

How the
GOP is using
the Voting
Rights Act to
carve out
Republican
election
districts

BEWARE OF REPUBLICANS BEARING VOTING RIGHTS SUITS

by Matthew Cooper

In December 1985, the Supreme Court heard *Thornburg v. Gingles*, a case that seemed like it was torn from the pages of *To Kill A Mockingbird*. The case, which concerned racial gerrymandering in North Carolina, was a familiar confrontation of civil rights groups and their conservative opponents. On one side of the chamber stood the Reagan Administration's Solicitor General, Charles Fried, the attorney general of North Carolina, and the Washington Legal Foundation, a conservative advocacy group. Opposing them were the NAACP Legal Defense and Education Fund, the American Civil Liberties Union, and a bipartisan group of congressmen including Senators Edward Kennedy and Robert Dole. Last spring, the Court ruled in favor of the NAACP et al.

Reinforcing the civil rights advocates in their suit was a fellow petitioner that clouded the political battle—the Republican National Committee (RNC). In his supporting brief, RNC general counsel Mark Braden claimed that the Republican concern was “fair and effective representation for all the citizens of North Carolina in their state legislature.” On the sidelines, other Republicans, including North Carolina's Gov. Jim Martin, cheered him on. A state GOP official told *The Washington Post* that “there was a happy coincidence between blacks and Republicans.”

Blacks and Republicans came together in North Carolina—and across the South—to create

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black legislative districts, enclaves with a majority black population. In the last few years, many of the nation's most prominent civil rights groups, joined by local Republicans, have used provisions of the Voting Rights Act to overturn existing electoral plans. For blacks, creating black majority districts is a simple way of ensuring the election of black representatives. For Republicans, packing blacks into a few districts means that the surrounding districts become whiter, less Democratic, and fertile soil for GOP candidates. Of course, race-based redistricting has often been used to defeat racists and increase black representation. But in teaming up with the Republicans to create more and more heavily black majority districts, civil rights groups may ultimately harm their own cause.

While the Reagan Administration was opposed to racial redistricting in the *Thornburg* case, there are signs that the Department of Justice has used the Voting Rights Act to partisan advantage. Furthermore, the Voting Rights Act may well be one of the legal tools the GOP will use in its “1991 Plan”—its all-out strategy to influence reapportionment following the 1990 census.

Redistricting has always been used as a weapon in party politics by both sides, but more is at stake now than a shift of some votes to the Republican column. In local elections, where candidates often run independent of party affiliation, voting rights suits have created districts where white candidates no longer need to court black voters—and vice versa. And there is the great danger that as redistricting spreads, state houses, county commissions, and even Congress will become

dominated by two factions—blacks who are unaccountable to whites, and whites who are unaccountable to blacks.

“You know, the federal government goes through the South,” one RNC aide joked, “and says you have been very bad to your blacks. You have to desegregate your restaurants, your schools, and your hotels. And, yes, you have to *segregate* your districts.”

Common cause

The exact number of voting rights suits is unclear, but dozens are launched every year. New York City and Chicago have had their days in court, just like Lubbock, Texas. Anchorage, Alaska even has a suit pending. How these suits have affected the fortunes of the two major political parties remains uncertain. One thing is known: When white Democrats are decoupled from their black constituents, they lose.

Look at the aftermath of voting rights suits in the South.

In 1984, South Carolina created two black state legislative districts to fend off the Department of Justice. In these black districts, the white Democrats held onto their seats. In the surrounding four districts, from which black voters were drawn, the liberal Democratic incumbents were all defeated by conservative Republicans.

In 1983, when the Alabama state legislative lines were redrawn to comply with the Voting Rights Act, Republican strength nearly doubled in both houses. Again, the gains often came in districts where black voting strength has been diluted. One Democratic representative, Larry Dixon of Montgomery, forced to run in a new, lily-white district, switched parties.

When North Carolina was reapportioned to comply with the Voting Rights Act in 1984, nearly half of the 24 Republican state legislative seat pickups came in districts where lines had been redrawn. The growth of Republican strength in the South is owing to several factors—like the Reagan landslides—but it is hard to believe that redistricting wasn't a boon to the GOP.

