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Voting Rights, Reapportionment, and Majority-Minority Districts

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Voting Rights, Reapportionment and Majority-Minority Districts

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Thesis: The challenge is to navigate the untrodden area of reapportionment, in particular majority-minority districts. The Supreme Court has ruled in various reapportionment cases, yet these cases continue to plague the dockets of the United States Supreme Court. The focus of research is to evaluate the new phenomenon of majority-minority districts as it has progressed through constitutional amendments, civil and voting rights acts, and Supreme Court cases, all of which culminate in the 1992 elections. The 1990 Census and reapportionment were the birth of majority-minority districts. In creating these districts, one must look at the most effective percentage breakdowns in each district. Will the barest majority be sufficient or do states need to create safer majorities? Through research of past legislation and Supreme Court cases, analysis of current problems, and study of initial results of majority-minority districts, I will offer to political science information organized in such a way that is currently unavailable.

Title: "Voting Rights, Reapportionment and Majority-Minority Districts"

Method of Research: A historical evaluation of constitutional amendments and their significance to reapportionment will be made in order to make clear the constitutional basis for minority rights.

A historical evaluation of precedent United States Supreme Court cases is necessary in order to establish the trend toward majority-minority districts.

The Civil Rights Act of 1866-67, the Civil Rights Act of 1964, and the Voting Rights Act of 1965 will be historically investigated because each aids in forming the foundation of majority-minority districts. Each act will be evaluated in relation to its role in the trend toward reapportionment

The preliminary results of the majority-minority districts created for the 1992 elections will be analyzed in order to evaluate the early success of these districts in providing minority representation.

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I. INTRODUCTION

The dilemma of apportionment has plagued this country since its beginnings. The United States has become a haven for racial diversity, and this makes for problematic districting procedures. Principal among these are majority-minority districts and their legality. The state designed majority-minority districts with the purpose in mind of creating favorable odds for the election of a minority candidate in a given district. Through a strategic drawing of voting district lines to encompass a majority of minority voters, states achieve this purpose.

A perplexing problem of the 1990s has been one of reapportionment and redistricting. The allocation of congressional districts among the states is called apportionment. After the feat of reapportionment is accomplished, the actual redrawing of district lines, which is called redistricting, takes place. (Congressional Digest Oct. 228) Two key questions arise in redistricting and the

creation of majority-minority districts. One question concerns constitutionality and the other deals with practicality. The constitutional question addresses the legality of the majority-minority district and the power of the federal government to mandate states to implement an apportionment system which clearly benefits racial minorities. The practical question is, if such districts are constitutional, what would be the most efficient percentage breakdowns in each district? Should one draw lines with the barest majorities in order to have a greater number of majority-minority districts, or would a more practical decision be to draw fewer districts with a higher percentage of minorities in each?

Although an urgent problem in the 1990s, apportionment has been one of a plethora of problems dealing with suffrage. In order to effectively analyze and critique, one must go back and trace the question of apportionment from its roots. These beginnings go back to the Constitution, run through countless civil rights and voting acts, and are ultimately interpreted in the courts of this land. One must recognize that the protection of minority rights has become one of the

purposes for reapportionment, hence the creation of majority-minority districts.

II. LEGISLATION

A. Amendments

The first governmental action affecting voting is found in the Tenth Amendment. The Tenth Amendment gives states the power to decide who may vote. The text reads as follows:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. (Dumbauld 55)

The Bill of Rights' purpose was to limit the sovereignty of the federal government. (Dumbauld 132) The Tenth Amendment specifically stated this. Since no federal law had been set forth regulating voting, on the basis of the Tenth Amendment, the state governments had the right to regulate voting. After the civil war, this led to racial discrimination at voting polls in virtually every state.

Upon passage of the Thirteenth amendment, slavery was abolished, and blacks were given citizenship, therefore, when

the Fourteenth Amendment refers to the citizens of the United States, it is for the first time making reference to black citizens.

The Fourteenth Amendment sprung from this problem of post-war discrimination at the polls, and it guaranteed rights and immunities to citizens in every state.

The Fourteenth Amendment states the following:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property; without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Curtis 1)

The intent of the Fourteenth Amendment was to apply the Bill of Rights to the states, but later it was interpreted in various ways. One such interpretation was in relation to suffrage. Voting is an important privilege of a citizen of the United States, therefore, the clause, "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," gives the privilege to vote to black citizens. This amendment became

the basis for the Voting Rights Act of 1965 which will be discussed later. (Donald 23)

Controversy ran rampant across the country, and immediate voting rights were not given to Negroes as a response to the Fourteenth Amendment. This prompted the writing of the Fifteenth Amendment, which dealt specifically with the problem. The early draft read as follows:

> Representatives shall be apportioned among the several States which may be included within this Union according to their respective number of persons in each State, excluding Indians not taxed: Provided, that whenever the elective franchise shall be denied or abridged in any State on account of race or color shall be excluded from the basis of representation. (Donald 23)

This proposal was criticized for allowing exclusion of Negroes at the polls to occur with penalty. Senator John B. Henderson of Missouri introduced a much stronger, more explicit amendment that, "no State, in prescribing the qualifications requisite for electors therein, shall discriminate against any person on account of color or race." This form, which adamantly prohibited racial discrimination was much like the final draft of the bill, but was voted down by a great margin. (Donald 23) The final draft of the

amendment experienced a very difficult journey to ratification. After much modification, it read as follows:

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
> The Congress shall have the power to enforce this article by appropriate legislation. (Donald 71)

This final version specifically addressed the issue of voting and slavery, and primary foundations were laid for Negro suffrage.

