TRICKS OF VIRTUAL REDISTRICTING
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TRICKS OF VIRTUAL REDISTRICTING

BY LANI GUINIER AND GERALD TORRES

DURING ORAL arguments on the Texas redistricting case March 1, Chief Justice John Roberts asked the lawyer for the Mexican-American appellants: "What's the difference between 'being one' and 'looking like one?'"

Though Roberts was asking about the claim that the Legislature was hiding its partisan shenanigans behind an ersatz majority Latino election district in Southwest Texas, he could easily have been inquiring about the identity of the residents of that district and of their congressman. The question looms large because the legality of the Republicans' mid-decade redistricting will probably rise or fall with the proposition that appearances matter, i.e., that the legality of the plan depends on what the district, the politician who represents it, or the people living inside the district "look like."

That the case will turn on identity, not partisan politics is not surprising since the probable swing voter, Justice Anthony Kennedy, objected that the mapmakers' twists and turns camouflaged a racial "affront and insult" within the partisan landscape. Kennedy grounded his objection in a series of cases in the 1990s, where the court expressed displeasure with Democrats who allowed race to predominate on the map of congressional districts in North Carolina.

In North Carolina, blacks, who were one-fifth of the electorate, had not elected a representative of their choice to Congress for almost a century. Yet Democrats, concerned about the reelection of a white Democrat incumbent, chose not to create a compact district in the southeastern and central part of the state where blacks and Native Americans lived in close proximity. Motivated by their own brand of political engineering, North Carolina Democrats ignored the potentially compact district to fashion instead a majority black "highway district" that followed the lines of a zigzagging interstate. One legislator mused that if you drove down Interstate 85 with both car doors open, you would mow down all the voters in the district. The court objected. Appearances mattered.

Republicans in Texas are now outdoing what the court found so objectionable when practiced by Democrats in North Carolina. In order to shore up support for an endangered Republican incumbent, the Texas Legislature did not merely decline to draw compact districts. They dismantled a compact majority Latino district where the voters, historically excluded from the political process, had begun to express dissatisfaction with the Republican Latino incumbent, Henry Bonilla, giving him only 8 percent of their vote. To shore up Bonilla's chances of reelection, the Legislature removed 100,000 Latinos from the district. To appear to satisfy the Voting Rights Act, they conducted a "voting rights swap meet," trading one group of rural Latinos for another group in the urban state capital.

Highlighting the trade was another highway district, this one stretching over 300
miles twice the length of the offending district in North Carolina. And while the North Carolina district linked urban communities with shared concerns and common media markets, the Texas redistricting links poor rural communities in the Rio Grande Valley to the exclusive white exurbs in Central Texas, breaking up a district where Latinos had organized effectively. Bonilla's new district, which has 359,000 Latinos still stranded in it, is now majority Anglo Republican. It is larger than every state east of the Mississippi and covers two time zones.

In this virtual reality of representation, the politicians in the state legislature are the only real voters. They alone get to make these trades, offsetting the rights of Latinos in South Texas against the rights of Latinos in Central Texas. It is the Republican politicians who decide whether Latino voters in the Valley will be "virtually" represented by candidates chosen for them by Latino voters 300 miles away in Austin or by Anglo Republican voters in the newly drawn and expanded district. In this legislative driven reality, there is no difference between "being" a Latino district and "looking like" one.

Frankly, though, it is the game of redistricting that is mistaken. At the heart of Roberts's question is a profound tension between the rights of politicians and the rights of voters. Should voters trust politicians to decide who best represents the interests of Latino voters in this case, or all voters more generally? Should it be entirely up to the state to decide the difference between "being one" and "looking like one"?

No. The voters, not the politicians, should decide. Districts should reflect linked fates, not linked faces.

All voters should enjoy the freedom to associate and elect representatives who reflect their views, not just their complexion or address. It is time to remind Republican and Democratic mapmakers alike that voters should elect their politicians. Politicians should not select their voters.

NOTES: Lani Guinier, a professor at Harvard Law School, and Gerald Torres, a professor at University of Texas Law School, are coauthors of "The Miners Canary: Enlisting Race, Resisting Power, Transforming Democracy."