The Republican leadership is not oblivious to this effect. The RNC has done more than go to court to force race-based districting. They've even allowed at least one member of their senior staff to assist civil rights advocacy groups that were working to redraw district lines. Dr. Thomas B. Hofeller, director of the RNC's computer services division, said he has worked with black plaintiffs in Chicago and the Mexican American Legal Defense and Education Fund (MALDEF) in Los

Angeles. Computer experts, like Hofeller, who can perform analyses of voting behavior, are essential in today's highly technical voting suits. MALDEF's complaint that the Los Angeles city government discriminated against Hispanics when crafting voting districts embarrassed black Mayor Tom Bradley during his failed gubernatorial campaign against Republican George Deukmejian.

Hofeller maintains he aided the groups on his own behalf—with the RNC's permission, but not as its representative. “Sometimes blacks and Republicans make common cause,” he says. That kind of common cause could transform the political landscape to the Republicans' advantage. Nationally, the RNC's 1991 plan is targeting 750 select counties. The GOP can look to 138 congressional districts where blacks constitute 15 percent or more of the population, which makes them ripe for consolidation.

To understand how the Republicans became allied with civil rights groups, it is important to understand the Voting Rights Act and its history.

Effect test effects

“I want the goddamndest, toughest voting rights law you can find,” Lyndon Johnson told his aides in 1965. They delivered, producing a statute that did what other laws, court orders, troop movements, and voter drives had failed to do. It opened the polls for millions of blacks; within two years of the act's passage the number of registered voters in Mississippi jumped ninefold.

The success of the act lies in its scope. It is a mercilessly—and wonderfully—thorough piece of legislation, complete with its own regulations, bureaucracy, and individual amendments. Some sections, like the ban on literacy tests, cover the entire nation. Others, like the provision of bilingual ballots for some ethnic groups are only triggered by a mathematical formula.

By the early seventies, voting rights litigation began to change. Violence and intimidation were still being challenged, but civil rights attorneys began to turn their attention to what they considered equally pernicious abuses: majority-vote requirements, at-large electoral systems, and other devices that they believed amounted to disenfranchisement.

Those suits involved much more than witnesses testifying about recalcitrant registrars. To determine whether a community was racially polarized, plaintiffs and defendants hauled in demographers, political scientists, and computer

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scientists to assess the ebb and flow of local politics in sleepy Southern towns.

When minority plaintiffs won, the losing municipalities' electoral systems had to be revamped. Most frequently, at-large plans, in which all voters cast ballots for candidates running citywide, were broken up into wards.

The legal definition of a fair method of election remained—and still remains—vague. But in 1980, the Supreme Court ruled that proof of discriminatory "intent" was required for an electoral system to be declared unconstitutional. A pattern of discrimination could be used as circumstantial evidence to reach the verdict of discriminatory intent, but a statistical disparity of black and white electoral success was not, by itself, illegal. For there to be discrimination, the Court ruled, someone had to be discriminating.

When sections of the Voting Rights Act came up for renewal in 1982, civil rights groups wanted to change the act so that electoral systems with a discriminatory "effect" would be outlawed. Oblivious to the consequences for their own party, Democrats scarcely questioned this radical change in the law. This was testimony to the successful strategy of Ralph Neas, executive director of the Leadership Conference on Civil Rights who portrayed opponents of the "effects test" as "isolated extremists." No Democrat would risk being called a racist. With scarcely a Democratic defection in the House and none in the Senate, the bill passed the House 389 to 24, and the Senate 85 to 5.

The "effects" test was touted as a mere clarification of the law, but as civil rights attorney James Blacksher acknowledged last year, "It was a revolution in voting." The new, broadened definition made it much easier to bring electoral discrimination suits. There are no firm statistics available, but civil rights attorneys agree that the amount of litigation has increased. Plaintiffs now win well over two-thirds of their cases, speculates William L. Taylor, a Washington civil rights attorney and Lyndon Johnson's staff director of the U.S. Commission on Civil Rights. The black-

Republican victory in the Thornburg Case, which broadened the definition of discriminatory effect, will make it even easier to win these cases in the future. There are also many more out-of-court settlements. Many small towns like Warrington, Virginia (population 4,000), have resolved their disagreements without waiting for sentencing.

