#### THE LOOMING REDISTRICTING STORM

## **How will the Republican Party Fare?**

Thomas B. Hofeller, Ph.D.

This year, influenced by GOP success in last year's elections, the decreased popularity of the president, and historical gains by the minority party in off-year elections, many pundits are making optimistic predictions of significant Republican gains in both houses of Congress.

But, despite the importance of these elections, it is not the battle for seats in the House and Senate that will decide which party dominates this nation's political process for the remainder of this decade and beyond. It is a series of district-by-district skirmishes that will determine control of key state legislative chambers throughout the states. It is also a series of contests for control of the governorships which play key roles in redistricting. Why are these state-level contests so important to the GOP? It is because it is in the states where the results of the 2010 census will be used to redraw the boundaries of congressional districts which will be used in the 2012, 2014, 2016, 2018 and 2020 elections. The outcome of this battle will determine the electoral playing field for the next decade.

If the GOP wins big at the state and legislative level, it can be more assured of retaking and keeping control of the U. S. House. These critical election contests in 2010 are "the hidden national elections of 2010 and beyond" and will determine GOP success in the 2012 elections following redistricting. Recognizing this fact, national GOP organizations are committing millions of dollars toward this effort to match massive Democrat resources.

Prior to this year's elections, the GOP forgot the vital connection between success in state and legislative elections and its future ability to regain and keep control the U.S. House of Representatives. It has all but forgotten the historical electoral disadvantage to GOP candidates caused by past Democratic gerrymanders resulting from their lock on the redistricting process prior to 2001.

These historic Democratic gerrymanders distorted the electoral process and resulted in the GOP's winning proportionally fewer districts than its percentage of the popular vote. California, Florida, Georgia, North Carolina and Texas provide striking case studies of this effect. For example, in 1981 the legendary Democratic Congressman Phil Burton of California convinced that state's legislature and Governor Jerry "Jerrymander" Brown to impose his congressional gerrymander. Burton crafted a set of districts that won the Democrats 62 percent of California's districts while receiving only 51 percent of the votes cast—an 11 percent gerrymandering bonus. History could be repeating itself again with the same Jerry Brown running for Governor of California in 2010. The same was true in Texas where Democrat candidates regularly won considerably more than 57% of the congressional seats with as little as 39% of the vote.

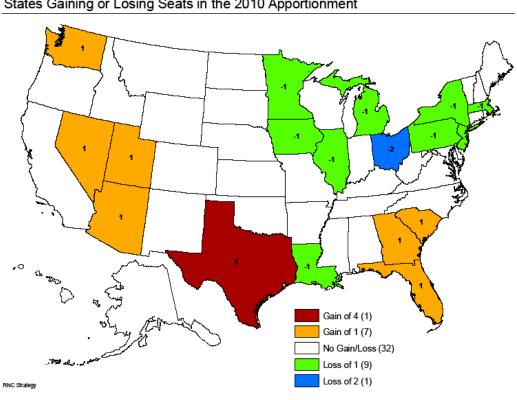
After three decades of clawing its way to parity with the Democrats with respect to control of governorships and legislative houses, the GOP, in 2001, reaped the fruits of its success by exercising an equal voice in the redistricting process—and the Democrats were stunned. The Republicans were in a better redistricting position than in any of our political lifetimes. But that could all change if the GOP does not match electoral success in 2010 with sufficient technical and legal resources.

In the decade of the 1990s, the Republican National Committee raised and spent millions of non-federal dollars to support legislative and gubernatorial elections. The RNC also was able to commit the millions required to finance redistricting technical and legal operations. These latter activities were essential to GOP redistricting success when combined with the record GOP gains in governorships and legislative chambers realized in the 1990s. While it is absolutely necessary to have "seats at the

redistricting table" not having sufficient technical and legal resources is like coming to the table with no food or eating utensils. One still starves. Due to McCain-Feingold it is now illegal for the RNC to raise and spend non-federal dollars to fund critical technical and legal operations, and other national GOP organizations have been unwilling, or unsuccessful, in filling this funding void.

The RNC had the foresight to reactivate its redistricting office in early 2009, but it has had to use federal dollars to do so. Because of the McCain-Feingold it is clear that the RNC is not in a financial position to adequately fund redistricting operations, both in preparation for redistricting and for legal and technical operations during the actual process. Because of this, the GOP may well win the election battle of 2010 but lose the redistricting war of 2011.

