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Racial Progress Stymied

By Abigail Thernstrom | National Review Online
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The 1965 Voting Rights Act is the crown jewel of federal civil rights laws. No one should doubt its importance in making America a very different nation from the one in which I grew up not so many years ago. While the 1964 Civil Rights Act was crucial in forcing southern whites to accept the blacks in their midst--in restaurants, hotels, theaters, places of employment, hospitals, schools, indeed, in the entire public sphere--that earlier statute had only minor and weak provisions guaranteeing the right to vote. And yet, black ballots were the levers of change that white supremacists most feared. Enfranchisement, they knew, would turn African Americans into true citizens. President Lyndon Johnson, in signing the act on August 6, called it "one of the most monumental laws in the entire history of American freedom," while John Lewis, a young leader in the civil rights movement at the time, saw the statute as "every bit as momentous and significant . . . as the Emancipation Proclamation."

Black ballots alone turned out not to suffice. In Mississippi and elsewhere, whites in power were prepared to alter election processes to keep blacks out of public office--hence, the race-conscious districting as a temporary measure to give blacks what Daniel Lowenstein has called "a jumpstart in electoral politics." But Lowenstein makes a further, important point: "A jumpstart is one thing but the guy who comes and charges up your car when the battery's dead, he doesn't stay there trailing behind you with the cable stuck as you drive down the freeway. He lets it go." It's time to let race-driven districting go the way of those jumper cables. America is better off with the increase in the number of black elected officials who gained office, in large part due to the deliberate drawing of majority-minority districts. But black politics has come of age, and black politicians can protect their turf, fight for their interests, and successfully compete even for the presidency, it turns out. It's a new world.

In today's America, the costs of continuing to insist on race-based electoral arrangements are very high. Had congressional committees in 2006 been willing to confront honestly the question of renewing and strengthening section 5, they would have acknowledged the constitutional problems at the core of a decision to extend further the emergency provision designed as a temporary measure to force the nation to live up to its constitutional promise. Special arrangements that provide privileged protection for black and Hispanic candidates are a serious distortion of a democratic system in which ethnic groups have no collective right to representation. Methods of voting based on the notion that individual citizens are indistinguishable members of a racial group and should be grouped accordingly are also deeply constitutionally suspect. The Fourteenth Amendment stops states from denying "the equal protection of the laws" to "any person"--not to "any group." Rights are individual in America; our liberty depends on that belief.

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Congress in 2006, had it been willing to explore the status of American voting rights in the twenty-first century with some intellectual integrity, would also have acknowledged that maximizing the number of majority-minority districts impedes black progress in significant ways. The costs enumerated by Sandra Day O'Connor in *Shaw* cannot be empirically proved, but nevertheless seemed instinctively to have some validity. Such districts, she said, reinforce "the perception that members of the same racial group--regardless of their age, education, economic status, or the community in which they live--think alike"; they "threaten to stigmatize persons by reason of their membership in a racial group and to incite racial hostility"; they may "balkanize us into competing racial factions"; and they tell elected representatives that "their primary obligation is to represent only the members of that group, rather than their constituency as a whole." Alex Aleinikoff and Samuel Issacharoff, it may be recalled, also argued that race-conscious districts not too surprisingly raise racial consciousness; they scream, "RACE, RACE, RACE."

And yet, increasingly, blacks may not see themselves as defined by racial identity, some recent polling suggests. In a 2007 national poll, 37 percent disagreed with the notion that blacks can "still be thought of as a single race," while 61 percent expressed their belief that, in recent years, "the values of middle class and poor blacks [have] become . . . more different." Is America moving very slowly toward Harvard law professor Randall Kennedy's ideal of "all Negroes" being "voluntary Negroes"? The luxury of racial identity is still quite new in America, and the deck is heavily stacked against such self-identification. It is hard to escape the world of boxes that demand that you check one to select your racial or ethnic group. But that is today, perhaps not tomorrow.