Georgia's folly

That voting litigation is bulldozing the political landscape is not, by itself, disturbing. In rural spots like Merengo County, Alabama, or even cities like Jackson, Mississippi, redrawing the political map gives political power to blacks who seemed to have none at all. These are areas where race seems to control politics: where there was little of the backslapping that defines politics, where campaigning across racial lines was virtually unknown, even when competition between two or more whites would seem to demand the courtship of black voters.

But look at Atlanta. Long before the civil rights movement, it was touted as "the city too busy to hate." The city does have its racist elements, but it has a large black middle class, and it has a substantial number of sympathetic whites. This racial quietude allowed Andrew Young, now Atlanta's second black mayor, to run for Congress in 1972. Back then, his 5th Congressional District had a 48 percent black population, though low rates of registration and turnout. Running a biracial campaign, Young became the first black to hold office in the deep South since Reconstruction. When he left office in 1976 to become Jimmy Carter's United Nations ambassador, he was replaced by Wyche Fowler, a white who was arguably the most liberal congressman from the South. Building on Young's coalition, he won by substantial margins in 1978 and 1980.

After the 1980 census, the Georgia legislature reapportioned its congressional districts. Its proposed plan increased the number of blacks in the

5th District to make it 57 percent black. Unsatisfied, civil rights groups sued, charging the state with thwarting the political will of blacks. The decision handed down by the District of Columbia Circuit Court of Appeals created a 65 percent black district, and gratuitously repeated charges that an elderly black legislator who opposed the new plan was an "Aunt Jane."

In 1984, the judicial "remedy" went into effect. But did blacks really gain political strength? Probably not. In the first place, blacks thought enough of Fowler to re-elect him in 1984. In 1986, when Fowler successfully ran for the Senate, a black, John Lewis, ran for his House seat and won. But this is not necessarily because of the district's new racial mix. After all, Andrew Young won when it was only 48 percent black. Like Young, Lewis was a celebrity and a civil rights hero from the sixties. And so was his only serious challenger, Julian Bond. In fact, it was Bond who won the majority of the black votes, and under the effects test he could go to court, claiming that the election was evidence of racial discrimination even though a black won.

Beyond this, blacks actually lost political influence. In the adjacent district, where the percentage of blacks was reduced from 28 to 17 percent, Elliott Levitas, a veteran moderate with an early and outspoken record on civil rights, was defeated. He lost to Republican Pat Swindall, who ran ads showing Levitas with Geraldine Ferraro and labeling him a "New York liberal."

Barney's store

Where is the Reagan Administration on all of this? Intimately involved. One of the most important elements of the Voting Rights Act—Section 5—requires covered jurisdictions concentrated in, but not confined to, the South, to have any electoral changes approved by the Department of Justice before they can be implemented. It is an extraordinary extension of federal power, and the Supreme Court has permitted it only so long as it is temporary and restrained. It is the power to veto councilmanic districts in Charlotte, North Carolina and congressional lines in Texas, auditor elections in Atlanta, and mayoral races in New York. The official who wields this weighty gavel is Assistant Attorney General for Civil Rights William Bradford Reynolds.

And, here, the facts will surprise many. The Reynolds record on voting rights enforcement has been remarkably vigilant, albeit not as aggressive as the civil rights groups want. He is much closer to their position on this issue than he is on bus-

ing or affirmative action. While Reynolds has talked about his color-blind vision, he has enforced the Voting Rights Act with an eye towards race.

For one thing, he has used his veto authority aggressively. As of July 1985, according to the Washington Legal Foundation, Reynolds had vetoed 110 redistricting plans versus 26 during the Carter administration. When the high number of submissions following the 1980 census is taken into account, Reynolds' rate of objection is comparable to the Carter years. In management terms, Reynolds has preserved remarkable continuity in the staff of the Voting Section. No members of the young conservative Federalist Society here. The long-time head of the Voting Section has survived six years of Reagan.

And at times Reynolds seems to have flirted with mandating additional black districts. This has been duly noted by University of South Carolina law professor Katharine I. Butler who worked for the Voting Section in the seventies. In 1982, she observes, Reynolds objected to a district in Virginia's House of Delegates that he considered too black. So he urged the state to go back to the drawing board and produce "two [districts with] substantial black majorities."

