

## Racial gerrymandering

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HEN the 102nd Congress convened in January 1991, the Georgia House delegation was comprised of nine Democrats and one Republican—Newt Gingrich. Eight of the Democrats were white (as, of course, is the Republican) and one was black. But more than a quarter of Georgia's citizens are black, and, in order to comply with the Voting Rights Act following the 1990 census, two more black-majority districts had to be drawn.

Finding blacks around whom to draw those districts proved challenging. But, under pressure from the U.S. Justice Department, the legislature adopted what was known as the "max-black" plan, which stretched the new Eleventh District for 260 miles, snaking block by block through neighborhoods from Atlanta to Savannah in order to collect enough blacks to form a majority. Just over four years later, Newt Gingrich is Speaker of the House, and the only Democrats in the state's delegation are the three representing the black-majority districts. All the other Georgia congressmen are white Republicans.

If Georgia is the most extreme example of Democratic de-

cline following the creation of black-majority districts, it is by no means the only one. Within the last four years, while the Democratic share of the southern black vote has increased to a near-unanimous 91 percent, its share of the white vote has declined to just 35 percent, which has cost the party seats in Alabama, Arkansas, Florida, Mississippi, North Carolina, and South Carolina. For the first time since Reconstruction, Republicans hold a majority of southern House seats.

However, if the purpose of the redistricting was to increase black representation in Congress, the Voting Rights Act has actually been a great success. Every one of the newly created black-majority districts elected a black congressman, all of them Democrats. Six southern states elected their first black congressmen since the Hayes administration. And increased numbers have brought increased clout; before Republicans took control of the House, the Congressional Black Caucus influenced national policy on issues ranging from the crime bill to the use of military force in Haiti.

Last summer, however, the Supreme Court ruled in *Miller v. Johnson* that the Georgia reapportionment plan unconstitutionally classified citizens according to race. A year earlier, North Carolina's plan, which had also gerrymandered black districts, was called into question and will be reviewed again in the coming term, along with plans from Texas and perhaps Louisiana, as well. More such challenges surely are on the way.

The debate over racial gerrymandering has bred exaggerations on both sides. Cynthia McKinney, elected from Georgia's max-black Eleventh District, warns direly that the Supreme Court's decision will revive segregation. Justice Sandra Day O'Connor suggests that the drawing of black-majority districts smacks of apartheid, overlooking the fact that most of those districts are no more than 55 percent to 65 percent black and, by that measure, are actually among the most integrated in the country. Republicans contend that racial gerrymandering had little to do with their recent electoral success, ignoring cases where it clearly made the difference. Democrats blame racial gerrymandering for their loss of the House, which was, however, too broad not to have had other causes.

Yet the fact is that the aggressive drawing of black-majority

congressional districts has coincided almost exactly with Democratic decline in the House. With the Supreme Court possibly forcing almost a dozen states to draw reapportionment plans from scratch, it is worth assessing to what extent racial gerrymandering actually has contributed to Democratic electoral losses in Congress, in the South, and in the nation as a whole. Can the collapse of the Democratic party's majorities be blamed on racial gerrymandering? Or, to put the question more bluntly, are black electoral success and Democratic electoral success incompatible?

### Into the "political thicket"

Gerrymandering has been practiced for as long as there has been apportionment. The term itself mocks a Massachusetts assembly district approved by Governor Elbridge Gerry in 1812, which, it was said, resembled a salamander. Nothing in the Constitution, however, requires that congressmen be elected by districts; that was not required by federal statute until 1842, at which time almost one-third of the states still elected all their representatives at large. Given, however, that representatives are elected by district, the unbreakable rule of apportionment is that congressional districts within a state must have an equal number of people. This is the "one-person, one-vote" requirement. Numerical equality, however, is not the same as political equality, for it is easy to draw the lines in a discriminatory way yet still make the numbers balance.

The Voting Rights Act, the history of which neatly parallels the history of the civil-rights movement in general over the last 30 years, was enacted in 1965 to ensure blacks the right to vote in elections. But, in 1982, Congress amended Section 2 of the Voting Rights Act to prohibit election laws that had the effect of reducing minority voting power. It thus became a vehicle for guaranteeing blacks the right to win elections, though, due to pressure from Republicans, the 1982 amendments stated explicitly that they did not require proportional representation according to race.

As a practical matter, though, it is hard to prohibit practices weakening minority voting strength without effectively guaranteeing minorities a certain minimum number of seats; in other words, proportional representation. Interpreting the

1982 amendments in the 1986 case of *Thornburg v. Gingles*, the Supreme Court conceded that the Voting Rights Act not only now permitted but even required that race be taken into consideration during reapportionment in order to prevent the dilution of minority votes.

