, and other minorities to have electoral power in Texas. Under the current statewide Senate map, 15 districts have majority-minority populations, and in 12 of these districts, including SD 10, minority citizens have demonstrated the ability to elect their candidate of choice. Under the proposed Senate plan, only 12 districts would have majority-minority populations, despite these populations accounting for nearly all the growth this last decade.

Unfortunately, Texas has a long history of denying minority citizens their rights under the Voting Rights Act and the U.S. Constitution. What has become increasingly clear is that state leaders will stop at nothing to deny minorities in this state from wielding their electoral strength. Regardless of claims that race was completely ignored in creating this map, no senator can claim after multiple hearings and today's debate that they do not know the harmful effects this map will have on racial minorities across Texas. Texans deserve better than to have maps that perpetuate decades of suppressing minority voters.

ALVARADO	MENÉNDEZ
BLANCO	MILES
ECKHARDT	POWELL
GUTIERREZ	WEST
HINOJOSA	WHITMIRE
JOHNSON	ZAFFIRINI
LUCIO	

REMARKS ORDERED PRINTED

On motion of Senator Johnson and by unanimous consent, the remarks regarding **CSSB 4** on second reading were ordered reduced to writing and printed in the *Senate Journal*.

The remarks are printed in an addendum to this day's Journal.

SENATE BILL 7 ON THIRD READING

The President laid before the Senate **SB 7** by Senator Huffman at this time on its third reading and final passage:

SB 7, Relating to the composition of districts for the election of members of the State Board of Education.

The bill was read third time and was passed by the following vote: Yeas 21, Nays 10.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Hinojosa, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Springer, Taylor, Zaffirini.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Johnson, Menéndez, Miles, Powell, West, Whitmire.

REASON FOR VOTE

Senator Miles submitted the following reason for vote on **SB 7**:

I voted against SB 7 because it reduces the ability of African Americans to elect a candidate of their choosing to the State Board of Education. Currently, District 4 is currently represented by an African American and the district is made up of voters from Harris and Ft. Bend Counties. SB 7 removes the precincts from Ft. Bend County from District 4. Removing these precincts from District 4 will reduce the ability of African Americans to elect a candidate of their choosing. As a result, I cannot vote for this plan.

MILES

SENATE RULES SUSPENDED
(Posting Rule and Tag Rule)

On motion of Senator Hughes and by unanimous consent, Senate Rule 11.18(a) and Senate Rule 11.19(a) were suspended in order that the Committee on State Affairs might meet and consider **SB 10** upon recess in the Betty King Committee Room, 2E.20.

MOTION TO RECESS

On motion of Senator Whitmire and by unanimous consent, the Senate at 7:26 p.m. agreed to recess, pending the receipt of committee reports, until 1:00 p.m. tomorrow.

APPENDIX

COMMITTEE REPORTS

The following committee reports were received by the Secretary of the Senate in the order listed:

October 4, 2021

STATE AFFAIRS — **SB 47, SB 10, SB 9**