Current projections of the 2010 decennial census populations of the 50 states indicate that, as a result of reapportionment of the House of Representatives, 11 seats will be shifting among 18 states. This is shown on the map below which uses projected populations. Adding or subtracting seats from a state causes greater-than-normal changes in congressional district boundaries. Incumbents' districts will be eliminated, and new districts will be created in other states. Controlling or having a seat at the mapdrafting table when this happens is extremely vital. However, many state's congressional boundaries will also shift extensively due to uneven population growth within the state.



States Gaining or Losing Seats in the 2010 Apportionment

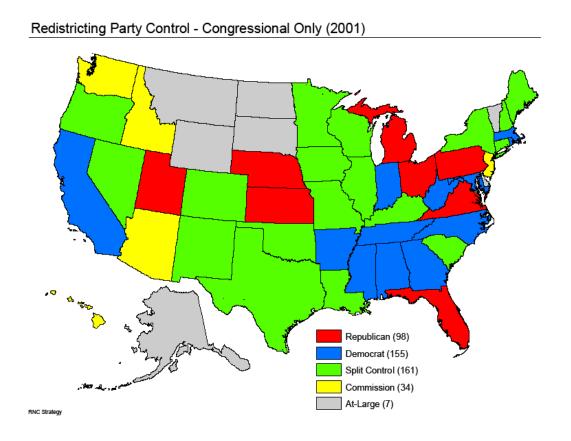
### The battlefield

A brief review helps set this struggle in context. The best way to measure the relative strength of the parties in redistricting is to note the number of congressional seats each gets to draw—and the number for which each has a partial say in drafting. In computing this measure, states are divided into five groups. The first group comprises states where Republicans control the entire process. Group two

comprises the Democratic-controlled states. The third comprises split-control states - those in which both parties have a say. Fourth are states that are redistricted by commission. Finally, there are the seven states having only one seat. Totaling the number of 2012 seats in each group will produce a true measure of each party's congressional redistricting strength.

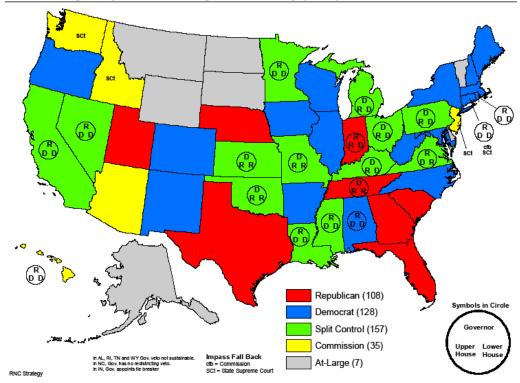
In 1991, the GOP controlled line-drawing in states containing only five districts, and the Democrats controlled 172. States with a combined total of 240 seats were under split control. By 2001, the GOP controlled line-drawing in states containing 98 districts, and the Democrats controlled 155, with 161 seats under split control. In addition, through successful redraws and lawsuits in Texas and Georgia, newly-elected GOP legislatures were able to unscramble Democrat gerrymanders in those states' 45 congressional districts, bringing the 98-seat GOP total up to 144 seats. If redistricting were to occur today, the score would be quite different. Today the GOP would control the redraw of 108 seats, the Democrats 128, and 157 would be split. 2010 general election results in the gubernatorial and state legislative races could dramatically alter this redistricting landscape.

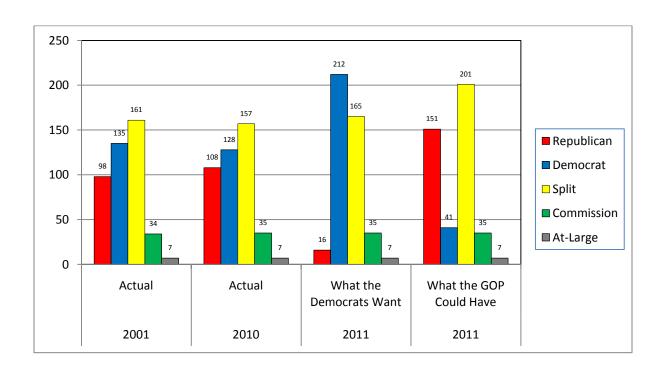
This year's elections could result in the GOP's full line-drawing control of as many as 151 seats, or as few as 16. Conversely, the Democrats could control line-drawing in as many as 212 seats, or as few as 41. Split control of line-drawing could range from 168 to 201 seats. Combine that with the uncertainty of adequate funding for technology and litigation, and as many as 50 seats could be at stake. This is why committing the funding required for all aspects of GOP redistricting success should be a "no brainer" decision. It is not clear that this is presently evident to all GOP decision-makers.



