

## Koy Kunkel\_SC

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**From:** applications.administrator@capitol.local  
**Sent:** Saturday, March 13, 2021 12:30 PM  
**To:** Senate Redistricting  
**Subject:** INETMAIL: Redistricting Public Input  
**Attachments:** Robyn Honig-Senate Redistricting Testimony-20210313.pdf

Date: 2021-03-13  
First Name: Robyn  
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Affirm public info: I agree

Regarding: Senate

Message:

Thank you for allowing virtual testimony. It's a safe, convenient, and inexpensive way for Texans all over the state to make themselves heard, and it should be permanently adopted.

Attached is my testimony from March 13, 2021, including citations.

[REDACTED]

I'm a lifelong Texan. I testified here in Austin in September 2019, in front of the House redistricting committee [see Appendix A]. You might've seen this picture of my husband's feet straddling the congressional boundary that bisects the width of our street.



The day I testified, dozens of us asked for an independent, nonpartisan redistricting entity, and compact districts that represent our communities.

Unbeknownst to me, the then-chair of the House committee had given a presentation the previous month at a right-wing forum, held here in Austin, about how to pretend you're not gerrymandering [see Appendices B & C].

Now the House chair has been replaced with a known gerrymanderer [*Perez v. Abbott*, 250 F. Supp. 3d 123 (W.D. Tex. 2017)], and here I am, in front of another partisan redistricting committee, where I expect more than half of you to pretend to forget,

or try not to hear, what so many of your fellow Texans are saying.

Most of you might conveniently forget the recent U of H survey<sup>1</sup> stating that more Texans than not want to reduce political partisanship in the redistricting process via an independent, nonpartisan commission. The Republicans were pretty evenly divided on that issue, and if you include every constituent, which you're supposed to do, the percentage in favor goes even higher.

Most of you might also pretend to forget that scores of constituents have implored this committee to keep their neighborhoods, communities, and cities together. They even attempted to reason with you while urging you to adhere to the Voting Rights Act; avoid gerrymandering; prioritize public input from beginning to end; and keep all your records, communications, and rationales fully transparent. All despite the odds that most of you might pretend that we never spoke or that we were paid, or that you'd mischaracterize our statements, telling all who'll listen that you gave Texans what they wanted. And that would be true, if, by Texans, you meant under a third of them.

I hope we get our representative districts soon. I hope it's because you drew them. Not holding my breath, but I'd be among the first to thank you.

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<sup>1</sup> Kirk Watson, Renée Cross, & Mark P. Jones, Hobby School of Public Affairs, University of Houston, *Texas Policy & Politics 2021: Legislative Issues* (January 27, 2021), available at <https://uh.edu/hobby/tx2021/issues.pdf>.

Citizen Testimony, House Committee on Redistricting  
September 10, 2019

I can't talk about representation without talking about my neighbors. Let me tell you about my neighbors across the street.

We send our kids to the same school. We shop at the same HEB. We had our babies at St. David's hospitals. And of course our needs are similar. I can see their front porch from mine.

But when I cross the street to visit my neighbors, I cross from the 10th congressional district to the 17th.

Here is a picture of my husband's feet. He's standing in the middle of our street. His right foot is in the 10th district. His left foot is in the 17th. We don't have the same US Representative as our neighbors across the street. Our established, suburban neighborhood in northwest Austin is actually divided among three different US Representatives.

Now let me tell you who our congressperson is tasked with representing, besides my side of the street. Volente. Manor. Bastrop. La Grange. Brenham. Prairie View. Cypress. Katy. But not my neighbors across the street.

Did anyone consider how difficult it would be for whomever represents our district to get to know their constituents or understand our incredibly diverse needs? We're urban and rural. We're hill country and gulf coast.

If our congressperson dared to hold consecutive town halls in the district, in enough locations so nobody would have to drive more than 20 minutes, it would involve overnight stays.

It takes thirty minutes to get from Volente to my neighborhood. It takes nearly two-and-

a-half hours to get from my neighborhood to Cypress. I'd need my GPS to get to Bastrop or Katy. How is one person supposed to represent all of us? It's so hard that far too many of my neighbors feel starved for representation.

In the meantime, my neighbors across the street compete for representation with the lovely people of Waco, maybe an hour to our north, Bryan, two hours to our east, and these small, industrial towns in counties northeast of ours that I've never even heard of, let alone driven through.

So I ask you a rhetorical question: do the three congressional districts shattering my neighborhood keep with the spirit of a representative democracy, or were they drawn in the spirit of something else? You know the answer, and so do we—you only have to look at my husband's feet. Texas needs an independent, nonpartisan redistricting committee and geographically compact districts that reflect the population density of each. It is time for all y'all to put an end to this nonsense.



David Daley, *Slate*, *How to Get Away With Gerrymandering* (October 2, 2019), available at <https://slate.com/news-and-politics/2019/10/alec-meeting-gerrymandering-audio-recording.html>.

### **How to Get Away With Gerrymandering**

A leaked audio recording reveals how state lawmakers are taught to trash evidence, avoid the word gerrymander, and create an appearance of bipartisanship.

By David Daley

Oct 02, 2019 1:16 PM

Luxury cabanas atop Austin's JW Marriott kept state legislators cool poolside as August-in-Texas temperatures soared above 103 degrees during each day of the American Legislative Exchange Council's 2019 annual meeting. The gathered Republican officials could enjoy a \$14 rooftop Peppered Paloma cocktail with Patrón silver, housemade grapefruit poblano soda, and Chilean salt, all while gazing over Lady Bird Lake and the nearby state Capitol, or catching a ballgame on the cabana's 55-inch private TV.

Downstairs, meanwhile, five of the GOP's most seasoned redistricting minds and über-lawyers would teach them the finer points of tilting maps and drawing districts that would allow them to retain such spoils for another decade.

Slate has obtained an exclusive audio recording of the closed-door panel called "How to Survive Redistricting," moderated by influential Republican lawyer Cleta Mitchell. The panel's four experts—Hans von Spakovsky of the Heritage Foundation, North Carolina election lawyer Thomas Farr, former Georgia Rep. Lynn Westmoreland, and Texas state Rep. Phil King—are among the architects and defenders of some of the most notorious gerrymanders and voter suppression plans of this decade.

During the session, the legislators were advised to treat redistricting as "political adult blood sport," trash potential evidence before it can be discovered through litigation, avoid the word *gerrymander*, and make deals with black and Latino legislators that guarantee them easy reelections by packing as many minority voters as possible into their districts, thereby making the rest of the map whiter and more conservative.

Panelists offered complicated technical advice, such as adding a legal provision that would allow a legislature to defend its maps in court even if the state attorney general refuses. And then there was less-technical advice, like being sure to put "sharp" legislators on redistricting committees because they'll spend a lot of time explaining the maps in court.

