

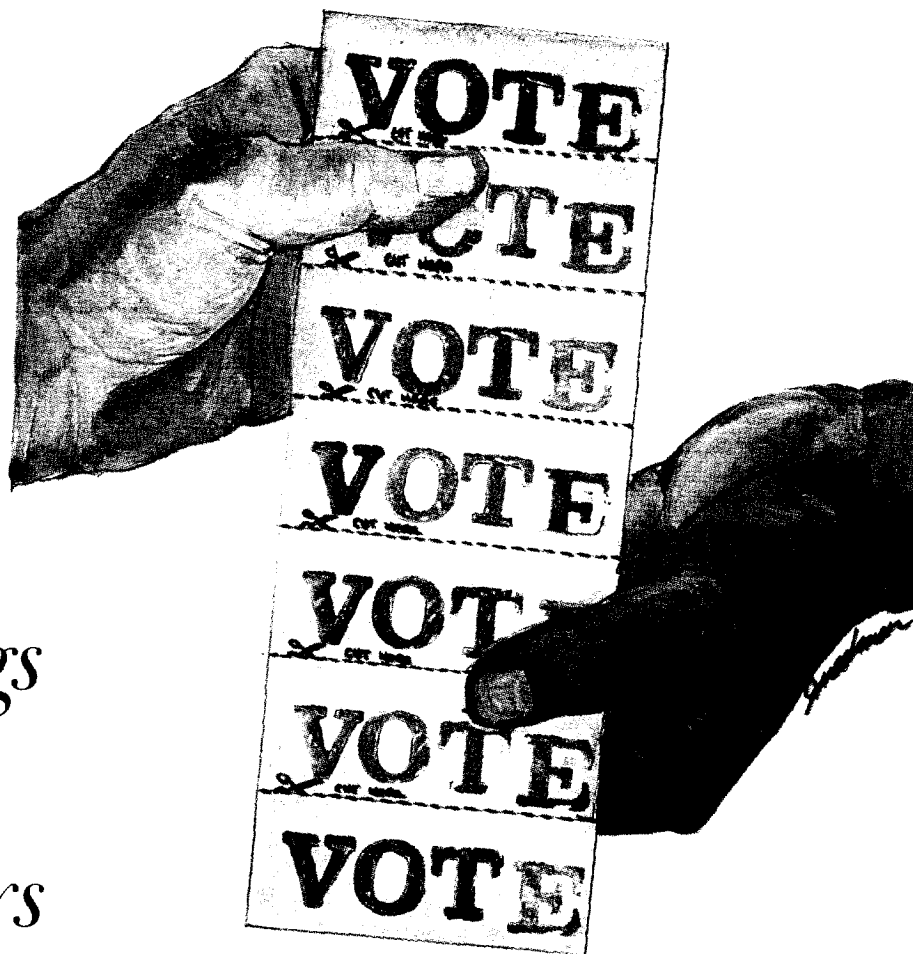


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The Supreme Court's Rulings on Congressional Districts Could Benefit Minority Voters



DAN SWEETMAN FOR THE CHRONICLE

By Carol M. Swain

AS WE HEAD INTO THE FALL ELECTIONS, many civil-rights organizations fear that the number of African Americans and Latinos elected to Congress will drop. For the past three years, the Supreme Court has issued a series of rulings that sharply curtail the use of race as a major consideration in drawing the boundaries of Congressional districts.

This has forced states to redraw the lines of some districts created to insure that members of minority groups would make up a majority of the voters in those districts. States had used that strategy aggressively for several years—under pressure from the Justice Department and prevailing interpretations of the Voting Rights Act—to take account of the growing racial- and ethnic-minority populations documented by the 1990 census.

But in June, in *Bush v. Vera* and in *Shaw v. Hunt*, the Supreme Court invalidated minority-dominated districts in Texas and North Carolina. It already had declared districts in Florida, Georgia, and Louisiana unconstitutional.