Hispanics are clearly not a united group, and if blacks as well are ceasing to see themselves as all belonging to one "community," the practice of drawing districting lines that chase after middle-class blacks who have chosen to move out of low-income neighborhoods has become truly offensive. For the courts and the Justice Department to insist that wherever you move, you still belong to a racially defined community reinforces stereotypical assumptions that all blacks are alike, and that race--never social class or residential location or identification with other interest groups--is still the characteristic that counts.

Blacks sit on legislative bodies ranging from elected school boards to the U.S. Congress, but many have acquired their seats by running in districts carefully designed to elect minority candidates. Reviewing data from 1992 to 2007 on the impact of race-conscious districting at the state and congressional levels, political scientist David Lublin and colleagues concluded, "The overwhelming number of minority legislators continue to represent majority-minority districts." As Lublin notes, in some of these districts the majority is composed of a black-Hispanic coalition, and where the minority population is less than 50 percent, it often controls the outcome of the decisive Democratic primary. Of

course, some minority-minority districts do elect black candidates with white crossover votes, as the civil rights community admitted in *Bartlett v. Strickland*. But they are not the norm.

Majority-minority districts appear to reward political actors who consolidate the minority vote by making the sort of overt racial appeals that are the staple of invidious identity politics. Harvard law professor Cass Sunstein describes a larger phenomenon that is pertinent: People across the political spectrum end up with more extreme views than they would otherwise hold when they talk only to those who are similarly minded. Districts drawn for the sole purpose of maximizing the voting power of a racial group surely encourage voters who live there to talk only to one another and lead candidates to focus on issues of immediate concern to their minority constituents. As a consequence, elected representatives seem to be left untutored in the skills necessary to win competitive contests in majority-white settings. It's a self-fulfilling prophecy: Very few black candidates risk running in majority-white constituencies; majority-minority districts thus become the settings in which blacks are most frequently elected.

In such settings, officeholders tend to be pulled to the left--or, in any case, are certainly under no pressure to run as centrists. Their left-leaning tendencies, along with a reluctance to risk elections in majority-white settings, perhaps explain why so few members of the Congressional Black Caucus have run for statewide office and none made a serious bid for the presidency before Barack Obama. It is doubtful that anyone can imagine, for instance, South Carolina representative James Clyburn building a national campaign, despite the fact that he is a well-respected, long-serving political figure. Nevertheless, he's a black politician with a majority-black constituency. His race was his ticket to Congress. The contrast with Barack Obama's "postracial" campaign for the presidency is striking.

In 2000, Obama ran in the Democratic primary in Chicago for a U.S. House seat. "I've always thought," attorney Michael Carvin has said:

The best thing that ever happened to Obama was [that] he ran for a heavily minority black congressional district in Chicago and lost. If he had won, he would have just become another mouthpiece for a group that is ghettoized in Congress and perceived as representing certain interest groups in the legislature.

Obama did, however, win a seat in the U.S. Senate in 2004, and his status as a senator from a heavily white state enabled him to transcend that perception.

Blacks running in majority-minority districts, not acquiring the skills to venture into the world of competitive politics in majority-white settings--that is not the picture of political integration, equality, and the vibrant political culture that the Voting Rights Act should promote. By another measure, as well, equality may be compromised by race-conscious districting. The creation of these districts has not overcome the heritage of political apathy created by the long history of systematic disfranchisement; their residents are generally less politically engaged and mobilized, a number of scholars have concluded.

Vanderbilt University law professor Carol Swain found that turnout in black-majority congressional districts across the country was especially low. She noted, for example, that just 13 percent of eligible voters showed up at the polls in 1986 in Major Owens's 78 percent black district in New York City. If voters in Owens's district felt more empowered with a black man representing them in Washington, it certainly did not inspire many of them to bother to vote.