"You are going to be sued. Let's start with that," Mitchell told a packed room at the ALEC gathering, attended by more than 1,400 people, including Trump administration officials and top conservative lawmakers, thinkers, donors, and activists. Mitchell made light of ALEC's reputation as a conveyor belt for cookie-cutter conservative legislation enacted by state after state. "Mindless state legislators, we're just pouring in information and we're indoctrinating you, pouring into your empty skulls!" she said, sarcastically. "We're going to teach you how to gerrymander."

And then she did. "Let us begin with the fact that, probably, your notes from this conference, and this workshop, will probably be part of a discovery demand," Mitchell said on the recording, dropping the sarcasm. "My advice to you is: If you don't want it turned over in discovery, you probably ought to get rid of it before you go home."

Farr, the veteran North Carolina election lawyer whose nomination to the federal bench in North Carolina ended amid persistent allegations that he had defended efforts to suppress the black vote, compared lawsuits against GOP redistricting plans to a cancer diagnosis. “You better get some chemotherapy,” he said, “because if you don’t, things aren’t going to turn out real well for you.” He also told legislators that they needed to think about any trial as a play that he would direct as the counsel, and to be sure that they created a script that an attorney could work with before a judge.

Westmoreland, the former Georgia congressman who co-chaired a Republican 2010 redistricting initiative called REDMAP, told a story about giving black Democrats in his state mapmaking software and encouraging them to draw their “perfect district,” knowing that districts filled with minority voters would make surrounding districts whiter and more Republican.

“We ended up being very successful with it,” Westmoreland said.

Westmoreland recalled inviting the members of the “black caucus” to his office, “off campus,” to create their “perfect map.” One incumbent, he said, “finally fell into the trap and came over there and drew his perfect district.” To show the redistricting plan benefited black Democrats too, he “immediately got the local paper down there” to run an article on that lawmaker’s perfect district. Westmoreland then included a district as close as possible to that overwhelmingly black and Democratic one in the state’s official map. The legislator, he said, voted against the map and soon lost his seat.

“I promise you it’ll be beneficial to you,” he told the ALEC attendees. “They still want to be reelected. They still want to have the best district they can have.”

The speakers repeatedly insisted that there is no such thing as a nonpartisan redistricting process. Farr argued that maps can never be neutral. “Every time you draw a districting line, it benefits one party and hurts the other party,” he said.

The idea that Republicans are simply fighting similarly skewed Democratic gerrymanders has been debunked. According to a University of Southern California study, 59 million Americans live in states where at least one chamber of the state legislature is controlled by the party that won fewer votes in 2018. In every case, Republicans drew the lines, and hold minority control. That the process is inherently political has been disproved as well: Several states, including California, Iowa, and New Jersey, use independent commissions or various neutral or bipartisan processes that have successfully created fairer and more competitive maps. Three-quarters of the seats that flipped during the 2018 U.S. House elections were drawn by commissions or courts. Studies show that maps become more representative and equitable when more parties have a seat at the table.

Nevertheless, Farr urged these lawmakers to make their processes appear as open as possible, even though they are driven by partisanship behind closed doors.

The legislative record, he told them, must appear to be business as usual, following every statute, with every transcript and debate filed for the record.

Given that every map could end up in court, Farr advised extraordinary caution. “You never know what you might say, even if it’s unjust, that the left can take out of context and try to use to make the Republicans look like they’re evil.”

Then, in court, Farr could take it from there.

“It’s like I’m a director of a play,” he explained to the room. “I know what I want the play to look like for the judges when we actually have to go and defend what we’ve done in court, and so this is why you want to make it look like—I know most of you know this already—you’re very cordial, cooperative with the minority party or the opposing party. ... The more you take the high road in the legislative process, the better it’s going to look in court when you have to defend what you’ve done.”

Von Spakovsky also praised Chief Justice John Roberts’ majority, 5–4 opinion earlier this year in *Rucho v. Common Cause*, which essentially closed the federal courts to partisan gerrymandering claims. But he warned that other legal avenues are still open to proponents of fair maps. “What you have to understand is this is not the end of this,” he said.

Gerrymandered maps could get challenged under state constitutions as a political question, he said, or in federal courts for unconstitutional use of race data and for diluting the votes of minorities contrary to Section 2 of the Voting Rights Act. He called this “the Goldilocks principle of redistricting,” noting that “you can’t use too much race,” but if you don’t use race at all, “Hispanics, African Americans are going to claim you didn’t create a district in which they can elect a candidate of their choice.”

To withstand these inevitable legal challenges, the panelists said, it is important to control not only legislative majorities but also the judges approving or rejecting redistricting plans.

“Always know who’s going to end up ruling on your maps,” Westmoreland, the Georgia lawmaker, advised. “It’s important to work with the judges, the judicial system. You need to work for your attorney generals. ... You need to work with as many organizations that you can to make sure that not only you win the majority, but that you elect people that are going to be able to supervise what these maps, or what you, come up with.”

Enticing more “dance partners” from minority groups to protect their own seats is another key part of that plan.

“It’s not rocket science,” Westmoreland said. “It’s politics.”

*Slate, The Full Transcript of ALEC's "How to Survive Redistricting" Meeting (October 2, 2019), available at <https://slate.com/news-and-politics/2019/10/full-transcript-alec-gerrymandering-summit.html>.*

### **The Full Transcript of ALEC's "How to Survive Redistricting" Meeting**

Oct 02, 2019 1:16 PM

*Note: This is a rough transcript. Read our story on the meeting here.* [Please see Appendix B for their story.]

**Cleta Mitchell:** Our panel is going to be more focused on some of the ... what are the legal things you have to keep in mind, and all of these different competing interests. Not just the technical of the numbers that you've just been ... sort of the technology and intricacies of the nuts and bolts. But now that we're getting into the theory of redistricting. And so I'm going to introduce our panel members now. And then we're going to start with our conversation. Hans von Spakovsky is the senior legal fellow at the Heritage Foundation. Hans is a former Department of Justice attorney who actually has some interesting insights from his time when he was in the Civil Rights division of the Department of Justice, and receiving and reviewing various plans from different states so I'll let him talk to you about that.

He's written extensively about redistricting, about the citizenship issue, and many other legal issues so we're very fortunate to have Hans with us. We have Tom Farr who is a practicing attorney. Tom lives in Raleigh, North Carolina. He's a partner in the law firm Ogletree Deakins. But he's been involved in redistricting and election law cases for 34 years. Tom has prepared for us, and I hope all of you have a chance to pick it up, lessons learned from 35 years of election law and redistricting of litigations so this is a wonderful narrative, and a checklist, of what you need to know about redistricting and we're very fortunate that Tom could be with us to share some of his thoughts and experiences with us.

The honorable Lynn Westmoreland is a unique person in many ways. He's a former legislator in the state of Georgia, was involved in redistricting as a state legislator in Georgia, then was elected to Congress, served a number of years in the Congress from Georgia and in the 2010 redistricting cycle, Lynn was the liaison, basically the chairman, of the redistricting project related to the House of Representatives. I honestly want Lynn to share some of the nuts and bolts of things that he did as chairman of that committee because I think it had a huge impact on what happened in the 2010 elections. He has a unique perspective of having been involved in redistricting, drawing lines, as a state legislator. Not only for legislating mass but worked Congressional which is also something that's really important.

