

The Washington Spectator / By Lou Dubose

Republicans Launch Game-changing War on Black Voters in the South

Georgia GOP rewrites laws to hedge against growing minority strength.

September 5, 2014

Race and party affiliation are inextricable in this state,” said Georgia House Minority Leader Stacey Abrams in a telephone interview. Abrams, an African-American attorney elected to the General Assembly in 2007, said that more than 90 percent of blacks in Georgia are Democratic voters.

In a state where African Americans make up 31 percent of the population, Democratic candidates, particularly those running for statewide office, are not competitive without the black vote. In any close election, African-American turnout determines which candidate prevails.

The same is true across the South, where the black population has increased 18 percent between 2000 and 2010 (compared to white growth of four percent). Those numbers threaten a Republican hegemony that began when political strategist Kevin Phillips added Richard Nixon’s 43.89 percent to George Wallace’s 13.5 percent of the popular vote in 1968 to devise a “Southern Strategy” that used what Phillips called “the Negro Problem” to create a perennial Republican majority in the states of the former Confederacy.

That majority is slipping away and each successive statewide race becomes more of a challenge because, as South Carolina Senator Lindsey Graham observed in 2012, “We’re not generating enough angry white guys to stay in business for the long term.”

In Georgia, the long term has arrived.

Republicans saw it coming six years ago. The 2008 election unsettled the leadership of the Georgia Republican Party, Democratic state Senator Vincent Fort told me in an interview in his Capitol office in Atlanta. Fort, an African-American professor of history before he was elected to an Atlanta Senate seat in 1996, is the Democratic Whip.

Republican legislators had passed the nation’s second voter-identification bill in 2005, then modified the legislation in 2006 to stay ahead of a lawsuit filed in federal court. Their intent, Fort said, was to suppress the African-American vote.

It didn’t exactly work out as planned.

“In 2008, Barack Obama got 47 percent of the vote in Georgia,” Fort said. “That wasn’t supposed to happen. But civil-rights activists, voting-rights activists, they used the state’s 45-day

early-voting period to really turn out black voters.”

In response, GOP legislators upped the ante, passing two more bills that make voting more challenging—including one that cut the early-voting period in half.

“They have no choice,” Fort said. “They know if they don’t get ahead of the demographics, they lose.” Georgia’s combined non-white population increased from 37 to 45 percent from 2000 to 2010.

Fort said the voter-ID bill demonstrated how serious Republicans are about restricting access to the polls. “But coming back and passing a bill that cut early-voting in half, that showed me that Republicans are playing hard ball,” Fort said. “Real hard.”

First real test

In November, Georgia’s restrictive ballot-access laws will get their first real test. Michelle Nunn, the daughter of former Democratic Senator Sam Nunn, is the Democratic candidate for the U.S. Senate seat being vacated by Republican Saxby Chambliss. Nunn is in a close race with former Dollar Store CEO David Perdue. The African-American vote will likely determine the winner.

Georgia’s ballot-access laws could also shape the outcome of the competitive race between incumbent Republican Governor Nathan Deal and Democratic challenger Jason Carter, the grandson of former President Jimmy Carter.

A Carter win would be a game-changer in Georgia, unless Republicans pick up the one House seat that would provide them a supermajority in both chambers of the General Assembly and allow them to govern by veto-proof legislation.

Michelle Nunn, however, is one of very few firewalls against a Republican takeover of the U.S. Senate. What remains of President Obama’s agenda might hang on election results posted in Atlanta in November.

“The voter-ID bill is big,” Atlanta Democratic Senator Nan Orrock told me. “But it is one part of a much larger whole.”

Orrock, a white liberal who found her way into politics through the civil-rights movement in the 1960s, has represented predominately black Atlanta districts in the Georgia House, and later the Senate, for 28 years.

According to Orrock, the Voter ID Act is best understood as one piece of a broader Republican legislative agenda. That agenda extends beyond voting laws that specifically target minority voters: voter ID, cutting the early-voting period from 45 to 21 days, and a citizenship-verification law that matches databases and scrubs voting rolls.