As a result, some civil-rights activists have predicted dismal electoral results this November. Elaine Jones, an attorney for the NAACP Legal Defense and Educational Fund, said in response to the June rulings that the “noose is tightening.” She predicted that eventually, as the boundaries of currently minority-dominated districts were redrawn, the members of the Congressional Black Caucus would be able to “fit into the back seat of a taxicab.” That would indeed be a change from the current minority representation in the House of Representatives: 38 blacks, 17 Latinos, and 3 Asian Americans.

Whether such dire consequences will follow in the wake of the Court's decisions is a hotly contested topic among scholars, as well as civil-rights activists and politicians. Many see the Court's rulings as an attack on the Voting Rights Act. The day after the June decisions,

Pamela Karlan, a law professor at the University of Virginia, concluded that the Voting Rights Act was “on the ropes and badly damaged; states now have virtually no incentive to draw black districts.”

Political scientists have debated for years whether minority-dominated districts are the best way to increase the number of blacks and Hispanics in Congress. Among them are Bernard Grofman of the University of California at Irvine and Chandler Davidson of the Uni-

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versity of Houston, editors of *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990* (Princeton University Press, 1994). Their book points to the large number of blacks and Latinos (13 blacks and 5 Latinos) elected to Congress in 1992 from new minority-dominated districts as proof of the importance of such districts.

But I believe that many activists and scholars have greatly overstated the likely impact of the Court's decisions on minority-group representation in Congress.

After the 1990 census, many state legislators found that population shifts since the 1980 census would force them to redraw the lines of Congressional districts in their states, either to create new districts or to eliminate districts if the states' populations had dropped. Legislators drew up more minority-dominated districts, under pressure from the Justice Department and civil-rights

groups, to insure that the voting strength of minority groups was not diluted by scattering those voters throughout white-dominated districts.

That prompted lawsuits by some white voters to try to overturn the new districts, and, since 1993, the Supreme Court has upheld many of their objections. For example, reacting to the creation of a very narrow and weirdly shaped district that wound 160 miles along Interstate 85 in North Carolina, Justice Sandra Day O'Connor noted in the 1993 case of *Shaw v. Reno*: “Racial classifications of any sort pose the risk of lasting harm to our society. They reinforce the belief, held by so many for too much of our history, that individuals should be judged by the color of their skin. Racial classifications with respect to voting carry particular dangers.”

TODAY, many voting-rights activists, permanently scarred by long trench warfare in Southern states, feel themselves under siege. Yet contrary to what critics of the Court have claimed, its rulings have not decimated the Voting Rights Act. Nor should the decisions be viewed as an invitation for white officials to return to the redistricting techniques used in the past, which broke up geographically compact minority-group populations to dilute their voting power.

In fact, although it has had the opportunity to do so, the Court has not overturned rulings it handed down in 1976 and 1986 that protected the voting power of minority populations. In *Beer v. United States* (1976), the Court held that a redistricting plan could not arbitrarily eliminate existing black-majority districts, which include most of those represented by black politicians elected before 1992. That prohibition is now known as the “no-retrogression standard.” In *Thornburg v. Gingles* (1986), the Court established a test designed to help

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policy makers decide when a predominantly minority district is warranted: Such a district should be created whenever a geographical area contains a large minority population that tends to vote as a bloc, but whose candidates are regularly defeated at the polls.

And critics of the Court have overlooked the fact that black representatives also win elections in areas with a majority of white voters. For example, Carol Moseley-Braun won election to the Senate from Illinois in 1992 with the support of voters of all races. Other black officials elected with a great deal of white support include former Virginia Governor L. Douglas Wilder, New York State Comptroller Carl McCall, and Ohio Treasurer J. Kenneth Blackwell. Two black Republicans, J. C. Watts of Oklahoma and Gary Franks of Connecticut, represent Congressional districts whose populations are more than 80 per cent white.

Similarly, two black Democrats from Georgia, Cynthia McKinney and Sanford Bishop, garnered significant white support after the Supreme Court forced their Congressional districts to be redrawn; this year, they won renomination in their newly configured, overwhelmingly white districts.