And then Phil King has agreed to stay with us to share some of his experiences. Not just the technical but the more theoretical and legal aspects. He's a competent attorney, and he probably has more experience in redistricting than probably anyone else in the country. I just want to share a couple of thoughts before I recognize our first speaker. Let's begin with this, ladies and gentleman. You are going to be sued, let's start with that. You're going to be sued, and you need to prepare for that from this day forward. On Sunday, ThinkProgress, which is a left-wing publication of the Center for American Progress, published an article about this workshop, and attacked us for having this workshop, and the whole article was that we, that outlet, that evil conserved organization, was going to instruct state legislatures, mindless state legislatures, so we're just pouring in information and we're indoctrinating you, pouring into your empty skulls today.

You may not have realized that, but that's what's happening and how we're going to teach you how to gerrymander. And so let us begin with the fact that probably your notes from this conference, this workshop, will probably be part of a Discovery demand. So my advice to you is, if you don't want it turned over in Discovery you probably ought to get rid of it before you go home. But everything, and I want to share one other thing with you, so start with the idea that you are going to be sued, and one of the things, and Tom can talk about this, this is his case. But in the voter ID case in North Carolina when the legislature passed a photo identification

requirement, there was a trial, it was challenged, remember Eric Holder and Hillary Clinton both attacked the state of North Carolina because there was a total racism that they passed as a photo ID requirement?

So the judge, the federal district judge, conducted a trial, there were significant evidence on both sides. There were experts, there were evidence, the judge weighed the evidence shown, that they extend the voter ID requirement had been imposed by law in North Carolina that minority voting activity, voter turnout, actually increased. Did not decrease, it increased.

And the judge wrote a thorough order of how the ID requirements said the challenge was inappropriate, that it showed no disparate impact on minorities and so he threw out the challenge. That was appealed to the very now political, it used to be a great board circuit, now it's pretty bad circuit for purposes of actually being rule of law judges. And that fourth circuit just completely disregarded the record, completely disregarded the facts, but this is the striking thing to me, and it's why I tell the story to you as you begin to work on redistricting.

The court found that the state legislatures in North Carolina had undertaken to determine, and considering the voter ID law, what the impact would be if any, on minority turnout in voting. And the judge said, the panel said, that because they took that into consideration that that demonstrated they had a discriminatory intent. Now let me ask you what you think that court would have said if they had never considered the impact on minority voters, or different groups of voters. The court would have said, you didn't even take that into consideration, so we're throwing this out because you didn't take that into consideration. So I'm telling you now, not only do you have to document what you are doing, but you have to say why you're doing it.

You have to show your proper intent. That's not easy to do, I'm going to let these gentlemen begin to tell us about how it is ... what are the legal principles you have to keep in mind and how do you document in preparation for the ultimate litigation? What you're doing and why you're doing it. And so with that, our first speaker, we'll let each of them speak for about 10 minutes, and then we will open it up to questions. I think we'll just flow throughout presentations and have questions at the end. So write down your questions, our first speaker will be Hans von Spakovsky.

**Hans von Spakovsky:** All right, I'm about to go against my Alabama upbringing and talk really fast since I only got 10 minutes. By the way Phil, I don't know if you know this but I started working at the Civil Rights Division in December 2001, and I just happened to be there when that redistricting plan you were talking about got submitted to the Civil Rights Division for preclearance review under Section 5. Okay, I'm going to try to give you a 30,000-foot level of this. There are two ways you can be sued for a redistricting plan that you put together. Progressive liberals try to create a third. The third they tried to create was, they had serious cases that ended up in Supreme Court in this past term. The client feeling that if engage in politics, you're violating the Constitution.

And what they tried to get the court to say was that, if you engage in partisan gerrymandering, if you draw districts to benefit a political party, that's a violation of the Constitution. North Carolina case, the Maryland case, got to Supreme Court, and fortunately in a 5-4 decision, 5-4, so it could have gone the other way with one change. The court said that's a political question, and there are no judicially manageable standard. Because what politics is it ethical to gerrymander? And what they were asking the court to determine was, how much politics is too much? And that's an impossible line to draw, plus the Constitution doesn't guarantee the political party representation, it guarantees individuals representation. And as Chief Justice Roberts recognized, the bottom line of what the plaintiffs were claiming was that political parties are entitled to proportional representation.

Because what they were arguing was that, if for example, the Democratic party has a presidential candidate who gets 60% of the votes statewide in the presidential election, why then they're entitled to 60% of the state legislative seats, and 60% of the congressional seats. Which is an absurd notion because you all know, yeah maybe the presidential candidate for that party gets 60% of the vote, but another statewide candidate for that



party might only get 55% vote, he might lost, which percentage are you supposed to use? And it changes from election to election, so fortunately the court threw that out. But you need to understand, Justice Elena Kagan who led the minority verily disagreed and said the court was refusing to remedy a constitutional violation.

What you have to understand is, this is not the end of this. There was a huge amount of money and resources put by Liberals into these cases, there was another case in Wisconsin making the same argument, that's not going to move into the state courts, and they're now going to try to use state constitutional provisions to make the same argument. Which is why in states that elect state court judges, the left is now pouring huge amounts of money into winning those races because they want to get judges in place who will do what they want on it. So there are two ways you could be sued, one is ... and by the way you all should know the idea that this is a political question is something, that was a position the Supreme Court into the early 1960s, and then in a series of cases, they established the one person, one vote, rule. That's the equal protection clause of the 14th amendment. And they created it out of whole cloth.

You can look at the 14th Amendment and it doesn't say one person, one vote. They just created this. And what that means is, you could be sued under the 14th amendment for violating the one person, one vote standard if your districts don't have a population as equal as possible. For congressional districts, that means the population has to be almost exactly equal from one district to another. Now for a long time the court has given a lesser rule for a state legislative district. They had what we would call kind of a 10% rule. Because states have different rules on compactness, keeping counties together. The court was a little more lenient in saying they have up to a 10 percent waver in populations between different districts. But that waver isn't entirely free, and you can't just do whatever you want. And the best example of this, Lynn I think is going to talk about, the case in Georgia, the Larios case where when the Democrats control the state Legislature, they systematically under populate urban districts, which were Democratic districts, and they systematically overpopulated rural Republican districts still within the 10 percent in order to be able to retain control despite not having the strength statewide to do that.

A court found that to be a violation of one person, one vote standard. So even there, there's a limit on it. The other way you can be sued is under the voting rights act. Now section five of the act is fortunately no longer there. That was the pre clearance provision that a small number of states, including Texas, had to go through to make any changes. So what you're going to get sued under is section two of the voting rights act. Section two is nationwide, it's permanent, and it bans racial discrimination of the voting context. When it comes to redistricting it prevents you from engaging in what's called vote delusion. Vote delusion is look at individuals who are a minority of a particular area, not being able to elect their candidate of choice. Now, I haven't trademarked this yet but I've come out to describe this with what I call the Goldilocks principle of redistricting.