James E. Campbell, a political scientist at the University of Buffalo, has supported Swain's findings. Campbell found that in 1994, over 60 percent of congressional districts in which minorities were the majority ranked in the bottom quintile in levels of voter turnout. The most recently published review of the scholarly literature on this subject is a 2007 article by Harvard political scientist Claudine Gay. Summing up what we have learned from previous investigations, Gay observed: "Limited electoral competition and low voter turnout are widely viewed as defining features of districts with black or Latino majorities." The "lack of competition" serves to "discourage participation" and reduces "the incentive for candidates or parties to mobilize voters." Thus, "the unique opportunity that majority-minority districts offer for minority self-determination only partially offsets . . . the decrease in turnout associated with noncompetitive electoral environments."

Gay added further empirical evidence showing that the creation of majority-minority districts tends to depress minority voter turnout, and thus generates political disengagement and apathy. In the districts from which members of the California Assembly were elected in 1996, voter turnout exceeded 60 percent (of registered voters) in only a quarter of the majority-minority districts. Turnout levels were above 60 percent, by contrast, in 90 percent of the white-majority districts. In sum, majority-minority districts probably lower the level of black political participation--a significant cost overlooked by advocates of race-based constituencies.

Thus, the pressure on jurisdictions to create race-based districts ultimately has the perverse effect of suppressing minority turnout and diminishing electoral competition within districts. Race-conscious districting also contributes to the larger problem of political polarization among districts. It tends to reduce the diversity of adjoining districts. As Georgetown University law professor Sheryll Cashin has put the point, "Racial gerrymandering that creates both majority-minority districts and 'safe' Republican . . . districts reduces the number of competitive races and contributes to a balkanized electorate."

Finally, majority-minority districts, with their insularity, may encourage dangerous black pessimism. A 2006 CNN poll found that 40 percent of blacks believed "many" or "almost all" white people disliked blacks. A Gallup poll almost three years earlier had discovered that only 38 percent of blacks believed they were treated "fairly" or "somewhat fairly" in our society. For blacks who had attended college--those best equipped to take advantage of the opportunities opened up since the civil rights revolution--the figure was an even lower 26 percent. The congressionally sanctioned narrative of an America still steeped in white racism and thus in need of another quarter-century of careful federal oversight over covered jurisdictions is not benign.

Pessimism had an impact in the early months of the campaign for the 2008 election. Polling before the first primary ballots were cast showed Barack Obama as having only modest support from black voters. African Americans, it appeared, were lukewarm toward Obama because they believed he had no chance of winning. Robert Ford, a black state senator in South Carolina, for instance, told a Time magazine reporter in January 2007 that "Obama would need 43% of the white vote in some states to win, and that's humanly impossible." Southern blacks "don't believe this country is ready to vote for a black president," he added. Referring to Obama's opponent, Hillary Rodham Clinton, Jesse Jackson said, "A white female has an advantage over a black male." And, after the first three contests, political scientist Philip Klinkner was ready to conclude that there was a "ceiling" on potential white support for Obama of about 35 percent.

That pessimism, woven into the fabric of the Voting Rights Act and broadcast as part of civil rights orthodoxy, is belied by polling data on white racial attitudes and by the facts on the ground. In 2007, for instance, only 5 percent of Americans said they were unwilling to vote for a "qualified African American candidate," according to a Gallup Organization survey. Before the Reverend Jeremiah Wright, Obama's longtime pastor, surfaced with his racist, anti-American rhetoric, the Illinois senator had won the majority of white votes in the Democratic primaries in Virginia, New Mexico, Wisconsin, Illinois, and Utah, and had received impressive vote totals among whites in other states' primaries, as well. And in November, as noted above, he received 43 percent of the white vote nationally.

In February 2008, voters in an Alabama county more than 96 percent white sent a black man, James Fields, as their representative to the state House of Representatives. "Really, I never realize he's black," a white woman, smiling, told a New York Times reporter. How many Americans today look at the president and think, "black"? I know of no polling in which that question has been asked, but I suspect the answer is, relatively few. They look to him for leadership in the face of extraordinarily urgent economic and foreign-policy problems; if previous surveys are any indication, they are unlikely to judge his accomplishments through the lens of race. America has come a very long way in the decades since the Voting Rights Act was passed.

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