After Republicans won control of both houses of the General Assembly in 2004, they resorted to race as the primary criterion in drawing the congressional, legislative and even county commissioners' districts, frequently "pairing" Democratic incumbents to force them to run against each other. They packed blacks into racially homogeneous districts and subdivided, where they could, those communities where whites and African Americans had built biracial coalitions of voters.

Atlanta under siege

"Fulton County, this is critical to understand," Orrock told me. "The Republican Party has stripped the power from the African-American community in Fulton County."

Fulton County, which includes Atlanta, is 44.4 percent African American, 7.7 percent Latino and 40.7 percent white. Today, in a coalition with white progressives and Latinos, its African-American majority dominates local government; five of Fulton County's seven county commissioners are black Democrats, but that's likely to change.

For years, Republican legislators criticized the Board of Commissioners for being profligate and inefficient, yet because of Atlanta's demographics, electing a majority has been beyond the Republicans' grasp. They managed to undermine the county's finances by freezing property evaluation for two years and requiring a five-vote majority on the commission to pass a property tax increase. But to "win" a majority of seats on the Fulton County Commission, Republicans embarked on a two-step process that began in the Legislature.

Each county delegation in Georgia's General Assembly controls legislation related to the county it represents. For 20 years, Democrats dominated Fulton County's legislative delegations in the House and Senate. Before Republicans could increase their two-member foothold on the Fulton County Commission, they had to redraw the legislative districts to their advantage.

They did so during redistricting in 2011, extending Fulton County's legislative district boundaries out into whiter, more Republican counties. Until the 2013 elections that followed redistricting, Fulton County was represented by a 14-8 Democratic majority in the Georgia House and a 4-3 majority in the Senate.

Republicans now hold a 13-12 edge in Fulton County's House delegation and 7-4 majority in its Senate delegation.

Once Republicans controlled Fulton County's legislative delegation, they could change the complexion of the county Board of Commissioners.

In the 2013 legislative session, Fulton County's Republican legislative delegations redrew commission district lines to ensure that one of the five incumbent Democrat commissioners will be automatically eliminated (by forcing two veteran African-American Democrats to run in the

same district). They also turned an at-large seat currently held by an African-American Democrat into a new district situated in (majority white) north Fulton County.

While the at-large seat in a majority African-American county was winnable for a Democrat, the new district in the north of the county favors a Republican. If they prevail at the polls in November, Republicans will, by legislative fiat, have taken control of Georgia's largest majority-minority county.

They are just beginning.

For years, Republicans in the General Assembly have been working to turn north Fulton County's suburban municipalities into a separate "Milton County." This act of local secession would leave Atlanta as the seat of a smaller, poorer and much blacker Fulton County. (The city of Milton is 76 percent white and 9 percent African American.)

Proponents of the creation of Milton County couldn't get past the Democratic House Caucus, and House Republicans are one vote short of the two-thirds supermajority required to create a new county.

None of this is a state secret.

Republican House Speaker Pro Tempore Jan Jones promised white suburbanites in north Fulton County that she will "reduce the thumbprint of Fulton County on your lives and pocketbooks such that in a very few years, Atlanta and south Fulton will not fight us" on the creation of Milton County.

There is more to this than re-segregation.

Fort said that for Republicans, creating a blacker Fulton County is as important as creating their own majority-white Milton County.

It is part of a strategy of "packing" African Americans into their own "black legislative and congressional districts," Fort said, which will lead whites to conclude they have no place in the state's Democratic Party.

"Their model is the Mississippi model, the Alabama model, where the Democratic Party is the black party," Fort said.

Race-based legislation

While eight other Southern states have passed restrictive voter-ID laws since Georgia led the way in 2005, Georgia has the distinction of having passed two voter-ID laws in two successive legislative sessions. (The second law, passed in 2006, was a makeover intended to satisfy a

federal judge.)

If there were ever any doubt about the intent of the legislation, it was dispelled by a Department of Justice memo leaked to The Washington Post, which included unguarded comments by the bill's author, Sue Burmeister.

“Rep. Burmeister said that if there were fewer black voters because of this bill, it will only be because there is less opportunity for fraud,” the memo read. “She said that when black voters in her district are not paid to vote, they do not go to the polls.”

In 2005, Burmeister was a GOP state representative from Augusta. She's probably better described as a “sponsor” than the author of the bill.