The reason I call it that is because you can't use too much race. If race is the predominant factor in your redistricting, then you're violating the 14th amendment. Another case called Shaw v. Reno, which is a North Carolina case back in 1993, your redistrict plan is going to get thrown out. On the other hand, if you try to do redistricting, and you don't include race at all, you're going to get sued under section two of the voting rights act because, for example, Hispanics, African Americans, are going to claim that you didn't create a district in which they can elect their candidate of choice. So you can't use race too much, but you do have to use race somewhat to do this. And the problem is, this area is so confusing, and so chaotic, that you never really know whether you're okay in what you're doing. And the other problem here, and this is something that was talked about in another case out of North Carolina called Cooper v. Harris just two years ago is that this is something the Justice of Leo pointed out.

He said this, "If around 90 percent of African American voters cast their ballots for the Democratic candidate as they have in recent elections, a plan that packs Democratic voters will look very much like a plan that packs African American voters." And there's the problem. Judges have a very difficult time trying to differentiate between what the voting rights act is supposed to prohibit, which is actual racial discrimination. And partisan

redistricting because of this monolithic block of voters. And unfortunately, the voting rights act today, which typically is the dilution case is it being used purely for partisan political reasons? The other thing I would tell you is, and this is something I would urge all of you to consider, that is up until now states have used total population when doing redistricting. All of you need to seriously consider switching to using citizen population to do redistricting.

Now, the census data is important for two reasons, the first is apportionment. Because as you know, what's going to happen after the census data comes in based on the total population of the US, they're going to reapportion each state and how many congressional seats they have. Because they use total population, states with large numbers of aliens, particularly illegal aliens, are getting more political power than they would if we used citizen population, which I personally think is fundamentally unfair. And that hurts, particularly, states in the Midwest. California, there's a study done by the Congressional Research Service not too long ago in which they said, how would a congressional map look if citizen population had been used, California would probably lose between five and six Congressional seats. Illinois would lose a seat, New York would lose a seat, and particular states in the Midwest would gain congressional seats.

There currently is a lawsuit pending in the Northern District of Alabama filed by the attorney general and Mo Brooks the congressman who represents north Alabama claiming that the use of total population apportionment is a violation of the Constitution, it's the beginning stages so don't know what'll happen. But the other place that is important is redistricting. I think there's a manner of fundamental fairness that you use citizen population when you do redistricting and here's why. Look if you take two hypothetical districts, each with 100,000 people in it. If one district has 100,000 citizen voters but the next district only has 50,000 citizen voters and the other 50,000 are aliens whether they're here legally or illegally. The votes are the people in the 100,000 citizen district is worth half of what it is in the one with 50,000. Liberals do not want you doing this because of another phenomenon here. I think it's a matter of fundamental fairness to do this but the other phenomenon, this was told to me by a political statistician for Real Clear Politics website, which you'll probably see, is that the higher the number of noncitizens in a district, the greater the chances they're going to vote for a liberal.

The higher the number of citizens in a district, the greater chance that they're going to vote for a conservative. And so that's why there was this huge fight over citizenship data coming and assisted question on the census because the left does not want us to have accurate data on the number of citizens in the country. Independent commissions, I know Merrick Tiffmire asked a question about this. That is the other big move by the left now that they are pushing is independent commissions. Now you have to wonder, why are they doing that? Well because, I can tell you, they believe it will benefit them in the redistricting process. It was very interesting in the partisan redistricting case, I'm going to tell you a quick story about this. All the experts, all of them were up there telling the courts that the partisan redistricting going on now is the worst it's ever been in US history. That is factually, and historically, a lie.

And Cleta and I, and an organization we're with, Public Interest Legal Foundation, actually found Amicus brief in that case. Because we went, and we looked at the 1864 presidential election. Now the 1864 presidential election, as you know, for Abraham Lincoln was reelected, beat Gen. McClellan. But Gen. McClellan had votes in the mid-high 40 percentiles. 45 percent, 49 percent, in many different states. And we looked at what the congressional representation was in many of those states, state, after state, after state had been redistricted so there wasn't a single Democratic congressional representative. 100 percent Republican, you talk about extreme gerrymandering—that was it. What goes on today is nothing close to that. But the problem with commissions is this, first of all they are unaccountable to voters.

Voters don't like what you've done, they can vote you out of office. The commissioners, these bureaucrats, if voters are unhappy what they've done they've got a pull, and they can't do anything about it. But the Capital Research Center, and they've got a booth here, did a very interesting study recently, I wrote a piece about it

with the author of it about the fact, Michael Watson, where we took the proportional representation formula that the European Parliament uses to figure out how many members of that parliament, each country has. They use proportional representation. And we applied that to American congressional races, and you know what we found? We found that the California independent redistricting commission, which is held up as this great ideal, they elected that they get to rule up districts at least five more Democratic districts than they should out of the 53 seats. Much more than Texas, which only drew four more seats. So the independent redistricting commission in California drew far more partisan gerrymanders than Texas legislature.

So that tells you all you need to know about independent commissions. I'll end with this, don't say anything in emails or in private that you don't want to see on the front pages of whatever the big newspaper is in your capital. Because when you get into litigation, it's all going to come out. You should not be discriminating on the basis of race, but engaging in partisanship because you want to benefit your political party is perfectly acceptable under the law. The other thing, and this is the final thing I'll tell you is this, going back to Cleta's story about North Carolina's voter ID law, remember, the lower federal court said this law is not discriminatory, the facts showed it wasn't. A lawless three-judge panel of fourth circuit threw it out, said it was discriminatory to Obama claims by the way, and it was appealed to the US Supreme Court.

Of course the problem was they didn't have an election in North Carolina, the Democratic attorney general was elected. And we came in, he withdrew the appeal. So my point for you on redistricting is, that if you are in a state where you have an attorney general who you don't trust, or there's going to be an election coming up in which you believe there's a chance that an attorney general is going to be elected who you don't trust. Be sure that your redistricting bill has a provision in it that says that you, the legislature, have the ability to defend any lawsuits filed against your redistricting plan and that you will have control of that over and above the state attorney general. Because otherwise you're going to get stuck the way North Carolina, unfortunately, did, thanks.

**Mitchell:** Thank you. Tom Farr?

**Tom Farr:** Thank you, Cleta, it's an honor to be here with this really wonderful group of people who've been working in the vineyards for years trying to put their fingers in the dike when we've had little breaks that are coming from all these left-wing groups that are funding all these cases that we have to defend. By the way, Hans, I want to point out to you the federal ID case was my case, we had a statute that said the legislature couldn't select the same counsel, and the Supreme Court of the United States ignored that statute. So when they allowed the newly elected attorney general who actually had been a witness for the plaintiff in the federal ID case, to withdraw the appeal. It's a good idea that Hans had, and we've tried to further buttress that statute but sometimes you can't do anything about the judge's withdrawal.