Minority votes are diluted, the Court reasoned, if three circumstances exist: first, there must be a minority group "sufficiently large and geographically compact" to constitute a majority in the district. In other words, one can't sue New York for failing to create an Aleut-majority congressional district, because there aren't enough Eskimos in the state to comprise one. Second, the minority group must be "politically cohesive," i.e., it must be determined that they tend to vote alike. Third, the minority's preferred candidate must usually be defeated by white bloc voting. Wherever a large, cohesive minority group existed, but could not elect the candidates of its choice because of unified white opposition, the solution was to create districts in which the minority could be a majority.

*Gingles*, although circumvented by the Court's decision in the Georgia reapportionment case last June, turned the Voting Rights Act in a new direction for the next round of reapportionment. If a redistricting plan could be successfully challenged because it had the effect of keeping minority representation below where it demographically could be—even if that effect was unintentional—the safer course was to draw boundaries that gave minorities something approximating proportional representation. As the 1990 census approached, minority interest groups, which had successfully fought for the Voting Rights amendments, found an unlikely ally in the Bush Justice Department. Having failed to defeat the 1982 amendments, many Republicans came to recognize the opportunity the amendments created.

### Strange bedfellows

Population had continued to shift during the 1980s away from the Rust Belt and toward the South and West. California, for example, would gain seven seats as a consequence of redistricting, Florida, five, and Texas, three. Fortuitously, the areas that were gaining seats were also areas that tended to vote Republican, while the states losing seats—e.g., New York,

Pennsylvania, and Illinois—tended to vote Democratic. Several Southern and Western states also now had Republican governors who could influence the redistricting process. More federal judges, who would hear challenges to reapportionment plans, had been appointed by Republican presidents, giving the party another intangible advantage that it had not enjoyed in previous years. The Republican governor of Alabama, for one, refused to call the Democratic legislature into special session to adopt a reapportionment plan, preferring to take his chances in federal court.

The Bush administration decided to enforce the 1982 Voting Rights amendments aggressively, siding with those Republicans who had concluded that the creation of black-majority districts could actually benefit the party by drawing black voters out of suburban districts whose white voters overwhelmingly voted Republican. As Benjamin Ginsburg, former chief counsel for the Republican National Committee, remarked after the 1994 elections, "Look at the results.... We'd be nuts to want to see these districts abolished."

An alliance of sorts was created between black Democrats and white Republicans, usually only tacit but occasionally more open. In 1989, the Republican National Committee and conservative groups formed a tax-exempt organization called Fairness For The '90s, which offered computer redistricting software packages, worth almost \$360,000 apiece, to black groups in order to help them draw reapportionment plans.

In fact, the new technology was crucial to the new wave of reapportionment. Master reapportioners of the past, such as California's Phil Burton, had aggressively sought to maximize the number of safe Democratic seats and had used such computer technology as existed at the time to help them. What changed after the 1990 census was that the software to do this sort of work became widely available. Without computers, partisan redistricting was unavoidably ham-handed. In addition to a tradition in most states against splitting all except the most populous counties between districts, few plans were drawn that divided actual neighborhoods because it was not possible to do so accurately. By 1990, it was.

The software program used by the Texas legislature to design its reapportionment plan (known as REDAPPL), for ex-

ample, could provide racial and ethnic information down to the block level, making it possible for line drawers to wend their way through neighborhoods, sorting black streets into one district and white streets into another. Moreover, REDAPPL could *only* show racial breakdowns; it lacked the capacity to show party affiliation or previous voting patterns at the block level. As the computer technician for the Texas legislature later explained, "The problem is when you draw on this computer, it tells you the population data, racial data. Every time you make a move, it tabulates right there on the screen. You can't ignore it."

### **Racial gerrymandering's political cost**

In the two elections since the last round of reapportionment, racial gerrymandering has directly cost the Democrats about a dozen seats in the House; i.e., about one-fifth of their total losses, but half of their losses in the South. Clearly, drawing the most loyal part of the Democratic constituency out of a district will make it harder for the Democrats to hold the district. Two examples from Alabama demonstrate how this has happened.

When Democrat Ben Erdreich was reelected without opposition in 1990, the Sixth District consisted of the eastern half of Jefferson County: Birmingham and its suburbs. Erdreich, who is white, had a moderate voting record among southern congressman and had always run well in the black neighborhoods of his district. The neighboring Seventh District, which also was represented by a white Democrat, Claude Harris, had included the black-majority counties in western Alabama. In order to satisfy the Voting Rights Act, the Seventh District was converted into a black-majority district by dropping three white-majority counties and adding two long arms, one taking in the black areas around Montgomery, in the Second District, and the other reaching into Erdreich's district to take all the black areas around Birmingham. The new plan split Jefferson and Montgomery Counties cleanly along racial lines.