In January, Reynolds approved sweeping regulations that greatly expand his authority to veto districting plans. The new rules, which were applauded by civil rights groups, would incorporate the effects test into his administrative review—even though it is supposed to be confined to courtroom proceedings. Under Reynolds' change, Justice Department attorneys, based in Washington, thousands of miles from the scene, will have much more power to decide whether the city council line should cut behind the railroad track or over by Barney's store. So much for deregulation.

Why does Reynolds support affirmative action when it comes to voting? Part of the reason is that he may be following the law as he sees fit; or he may be preserving his political capital for other battles he feels are more important; or he may be baffled by the complexity of the Act. Or he is doing it to help the Republicans. "The Administration, it seems to me, is taking a very political position," said Elliott Levitas, now a private attorney. "It wants to separate the urban districts and achieve the Republicanization of the suburbs."

Together but equal

The paucity of black elected officials is not to be taken lightly. A history of disenfranchisement

unmatched by any other ethnic group means that black politics should always be a moral concern. It is important that more blacks hold office to ensure blacks access to government service, to create positive role models, to send aid to depressed areas. They could help heal a fractured society. Something is still very wrong when blacks make up more than 10 percent of the population, but only 1.8 percent of the nation's office holders.

The question is how to ensure larger numbers of black officials. Racial districting can be a dramatic way to rush blacks into mainstream politics. But such lines are easier to draw than erase.

Other avenues to help blacks gain office are open. A wise and savvy Democratic leadership could do much more to promote blacks in the party hierarchy. Last fall, House leaders shrewdly guaranteed a seat on the House Agriculture Committee to Michael Espy, helping him to become the first black elected to Congress from the rural South since the 19th century. The party could also commit more money to recruit strong black candidates. Most importantly, it could develop an economic agenda that would attract poor blacks and whites.

For civil rights organizations, there are ways to promote black political strength, even black office holding, without resegregating the political process. Instead of jumping to redraw the map after a determination of voting rights abuses, minority plaintiffs could pursue other legal remedies. A culpable town ought to be required to promote door-to-door registration, or to provide mobile bus service on election day.

Creating black districts is a limited answer, best resorted to in only the worst cases. One-third of all black mayors, after all, are elected from white majority towns. It is a mistake to assume that all of America is Mississippi in 1957, that whites cannot be made responsive to blacks, and that it is better to go it alone than build bridges. That is a strange and sad call from those who rightly promote integration in other aspects of our daily lives.

One way to judge an idea is by the company it keeps. The Republican connection ought to disturb those who carry the banner for civil rights. Racial districting may have become a clarion call for the civil rights movement, but it is also a cause celebre for the conservatives who cheer the willingness of blacks to separate. ■



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MEMO OF THE MONTH

MAY 12.....SCHEDULE OF EVENTS

On May 12th, an aggressive fundraising campaign will be kicked off by a series of special events. These events require a \$50 to \$5,000 donation (depending on the event) and are designed to enlist the emotional and financial support of the general public in a continuing battle against the plight of the hungry and the homeless. Supporters and co-sponsors of these events include, Motion Picture of Association of America President Jack Valente, actors Martin Sheen and Dennis Weaver, actresses Valerie Harper and Cicely Tyson, District Mayor Marion Barry, Eunice Shriver, Abe Pollard, Senators Mathias, Metzenbaum, and Hart.

3:00 p.m. Special celebrity lunch/preview at the Federal City Shelter, 425 Second Street, N.W.....A Ridgewell's catered lunch hosted by the fundraising committee to pay tribute to the hungry and homeless who live there.

5:30 p.m. Fundraising dinner at Dominique's.....Hosted by Mitch Snyder, Martin Sheen, Valerie Harper and Dennis Weaver as well as leadership from both the Democratic and Republican parties.

7:00 p.m. Gala Film Premier of "SAMARATIN-The Mitch Snyder Story" starring Martin Sheen and Cicely Tyson.....Held at the National Theater followed by a "starlight" celebrity reception catered by Ridgewell's in Western Plaza.

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