In relation to apportionment, it is noteworthy to add that the greatest debate over the Fifteenth Amendment was that of office holding. The Republicans of the North were more concerned with counting northern Negro votes than electing southern Negroes to office. (Donald 71) William Stewart, a member of the conference committee, pointed out that each senator wanted a different set of reforms. The greatest concern, however, was to give the Negro suffrage. Stewart called upon his fellow members to realize, "the ballot is the mainspring, the ballot is power; the ballot is the dispenser of office." Henry Wilson, a fellow member of the conference committee, was another who criticized the committee's failure to obtain office holding reform. Perhaps

this foreshadowed today's problem of malapportionment. (Donald 74)

A last amendment which must be noted is the Twenty-fourth. This particular amendment dealt with a device called the poll tax which was intended to keep blacks from voting. This practice excluded poor blacks from participating in the political process. It was not until 1964 with the passage of the Twenty-fourth Amendment that the poll tax was outlawed. However, the amendment applied only to federal elections. In Harper v. Virginia State Board of Elections (383 The United States Reports 663, 1966), the Supreme Court ruled that all poll taxes were unconstitutional. (Bardes, Schmidt and Shelley 150)

B. Civil Rights and Voting Acts

Litigation through Civil Rights and Voting Rights Acts was another form of law which also laid a basis for today's apportionment issue. The Civil Rights Acts of 1865-1877 were of importance. After the radical Republicans pushed through the Thirteenth, Fourteenth and Fifteenth Amendments to the

Constitution, Congress drafted a series of civil rights acts to further enforce these amendments.

In 1866 Congress passed the first civil rights act despite the veto of President Andrew Johnson. The act was a landmark one because it gave citizenship to anyone born in the United States and gave American Negroes full equality under the law. The act provided for enforcement by commanding the president to enforce the law with national armed forces.

On May 31, 1870, Congress passed one of the most important of the six civil rights acts of the nineteenth century. It provided punishment for interfering with the right to vote as protected by the Fifteenth Amendment or the Civil Rights Act of 1866. Also of significance was the Civil Rights Act of April 20, 1872. This act set forth specific punishments, detailing punishment for failure to adhere to this act. It made it a federal crime to deprive an individual of rights that had been guaranteed in the Constitution and other federal laws. (Bardes, Schmidt and Shelley 135) The civil rights acts of the 1870s are significant because they set precedents that congressional

power would encompass not only governmental actions, but private ones as well.

As can often be the case, the laws set forth by the government did little in reality to secure the equality and welfare of blacks. In the Civil Rights Cases of 1883, the Supreme Court held that the enforcement clause of the Fourteenth Amendment was limited to correcting actions by states in their official acts; hence actions in the private sector were legal. This Supreme Court decision was praised by the country; thus, twenty years after the Civil War, the nation forgot the condition of the black community in the prewar South. Although the other civil rights acts were not specifically repealed by Congress, they became dead letters in the statute books. (Bardes, Schmidt and Shelley 136)

The Civil Rights Act of 1964 is currently the most far reaching bill of civil rights. It prohibited discrimination of the basis of gender, race, color, religion, and national origin. The most pertinent provision set forth in the act was that it "outlawed arbitrary discrimination in voter registration." It is believed that, aside from the changing attitudes of the American public, this act was passed in

honor of the martyred President John F. Kennedy. (Bardes, Schmidt and Shelley 145)

The Civil Rights Act of 1965 was passed as a response to Dr. Martin Luther King Jr.'s fifty mile march from Selma to Montgomery promoting black suffrage. The act had two major provisions. The first provision prohibited discriminatory voter registration tests. The second section provided for federal intervention in registration and voting procedures in any state that discriminated against a minority group. (Schmidt 158)

When the Voting Rights Act was passed in 1965, it was a simple law. Its purpose was to give black Americans the ballot; however, by the 1960s and 1970s, it became obvious that it would be necessary to take greater steps in order to give minorities a real voice in the country. Since the mid-1970s, the power of the Voting Rights Act as amended by the Congress and interpreted by the courts has been to prevent discriminatory election practices from muffling that voice. (Cain 17)

C. Grandfather Clauses, Literacy Tests and White Primaries

Through the years Americans have been creative in developing ways to keep black citizens away from the polls. This has always been primarily an action of southern states. Various procedures were constructed which aided in keeping blacks from voting. These methods included literacy tests, grandfather clauses, and white primaries. Often African Americans were denied the right to vote because such tests asked potential voters to read, recite, or interpret complicated texts, such as a section of a state constitution, to the satisfaction of local registrars. The grandfather clause was also used, and it stipulated that if one's grandfather had not voted in the district then the present citizen was not allowed to vote which excluded blacks whose grandfathers had been slaves. (Bardes, Schmidt and Shelley 158) Some states even excluded blacks before the general election by holding all white primaries.

There were a great number of counties in the South where less than fifty percent of those who were of voting age were registered to vote. Federal voter registrars traveled all

over the South registering black voters who had been restricted by local registrars. It was not until Guinn v. United States (238 U.S. 347, 1913) that the Supreme Court held that such grandfather clauses were unconstitutional. Oklahoma and other southern states used a grandfather clause in accordance with literacy tests to deny African Americans the right to vote. As previously described, the state demanded that a literacy test be taken by all potential voters, but because such a test could disqualify illiterate whites as well as illiterate blacks, the state used the literacy test in conjunction with the grandfather clause by adding that the state may exempt those people whose grandfathers were eligible to vote in 1860. The law was blatantly unfair; it was also unconstitutional, according to the Supreme Court decision in 1913, Guinn v United States. (Edwards, Lineberry and Wattenberg 175)

To render African-American votes ineffective, most southern states also used the white primary, a device that permitted political parties in the heavily Democratic south to exclude blacks from primary elections. This deprived blacks of a voice in the real contests and let them vote when

it mattered least. Smith v. Allwright (321 U.S. 649, 1944) outlawed the white primary. In May 1932 the Texas Democratic party passed the following resolution to its convention:

> Be it resolved that all white citizens of the State of Texas who are qualified to voted under the Constitution and laws of the State shall be eligible to membership in the Democratic party and, as such, entitled to participate in its deliberations.