“The bill was actually written by ALEC,” Emmet Bondurant told me. Bondurant is the name partner in a prominent Atlanta law firm and a veteran civil-rights litigator. He represented plaintiffs who sued to block implementation of the 2005 Voter ID Act.

ALEC is the American Legislative Exchange Council. While it appears to be an association of state legislators, it has been revealed to be a corporate-funded bill mill that produces model legislation used by conservative legislators across the country.

“I wish I had known it was an ALEC bill when we filed our lawsuit,” Bondurant told me. “The appearance was that it was a grassroots movement to deal with voter fraud.”

In 2005, Indiana and Georgia were the first states to pass voter-ID laws, both using ALEC templates. Representatives of ALEC denied any connection until the Washington-based Center for American Progress obtained a copy of the bill and posted it online.

The damning DOJ memo was leaked to The Washington Post by career employees whose reservations regarding the Georgia law were overridden by Bush administration appointees and ultimately by then-Attorney General Alberto Gonzales.

The career staff had recommended the DOJ not “preclear” Georgia's Voter ID Act, as required at the time by Section 5 of the Voting Rights Act. The preclearance provision required states with a history of ballot-box discrimination to “preclear” any changes to voting laws with the Justice Department. This essential feature of the Voting Rights Act was overturned by the conservative majority of the U.S. Supreme Court in a 5-4 decision in July 2013 (see *The Spectator*, February 1, 2013).

When the DOJ memo came to light, Burmeister said her remarks sounded “pretty harsh.” But she stood by her allegations, which were anecdotal and based on an interaction she said she had with a former Augusta mayor who had died the previous year and had been convicted of extortion in 1984.

The memo was straightforward and critical. But some of what it described bordered on the comedic. The Republican sponsor of Georgia's Voter ID Act had used a personal anecdote that had nothing to do with individuals impersonating voters and could not be corroborated, because her source was dead. She also managed to perpetrate a stereotype of blacks who only vote when they can earn a few dollars doing so. All to justify legislation that would make it more difficult for blacks to vote.

The state submitted no empirical evidence of voting fraud. In fact, the secretary of state, who supervise Georgia's elections, had testified that during the eight years prior to the introduction of the voter-ID bill, there had not been a single documented incident of ballot-box fraud in Georgia.

A Republican House staffer quoted in the memo admitted that "the Legislature did not conduct any statistical analysis of the effect of the photo ID requirement on minority voters."

And the state failed to establish that the new law would not result in a return to the ballot-box discrimination that led to the passage of the Voting Rights Act in 1965.

"The state has failed to meet its burden of demonstrating that the change is not retrogressive," the authors of the memo wrote.

Revamping the poll tax

In a scramble to enact an ALEC bill in the first General Assembly in which they held a majority since Reconstruction, the Republican majority failed to do its homework, submitting documents to the DOJ that were described as "riddled with errors and of a quality far below what we are accustomed to using in the Voting Section."

With Bondurant acting as lead counsel, Common Cause, the NAACP, the Georgia Legislative Black Caucus, the League of Women Voters and other plaintiffs sued the state of Georgia in an attempt to block the law. The Legislature responded by introducing a slightly modified voter-ID bill on the first day of the 2006 session, passing the bill in three weeks.

Until the 2005 bill was signed by then-Governor Sonny Perdue, qualified voters in Georgia could use 17 different kinds of identification, ranging from social security cards to utility bills.

The new law authorized five acceptable photo IDs.

Eligible voters lacking approved identification would have to pay from \$20 to \$35 to obtain a state ID; those lacking birth certificates, an additional \$20 for a certified birth certificate.

Identification cards could be obtained at 59 offices across the state. (Georgia has 159 counties.) The same law notably eased restrictions on absentee voting, which whites in Georgia use with twice the frequency as blacks.

In a harshly critical opinion, U.S. District Judge Harold Murphy issued a temporary restraining order that blocked enforcement of the 2005 law, observing:

[T]he photo ID requirement makes the exercise of the fundamental right to vote extremely difficult for voters currently without acceptable forms of photo ID for whom obtaining a photo ID would be a hardship. Unfortunately, the photo ID requirement is most likely to prevent Georgia's elderly, poor and African-American voters from voting. For those citizens, the character and magnitude of their injury—the loss of their right to vote—is undeniably demoralizing and extreme.