I wanted to tell y'all that in my real life I do labor and employment law for a firm called Ogletree Deakins but I've handled—I was kind of lucky yesterday, I had about 12 or 13 of these types of cases in federal court or state court, big cases, and I probably have done like 20 other cases over the years involving election recounts and other similar election protests, and I've got a pretty good idea of what you're going to be up against, Cleta's absolutely right, you're going to be sued. And I know the lawyers that are going to handle the cases, I know the expert witnesses they're going to use, and I'm kind of here as a doctor telling you that you might have cancer, and you better get some chemotherapy because if you don't things aren't going to turn out real well for you.

Now I put a presentation in your packets, this is the cover page, and this is just kind of practical thoughts that I have as somebody who's been involved in this for a long time. The first page is a checklist of things that you can look at and can probably just conclude pretty close of what I want to talk about, or what they mean, but I do have a 17-page narrative that goes with this that goes into more detail. Basically I have three sections. One is about the legislative process, ones about the litigation, and then ones about developments that I think you're

going to see in the next round of redistricting. During the course of my speech I'm going to give you a couple war stories to kind of reinforce some of the comments that you've already heard from Cleta or Hans.

So the first section's about the legislative process and one of the things I don't have in there, that I want you to write down, maybe you got to destroy it as Cleta said, but I want you to remember this. Besides all the other points I make in the paper, you need to follow your regular procedures. Okay now the reason why I say that is there's a Supreme Court case, city of Arlington V somebody, where one of the things courts look at to determine whether or not your legislature act was a bad move, is whether or not you passed these election statutes whether you followed your normal process. We had a problem with that in North Carolina in the federal ID case. One side of our general assembly followed their normal process, the other side passed the bill essentially 24 hours, and when the fourth circuit got the case they made a big deal over the fact that the state Senate had only considered the bill for 24 hours, even though there had been past precedent when the democrats were in charge when they passed the redistricting bill in 12 hours.

Nevertheless, I want you to write down, remember, think of, when you're passing these bills follow your normal practices that you have. Don't expedite things, make sure you've got public hearings, give everybody a chance to speak, and another benefit that you get from that is, when you hear what the other side has to say, oftentimes you can improve your legislation and deal with some of the criticisms that they make at the public hearing situation. So another thing I want to talk about is public records, this is very important, get this into your head, I think Hans just said when you write something, think it's going to be in the newspaper the next day, that's absolutely correct. Here's where I want to give you a couple war stories.

Our firm represented Ohio in a recent congressional redistricting case and unfortunately we didn't win because the other case we handled, which was the Kamikaze redistricting case, which was the North Carolina congressional redistricting case, which is the case where the Supreme Court said, political gerrymandering claims are not just issuable under the federal Constitution. In Ohio there's this very famous and wonderful national math drawer who read the memo describing some Democratic areas in Franklin County were formerly located as "dog meat areas" so suddenly ... y'all remember R. Emmett Tyrrell? Anybody know who he is? He was the publisher of the American Spectator and he had this phrase referring to the left-wing media as the hive. So when they get an idea they just spread it, it spreads around immediately. You've seen all the talking point things on the national news stations where they say the same things on all the stations. Well they do the same thing with these election law cases with the professors, and the blocks, and everything else.

So suddenly the Ohio case became the dog meat case, the Republicans were calling voters in Columbus the dog meat. Well the problem with this was the memo that this man wrote never was seen by the people in Ohio who actually drew the maps. And they never heard the phrase dog meat territory, and so the lawsuit was filed, and the Democrats found this memo through Discovery against the Republican National Committee or some affiliate of that. So this is just an example how they can take something out of context, and then they can generate all throughout the country with articles in the New York Times, and the Post, and everywhere else and just completely fabricate something that they tried to use to make the Republicans look like they're evil.

Another example of that occurred in the Republican congressional case, Kamikaze and Reach, which we just won in the US Supreme Court. We have a very great, great guy, wonderful person, leader for the Republicans who throughout the legislature record made the point that this was the least gerrymandered plan in North con history for years, and years, and years. How many of y'all remember the Congressional district 12 that's in North Carolina that stretched from Gas County into Durham? Everybody must remember that because that's the ultimate gerrymander. They had the saying that if you drove a fight, and you flied with the doors open on your corn and kill half the people in the district because you're driving the 585. So the North Carolina man that was challenged recently. We have 100 counts in North Carolina and they only divided 13 counties for 13 districts. It was just not gerrymandered at all. Well our leader is a great guy who understood the wall, and has a good

relationship with most of the democrats, there was a hearing where someone made a comment, they were joking around, and he said something like, "Well you know, I drew this map because I think it's better through the 11 Republicans, that's why I support this map."

Well suddenly the media, and the election law, and the guy named Rick Hasen, who is the leading election law professor in the country. Suddenly North Carolina became the worst gerrymander in history. They had the audacity to call this man that went and bought 13 out of 100 counties. The worst gerrymander ever that's ever happened simply because once they've led us completely out of context. So this is just a highlight for you, you never know what you might say, even if it's unjust, that the left can take out of context and try to use it to make the Republicans look like they're evil so just keep that in mind. I think when you're going through your process you need to make it an open and transparent process, keep putting transcripts in the Department of Records, and I've got some other things that I want you to think about in my paper.

And my perspective on this is, like I've told some folks yesterday, it's like I'm a director of a play, I know what I want the play to look like for the judges when we actually have to go and defend what we've done in court, and so this is why you want to make it look like, I know most of you know this already, you're very cordial, cooperative with the minority party, or the opposing party, that you've given everyone a chance to offer amendments that you considered things that other people have suggested. Because the more you take the high road in the legislative process, the better it's going to look in court when you have to defend what you've done.

I can go into a lot more detail on that, but I'll just let you read my paper, but that's kind of the main point that I want to make. And the next section I talk about it litigation. I'd like to elaborate on some of the things that Hans or Lynn have said. Every time you draw a districting line, it benefits one party and hurts the other party. That's the nature of districting. District is an apparently political process, Justice Soother, he was one of the justices, he wanted to recognize some sort of federal cause of action for political gerrymandering, even he has admitted, in the same opinion, he wrote in the meat case, which is in my paper: that every time we draw a district line there is losers and there's winners. So this is another problem with independent redistricting commissions, there's no such thing as independent redistricting commissioning, there's no such thing as fair lines that treat everybody equally, because at the end of the day when you draw a district, someone's going to win that district and someone's going to lose that district.

You have to make that point very clear when you get into a lawsuit with every judge because what the Democrats wanted the federal courts to do is, they wanted to throw out the idea that legislatures get to make political choices in districting. And they wanted federal judges, most of whom right now, or at least a lot of district court judges, have been appointed by Obama to basically redraw a district's, according to their sense of what's equitable and fair, instead of some precise standard of what the rules really are for drawing districts. They always put the fragments over, in the two cases Hans was talking about, should judges get to choose a political winners or losers, or should that be something that the Peoples Representative should do. And so you just need to make sure that you make that point in any sort of case that you may be facing.