This was written as a result of a law enacted by the Texas legislature in 1927 authorizing political parties to establish qualifications for party membership. As a result of this resolution, Lonnie Smith, an African American, brought suit against Allwright, an election judge, who refused to allow him to vote in a Democratic primary at which candidates for state and national office were to be selected. The court found that in spite of a state's freedom to conduct elections in a fashion which they deemed appropriate, this provision was limited by the United States Constitution. The court ruled that the white primary was in direct violation of the Fourteenth Amendment, which forbids a state from making or enforcing any law which abridges the privileges or immunities of citizens of the United States. It also violated

the Fifteenth Amendment, which specifically states that any denial or abridgement by a state of the right of citizens to vote on account of color is illegal. Thus, white primaries were outlawed, and minorities gained momentum in their quest to obtain elected office. (Chase 1394)

III. SUPREME COURT CASES

A. One Man - One Vote

Once the court decided to intervene, it became the primary force for upholding minority rights. Colegrove v. Green (328 U.S. 549, 1946) ruled, by a vote of four to three, that malapportionment of congressional districts by the Illinois state legislature did not present a justiciable issue. The court based its decision on the fact that malapportionment raised a political question and therefore not one on which the court could rule. (Butler and Cain 27)

The Warren Court in the 1960s proved instrumental in significant public policy issues by reversing the ruling of Colegrove v. Green in Baker v. Carr (369 U.S. 1986, 1962). The court faced a decision much like the decision it

confronted in Colegrove v. Green in Baker v. Carr. In the case from Tennessee, Baker v. Carr, the court once more confronted the issue of malapportionment. Tennessee had not reapportioned its state legislative districts since 1901, and the disparities were pronounced. Thirty-seven percent of the voters elected over sixty percent of the State Senate, and forty percent of the voters elected sixty-four percent of the house. The court agreed with Baker and other plaintiffs that the case raised a Fourteenth Amendment equal protection issue. (Goldon 210) Baker v. Carr ultimately established the principle of one man-one vote.

Baker v. Carr eliminated the barrier imposed by the Supreme Court when it ruled in Colegrove v. Green that malapportionment was a political question and consequently not justiciable. By rejecting the earlier broad, ambiguous decisions and distinguishing "the defense of political rights from imprudent intervention into political disputes," the court gave full opportunity for legal challenges to state apportionment practices based on the equal protection clause of the Fourteenth Amendment. In a relatively short period of time after the Supreme Court's landmark decision in Baker v.

Carr, the power to determine the broad approach to redistricting passed from Congress and the state legislatures to the courts. The history of redistricting has been primarily driven by legal decisions since 1962. (Butler and Cain 27)

B. Equality of Each Vote

In Reynolds v. Sims (1964), the Supreme Court ruled that seats in both houses of a bicameral state legislature must be apportioned on a population basis. The goal is to provide fair and effective representation. After the court ruled in Baker v. Carr that malapportionment was an issue suitable for the courts to exercise jurisdiction over, it remained for the Supreme Court to establish appropriate constitutional guidelines. Although the foundation for one man-one vote was laid down in Baker v. Carr, it was not fully developed until Reynolds v. Sims. In this case Sims and other voters sued various Alabama officials, including Probate Judge Reynolds. The plaintiffs challenged the apportionment of the Alabama legislature which had been based on a 1900 federal census. (Goldon 873) The range in

district populations was sixteen to one for the House and forty-one to one for the Senate. This case concluded that since the weight of a citizen's vote varies with the size of the electorate, a vote in a large district has less value than a vote in a small one. In order to have equally weighted votes, the districts must have equal populations.

C. Federal Regulation of Voting

Reynolds v. Sims established that equally weighted votes must be maintained, but the question of federal regulation of voting was still a vague one. In South Carolina v. Katzenbach (383 U.S. 301, 1966), the court discussed the dilemma of federal regulation. The major issue questioned, at what point after establishing that federally guaranteed rights have been abridged should the government move into a domain previously administered by the state? South Carolina v. Katzenbach ruled on the question of whether state sovereignty should be forfeited at the overlap of national power. South Carolina claimed that sections of the Voting Rights Act of 1965 violated the Federal Constitution. The state asked for an injunction against enforcement of these

sections by the Attorney General. Mr. Chief Justice Warren addressed the state in this way:

> The Voting Rights Act was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century. The act creates stringent new remedies for voting discrimination where it persists on a pervasive scale, and in addition the statute strengthens existing remedies for pockets of voting discrimination elsewhere in the country. Congress assumed the power to prescribe these remedies from section two of the fifteenth Amendment, which authorizes the National Legislature to effectuate by 'appropriate' measures the constitutional prohibition against racial discrimination in voting.

Finding the questionable sections of the Voting Rights Act to be appropriate and consistent with all other provisions of the Constitution, the court denied South Carolina's request. The court further ruled that Congress appropriately exercised its authority under the Fifteenth Amendment to enact the Voting Rights Act of 1965. (Goldon 374)

Katzenbach v. Morgan (384 U.S. 641, 1966) also upheld the Voting Rights Act of 1965 by citing the Tenth Amendment. The Tenth Amendment states that those powers not specifically delegated to the federal government are reserved for the states. Katzenbach v. Morgan established that citizens may not be prohibited from voting on the basis of this amendment.

(Goldon 781) The 1965 Voting Rights Act contained a provision that no individual who had successfully completed the sixth grade in a Puerto Rican public school or in a private school accredited by that territory could be excluded from voting. In many of the schools, the language used for instruction was other than English and students were denied the right to vote simply because they could not read or write English. In New York the existing law specified that no person would be eligible to vote, however satisfactorily other registration requirements were met, unless the individual could read and write English. In an effort to bar the consequent enfranchisement of several hundred thousand New York City residents who had migrated from Puerto Rico, Morgan took action. Morgan, a registered voter of New York City, sought an injunction prohibiting the U.S. Attorney General and the New York City Board of elections from complying with the act. The district court, finding for Morgan, held that this provision was covered under the Tenth Amendment. The Supreme Court concluded that the Equal Protection Clause must be enforced, and the

minority voter achieved a more insured status as a voter. (Chase 1405)

