



## Commentary

# Gerrymandering Democratic Votes

Abigail Thernstrom 10.23.08, 12:00 AM ET

The U.S. Supreme Court has refused to wade into the turbulent waters of partisan gerrymandering--districting maps drawn to the advantage of one political party or the other. But through the back door, civil rights groups are trying to get the court to force states to increase the number of safe Democratic districts.

The seemingly unlikely vehicle to accomplish this aim is a proposed reinterpretation of the 1965 Voting Rights Act. *Bartlett v. Strickland*, heard by the court on Oct. 14, is the case the Congressional Black Caucus and other advocates need to win to remake the statute into a Democratic Protection Act, in effect.

*Strickland* involves a districting plan for the North Carolina House of Representatives. Newly drawn District 18 has a black voting-age population of just under 40% (with turnout probably lower). But that was a "workable" district, the state argued--meaning that, while 60% white, the district would nevertheless elect a black candidate. Safe black constituencies had long been a Voting Rights Act entitlement; this district was thus a statutory right, North Carolina maintained.

Five county commissioners didn't like the map and sued the state. It violated the "Whole County" provision in North Carolina's constitution, they pointed out. In response, the state claimed the district was a Voting Rights Act requirement, although, in fact, the U.S. Supreme Court had interpreted the relevant provision (Section 2) as applying only where it was possible to create a majority-black district. Moreover, the setting had to be one in which whites had been demonstrably voting as a bloc to deny black voters an equal opportunity to elect the candidates of their choice.

The remedy of majority-minority districts was an appropriate response in true settings of racial exclusion. The 1965 statute had finally opened the doors of Southern politics to blacks, but it quickly became apparent that simply forcing racist registrars to provide access to the polls did not everywhere suffice. Most Southern black candidates, for some time, needed protection from white competition if they were to win legislative office.

But the drive for such protection was taken to indefensible lengths. A reshaped statute forced racial quotas on legislative bodies at every level of government. By now, however, even civil rights spokesmen depict a South so changed that neither incumbent nor aspiring black politicians need majority-black settings in which to run. Sticking to the majority-minority rule wastes black votes. Perhaps, then, *minority*-black districts--districts that are considerably under 50% black--should become the new statutory obligation where white voters seem open to black candidacies.

And here we get to the quite amazing argument made by North Carolina (and civil rights allies) in *Bartlett v. Strickland*. Racial progress actually requires a stronger Voting Rights Act--one stretched to include "coalition" districts as an entitlement. The sharp increase in white "crossover" voting for black candidates paradoxically suggests to proponents the need for even more federal intervention into legislative map making than racist exclusion did in the past. The courts and federal attorneys should figure out precisely what combination of blacks and white liberals in a particular district would maximize black office holding, and insist that the lines be properly drawn.

Still, whites were hardly voting as a racially hostile bloc if they were forming political coalitions with blacks. Quite the opposite: Interracial coalitions should have suggested the Voting Rights Act had become a period piece, its racially gerrymandered districts a remedy for wrongs in a bygone era. As Chief Justice John G. Roberts said in oral argument, such interracial coalitions were "evidence that the Voting Rights Act ha[d] succeeded, rather than evidence that you need to apply it more broadly."

It was an obvious point, but not to North Carolina state Rep. Mel Watt, who warned, "If the court goes the wrong way, it could substantially undermine the Voting Rights Act." The Congressional Black Caucus, in its amicus brief, went one step further. Retaining the insistence on majority-black districts as the remedy for racial exclusion "would freeze and even reverse progress that has been made in voting rights in this country," the CBC argued.

Minority candidates were already uniquely entitled to reserved legislative seats; in a racially altered America more than four decades after the passage of the Voting Rights Act, that extraordinary privilege was still safe and sound. Did these black

officeholders really believe the political integration of American politics (the core aim of the Voting Rights Act) would suffer a setback if the court refused to extend that privilege to black candidates who could win elections by forging biracial coalitions in a majority-white setting?

Not a chance. But this revised form of race-conscious districting would surely be good for Democrats. As J. Gerald Hebert, former acting chief of the civil rights division in the U.S. Department of Justice, acknowledged, "The Democratic Party will seek to work closely with minority officeholders and civil rights advocates" to create districts that are "less than 50% minority." And if *Strickland* makes that close collaboration a Voting Rights Act mandate, the court will have sanctioned Democratic gerrymandering disguised as increased racial fairness.

Suppose the court rules against coalition districts as a statutory entitlement--as I suspect it will. It matters less than one might think. Throughout the history of Voting Rights Act enforcement, the Department of Justice has simply ignored the court's decisions regularly, frequently operating way outside the law but below the public's radar screen. Attorneys appointed in a Barack Obama administration are very likely to find ways of ignoring an adverse *Strickland* decision and using the statute to elect still more Democrats.

No one will be able to stop them. In obvious and subtle ways, the Democrats are on the march.

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