Another thing, this is where I'm getting back to being a doctor and telling you here's reality, these cases are very expensive. The other side is going to put millions of dollars into your face, not just into the effort, they're going to put millions of dollars into the case that you may be facing. Like the Ohio case, the court out there was requiring the plaintiffs to file interim bills on how much attorney's fees they had incurred because if they had won that case, Ohio would have had to pay their attorney's fees, and I think the last time I checked, they had claimed that they had occurred something like six million dollars in attorney's fees.

So these things are expensive, the legislatures going to put a lot of money into it. Another thing that the left has that you need to be prepared for, they have a legion of expert witnesses who come up with all these newfangled theories about, here's the magic bullet for determining how you judge political gerrymandering. And our side

has got a very thin bench in that area. So for example, the federal ID case, which we defended, just to give you an idea, we had about five to six lawyers in the courtroom every day for a month and maybe about 10 working on the case. The other side had 40 lawyers in the courtroom every day. Every witness in the case was handled by a different lawyer on the other side, whether it was direct examination of their witnesses, or cross-examination of our witnesses. There was no lawyer on their side that handled more than one witness.

Another thing that we are facing, we have, I think, five or six expert witnesses. They had 18 or 20 expert witnesses, and these people that they have, those expert witnesses, were really outstanding and smart people who were very difficult to nail down and be able to explain to the court about how what they're saying is cacophony, irrational, made up, litigation-oriented approach. So this is just what you're going to be facing. There's nothing you can do about it except you have to be committed, if you're going to pass the statute, and if you want to defend the statute, you've got to be committed to putting resources into it. One other comment I'll make to you is that having done this for a long time, lots of jurisdictions, I think we heard very few have done this before.

So a lot of legislatures don't really know what they're getting in to when they hit these cases, and they don't have the defense team that is even marginally close to the lawyers, and the experts that the other side is going to put into the case. So it really is important, if I was the speaker of the house, we'll pretend I'm the Senate, I would make sure you want to get a good local counsel, but I will also make sure that I had the best part of my legal team, one of the firms that are in the country who've got experiences defending these cases who understand theories, understand desperate witnesses, understand where the skeletons may be in the legislative record and anticipate some of the attacks that are going to be made on you and essentially make the playing field level because those are the type of people that the plaintiffs are going to have handling their cases.

And I want to tell you something, they've got very, very smart lawyers who are bringing these cases. The same group of people by margin over the country, they know what they're doing, and they're extremely capable. OK. I just want to talk about one other thing, which is what I see coming as the next come around, that's the last part of my paper, I'll try to get through this very quickly. You're going to see the political gerrymander cases filed in state court. Whether the US Supreme Court forecloses these type of cases in state court depends upon how much precedential value your state court gives to the U.S. Supreme Court decisions. It's very likely if you're in a state where the democratic majority on your state's Supreme Court, they will not give any precedential value to the U.S. Supreme Court's decision.

Hans talked about use of race, that's going to be a big issue next time around, I'm going to skip over that because I thought he did a pretty good job on that. Independent commissions, pushing my paper because there's no such thing as an independent commission. Typically, what they are, they're proxies, they're political proxies for the people who put them on the commission, and another thing is you can try to use the [inaudible 00:40:16] against independent commissions because there's going to be lawsuits anyway, they're going to be expensive because one of the things you hear about independent commissions is, this is going to get real expensive lawsuits. Not true, there's just as many expensive lawsuits in independent commission states as there is elsewhere.

Hans talked a little bit about the proportional representation theory, so I'm going to save some terms for you, read my paper. But you're going to hear about things like efficiency gap, symmetry, mean, median, so basically what the democrats are trying to do is, everyone knows the red/blue map right? Of the United States? The Democrats are concentrated in urban areas so basically Republicans live everywhere else. So what they're trying to do is proportional representation theories, is they're trying to maximize the Democratic voters in the cities at the expense of the Republican voters in suburban and rural areas. So you'd get your efficiency gap, symmetry, mean, median, anything that compares the statewide vote totals to the number of seats won. Please get yourself some extra attorneys, and experts, who can help you figure how to respond back.

And the final thing I'll talk about, I've got other points in my paper that I hope that you'll read, but the other thing that's coming next time is "computer-simulated maps." There's a couple of guys that have come up with this theory that they can develop an algorithm based upon nonpartisan criteria and run two million simulated computer maps and then they base it like, here's how many seats the Democrats went under with these simulated maps, here's how many that went under the Republican map, and by gosh that Republican map is so bad it's a political outlier. The problem with the computer-simulated maps is that they garbage in and garbage out.

**Unknown speaker:** Thank you.

**Farr:** You can read these things to get the results that you want to get and we've had a couple cases all ready when we know the guy who's the top expert in his field and we were starting to get to him because we found out this is exactly what he's doing. So if you hear the term computer-simulated maps, they canvas people doing this are very smart. It's very complex, you've got to get the right experts to look at their algorithm and all the back up that they have. But there's a definite way to defeat the concept of computer-simulated maps. I hope I didn't run over, and again, thank you for having me here.

**Mitchell:** We ran out of Tom's paper, but there may be more copies. If you don't have one they'll be at the back as you leave. Lynn Westmoreland, here we go.

**Lynn Westmoreland:** Thank you. I'm just going to stay seated to save time, me walking up is slow. But first of all let me say that redistricting is a political adult blood sport. I'm going to speak first about being the state legislature, and coming from a minority standpoint. I was the minority leader in Georgia, when we went through redistricting in 2001, and Governor Roy Barnes drew a map that I think Hans and others have spoke to us and it eventually, it was a Larios versus Ashcroft. Which we won, and that let us take over the majority. But if you're in the minority, and you need some dance partners if you're going to ever win the redistricting battle.

And so we were a democratically controlled state, so they controlled the enforcement office. So what I did is, I created an office down the street, bought a computer, got Maptitude, had a young man that knew how to work it. And the Democrats were playing heavy hands with both the minorities and the other members, and so what I did was, I put an offer out to the black caucus to feel free to go over to my office, off-campus, and draw their perfect map.

And I also offered it to the other members to go over and draw their perfect map, and then what we would do is, we would take enough of those and put them in our plans, and have them watching those against it. I'm going to give you one example. We had a gentleman from Burke County, he finally fell into the trap and came over there and drew his perfect district.

We immediately got the local paper down there to draw, and to run an article, on his perfect district because there had been a lot of contention about the way that the drawn in the last reinforcement, so it was a great article for the member, the people down there loved it. And so we incorporated that into our map. And when it came time to vote for the map, he voted against it. Needless to say, he got beat in the next election. So those were some of the stuff, we did that for a lot of the Democrats, we did it with minorities because they were telling the minorities you can't have your district this way. It was a multi-member type situation, we would go in and find majority of minority districts in there and point out to them that they were just doing enough minorities to give white Democrats elected.

And so if you're in a minority, this is politics. It's not rocket science, it's politics. So you have got to put yourself out in the tribe of work, and so with the other people, that their leadership is trying to mess with owner

redistrict. So that's just something, this was just an idea that we did but we ended up being very successful with it. If you're in majority, you still need dance partners. You need people to vote with you on that map. If you go to do congressional redistricting, and you've got some minority members in your congressional delegation, give them the map and let them draw their districts.