D. Annexation

In Gomillion v. Lightfoot (364 U.S. 339, 1960) the Supreme Court decided to enter the "political thicket" of Colegrove v. Green by striking down the Alabama legislature's attempt to redraw the city boundaries of Tuskegee to exclude nearly all black voters. (Butler and Cain 162) An act passed by the Alabama legislature in 1957 redefined the boundaries of Tuskegee from a square shape to that of a figure with twenty-eight sides which excluded from the city nearly all of its African American voters. However, the act did not exclude any voters who were white. African American residents headed by Charles Gomillion brought suit against the mayor, Phil Lightfoot, and other city officials challenging the constitutionality of the act. Due to the fact that the state never suggested any other purpose for the district lines which it had drawn, the complaint of racial discrimination stood in this case. Although the court

recognized the importance of the state's political power, Justice Frankfurter offered an enlightening quote. "It is inconceivable that guarantees embedded in the Constitution of the United States may thus be manipulated out of existence." This case established that when a state exercised power wholly within its domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right, and racial discrimination would not be tolerated in voter registration. (Chase 1398) Gomillion v. Lightfoot prohibited racial gerrymandering and the drawing of lines in order to water down minority votes.

City of Richmond v. U.S. (422 U.S. 358, 1975) dealt with city wide or ward elections and deemed annexations constitutional in light of their good intentions. In 1969, a state court approved annexation of adjacent territory. The result of this annexation was to reduce the African American population within the city limits from fifty-two to forty-two percent. Curtis Holt, an African American resident, brought suit in a federal district court within Virginia alleging

that the annexation was unconstitutional since it had been undertaken for the racial purpose of diluting the electoral strength of African Americans. Shortly after filing this suit, however, a district court handed down a ruling in City of Petersburg v. United States (1975), striking down an annexation by another Virginia community where council elections were held at-large. The court indicated potential approval should the system of elections there be modified by the adoption of a ward system. For example, to stem any adverse effect that at-large elections would have on the electoral scheme, they would partition the city into nine wards, four with substantial white majorities, and one ward roughly three-fifths white and two-fifths black. One councilman would be elected from each ward. A special master appointed by the district court, however, concluded that annexation still diluted the political power of African Americans and that any arguments advanced by the city failed to outweigh this finding. The district court concluded that the voting power of African Americans was diluted after the election. When appealed to the Supreme Court, it was concluded that the real issue is whether the city in its

declaratory judgement action brought in the District Court carried its burden of proof of demonstrating that the annexation had neither the purpose nor the effect of denying or abridging the right to vote of the Richmond Negro community on account of its race or color. Therefore, since no intentions of fostering racial discrimination were found, the decision was not reversed. (Chase 1410)

E. Basis for Districting

Lucas v. Forty-Fourth General Assembly of Colorado (377 U.S. 713, 1964) said that the proposed policy, which based the drawing of district lines in the state house on population and based the senate on area, was unconstitutional. Andres Lucas and other residents of Denver initiated action against the Colorado legislature which challenged the validity of the legislative apportionment scheme authorized in an amendment to the state constitution. Amendment Number Seven, which took into account additional factors along with population in drawing state senate districts, was approved by the Colorado electorate in

November 1962. In the same election voters defeated Amendment Number Eight, which allowed for the apportionment of both houses of the state legislature solely on the basis of population. This case cited Reynolds v. Sims which held that the Equal Protection Clause required that both houses of bicameral state legislature must be apportioned substantially on a population basis. Under neither Amendment Number Seven nor Amendment Number Eight is the overall legislative representation in the two houses of the Colorado legislature sufficiently grounded on area to be constitutionally sustained under the Equal Protection Clause. Therefore, the court reversed the earlier decision and state house seats could no longer be based upon area.

Each of the preceding Supreme Court cases was instrumental in paving the way for the majority-minority districting dilemma which pervades today's Supreme Court docket. From Baker v. Carr which established "one man-one vote" to Gomillion v. Lightfoot which specifically dealt with the legality of apportionment in order to water down minority representation, each aids in laying the foundation for the present accomplishments in minority rights.

IV. THE DRAWING OF DISTRICTS

A. Technical Aspects

A large problem in the 1990s is reapportionment, and redistricting and the fashion in which it should be carried out in order to best insure minority rights. This is quite often carried out by state legislatures, although several states provide for non-partisan commissions to draw the plans. (Congressional Digest Oct. 228) The Department of Commerce is required to provide states with detailed demographic data, no later than "one year after the decennial census date." In the case of the 1990 Census, the deadline was April 1, 1991, in order to aid them in the drawing of their new districts. (Congressional Digest Oct. 228)

As is apparent, drawing new district boundaries involves complicated technical questions. Therefore, on one level, redistricting is about politics, bargaining and negotiation. On another level, it is about population data, computers, statistics, and census maps. All of these difficult elements combined make it not only difficult for outsiders to understand this game, but virtually impossible to play it.

Not only is this a difficult game for the public to learn, it also varies from state to state. Each state has the common goal of adjusting political districts so that the populations in each are equal, but methods vary greatly. Small states with few congressional seats use little or no software or computational complexity. By contrast, in large states such as California, New York and Texas, redistricting is a complicated technological puzzle. (Butler and Cain 43)

The technical aspects of redistricting are made necessary by the numeric nature of the task and the immense volume of data that is needed to evaluate the racial and political effects of numerous proposals. However, there is deception in the technical appearance of redistricting. Numbers and shapes are not all that redistricting is composed of. Redistricting concerns political power, fairness, and values of representation. The reconciliation of these conflicting values is extremely problematic, and the results are often questionable.