Because so many voters were drawn out of the Sixth and Second Districts, new ones had to be drawn in. Erdreich's district was expanded to include all of Shelby and part of Tuscaloosa County, areas that are predominantly white, trans-

forming a district that had been 37 percent black when Erdreich ran in 1990 to one that was only 9 percent black when he ran in 1992. So obvious was it that reapportionment had made this a Republican seat that Erdreich, despite his earlier landslide victory, almost decided not to seek reelection. As it was, he lost the seat narrowly.

Reapportionment cost the Democrats the Second District, as well. To replace the black sections of Montgomery County, two counties that are almost 80 percent white were added. This had been a competitive district, giving Republican Bill Dickinson a bare majority in 1990. When Dickinson retired, the Republicans nominated Terry Everett, a local real-estate developer. Everett's Democratic opponent was George Wallace, Jr., son of the former governor and bearer of one of the most famous names in Alabama politics. Despite the senior Wallace's reputation as a segregationist, he had won a respectable share of black votes in his later gubernatorial campaigns, and his son was endorsed by several black political groups.

Everett beat Wallace by only 3,571 votes. Except for the white neighborhoods of Montgomery and the towns of Dothan and Enterprise, Wallace carried the district easily, but these were enough to make the difference. Had the boundaries been where they were before reapportionment, Wallace would have won, 48 percent to 46 percent.

Claude Harris, in contrast, chose not to run in the newly configured Seventh District. Black state senator Earl Hilliard stepped in and trounced the Republican candidate, gaining two-thirds of his majority in the black neighborhoods around Birmingham and Montgomery.

The effect of reapportionment on the Democratic party has been more than just seats lost, but seats weakened, as well. There are many more examples of districts, such as Charlie Rose's in North Carolina or William Lipinski's in Illinois, that the Democrats still hold, but with much narrower majorities. According to David I. Lublin of the University of South Carolina, racial redistricting has also endangered Democrats outside the South, such as Jane Harman in California and Sander Levin of Michigan, both of whom were barely reelected after Hispanic and black voters were drawn into neighboring districts. Effects have also been felt in districts that once were

competitive but now are unassailably Republican.

But racial gerrymandering is not the only cause of Democratic decline. What has cost the Democrats so many seats has been the loss of southern white support, a fact of life in southern politics for a generation, but one laid bare at the congressional level only after the last round of reapportionment. No Democratic presidential candidate has won the southern white vote since 1964, not even when a Southerner has been on the ticket. Strong white support has also enabled the Republicans to claim several southern governorships and control of assembly chambers in North Carolina, South Carolina, and Florida.

Two things enabled the Democratic party to delay the electoral impact of their weakness in the South. The first was control of the state legislatures, where most apportionment still is initiated. By manipulating the boundary lines, it had been possible to keep the Democratic share of House seats higher than the party's share of the total congressional vote would have suggested. But as Democratic control of the legislatures slips, so too will this advantage. With courts and Republicans now doing much of the reapportioning, the percentage of Democratic seats in the House is close to the overall percentage of Democratic votes in House elections. The second factor delaying their decline in the South was the strength of incumbency. Yet, as popular Democratic incumbents have retired, the party has been unable to hold the open seats.

### **Color-blind ambition**

It is easy to oversimplify the influence of racist thinking on the Democratic party. The way districts were drawn depended considerably upon how individual political careers would be affected. Ambitions must be accommodated, both the ambitions of minority politicians and those of incumbents. Courts draw a lot of reapportionment plans not because the ones the legislatures adopt are unconstitutional but because the legislature either can't (or won't) reach agreement at all. The Illinois legislature, for instance, has not enacted a redistricting plan since 1961.

Thus a large part of the reapportionment debate turned not so much on whether, but how, to draw minority districts.



Often, black-majority districts could have been drawn more compactly but for the need to serve other interests. Georgia's reapportionment plan was designed by Assembly Speaker Tom Murphy in order to unseat Gingrich—a plan that obviously backfired. The black-majority Fourth District of Maryland was drawn in order to pull enough blacks out of Democrat Steny Hoyer's district to prevent a primary challenge. Part of the debate in Illinois concerned in which of two black districts to put the Second Ward, a decision that was believed to affect the career of the ward's alderman.