I promise you it'll be beneficial to you once you've drawn your districts. Now you might not be able to draw them exactly like they've got them, but you can click them here and there because they want to be reelected. It's the same thing if you're dealing with a minority in the state Legislature, and you're in control, they still want to be reelected. They still want to have the best district they can have, and trust me, they want to have a much better district than you will come to have. And so that will help you in your process as far as doing that. Always know who's going to end up ruling on your maps. This is the reason it's important to work with the judges, the judicial system, you need to work for your attorney generals, you need to work with RGF, RGA, you need to work with as many organizations that you can to make sure that not only you win the majority, but that you elect people that are going to be able to supervise what these maps, or what you come up with.

So to me, that is one of the more important things. Going on to Congress, note to the redistricting in 2008, I traveled the country trying to raise money for redistricting. Redistricting is not sexy and people don't understand that redistricting is the nuts and bolts, it is the only science in political science. And so if you don't do the redistricting right, you're not going to do anything right. So we traveled the county and we spent a lot of time, and I think after traveling the country, we raised \$15,000. And so we scrounged around and did the best we could with that money, when we put together a book for every study, and then we went through and looked at the number of legislature bodies that we could flip, and we identified 16 that was plus or minus five people one way or the other.

We wanted to make sure we kept the majority, and the ones that were close, we wanted to take over the other ones. When we went into the 2000 election, we controlled 88 congressional seats that we could draw Republican congressional seats, 88. After the 2000 election we would control 202.

**Mitchell:** Wasn't that 2010?

**Westmoreland:** And that—

**Mitchell:** Was that 2010?

**Westmoreland:** Yes. That was in 2010. So you can see that that made a difference because we elected Harrison, we elected people that were making the decision on who they were going to appoint to commissions, if you've got one of these. And there is no such thing as a nonpartisan commission. And you need to get over that, there ain't one. You can't take politics out of redistricting. And so we sat down and what we did is, we took ... first thing we had to do was explain to members of Congress, they don't draw districts.

It's hard to tell a member of Congress anything. But they need to understand that they do not draw their districts, the state legislatures draw their districts. So what we did is we came up with these overlay maps and we went to different states and said, okay where is your five most normal people that you don't need to lose to keep the majority? Or where's the five people that you think we can pick up to give you majority? That was at both the House and the Senate, and if you're here from Pennsylvania we'll shoot through and work with your leadership. We worked with some in Alabama, we worked with some folks in North Carolina, but we did it for every state that we felt like we could take over.

And we did an overlay of House districts, and Senate districts that were within those congressional distances. So if we had a real strong congressional guy, and a weak candidate from State Senate, or the Statehouse, or it



conflicted with some trouble, we made sure that that congressional member or congressional candidate had those two men or women that every event that they did in Brackhill. Or if we had a very popular State senator, or a sheriff, we went all the way down to the sheriff's votes and looked in a popular sheriff. Popular sheriffs get more votes than everybody else in a county. So you go down, and you look at that, and you make sure that they understand that they can help each other. And then when we worked with the RGA of governors that were up in some of those states that we knew we had a great opportunity to take over, we made sure that the RGA understood that for him, if he was going to be the elected governor, he needed to have a majority in the state.

So we kind of built it from the ground up, the state parties, some of them dissipated but most of them didn't. But if they would have at least experienced it with me, or with our staff, then I think we could have done a lot better than what we'd done. We surprised Obama and the Democrats in the fact that I think we won 1,100 seats in 2010. It wasn't because of all the work we did, it was because of him, himself in some cases. But we still won those, and now Holder and Obama are the ones that's doing redistricting for the Democrats. We snuck up on them in 2010, they're blatant in going after our state legislatures right now. School boards, county commissions, sheriffs, state legislatures, they see what we did to them and now they're trying to make that comeback, that's where we kind of stopped it.

So I'm trying to work with the members of Congress and their leadership to let them understand that we need to be doing some of the same things that we did back in 2008, 2009, to prepare for the 2020 elections. The problem is, this is 2019 and they got about a year and a half head start on us in what they're doing. The other thing about gerrymandering is this, if you will go look at the majority, minority districts, they look gerrymandered but that's something that you have to do if you have a threshold that you have to meet. You go to some of the districts, now you just set your britches down in Louisiana in the fact that he goes up to Mississippi River, and they had to do that to get enough minorities to put in this district. Well when you draw a district like that, that's going to make other districts look like your gerrymandering. So a lot of things that we have to do that the other side is going to call gerrymandering is things that we had to do because of some of the stipulations that's in the Voting Rights Act, and that's especially to those in South. So I'll leave it at that since we're running short on time.

**Mitchell:** Thank you. Phillip King, you want to do a little short roundup?

**Phil King:** Yeah, I'll be real quick, just some pragmatic things. When you're picking your redistricting committees, and especially when you're picking your bill offers, use competent people. Because they're going to be in court, and you need people that will work hard, and their studios, and their sharp. Don't let seniority or anything like that make that decision. One thing we did if you're running the committee on redistricting, the very first thing I sent a letter to all the members, R's and D's, and just like Cleta said earlier, make sure they understand that there's litigation from the moment they're on that committee, and they need to think about their text messages, and their emails, and how they archive and delete, and all those type of things they're doing with them.

You need to, if you're doing bills, or if you're running a committee, or on the committee, you need to consider legal counsel but when you're picking them, also work through that issue of just because you got a lawyer for that committee doesn't mean that what you tell them is privileged between you and them. You've got to make sure that all is thawed out, and set up well. If you're planning on carrying a bill, have a lot of time. Not just during that session but after the session because for the next few years you're going to be dragged into court, and you're going to have to be prepared to be going to court.

It can be frustrating, I can tell you as a lawyer, if you're not getting test by the fourth or fifth circuit, and I'm looking around the room, and there's like 40 lawyers in there, and I'm the only one not getting paid that day. And so there's things like that, because it does take you away a lot from ... so make sure that you've got the time

to do that after the session too. Think about having a lot of public hearings in the interim before your legislative sessions start, we've got 27 hearings scheduled so far starting this September around the state. When you're putting those hearings together, think a lot about location, we let our committee pick the locations so that you have R's and D's picking the locations for those. We came to a consensus and when you do them think about locations that are easy for the public to get to.

Think about things like parking, what time of day are you going to have them? If you have them in the daytime people say, I can't go in the daytime, I'm working. At night, and so people at night go my kids are going to be there. So think about hearings maybe that start at four in the afternoon and go until eight or nine in the evening, things like that, so you can cross both things off. Livestream those, statewide but also in that local community, advertise for them. So think about the logistics for those hearings and try to get them done ahead of time because you don't really have time during the session, but you're going to get hit up about having them if you don't.

Remember to treat it like any other bill, that's a bill, treat it like any other bill, follow all the rules, don't rush it, follow your parliamentary guidelines that you have, and don't fudge. Any fudging you do, you're going to hear about it in court. And other than that, you'll just be amazed that you're doing the bills, are on the committee, how many new friends you have. They have different bodies like the Senate for me or the Congressional members, it's kind of like when you first open a legislature you've got all these lawyers and now you're good friends. And then you realize you were, and it's the same thing with all the Congressional members and everything.