B. Legal Requirements

There are three fundamental legal requirements that affect political boundary drawing. First is the Equal Protection Clause. This clause ensures electoral equality or that each citizen's vote will carry an equal importance. This, in effect, mandates that each district should encompass an equal number of voters. Second, principles of representative government should be upheld. In practice, this would mean that it is essential that each legislator represent the same number of people as every other legislator. Third, is the Federal Voting Rights Act of 1965. Section two of this act prohibits abridging the right to vote by diluting the voting strength of a protected group. (Clark and Morrison 58)

C. Vote Dilution

Providing that protection, however, means that minority groups are given considerations that are not afforded to others. Some critics of the current emphasis of the Voting

Rights Act on vote dilution did not originally object to the law. Critics first believed that the Voting Rights Act simply gave blacks the assurance of a vote. Prior to this law, the court had not recognized the right to an undiluted vote for other political groups or individuals. The original question was that if Republicans, Democrats and those identifying themselves with small parties were not given this right, then why should it be extended to ethnic minorities? Critics believe that minorities are receiving some special new right, and thereby violating the principal of political equality.

The next decade will determine whether this new right will be extended to other groups in the electorate. The most recent court decision on vote dilution, Davis v. Bandemer (478 U.S. 109, 1986), contained a phrase or clause for practically every side of the issue. However, critics feel that if the right to an undiluted vote is given to some ethnic and racial groups and is denied to others that this is a violation of democracy. (Cain 19) Critics find this to clearly be gerrymandering.

D. Gerrymandering

Prior to the 1960s, "gerrymandering" was quite common. Gerrymandering is a term used to refer to the process of drawing political lines to one group or party's advantage in a way that is unreasonable. As was previously mentioned, in 1962 the Supreme Court ruled in Baker v. Carr that State legislative districts must be proportional in relation to representation. Wesberry v. Sanders (376 U.S. 1, 1964) extended this ruling to the House of Representatives paving the way for equal representation.

This outlawed only one form of gerrymandering, to the present date however, those who wish to draw districts strategically can still do so by concentrating an opponent's strength in a few "safe" districts. This method is known as "packing." The opposite of packing is the division of opponent's strength between several districts which is called "cracking." (Congressional Digest Oct. 228) Throughout recent history, minorities have been discriminated against through these methods of packing and cracking, and attempts to resolve this have resulted in laws which provide

protection. While Congress has attempted to enact laws to prevent such practices, no uniform standards exist with which to judge the fairness of districting plans. The current trend is to use the same methods which were used before to discriminate against minorities to give minorities an edge.

V. MAJORITY-MINORITY DISTRICTS

Due to this recent trend, redistricting in the 1990s will undergo more intense scrutiny than in the 1980s. Legislative bodies elected from single-member districts must be closely attentive to how minority electoral opportunities are created or obstructed by the positioning of district boundaries. Expected backlash occurred after several majority-minority districts were created for the first time for the November 1992 elections. (Cain 17)

A. Harms to Majority

The common objection to accommodating the most recent Voting Rights Acts is that it offers special representational advantages to some racial and ethnic groups and not to others. Critics argue that entitlement to representation on the basis of race or ethnicity is unfair and dangerous, and inflames rather than cools racial and ethnic tensions. This view runs rampant throughout white middle class citizens. (Cain 17)

One example of this frustration is a white South Carolina congressman who decided to retire after four terms in Washington rather than seek reelection in his newly formed "black district." Representative Robin Tallon chose not to seek reelection. He was pitted against four black members of the state legislature who sought to become the first black representative from the state in more than one hundred years. Black Representative Craig Washington of Texas commented that "there is no such a thing as a Black district, or a White district, or a Hispanic district, in this Congress of the United States." Representative Washington disputed the

implication that the Voting Rights Act was set up to guarantee only the election of Blacks from specially designated districts, and he argued the that "these districts are created not for the people who run for office but the for the people who live in the area." (Jet 8)

A more current case of white backlash against majority-minority districts is Shaw v. Barr (1992), which was brought before the Supreme Court on December 7. North Carolina has one of the nation's most clearly gerrymandered maps. The court was to decide whether the map - drawn by the state's Democratically controlled legislature and approved by the United States Justice Department - discriminated against white voters.

Five white people sued to overturn the redistricting plan, claiming that it constituted unlawful racial gerrymandering. That claim had been rejected in April 1992 by a three-judge federal panel in Raleigh, but the plaintiffs appealed that ruling.

North Carolina was forced to reorganize districts when it acquired a new seat due to reapportionment after the 1990 census. North Carolina has a twenty percent black

population, yet it had not elected a black candidate since 1898 until the 1992 elections. The legislature's first map created only one majority-minority district out of North Carolina's twelve districts. The Justice Department rejected this proposal on the basis of the Voting Rights Act and required that two minority districts be created. A map was created which strung together narrow portions of thirteen counties. On election day the two minority districts produced minority office holders. In accepting the suit filed by the five white voters, the justices said they would determine "whether a state legislature's intent to comply with the Voting Rights Act was adopted with invidious discriminatory intent." The decision was not reversed, and minorities again gained considerable ground. (Duncan 1992 3822)

B. Harms to Minorities

However, many critics feel that not only are majority-minority districts unfair to the majority, but that they are also disadvantageous to the minorities which they were

designed to benefit. The claim is that there is an overemphasis on "safe black districts." This strategy has meant the redrawing of some majority-white districts, such as Atlanta's fifth district, Tennessee's ninth, or Illinois's seventh, that elected black representatives before being redrawn to have a black majority. By raising the black vote in each of these districts to majority status, black votes are taken from other districts where they are needed more than in those which are already producing minority representatives.

Even if black people, twelve percent of the United States population, held twelve percent of the political offices, they would be handicapped in that they could not make a difference in Congress unless aided by the white majority. There is no doubt as to the recent success of producing minority office holders, but in the long run such arrangements could hinder the promotion of black strength. Proportional representation could also rob white legislators of their feeling of commitment to black voters. (Swain 51) Therefore, not only are there critics of majority-minority districts who feel that they give minorities an unfair

advantage, but there are those who feel that such an arrangement hinders minority power in politics.

