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November 5 and the good news about race.

# THE RAINBOW COALITION

*By Jim Sleeper*

For several years now, as the Supreme Court has ruled again and again to limit the scope of race-based election districting, its decisions have prompted howls of outrage and prophecies of doom. *Miller* v. *Johnson*, which invalidated two majority-black districts in Georgia in 1995, was a "definite setback," said Deval Patrick, assistant attorney general for civil rights. It portended "a return to the days of all-white government," warned ACLU voting-rights specialist Laughlin McDonald. "One hundred years after the Supreme Court's decision in *Plessy* v. *Ferguson* set back the cause of racial justice by approving a doctrine of 'separate but equal,' a majority of the current Court members have demonstrated a perverse determination to resegregate the nation's politics," cried *The New York Times* last June, when the Court, in *Bush* v. *Vera*, brought to seven the number of "majority-minority" congressional districts it had struck down since they were created in 1992 to elect more blacks and Hispanics. "A century from now, fair-minded Americans are bound to view the Court's evisceration of the Voting Rights Act (VRA) this week with regret and even shame," continued the *Times* editorial titled "Democracy Demeaned."

Actually, it took fair-minded Americans less than six months to return a true verdict on the effect of racial redistricting, and the only people with occasion for shame are those voting-rights officials, activists and editorial writers who endorse using race as the dominant factor in districting. On November 5, five black incumbent members of Congress whose black-majority districts had been eliminated by court orders faced the voters in their new, non-black majority districts—they all won. By the theology of racialism that is the faith of many voting-rights activists, this simply wasn't supposed to happen. That the black incumbents' new, racially mixed constituencies elected them shook the racialists' two key premises: whites' perceptions and interests differ so profoundly from those of blacks that, as a rule, whites won't vote for blacks; and, therefore, non-whites' right to vote can be exercised only when they are "empowered" to vote en bloc as members of "protected" racial classes. More suits against majority-minority districts are pending in New York, Virginia, Illinois and Hawaii.

Anticipating the rulings two years ago, Frank Parker, a voting-rights advocate who teaches at the District of Columbia Law School, warned that "the elimination of [the contested majority-minority] districts ... would have enormous consequences for our democratic system." The results of November 5 belied such predictions. The 104th Congress had thirty-eight black members of the House of Representatives under racial gerrymandering; now, with seven fewer majority-black districts, the 105th will have thirty-seven. The only black representative who won't return as a result of the rulings is Cleo Fields, who decided not to run when his Louisiana district was invalidated. The only other black incumbent member of Congress to lose in 1996, Connecticut Republican Gary Franks, lost in a 88 percent-white district for reasons that had nothing to do with voting-rights issues. (Basically, he lost because his opponent convinced a majority of voters that Franks was out of touch with his district.) Anyway, for the racial head-counters, Franks's loss was offset when a 69 percent-white Indianapolis district, also free of voting-rights litigation, gave black Democrat Julia Carson a 53 percent victory over a white opponent.

Redistricted black incumbents who chose to test the presumption of white bigotry by facing majority-white electorates found their courage rewarded. White "crossover" voting for blacks was clearest in Georgia, where Sanford Bishop (whose 52 percent-black Voting Rights Act district was displaced by one 35 percent-black) won with 54 percent of the vote. When the Court nixed Cynthia McKinney's 60 percent-black Atlanta-to-Savannah district in 1995, she complained that black officeholders faced "extinction" and was adored as a martyr at the Harvard/*New Yorker* "*Plessy* v. *Ferguson*" conference last spring. But she won her new, 65 percent-white district with 58 percent of the vote. In northern Florida, Corinne Brown (her electorate down from 55 percent to 42 percent black) won 61 percent of the vote.

In Texas, two black women—Democrats Sheila Jackson Lee of Houston and Eddie Bernice Johnson of Dallas—won re-election against multiple opponents in districts reconfigured by court rulings to contain fewer

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black voters. Actually, their former black constituents had been replaced mainly by Mexican-Americans, not whites; still, their districts were a little bit whiter and a lot less black. So it's remarkable that Lee, whose constituency had gone from 51 percent black to 42 percent black, won 77 percent of the vote against three opponents, and that Johnson (down from 51 percent to 44 percent black) won 50 percent of the vote against five opponents, two of them fellow Democrats.

