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### **Gerrymander Slander**

Democrats cry foul on Texas redistricting.

By Abigail Thornstrom & Edward Blum

On the question of minority voting rights, neither Republicans nor Democrats are covered in glory. In the latest chapter, House Democrats, led by California's Nancy Pelosi, have gone ballistic over a leaked Department of Justice memorandum which concluded that the 2003 Texas congressional redistricting plan violated the Voting Rights Act. Pelosi has called for an independent inquiry into "the contemptible politicization of the Justice Department to rubberstamp Congressman Tom DeLay's illegal redistricting scheme"

Illegal? Gee, we thought that when a federal three-judge panel decided after a lengthy trial that the plan was constitutional, that also meant it was "legal."

No matter. The *Washington Post* breathlessly reported last week that in 2003 the recommendations of a team of Department of Justice career bureaucrats were rejected by the head of the civil-rights division and then-Attorney General John Ashcroft — implying that the final word on the implementation of federal voting-rights law should be that of staff, not the attorney general. The team's 73-page memo concluded the Texas plan "quite plainly" reduced "minority voting strength" in violation of the pre-clearance provision of the Voting Rights Act, which requires certain states (Texas among them) to show that electoral changes are not discriminatory either in purpose or effect. "Effect" has long been defined as any reduction in the number of majority-minority districts in a revised map.

Actually, though, what Pelosi and others are upset about is not that minority voters in Texas lost power under the new plan — they didn't — but rather that the 2003 redistricting plan bumped off four white Democrats and replaced them with Republicans. That sounds like redistricting business as usual to us: After the 1990 census, Texas Democrats had drawn an equally gerrymandered map. In other states — such as Maryland — Democrats remain in control and Republicans have lost congressional seats. Nobody has called the process in Maryland "illegal" or demanded a special inquiry. That Texas (unlike Maryland) is "covered" by the Voting Rights Act has given Democrats in the Lone Star State an excuse to use the statute to camouflage what are, in fact, partisan charges.

In the case of Texas, it is a pretty flimsy excuse. Minority voting strength was not, in fact, reduced as a consequence of the new districting lines. Under the old map, Texas sent two black representatives to the U.S. House of Representatives, one from Houston, the other from Dallas. The new plan added a third black district, and raised the number of majority Hispanic districts from seven to eight.

The Texas case is just the latest example of DOJ career lawyers run amok. For the last twenty years, the voting section staff has racked up a slew of embarrassing mistakes, a number of which had to be rectified by the U.S. Supreme Court. These mistakes ranged from approving plans that were later found to be illegal to disapproving ones later found to be perfectly legal. But a consistent thread runs through the decisions of the voting section: the conviction that only minority officeholders properly represent minority voters, and that racial and ethnic proportional representation (by the crude tool of redistricting) is both a matter of high principle and an entitlement under the Voting Rights Act.

The Supreme Court took the voting section to the woodshed a decade ago, citing the pressure it put on certain states to adopt race-driven districting maps drawn by the ACLU. Pelosi and others have complained that the Justice Department has been politicized. Apparently, working hand-in-glove with the ACLU, MALDEF, and other such advocacy groups — of which there is an extensive and indisputable record — did not constitute “contemptible politicization of the Justice Department.” That’s a charge that the *Washington Post* and the *New York Times* (editorially) will only air when Republicans run the civil-rights shop at DOJ.

We are happy to concede that the pre-clearance provision of the Voting Rights Act has become a partisan gerrymandering tool that has been used by both parties to further their electoral interests. All the more reason to question the continuing need for that temporary, emergency provision 35 years after it was initially scheduled to expire. But almost no one in Congress is questioning it, and most observers believe the provision will be renewed once again — for another 25 years.

Both Democrats and Republicans — for different reasons — like the safe minority seats that race-driven plans create, and already the Republican leadership, including the White House, has signed on to renewal. A few courageous and principled GOP House freshmen like Georgia’s Lynn Westmoreland and Texas’s Ted Poe have begun to question the wisdom of keeping their states under the thumb of Washington bureaucrats, but so far, they seem quite alone.

Almost no Republicans are profiles in courage when it comes to race-conscious public policy. But those in Congress who think racial gerrymandering is just fine should take note: This phony scandal is emblematic of the dangerous waters in which they choose to tread. The pre-clearance provision was essential in 1965. In a racially changed America, it is no longer necessary, and the racial and partisan ends for which it is used are not in their interest — or that of the public. Unless the Republicans want another 25 years of such phony scandals, they should let the provision expire.

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