As I have shown in my book *Black Faces, Black Interests: The Representation of African Americans in Congress* (Harvard University Press, second edition, 1995), 40 per cent of the blacks in Congress in 1990—before race-conscious redistricting took hold—had been elected from districts where blacks made up less than 40 per cent of the voting-age population. Of the 38 blacks elected to Congress in 1994, 11 represent districts in which blacks are a minority of the voting-age population, and 8 serve districts in which blacks make up a scant majority—less than 55 per cent of the voting-age population. (In 8 of the remaining 19 districts, the black voting-age population is between 55 and 59 per cent of the total; in the remaining 11, it is more than 60 per cent.)

BUT EVEN THOSE NUMBERS understate the degree of white support for black candidates. In some districts whose populations are slightly more than 50 per cent black, whites actually make up the majority of voters on Election Day, because blacks traditionally have lower levels of voter registration and turnout than whites. But this has not prevented blacks from winning elections in such districts. Examples include the North Carolina districts that elected Mel Watt and Eva Clayton to Congress in 1992 and 1994.

Some scholars, though, continue to contest or play down the levels of support that white voters give to black candidates. For example, Dr. Grofman of Irvine, Lisa Handley, a senior research analyst at Election Data Services, and Wayne Arden, an attorney at the Democratic National Committee, argue in the forthcoming issue of the *National Political Science Review* that increases in the number of black lawmakers in Congress and state legislatures between 1990 and 1992 were purely a function of the number of majority-black districts drawn after the 1990 census.

The authors note that among black members of Congress, the proportion rep-

resenting predominantly black districts jumped to 91 per cent of the total in 1992, from 79 per cent in 1990. Dr. Grofman and his colleagues argue that their data show the near-impossibility of black politicians' being elected from predominantly white districts.

Their numbers seriously overstate the case—for two important reasons.

First, their analysis is extremely misleading because it fails to account for the fact that in past redistricting, black incumbents of districts with white majorities frequently have been given districts with

higher percentages of minority-group voters—sometimes enough more that the districts shift from having white majorities to having black ones.

As a result, this reduces the number of white-majority districts electing black politicians, at the same time that it increases the number of blacks representing black-majority districts. But white voters who have elected blacks in the past remain as likely to vote for black candidates in the future. (Under the Supreme Court's decision in *Bush v. Vera*, policy makers may no longer increase the minority populations of districts that already have incumbents from minority groups.)

The second reason that the analysis by Dr. Grofman and his colleagues is misleading is that it bases its calculations of white and minority populations on the overall population of a district, not on its voting-age population. Since people under 18 cannot vote, and since those under 18 often constitute a significantly larger portion of Latino and black populations than of white populations, relying on overall population figures often understates the number of white voters in districts that elect black or Latino representatives.

Further, supporters of race-conscious redistricting often ignore the effects that changing demographics will have on this strategy. Blacks are becoming less, not more, concentrated geographically as suburbs grow and central cities decline. Consequently, it does not make a lot of sense for minority advocates to stake so much political capital on a strategy sure to have diminishing returns.

EVEN if the Supreme Court had given a green light to all race-conscious districting, the strategy of grouping minority voters in the same district as a means of augmenting the number of elected officials from minority groups has just about exhausted itself. The bizarre shapes of some of the districts that the Court has invalidated attest to the difficulty of finding new clusters of minority voters who can be gathered to form a new black- or Latino-majority district. Most of the areas with large black or Hispanic populations already are part of existing districts dominated by minority groups.

A better strategy for increasing the number of blacks or Latinos elected to Congress would seem to be the creation of "influence districts," in which blacks and Latinos constitute a significant percentage, though not a majority, of the population. Such districts would increase the number of geographical areas where attractive, well-financed minority candidates could forge winning coalitions. The number of black or Latino politicians actually might increase as significant numbers of minority voters were included in more districts.

But we face a more important issue than the number of blacks or Latinos in Con-

gress or in state legislatures. It is clear that many scholars have confused what I call "descriptive representation" of minority voters with "substantive representation." Descriptive representation occurs when voters are represented by members of their own racial or ethnic groups; substantive representation occurs when voters' policy preferences and interests are actively promoted by their legislators, whether or not those elected officials come from the same racial or ethnic backgrounds as the voters do.