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# Redistricting Party Control - Congressional Only (2011)





In Chinese, the two-character symbol for the word "crisis" combines portions of the symbols for opportunity and danger. In this sense, "crisis" aptly characterizes the GOP's situation. Either the Party commits sufficient resources to all aspects of redistricting, or it is in "danger" of wandering in the desert as a congressional House minority for another 40 years; just as it did from 1954 to 1994. The 'opportunity" is to rise to the challenge and end up with a nationwide set of new congressional districts which keeps control of the House in play for the elections of 2012 through 2020. The Democrats know this, are fully committed, and are fully funding their redistricting effort.

Even before the enactment of McCain-Feingold, the Democrats largely relied on outside groups, such as labor unions, the National Committee for an Effective Congress (NCEC) and IMPAC 2000, which used non-federal money to pay for redistricting activities. This cycle they have created new groups, such as the Democratic Redistricting Trust and the American Majority Project, to raise additional money for current and future activities.

### The deciding factors

In the 43 states containing more than one congressional district, 36 redistrict by means of a statute passed by the legislature and signed by the governor. In most cases, control of the governor's office and the legislature determines which party will draw these 36 states' legislative and congressional districts. Not all governors, however, are created equal.

In 30 of these 36 states, an override of a governor's veto takes a minimum of at least a three-fifths vote of the legislature. In five states, a veto override takes only a majority vote in each chamber.

In addition, eight states have non-conventional processes for congressional redistricting:

- In North Carolina, the governor has no veto over redistricting bills.
- In Indiana, the governor's veto can be overridden by a majority vote, but a deadlock triggers selection of a commission, with the tie-breaking member selected by the governor.
- Connecticut sets up a special legislative committee that produces a plan requiring a twothirds vote of both houses, which the Democrats presently enjoy. If a deadlock occurs, the process moves on to a non-legislative commission, with the State Supreme Court acting as the ultimate arbiter.
- In the remaining five states of Arizona, Hawaii, Idaho, New Jersey and Washington, congressional redistricting is done by commission, bypassing the legislative process altogether. In all but Hawaii, the state Supreme Court acts in case of deadlock.

Thus, in 31 states, the governor plays a pivotal role by virtue of a three-fifths or more veto override or, in the case of Indiana, the controlling appointment to the fallback commission. Only five of these key governors have already been elected and have terms running through the redistricting process. In addition, four of the key governors have little chance of having their vetoes upheld. This leaves 22 governorships, vital to redistricting, contested in 2010.

On the legislative front, the GOP position has weakened over the last four elections. There are 38 legislatures that participate in the congressional redistricting process. In 2001, the Democrats controlled 15, the GOP 11, and 12 were split between the parties. Going into this year's elections the Democrats now control 22, the GOP 10, and only 6 are split.

In the same group of 38 legislatures, with 73 chambers holding elections, the GOP must fight to avoid losing control of 10 closely-held chamber majorities and to protect potential gubernatorial vetoes

in an additional 6. The Democrats must protect 11 majorities, and protect vetoes in 2. A switch of as few as 77 seats out of 4,889 could have a huge impact on both parties' redistricting fortunes.

## The battle plan

The RNC is reaching out to all GOP stakeholders in this process to prepare them for the actual line-drawing and warn them about the legal battles to follow. All key states will be visited by the RNC redistricting staff, and the RNC is including a redistricting component in all its meetings this year. The RNC also hosted a national GOP redistricting conference in April of 2010.

Redistricting preparations are vital for all the party's stakeholders, and the GOP needs to prepare for the mechanics of the redistricting process. The GOP is clearly capable of training its troops to be ready for the redistricting battle ahead. But if GOP stakeholders have to fight on a field configured against them, and are under-funded, it is unlikely it will be successful.

The choice is up to the decision-makers in the Party. The contest is upon us. The GOP can weather the coming storm and realize electoral success through the next decade, but it must be fully dedicated to the fight.

With more than 45 years' experience in redistricting and census issues, Dr. Thomas B. Hofeller is one of the GOP's pre-eminent redistricting experts. Prior to returning to the Republican National Committee as its redistricting consultant last year, he served as Associate Administrator of the Department of Agriculture's Farm Service Agency. He also served as Staff Director for the U.S. House Subcommittee on the Census in 1998 and 1999