Best thing I can tell you about that, enjoy and take advantage of it if you can and other than that, it ain't all bad.

**Mitchell:** Well we don't have a lot of time for questions. I will say this, think carefully about the terminology you use, this is districting and redistricting, we're not gerrymandering, we're involved in redistricting. And that's the legal term, and make sure you don't let them put their words in our mouth, but we have time for a few questions and of course we'll all be around after. First question, yes sir?

Pennsylvania state Rep. Cris Dush: Cris Dush, ma'am, Pennsylvania, we actually went through the judge's writing that piece of legislation. So it goes to my point on this, what's your opinion with regard to stating the Constitutional authority, and the exclusive sovereignty of the legislature in the bill as part of the preamble as well as possibly any supporting comments from the founders and that sort of thing? The thing that we faced when we went before Justice Alito was and ... comments are very appropriate. It was a lot of esoteric legal stuff but very little on the Constitutional side so I think you need to have the right attorneys there. But what's your opinion including that kind of language in the preamble of the legislation itself?

**Farr:** Well, I'm very familiar with the Pennsylvania case, and I advise you do whatever you can do in the legislation, but the problem you had in Pennsylvania, and this is a wake up call for everybody in this room, because I understand in the Pennsylvania case, past precedent in Pennsylvania by the Pennsylvania Supreme Court and held that the U.S. Supreme Court decisions were precedent for the meaning of the Pennsylvania Constitution. The decision that resulted ... how many congressional seats did we lose? Four?

**Dush:** Four or five.

**Farr:** We lost four seats? Yeah so the Pennsylvania Court took an obscure provision of the Pennsylvania Constitution that nobody had ever used before in redistricting. I think the provision said the election shall be free and equal. And they took that and came up with some rules for drawing congressional districts, which since you had the follow county lines and townships and whatever, and the legislature actually passed plans that they

did with the court said they should do, and the Court still rejected them anyway. Because I recall they never really explained why they rejected them, you can correct me if I'm wrong.

**Dush:** Well actually what they did was they gave us an unreasonable time limit, it was outside of the time limit, so it went to Pennsylvania Constitution.

**Farr:** Right.

**Dush:** And then what they did was, they hired an attorney, I mean a professor from out in California-

**Farr:** Persily.

**Dush:** ... to draw a map. Now that's a piece of legislation, and they overstepped their ... the Pennsylvania Constitution's laid out with first principles in mind, but they had already heard what the executive branch issued purposely under the law. Whereas the people that the legislature, belongs with the sovereignty, that was totally ignored by the court. And they purposefully set up an unreasonable timeline and then out of whole cloth created this ability for them to write a piece of legislation, which they have no Constitutional authority to do.

**Farr:** And that's the point that some of our legislatures were making about the importance of judicial races because Republican judges like Scalia for example, who's one of my heroes. He thinks that we should interpret this Constitution to the way they're written. Or the way they've been observed over the years, well Pennsylvania and the case you're talking about, they not only didn't observe the rules that's spelled out in the Constitution, they made something completely up out of a very obscure part of the Constitution that nobody had ever thought had anything to do with redistricting, and it's clearly nothing more than the Pennsylvania Supreme Court assuming the role that's super-legislature and deciding that they should be the ones to pick the political winners and losers instead of the elected representatives.

So yes I think you should try to do what you suggested, and I also think you should try to do something like some Constitutional amendments, I don't know exactly how you get a Constitutional amendment for Pennsylvania, but you could have the constitutional amendment making it more clear. Here's exactly the rules for redistricting, the legislature does this, this free and equal clause has got nothing to do with redistricting, and the court's jurisdiction should be limited to ...

This is an important point, we should make the courts say, here's what's wrong with this specific district based upon the judicially manageable standard and here's how you fix it. But when I said judicially manageable standard, I mean something like, you didn't put the right amount of population in the district because you have unequal population. Or in the case of North Carolina, we have a very good protocol for preventing either side growing district based upon politics because we have to respect county lines in drawing the legislative districts, it's a little more complicated than that, I explain it in more detail in my paper but basically you do want to try to produce express prescriptions on ... the judiciary's willing to review these maps, it'd be good in legislation, great, I do that, because that's probably easier but ideally you need to get a Constitutional method.

**Mitchell:** We have time for probably one more question. Yes sir?

**Unknown speaker:** Yes, ma'am. I have a quick question. We're concerned in Alabama about the possibility of losing the House. I'd like to know what chance do you think congressman Mo Brooks, and attorney general's court case have, can it stand up?

**von Spakovsky:** This is a question that has never been answered by the US Supreme Court. In redistricting in the Evenwel case two years ago, two years ago in the Evenwel case two citizens of Texas sued and said that in

drawing up state legislated districts it was a violation of one person, one vote standard for the stage of total population. And in a very unfortunate decision led by the Liberal Justice's the Court said, no it's not a violation of the Constitution, you used total population. What they said at the end is in Justice Loya's decision, was Texas also asked them to say whether it was okay for the State Legislature to use citizen population to do redistricting. And Aledo and the Court said they're not going to answer that question because it's not up before us.

**Von Spakovsky:** So they've answered ... they haven't really even answered it on redistrict day, and the issue of whether using total population, which includes aliens is a violation of the Constitution when it comes to apportionment, that's never been answered. The issue's never been before the US Supreme Court, I have no idea, no idea how it would come out. And I don't want to be a prediction on that.

**Mitchell:** Let me just say this, Cathleen mentioned, we're going to send around some notes to people also, but she mentioned a couple of things that legislatures could do. One is make sure you have a count committee, and you know that's who she said has appropriated a lot of money. To California, New York, Illinois, New York City, why are they doing that? Because they get a lot of federal money based on those towns. So some of the other legislatures, we control, you need to make sure that you're doing everything that can be done to make sure that your rural population is being counted, and make sure some of the ... there are undercounts in other parts of the state, and we need to make sure that you think through, identify those populations, those communities, and make sure that you're taking overt steps to make sure that they know they're counted.

**Westmoreland:** Let me just say one thing about California, in 2010 they appropriated four million dollars for a complete count. This year they've appropriated 250 million dollars for a complete count. If you read all the newspapers they'll tell you that these people leaving New York, and California, and going to Texas, and Georgia and other places that have lower taxes, better living situations and what they have in those space.

But yet, as of right now, it doesn't look like they're probably going to lose any seats because of all their illegals that are there. So they are doing everything they can to make these counts count, and that's the reason why it's so important for some of our states that don't really recognize us. They're getting illegals coming over going to Illinois, and California, and New York, and others. That's not just something that happened, I mean these people are going to count when that 2020 census comes around.

**Mitchell:** OK, I think that ... I hate to break it off, and I apologize we're running long but there's so much to cover. We hope to do another one of these maybe in December. We'll keep on trying because there's so much work to do.