By concentrating minority-group voters in a relatively small number of districts, we may insure the re-election of their black or Latino incumbents. But the bordering white-majority districts often become still whiter and more likely to elect representa-

tives who are not attentive to minority concerns. Unfortunately, many activists and scholars (some of whom supplement their incomes by serving as expert witnesses in legislative or judicial hearings on redistricting) have paid too little attention to this outcome.

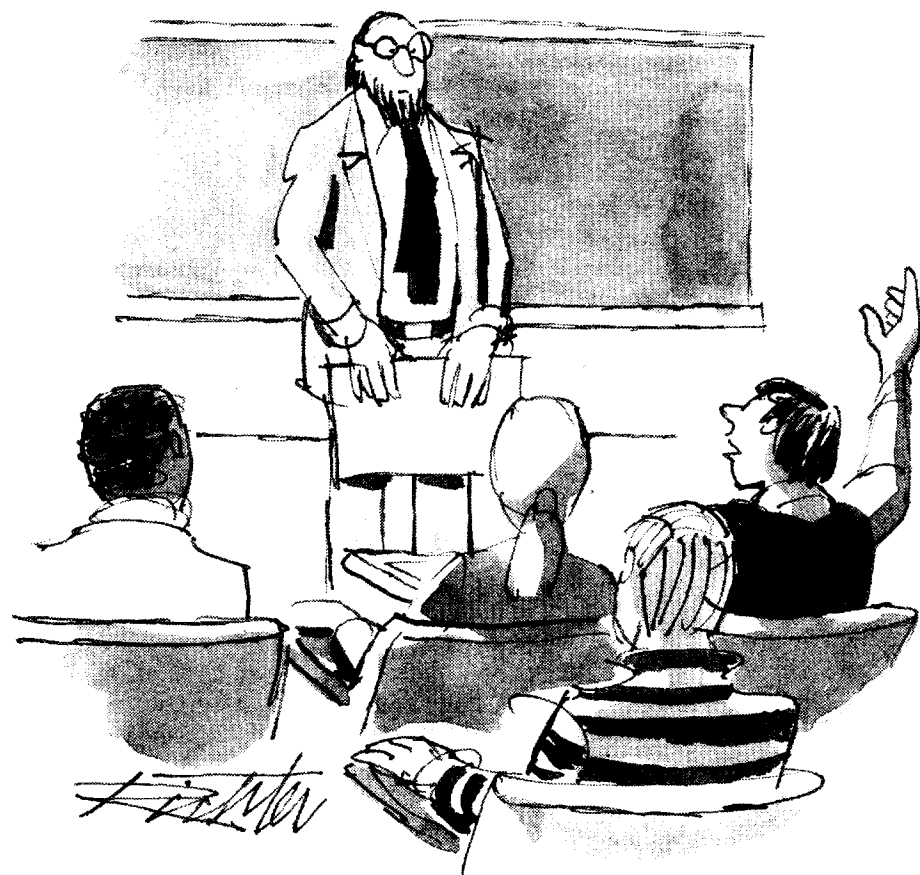
Paradoxical as it may seem, the interests of minority populations actually may be better served by district boundaries that make it somewhat more difficult for some black or Latino incumbents to be re-elected. What may be in the interests of such incumbents is not necessarily in the interests of minority-group voters, though some powerful individuals and organizations would like to conceal this fact. Minority-group voters may be better off if they make up large but not predominant proportions of the voters in more Congressional districts.

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THE Republican National Committee worked vigorously with voting-rights activists after the 1990 census to fashion districts that packed minority voters into a small number of "super minority" districts. This left other districts with heavier white majorities—populations more likely to vote Republican. Although, at the time, the Congressional Black Caucus was split over whether to cooperate with the Republicans, some members of the N.A.A.C.P. and other prominent minority-group leaders sided with Republicans, against the urging of many Democratic leaders—to the detriment, I believe, of black Democrats.

With the Supreme Court's latest rulings, redistricters can no longer pack minority voters into super-minority districts. The effect of those decisions thus may ultimately be far more beneficial for minority-group voters than many people believe.

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