Republicans were as adept as Democrats at playing this game. The reapportionment plan proposed by Florida Republican Andy Ireland had the same racial allocation as the one drawn by the NAACP, except that one of Ireland's black-majority districts would have covered parts of 17 counties and three television markets. North Carolina Republicans pressed for the creation of one black-majority district, which would in places have been only a single precinct wide.

It is also a mistake to view the reapportionment struggle as one solely between minorities and whites. In Texas and Florida, among other places, the struggle was as much between different minorities seeking to divide the racial pie. They also sometimes served as proxies in a larger battle between the major political parties. For example, Florida's Hispanics, who tend to vote Republican, argued that, because their numbers were increasing more rapidly, they deserved an extra minority district. But blacks, who are strongly Democratic, cited past discrimination as justifying special protection. Those who blithely assume the existence of a "rainbow" coalition overlook such divisions.

The desire of legislators to protect incumbents, as well as to boost minority representation, makes it difficult in some cases to decide whom to blame for the loss of a seat. Democrats might have defeated Republican Clay Shaw in Florida's 22nd District in 1992; they lost by only 36,771 votes, almost all of them in Broward County, which was divided between four congressional districts. One can attribute defeat here to the loss of votes to black Democrat Alcee Hastings, who won the new 23rd District in a landslide, but one could just as easily blame white Democrats Peter Deutsch and Harry

Johnston, who also won comfortably and could have spared voters in Broward County. As Lublin observes, Joan Kelly Horn might have held her seat in Missouri had not both Richard Gephardt and black congressman William Clay taken strong Democratic neighborhoods to pad their own majorities.

Finally, one should recognize that black-majority districts sometimes were drawn in order to further the personal political interests of the black legislators who proposed them. It is no accident that several of the architects of minority-majority plans—Eddie Bernice Johnson in Texas, Earl Hilliard in Alabama, Cynthia McKinney in Georgia, Cleo Fields in Louisiana, Luis Gutierrez in Illinois—now represent the districts they helped draw.

### **The end of biracial coalitions?**

If racial gerrymandering has been bad for Democrats, has it been good for minorities? The reason for creating black-majority districts, as the Supreme Court recognized in *Gingles*, was that black candidates can rarely win outside a black-majority district since whites will not vote for them. With very few exceptions, that has not changed. Black candidates who do win white-majority districts don't do so with much of the white vote. But then, neither do white Democrats.

The Court managed to strike down the Georgia reapportionment plan without repudiating *Gingles*, but consider this: Only two of the 41 black members of Congress were elected from white-majority districts. If the Court is serious about eliminating race as a predominant factor in reapportionment, Congress would probably again become an almost all-white institution. Given that likely outcome, is it really so bad to extend the lines a bit in order to allow black candidates to win?

Well, yes. Black participation in Congress may be at an all-time high, but are black interests better represented this year under Republican control than they were last year? Loss of the House cost the Congressional Black Caucus three full committee and 17 subcommittee chairmanships. As David A. Bositis of the Joint Center for Political and Economic Studies notes, blacks feel the loss of House control more severely than do whites because black political fortunes are inseparable

from those of the Democratic party. True, the Black Caucus does now exercise proportionately more influence within the Democratic caucus, but gaining a larger share of a shrinking pie is not a formula for success.

A compromise might be reached if the lines were softened. Every congressional district in the country that is more than 30 percent black, 46 in all, has a Democratic congressman, all but three of them black or Hispanic. The gerrymandered districts do not need so many black voters to be safely Democratic, but they probably do need that many to be safely black. Reducing the percentages a little would sacrifice some minority representation in exchange for more Democratic representation. This is coalition politics, which usually translates into black voters supporting white candidates. The Black Caucus responds that blacks are better off as representatives than as constituents. Black *representatives* are certainly better off—it's their jobs that are at stake—but are blacks in general?

And what about the political system as a whole? It is hard to look at something as tortured and as obviously over-extended as Louisiana's "Zorro" District or North Carolina's "I-85" District and not feel some qualms. It cannot be good for our politics to split neighborhoods street by street so that black residents are weeded out or, for that matter, weeded in. But, because of the alliance between racialists who want to see more blacks elected to Congress and conservatives who want to see more Republicans elected to Congress, some form of racial apportionment will likely survive the Supreme Court's attempt to eradicate it. Some have begun to advocate scrapping geographically based apportionment altogether in favor of an unabashed system of proportional representation such as Lani Guinier proposes. Georgia Congresswoman McKinney has already introduced such legislation.

We enter unexplored territory. Cynical as their tactics might be, the Republicans seem to have succeeded where the Democrats failed—in forging a political alliance that enables both blacks and whites to win election. Unless the Democratic party can devise something better, it will continue to suffer.

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