A second way which critics anticipate majority-minority districts will hurt blacks is in the area of voter participation. As black voters are concentrated nationwide into fewer majority-minority districts, it could exacerbate the problem of low voter turn out among the black population. Political and cultural factors already combine to repress participation in districts with large black majorities. (Donovan 563)

It is argued that majority-minority districts discourage voter turnout in two specific ways. First, blacks feel a sense of unity when they feel that they are competing in a hostile environment. This hostile environment is made much more pleasant through the creation of a comfortable majority, and blacks feel no need to unify. This in effect discourages blacks from going to the poll for the reason of unity. Second, the trend in majority districts is to create districts which are safe or have a sizeable majority. This will lead the black voter to again feel that one vote will make little difference in electing a minority candidate in

such a comfortable majority. Each of these arguments is quite logical, yet there is no evidence of a decrease in black participation at the polls in the 1992 elections. (Donovan 564)

C. Majority-Minority Districts and Democracy

The courts have been very cautious in their characterization of the suffrage rights that the Constitution and the Voting Rights Act give minorities. They have continued to deny that minorities have a right to be represented in proportion to their population. The courts speak of these majority-minority districts as more of a temporary medicine to cure the disproportional representation of minorities than of a permanent situation.

This country must continue to question to what degree a democracy should give special recognition to disadvantaged minorities. The nation must deal with the long standing dilemma in democratic theory: how should minority rights be balanced against majority will in a form of government which

derives its power and legitimacy from the consent of the constituents? (Cain 17)

Critics agree that the problem is simple. By attempting to remove barriers to minority participation in politics, the reformers have in reality launched yet another system of racial separation, carving up real communities as cynically as the older gerrymanderers once did. An example is the preposterous X-shaped district in New York City. This district cuts through a dozen different school districts in order to group scattered Hispanics in Manhattan, Queens, and Brooklyn. At some points this district is only one block wide. When an unpopular Jewish candidate nearly won his party's nomination, Hispanics were outraged that a non-Hispanic ran in the newly formed Hispanic district. The assumption is that Americans are capable of only voting on the basis of race, and that minority candidates must therefore, be given seats. This is the assumption on which this entire policy is founded. One study concludes that Asian-Americans in California have a large share of political power and gained it through winning the black and white vote of districts which went unaltered. (Leo 33) It is argued

that racial gerrymandering is being shoved through as quickly and quietly as possible in order to avoid social upheaval. This assumption is made on the basis of the vague rulings in recent Supreme Court cases dealing with the Voting Rights Act.

VI. REDISTRICTING

Yet, looking back over the nearly thirty years following the Baker v. Carr decision, it is clear that the Court's decisions have not lessened the controversy of redistricting. The increasingly strict application of "one person one vote" may have taken away a powerful political tool, malapportionment. Other redistricting concerns are as intense as ever. (Butler and Cain 39)

A. State Action

Despite attempts for nearly three decades by the United States Courts to solve these redistricting concerns, redistricting remains primarily an exercise in state action.

Despite the various national laws and court cases previously discussed, the politics of redistricting are still protected by state sovereignty. For example, states are free to decide individually whether state legislatures or private groups will draw their state lines. States are even allowed to mandate additional criteria beyond that required by the federal government. All of this will likely affect the results of the districting. (Butler and Cain 92)

B. Federal Action

Redistricting remains an issue for the federal government, but variation from state to state will most likely begin to diminish in the future. The principal of "one man-one vote" has eliminated some long-standing practices, for example, basing state senate seats on counties and strictly relying on county lines as the basic building blocks for congressional and state districts. If the court develops a more precise definition of vote dilution and takes a more aggressive position on political gerrymandering, even

more uniformity among states could result. (Butler and Cain 115) In the 1990s, the issue which should move to the forefront will be the meaning of vote dilution.

If what is meant by undiluted vote is more precisely defined as proportional representation for parties and groups, the single member district system used for congressional elections will be severely tested. In the immediate future, states may try to use creative redistricting arrangements to persuade groups that want greater representation, but this may not prove to be enough. If this is the case, the failure to create political fairness through redistricting may lead to desertion of the single-member, basic plurality system of electing Congress. (Butler and Cain 155)

VII. ALTERNATIVES TO CURRENT SYSTEM

If abandonment is a real possibility, then alternatives must be considered. If millions of Americans feel under-represented and incapable of bringing positive change to the political system, then there is error in the system. Some

people feel that there is a large discrepancy between the number of political viewpoints in the general population and the amount of representation at every level of government. The argument is that this lack of efficiency is due to the plurality voting system. (Cossolotto 22)

A. Proportional Representation System

Some argue that the United States should take a look at other countries and try to recognize characteristics which are more appropriate for a democratic government. In particular, those governments of Western Europe are a good example. Electoral systems may be divided into two basic groups: the plurality, or "winner-take-all," method and the party-list method with proportional representation. The plurality system which is used by the United States elects representatives by a plurality, or sometimes a majority, of voters in a single-member district. On the other hand, in proportional representation systems, the country has divisions of multimember districts. Various parties offer lists of candidates within each member district. The voter

casts his or her vote for a party instead of a candidate. The seats are allocated among the parties in relation to the proportion of the total vote they received. (Lind 75)

The United States has inherited the plurality method from Britain, which still uses this type of election. Australia formerly used this system, but has since broken from it in favor of a more modern method. (Lind 75) Proportional representation is not unknown to the United States. Between the 1920s and 1950s it was used in approximately two dozen cities including New York. City councils with leftist members and strong black presences frightened politicians and voters in the '40s and '50s, and the proportional system was voted out everywhere. There is even speculation that this form of government was ousted by "shady tactics." Interestingly the Cambridge, Massachusetts city council and New York's community school boards still have proportional representation, and forty-five percent of Cincinnati voters supported reestablishing it in a November 1991 referendum. (Cossolotto 22)

Under this proportional system, critics speculate that distortions in racial as well as party representation would

be kept to a minimum. Distortions of this sort now exist in the United States. In 1990 the Republican Party won forty-five percent of the popular vote, but was reduced to thirty-eight percent of the seats in the House. The Democrats, with fifty-three percent of the popular vote, obtained sixty-one percent of the seats. Nothing comparable to the distortions of the 1990 election would be possible in a proportional representation system.

