

February 21, 2004

MAKING VOTES COUNT

Elections With No Meaning

Let's hope the presidential contest is a close one this November. Otherwise, many of the voters who go to the polls may ask themselves why they bothered to show up. It's highly unlikely that the contests for Congress or the state legislatures will make them feel as if their votes make a difference. Both parties have succeeded in drawing district lines in ways that cement their power by eliminating contested elections.

The Supreme Court is poised to rule in a case that could put limits on this partisan gerrymandering and put power back where it belongs: with the voters. The plaintiffs have already made a compelling case, but two recent events — an investigation in Texas and a court ruling in Georgia — underscore the need for the Supreme Court to act against the scourge of partisan line-drawing.

Totalitarian nations hold elections, but what sets democracies apart is offering real choices in elections. In recent years, contests for the House of Representatives and state legislatures have looked more and more like the Iraqi election in 2002, when Saddam Hussein claimed 100 percent of the vote for his re-election. In that same year in the United States, 80 of the 435 House races did not even include candidates from both major parties. Congressional races whose outcomes were in real doubt were a rarity: nearly 90 percent had a margin of victory of 10 percentage points or more. It is much the same at the state level, only worse. In New York, more than 98 percent of the state legislators who run for re-election win, usually overwhelmingly. Anyone who knows anything about New York's state government knows that's not because the populace is thrilled with the job they're doing.

A major reason legislative elections are becoming a charade is that the parties that control the redistricting process now routinely follow the dictum of "pack, crack and pair." They pack voters from the other party into a single district and crack centers of opposition strength, dispersing opponents to districts where they will be in the minority. They redraw lines so two incumbents from the other party will wind up in one district, fighting for a single seat. Using powerful computers, line-drawers can now determine, with nearly scientific precision, how many loyal party voters need to be stuffed into any given district to make it impregnable.

This sort of hyperpartisan line-drawing was evident in Texas last year, when Republicans pushed through a plan that, by aggressively packing and cracking Democratic voters, could unseat as many as 8

of the state's 17 Democratic members of Congress. Now a local prosecutor is investigating charges that a political action committee run by Tom DeLay, the House majority leader, may have illegally used corporate contributions to help Republicans take control of the State House of Representatives — control that the party needed to have a free hand in redrawing new Congressional districts. The investigation is revealing just how much planning Mr. DeLay and the national party put into their Texas strategy, which seems to have involved every political player in the state except the voters.

In Georgia, a three-judge federal panel recently struck down the Democrats' blatantly partisan redrawing of state legislative lines in 2001. The ruling is good: the amount of packing, cracking and pairing that went on was indefensible. But the court did not rule, as it should have, that the lines were unconstitutional because they had been drawn in such a partisan way. Instead, it bent existing voting-rights law beyond recognition to hold that the lines violated the one-person-one-vote doctrine because the population variations between districts were too great. But the variations are in the range courts routinely uphold. It seems clear that the court wanted to strike down the districts without wading into the difficult question of whether partisan gerrymandering is unconstitutional.

The Georgia decision is dangerous because the court appears to have decided on the outcome it wanted, and then come up with a legal pretext to get there. It is, in this regard, similar to the Supreme Court's decision in *Bush v. Gore*, when the court's conservatives applied a rigorous equal-protection analysis they have not supported in other cases. (Some Democrats are also asking whether the case means that Democrats' partisan gerrymandering will be illegal, while Republicans' gerrymandering in Texas and elsewhere is allowed.) The principled way to stop partisan gerrymandering — and the way to create a doctrine that can be applied uniformly nationwide — is to hold that it violates the Constitution, something the Supreme Court can do this spring in a Pennsylvania Congressional redistricting case now before it.

Gerrymandering — named after one of the founding fathers — goes back a long way, but computer technology has made it far more pernicious. Districts can be created with surgical precision, taking into account not just party registrations, but also voting history — and line-drawers have become adept at drawing districts to exclude the homes of rival candidates. The populace ends up stuck with the candidates the dominant party inflicts on them, and once those candidates are elected, they, as incumbents, usually have life tenure.

When the justices heard arguments in the Pennsylvania case in December, some of them appeared reluctant to strike down partisan gerrymandering. That is not surprising because most judges have a political background, and many may regard this sort of business as fair game. But the Supreme Court needs to look at the big picture, and help push the United States back toward being a true democracy, not just a country that holds elections.