The revised 2006 Voter ID Act provided for photo IDs at no cost, mandated voter-ID offices in all of Georgia's 159 counties and created a voter education program. Seven months after the second bill was signed into law, Judge Murphy, who was appointed to the bench by Jimmy Carter in 1977, dismissed the lawsuit and lifted his restraining order.

The elimination of what he had described as a “poll tax” apparently satisfied Judge Murphy. He also devoted 23 of his 81-page opinion to recognizing the education and outreach effort that the new law required.

The second opinion reads perversely like Judge Murphy's rebuttal of his initial opinion.

Laughlin McDonald, who is based in Atlanta and serves as the director emeritus of the ACLU's Voting Rights Project, told me he was caught entirely off guard.

“This second ruling went a long way in the other direction,” McDonald said.

Bondurant said it read “as if it had been written by another judge on another planet.” He inferred that Judge Murphy was influenced by the Supreme Court's upholding of the Indiana voter-ID law while he was deciding Georgia's case.

The challenge to the Indiana law was a much weaker case going up on appeal, Bondurant said, lacking the demographic information Georgia plaintiffs provided the district court in Atlanta. The report the Georgia plaintiffs submitted to Judge Murphy included:

- Department of Transportation data indicating that 874,420 Georgia citizens of driving age did not have driver's licenses in 2003
- Census findings that 390,414 Georgians of voting age, and 242,929 Georgia households, have no access to a car
- Census data indicating that the median income of white households (\$36,150) is almost twice that of black households; and that 28 percent of blacks and 21 percent of Hispanics live in poverty, compared to 10 percent of whites

- Census data which reflect that 149,000 black households have no access to a car, as compared to 89,000 white households

- An AARP and League of Women Voters study finding that 152,000 Georgians who voted in the 2004 election were over 60 and did not have driver's licenses

“When you make driver's licenses the ticket to the polls, you automatically are benefiting the haves at the expense of the have-nots,” Bondurant said. “And the have-nots in this country, especially in the South, are more likely to be black than white.”

It has cost the state of Georgia \$2 million to implement its voter-ID program: \$1 million for software (which does not include cost of training in 159 counties) and, based on statements by successive secretaries of state, roughly \$1 million for public outreach.

Bondurant insists the outreach and education campaign directed by the Republican secretary of state discouraged voters who lacked proper identification. A mix of radio copy and direct-mail pieces I obtained place considerably more emphasis on the hard-and-fast voter-ID requirement than on how and where to apply for voter-ID cards.

Perhaps the best measure of the success of the outreach program—and conversely the chilling effect of the law—is found in one metric the Georgia secretary of state's office made available. After six years and an estimated \$1 million in outreach, 33,248 Georgians have received an official voter ID card.

That barely makes a dent in potential eligible voters in the pool of 874,420 driving-age Georgians whom the U.S. Department of Transportation reported lacked driver licenses they could use at polling places. And it is less than 12 percent of the low-ball 300,000 figure that then-Governor Sonny Perdue claimed when he defended the law in 2005.

These numbers are critical. The average margin of victory in the last three gubernatorial races was 260,704 votes, according to a Center for American Progress study. And in the 2010 election, Republican Governor Nathan Deal defeated his Democratic challenger by 258,821 votes.

That is the gap that has to be closed by a voter-registration drive funded by the national Democratic Party, and other registration and get-out-the-vote drives run by nonprofits, who are targeting 700,000 unregistered black Georgians.

Senator Orrock said media coverage of the voter-ID fight has its own chilling effect. “People see the coverage and come to believe they're going to be messed with when they show up to vote. There are new standards. You are walking there and you're going to be challenged, disrespected,” Orrock said.

“But there's another response. Some people say, ‘I resolve that I'm not going to have my vote

stripped from me.’

“When Republicans were defending this crap from the well [of the Senate floor], one Senator said, ‘If you don’t have a driver’s license, you can always use your passport.’

“A lot of the folks I represent don’t have passports, because they don’t have the means to travel. That’s who they went after with this bill. That’s who needs to get to the polls in November.”