Another advantage of the proportional representation system deals with how it hinders gerrymandering by making it virtually impossible. Every party or voting block in multimember districts is represented more or less in proportion to its strength in the entire district. Only in a plurality system, where an area of several blocks may make the difference between losing everything and winning everything, is there a strong incentive to gerrymander. (Lind 75)

Critics of the plurality system offer another advantageous aspect of the proportional system. Racial gerrymandering would tentatively be eliminated without curtailing the voting strength of ethnic minorities. Federal

courts have gone from striking down a strangely irregular twenty-eight-sided-district drawn to dilute the black vote and prohibit them from combining their strength to the opposite end of the spectrum where equally strange districts were created in order to promote the election of black candidates. Under proportional representation, minorities could find it much easier to elect a candidate of their own ethnic group, if they so desired. Critics claim that this would prevent them from being maneuvered into such a position by being "electorally ghettoized" in safe minority districts. Not only would this system benefit more recognized minorities; such as black and Hispanic, but would benefit those minority groups which are too small to have districts designed for their benefit. (Lind 76)

Opponents of the proportional representation feel that the system would harbor dangers through too many candidate choices. The proponents find this argument to be a lack of faith in democracy. Whether it would prove beneficial in the long run is questionable, but it does provide an alternative to the current problems of reapportionment in the United States' system of plurality.

B. Cumulative Voting System

Another alternative to the current system is of cumulative voting. This is a simple, yet radically different concept. Each voter is given as many votes to cast as there are seats to be filled. Voters have the liberty to distribute their votes among candidates in any way they choose. This allows the voter not only to vote for a candidate, but to vote with varying degrees of intensity. For example, in a five way race, a voter can cast one vote for each candidate, vote three times for one and twice for a second, or cast all his votes for one candidate. In this way, minority groups with common interests and strong preferences for a particular candidate can ensure his or her election, despite a hostile majority. This system would tentatively have the same results as the current system, but would alleviate the problem of drawing districts and the difficulties which minority districts entail. The fewer district lines to be drawn, the fewer invitations to gerrymander.

Cumulative voting is argued to be better for the minority as well as the majority. Voters voluntarily define their own interests and the voting affiliations that best promote them. Adopting this approach would avoid any assumption that black or Hispanic voters are monolithic groups with unitary political values and interests. (Pildes 16)

Opponents of the cumulative voting system argue that it may be too confusing. This reflects society's fear of trying new things. Yet, this system is not as new as it may seem in this country. It is already used by some cooperations in electing boards of directors. This system has proved effective at least once in America in 1987 when New Mexico used this system to elect its city council. This was the first such election in this century. Each voter had three votes to cast for three city council seats. Although the city's population was twenty four percent Hispanic and five percent black, it had been almost twenty years since a black or Hispanic candidate had been elected at-large. A Hispanic was elected to the council. She was only fourth in the number of voters who supported her, but due to the fact that

her support was particularly intense, she finished third in total votes.

It is possible to amend the Voting Rights Acts so that courts could consider cumulative voting as one option for redressing violations of existing law. This form of government may fail on a larger scale, but in the wake of the present turmoil in minority representation, all alternatives ought to be considered. (Pildes 17)

VIII. RESULTS OF MAJORITY-MINORITY DISTRICTS IN THE 1992 ELECTIONS

Although there is a need to consider the alternatives, the majority-minority districts as created for the November 1992 elections, fared quite well. Of the sixteen new black members of Congress, thirteen are from newly formed majority black districts which were created through reapportionment. The three other black freshmen are replacing retiring or defeated black incumbents. This is a net increase of thirteen, the largest since Reconstruction. The term freshmen seems inappropriate since most will be giving up

senior committee posts in their state legislatures when they move to Washington.

The youngest candidate was twenty-nine year old Cleo Fields of Louisiana, who served as the chairperson of the committee that passes on all major state appointments. The eldest candidate, sixty-six year old Carrie Meek of Florida, was chairperson of a major appropriations subcommittee in her state senate. Each, along with their fellow freshmen, will bring a wealth of political and legislative experience and diversity to Congress. (Smothers 17)

The thirteen new black members of Congress elected by majority-minority districts experienced varying degrees of majority cushion and intensity in their races. Alabama produced its first African-American Congressman since Reconstruction in the 1992 elections. Earl Hilliard decided to run after incumbent Claude Harris retired when redistricting made the seventh district more than two-thirds black. Hilliard ran a bitter primary run-off race and was pitted against another black candidate. In the general election Hilliard had no difficulty winning with eighty percent of the vote. (Congressional Quarterly Dec. 37)

Florida's third congressional district is one of the most distorted. It is shaped somewhat like a wishbone or a horseshoe and stretches through fourteen counties. The distorted district only yields a 50.1 percent majority for the black community and produces a very nasty race. Corrine Brown easily beat another black candidate, but she was forced into a run-off with the only white candidate, Andrew Johnson, a former state representative. Johnson made Brown's support of the extremely distorted district an issue. Color played a large role in this race, and Johnson called himself "the blackest candidate in the race" because of his position on black issues. In the end, Brown won with sixty percent of the vote. (Congressional Quarterly Dec. 64)

Florida's twenty-third district was also drawn to give the black population a majority. The newly drawn district brought about heated debate between Alcee Hastings and his opponent, a white incumbent. Lois Frankel argued that her record demonstrated devotion to the white and black constituents alike. Hastings countered her explanations and commanded that she was a white opportunist and should not run in a district created to elect a minority candidate.