Why didn't the predicted "evisceration of the Voting Rights Act" occur? Because, as the racialists refuse to acknowledge, the landmark 1965 law itself wasn't at stake in the Court rulings. Only their recent, ill-advised amendments to it were at risk. The original VRA never confused the right to vote with any supposed "right" to elect a candidate presumed to be the choice of a racial group to which one is presumed to belong politically as well as biologically. Yet in 1982, after the Court set stringent standards for proving discriminatory intent by district line-drawers, voting-rights activists amended the VRA to make racially disparate *impact* (measured by comparing the proportion of a jurisdiction's elected non-whites to the proportion of its non-white residents) weigh as heavily as *intent.* (This effort had help from Republican Party operatives who saw that giving non-whites "their own" districts would whiten adjacent ones for the GOP.) The original Voting Rights Act prevented white party bosses from cutting up existing minority communities to deny them viable districts. The post-'82 Voting Rights Act said, in effect, that plaintiffs no longer had to prove discrimination in court; they merely had to show the Justice Department enough racial disparities to trigger racial gerrymandering.

Elevating "impact" over "intent" is what most civil-rights law is now about. It is the kind of overreaching that the Court began rejecting in 1993—and that the racialists defended unthinkingly, because it had become their status quo. "Right now," Selwyn Carter of the Southern Regional Council told *The Village Voice* this year after the Court invalidated the Texas districts, "two things can change the situation: We could get a new Supreme Court justice who supports democratic values. And minority voters ... can begin to mobilize." He and other activists and liberal editorialists missed a third option: enough white voters could support democratic values strongly enough to cross racial lines.

It was a big thing to miss. Last June's *Times* editorial accused the Court of ignoring the "inescapable fact that racially polarized voting makes it hard to elect minority candidates in majority-white districts." Yet it wasn't advocates and judges but millions of white voters who made L. Douglas Wilder the governor of Virginia and Carol Moseley-Braun a senator from Illinois; who elected a dozen blacks as the mayors of big, majority-white cities and, since 1972, sent Andrew Young, Alan Wheat, Harold Ford, J.C. Watts, Gary Franks and Julia Carson to the House—all in majority-white districts and without voting-rights litigation.

You might think that activists and journalists who believed white voters were so ineradicably racist that black Americans could be elected only with state-mandated gerrymandering would be delighted to find it unnecessary. But the NAACP, the ACLU and the *Times* editorial board aren't celebrating the recent victories. "I must confess I was surprised," says the ACLU's McDonald, "but it is a mistake to rely on anecdotes to show that voting is no longer polarized." The NAACP's Penda Hair says she intends to study exit polls and racial counts of registered voters before deciding what the results mean. No sifting of the results, though, can deny the obvious: even if every black voter in the Georgia and Florida districts went to the polls and half the whites stayed home, Bishop, McKinney and Brown got a lot of those white votes. Yet, more than a week after the election, the *Times* editorial page had yet to recognize, much less applaud, the "fair-minded Americans" who had re-elected blacks in Georgia and Florida.

Some VRA-district defenders are arguing that the November 5 victories actually prove racial gerrymandering essential. Without it, McDonald and Hair claim, the victors would never have become incumbents in the first place and so wouldn't have had the standing and track records white voters found credible this year. But, if that's true, then the activists are conceding that something fairly ordinary *does* count more than race, even in places where it never did before. So much more, in fact, that the list of blacks, like Wilder and Braun and Indiana's newly elected Carson, who have won office without racial remedies, is growing. The real lesson of 1996 is that activists should stop dismissing such victories as aberrations and start studying them as precedents.

"We need electoral arrangements that deliver the right messages," wrote voting-rights analyst Abigail Thernstrom in *The Washington Post* in 1991. "And the right messages are: that we are all Americans, that we're in this together, that the government thinks of us and treats us as individual citizens with individual (not group) rights, that whites can represent blacks and blacks can represent whites, that we have no need for legislative quotas since distinct racial and ethnic groups are not nations in our society.... "

Racialists have dismissed Thernstrom's words as naïvely ahistoric or, worse, as pieties covering racism. But on Election Day the words took on an historic ring. "I am not your African American candidate, I am the Democratic candidate for Congress," Julia Carson had said, sounding the winning note that unnerves racialists because it announces that their remedies aren't needed. Representative John Lewis, who defied vigilantes to register black voters in the '60s, said in 1992 that he'd hoped "to create an interracial democracy in America ... not separate enclaves or townships. The Voting Rights Act should lead to a climate in which people of color will have an opportunity to represent ... all Americans." He risked his life for that vision. Is it too much to ask now that others give up their fantasies of racial destiny? •