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# NomineeAlert



## Berrien's Background

Associate Director-Counsel,  
NAACP Legal Defense and  
Educational Fund, Inc.

Adjunct Professor of Law, New  
York Law School

Program Officer, Governance and  
Civil Society Unit, Peace and  
Social Justice Program, Ford  
Foundation

Staff Attorney, Voting Rights  
Project, Lawyers Committee for  
Civil Rights Under Law

Staff Attorney, National Legal  
Department and Women's Rights  
Project, ACLU

Clerk, U.S. District Court Judge  
U.W. Clemon

General Editor, Harvard Civil  
Rights-Civil Liberties Law Review

Trustee, Oberlin College

## EDUCATION

B.A., Oberlin College  
J.D., Harvard Law School

## this issue:

Jacqueline A. Berrien, Nominee  
to be Chairman of the Equal  
Employment Opportunity  
Commission

## Who is Berrien?

On July 16, 2009, President Obama nominated Jacqueline A. Berrien to be Chairman of the Equal Employment Opportunity Commission.

Berrien is an attorney who has spent considerable time litigating issues involving alleged racial discrimination. It appears that she finds racism in everything.

The Equal Employment Opportunity Commission consists of five members who set equal opportunity policy. It would be unacceptable to allow an ideologue like Berrien to

lead the commission that enforces civil rights laws. She has cost taxpayers too much already with her frivolous lawsuits while in the non-profit sector. She certainly should not be given the authority and a \$350 million budget to further hobble struggling businesses and localities.

## Racism everywhere...

The following quotes from Berrien reveal her thinking regarding issues of race.

**"Race can't be an afterthought." Fn.1.**

**"It's time to put the racial grievance and faux victimhood industry out of business. Obama's nomination of Berrien to the EEOC will not help in this regard."**

*-Bill Wilson, President, Americans for Limited Government*

"Any law that helps Black people, has been challenged in the last decade or two, as hurting white people." Fn.2.

"[T]he courts are not, and have never been a substitute for the streets." Fn.3.

"[R]ace can't be an afterthought." *Id.*

"An injury to one is an injury to all. And the

example of that, in this context, is really felony disenfranchisement." *Id.*

"We have a current and continuing problem of people being excluded from the political process, and their access to parts of the political

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# What you really need to know about Berrien

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process being determined based on their race, color, national origin, and language proficiency.” *Id.*

“[S]ome of the most effective tools used historically, to thwart African-American voters in their political participation, are still effective and still powerful. And the two that I think deserve particular mention are: discretion of local election officials and intimidation of voters.” *Id.*

“Some of what happened in 2004, in terms of the enforcement of HAVA [Help America Vote Act], shouldn’t have been a surprise, because the way that the law was set up, it always provided for some of the things that were potentially most helpful not to kick in until after the 2004 election. And conversely, some of the things that were most problematic, like photo ID requirements, to kick in before the 2004 election. And, the Legal Defense Fund and other advocates were consistent in opposing that aspect of the law.” *Id.*

Berrien worked alongside the ACLU attorney who served as counsel in *Kentucky v. Welch*, 864 S.W.2d 280 (KY 1993), defending a woman who was prosecuted for child abuse for abusing drugs while pregnant. She has also written on this subject attempting to make the case that drug abuse by pregnant women should never be punished. Fn. 4.

Time and again, when blacks were not elected to office, Berrien alleged racism and sued to change the rules so that blacks would win. She wanted to call expensive special elections and reconfigure districts to her liking. Time and again, her racial arguments were dismissed. In *Dillard v. Baldwin*, she wanted to redraw the districts to try to ensure that blacks were elected—even though blacks make up less than 10% of the voting population and were not concentrated in a compact community. In *Williams v. McKeithen*, she unsuccessfully sought to postpone elections. In *Maxwell v. Foster*, she failed in her effort to redraw districts that had been in place for seven years and were about to be changed in the decennial redistricting. Never satisfied, she alleged in *Jenkins v. Red Clay Consol. Sch. Bd. Of Educ.* that the at-large system of electing school board members unlawfully diluted the voting strength of black voters. On the contrary, the court ruled that the plurality voting scheme did not allow discrimination. In *Mannings v. Sch. Bd.*, she tried to block a school redistricting plan because black children would have to go to a new elementary school with a 40% black population. Apparently, the court did not find that to be much of a hardship and ruled that there was no practicable way to further reduce the percentage of black students. Fn.5.

Berrien also filed a brief on behalf of those trying to destroy the Virginia Military Institute’s character and 150-year heritage by forcing the institution to accept women. Fn.6.

## Sources for further reading:

**Fn.1.** See Fn.3., *infra*.

**Fn.2.** *Black Labor Calls for New ‘Gary Convention’ National Gathering Planned for Broad Black Agenda*, The Black Commentator, Issue 140, June 2, 2005. Available online at: [http://www.blackcommentator.com/140/140\\_cover\\_cbtu.html#](http://www.blackcommentator.com/140/140_cover_cbtu.html#). (Accessed August 26, 2009.)

**Fn.3.** Rediscovering Democracy Panel: The Future of Election Law, 2005 ACS Convention, July 29, 2005. Available online at: [https://secure.acslaw.org/files/2005%20convention\\_rediscovering%20democracy\\_panel%20transcript.pdf](https://secure.acslaw.org/files/2005%20convention_rediscovering%20democracy_panel%20transcript.pdf). (Accessed August 26, 2009.)

**Fn.4.** Jacqueline Berrien, *Pregnancy and Drug Use: The Dangerous and Unequal Use of Punitive Measures*, 2 YALE J.L. & FEMINISM 239 (1990).

**Fn.5.** *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 1996 U.S. Dist. LEXIS 4747 (D. Del. 1996); *Dillard v. Baldwin*, 292 F. Supp.2d 1302 (M.D. Ala. 2003), *subsequent history* 289 F. Supp. 2d 1315 (M.D. Ala. 2003); *Williams v. McKeithen*, 2005 U.S. Dist. LEXIS 17788 (E.D. La. 2005); *Maxwell v. Foster*, 1999 U.S. Dist. LEXIS 23447 (W.D. La. 1999); *Mannings v. Sch. Bd.*, 1995 U.S. Dist. LEXIS 22267 (M.D. Fla. 1995).

**Fn.6.** *United States v. Virginia*, 976 F.2d 890 (4th Cir. 1992).

## NomineeAlert

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