Hastings went so far as to make the comment "The bitch is a racist." Hastings won the Democratic nomination by fifteen percent and, due to the largely Democratic district, went on to win in the general election by thirty percent. (Congressional Quarterly Dec. 73)

The Justice Department took a tough line on Georgia's compliance with the Voting Rights Act in the drawing of its districts for the 1992 elections. The department rejected two proposals, which left the second district with a white majority. On the third attempt the state drew a district which reached far beyond its rural base into urban communities and encompassed a fifty-two percent black majority. This became the third majority-minority district in Georgia. This presents another problem which the clever drawing of districts can create. One may no longer define the second district as a farming community, and hence, it should be represented that way. Sanford Bishop decided to take on the task of representing this district. Despite the fact that a majority of its residents are black, only forty-four percent of its registered voters are black. This made for a very close race. The white incumbent Charles Hatcher

finished first in the primary, getting around forty percent of the vote. The black vote was split and Bishop received twenty-two percent of the vote. In the run-off, by concentrating the black vote, Bishop won by a margin of fifty-three percent to forty-seven percent. (Congressional Quarterly Dec. 75)

Cynthia McKinney, a black Democrat from Georgia, won her race by moving into a newly formed black district. The eleventh district spreads 250 miles long. It was created to provide a second minority-dominated district in the state. It was formed to have a sixty percent black voting-age population. McKinney gained a lot of momentum in her own district by heading the reapportionment fight in the legislature for a third black-majority district in the southwest part of the state. "Against the odds, Mckinney led in the primary balloting and forced a runoff, which she won handily over George DeLoach, the only white candidate of five contenders." She easily won the general election in her heavily Democratic district. (Congressional Quarterly Dec. 80)

Cleo Fields pursued the fourth district seat of Louisiana relentlessly from the time of redistricting throughout the campaign. The results were overwhelming and he garnered forty-eight percent of the vote in a race of eight candidates. This victory was partly due to the opportune district for the twenty-nine year old candidate. The legislature moved the fourth's boundaries north to Monroe, but Fields managed to hold onto his Baton Rouge base, and the crucial student population at Southern University. The district is bizarrely drawn in a Z shape, and its sixty-six percent black population is in both rural areas and the corners of major cities. Field's campaigned hard to win the white voter's support. He played down racial issues and strove to raise the "comfort level" of his white constituency. Perhaps this is how Fields walked away with seventy-four percent of the vote in the general election. (Congressional Quarterly Dec. 90)

The fourth district in Maryland is another which is newly drawn. This new district straddles the Montgomery-Prince George's county line, with about three-fourths of its voters in black majority, Prince George's County, and the

rest in mostly white Montgomery. Albert Wynn decided to target Montgomery's white population and rely on the black base of Prince George to stick with him. It proved to be the appropriate technique, but the result was very close. His closest opponent, Alexander Williams, chose to concentrate on Prince George, where he was already state attorney, and edged Wynn by four hundred votes in that region. Wynn, however, beat Alexander in Montgomery by 1700 votes. It helped Wynn that the voter turnout in Montgomery greatly surpassed that in Prince George illustrating that low black voter turnout can be a factor in elections. (Congressional Quarterly Dec. 91)

The first district in North Carolina was designed to elect an African-American candidate to office. It has a fifty-four percent black voter base. Five black candidates and two white candidates entered the race which left it uncertain as to whom would come out on top. Although fifty-seven percent of the constituents were black, only fifty-one percent were registered to vote. Whites have a history of higher turnouts, especially in run-offs. Despite all this, Eva Clayton made a pledge to be the first black

Congressperson elected from North Carolina in this century and the first woman ever to be sent from her home state. Under the theme of history, Clayton came out on top. (Congressional Quarterly Dec. 118)

North Carolina's twelfth district may be the most maligned newly drawn district. Melvin Watt won this district by praising the virtues of his snake-like district, and down playing criticism that it does not encompass one single community. He was successful over three strong opponents and received forty-seven percent of the vote, a sufficient amount to avoid a run-off. Forty percent of the vote was required in North Carolina for a run off. His victory was promoted by white voters who make up forty percent of his district. They are most assuredly attracted to him due to his less confrontational approach to issues of race. (Congressional Quarterly Dec. 119)

A very interesting race occurred in the thirtieth district in Texas. Eddie Johnson led redistricting procedures by chairing the committee on redistricting and drawing the thirtieth district to her liking. Her action encouraged Texas Monthly magazine to label her as one of

Texas' ten worst legislators. They also compared her to "a two-year-old child on a white silk sofa with a new set of Magic Markers." Despite this bad publicity, the district tailor made for her is sending her to the United States Congress. (Congressional Quarterly Dec. 139)

Virginia also created its first majority-minority district for the 1992 elections. It was created with a sixty- four percent cushion and a Democratic base. Three candidates ran in the Democratic primary, and Robert Scott easily pulled out the victory. In a race that was expected to be hotly contested, there was only a fifteen percent turnout. This sprawling district carves out part of four different southeastern districts. Scott held a great advantage by having represented a portion of this district in the state house since 1978.

The overall perspective of these newly created majority-minority districts is that black candidates will win even in districts of the barest majority. Of all these districts in the 1992 election, only one did not produce a minority candidate, and this was the Hispanic district. As illustrated throughout these various races, the best campaign

strategy for these minority candidates is to appeal to the white voter and to play down racial issues. Black voter turnout is also a key element. Cleo Fields ability to capitalize on each of these issues gave him an overwhelming victory. He played down racial issues and participated in numerous voter registration projects. Therefore, one must conclude that districts only need to be drawn with a small majority and that black candidates should work to be responsive to the needs of the white minority in the district in order to be elected.

IX. CONCLUSION

The tangible proof that reapportionment and majority-minority districts have done what they were designed to do is found in the freshmen class of the 103rd Congress. The amendments, numerous Voting and Civil Rights Acts, and Supreme Court Cases, have laid a foundation on which minority representation may be built. The rights of all citizens are

insured by the Constitution of the United States. The right of minorities to have representation has been assured through the 1992 election, yet the rights of the majority remain in question. Is it right to use the criticized methods of past discrimination in order to contrive districts which will assuredly produce a candidate of a certain color? Is the country in fact moving away from the color blind society that it claims to strive toward? Is there an alternative plan to the one presently used which could more democratically give all citizens a voice? The issues have been clearly defined and discussed, and the reader is left to draw his or her own conclusions.

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