UCLA
Chicana/o Latina/o Law Review

Title
The Changing Role of Expert Witnesses in Redistricting Cases

Permalink
https://escholarship.org/uc/item/0g90c7xp

Journal
Chicana/o Latina/o Law Review, 14(1)

ISSN
1061-8899

Author
Estrada, Leo

Publication Date
1994

DOI
10.5070/C7141021032

ELECTORAL PARTICIPATION

THE CHANGING ROLE OF EXPERT WITNESSES IN REDISTRICTING CASES*

LEO ESTRADA†

In California, as well as other parts of the southwestern United States, Latino population growth has increased dramatically over the past twenty-five years. It should come as no surprise that in most cities there has been a dramatic, concentrated growth of the Latino population. In fact, in some cities, Latinos comprise 30 to 40% of the population. Yet, in terms of redistricting, it would still be difficult to create electoral districts if Latinos were scattered throughout an electoral jurisdiction. Consequently, redistricting combines the issues of demographic changes with electoral politics.

Redistricting is the redrawing of electoral districts to take into account shifting demographic changes. It is done every ten years after the United States Census is taken. Judicial intervention becomes a possible remedy when Latinos cannot elect officials of their choice and Latino population growth has approached a point where it may constitute a majority in a single-member district. When this happens, there are typically one of three processes at work: cracking[1], packing[2] or stacking.[3]

Cracking involves the fragmentation of a group's vote. It involves splitting a concentrated community into many districts so as to diminish the ability of that community to elect its own representatives. Packing may occur when Latinos are systematically situated in one district and cannot voice their concerns to other representatives. Stacking, similar to packing, involves di-

1. *See* Voinovich v. Quilter, 113 S. Ct. 1149, 1155 (1993).
2. *See* Thornburg v. Gingles, 478 U.S. 30, 46 n.11 (1986).
3. *Id.*

viding a community into many different districts in such a way that they cannot influence elections in dramatic ways.

The first redistricting case I ever worked on was a state legislature redistricting case in New Mexico.[4] After the 1980 census, the legislature tried to redistrict based on voting-age population, rather than total population. The court held that redistricting needed to be based on total population, not on voting-age population.[5] It reasoned that a district drawn only counting the voting-age population would consequently leave a segment of each district without representation in the political process.[6]

The same strategy, using voting-age population instead of total population, was used in a case involving the city of Pomona,[7] in which plaintiffs tried to create a minority district. In *Romero v. City of Pomona*,[8] by combining the Latino and African-American communities, a minority district could have been created. Yet, *Romero* was lost because the plaintiffs needed to show that the African-American and Latino communities were a cohesive political group. According to the court, this burden was not met.[9]

During the 1980s, community organizations began to get involved in redistricting efforts in California for the first time. However, initial efforts were not very successful. After the 1980 census, organizations such as the Mexican American Legal Defense and Educational Fund (MALDEF) and the Rose Institute sought to redistrict the California state legislature but did not fare very well. I worked at the Rose Institute at the time. Although the Rose Institute had the technology which would have allowed us to show various plans for the creation of minority districts, we did not know how to take advantage of the technology. We developed some state redistricting plans but those plans were ignored by the Latino community, because we did not have the political backing from the Latino community at-large needed to influence the state legislature. However, we gained vital experience that helped us during the redistricting battles of the mid to late 1980s.

Soon thereafter, the Rose Institute got involved in a voting rights case against the city of Los Angeles.[10] This time, however, the federal government became involved in the litigation. Phillip

---

4. Sanchez v. New Mexico, 550 F. Supp. 13 (D.N.M. 1982).
5. *Id.* at 14.
6. *Id.*
7. Romero v. City of Pomona, 665 F. Supp. 853 (C.D. Cal. 1987).
8. *Id.*
9. *Id.* at 864.
10. United States v. City of Los Angeles, No. CV. 85-7739 (C.D. Cal. settled Oct. 10, 1986).

Montez, now on the United States Commission for Civil Rights, informed the United States Department of Justice of possible voting rights violations in Los Angeles. With support from MALDEF and Californios for Fair Representation and the arm of the Department of Justice, a settlement was negotiated with the City of Los Angeles. The end result was that the Los Angeles city council districts were redrawn and a Latina was elected.[11]

The third redistricting case I worked on was *Garza v. County of Los Angeles*.[12] Since the county charter was adapted in 1912, Los Angeles County had never created a redistricting plan where Latinos constituted a majority or plurality of the population.[13] In 1988, MALDEF, the American Civil Liberties Union (ACLU), and the Department of Justice, sued Los Angeles County based on the theory that they fragmented the Latino community into different districts. They sued under the 14th Amendment,[14] the 15th Amendment,[15] and the Voting Rights Act of 1965.[16] The trial took about three months and resulted in a court order to redistrict the County Supervisorial districts. This new configuration resulted in the election of Gloria Molina, as the first Latina supervisor in Los Angeles County history. The overall legal strategy in *Garza* was quite immense; in fact, this case has set up an important model for future voting rights claims because of the impact it has had on the Southern California region.[17]

More broadly, the Supreme Court has developed a three-prong standard to analyze whether a voting rights violation has taken place.[18] First, you have to prove that a minority district is possible in a single-member district.[19] The concept of a minority district has been understood to require that the minority group

---

11. Gloria Molina, currently a member of the Los Angeles County Board of Supervisors, was elected to the Los Angles City Council.
12. 918 F.2d 763 (9th Cir. 1991).
13. *Id.* at 766 n.1.
14. U.S. CONST. amend XIV.
15. U.S. CONST. amend XV.
16. 42 U.S.C. § 1973 (1988).
17. Los Angeles County has about 350 square miles of territory and about eight million residents. It has a county budget of approximately $9 billion, larger than 42 other states in the union. The Board of Supervisors has authority over the county hospitals, trauma centers, beaches, parks, museums and libraries. It administers welfare and mental health services, provides all the regional planning and transportation services for the county, and executes all the public works for the two million people who live either in unincorporated areas or the contract cities. The Board yields an enormous amount of power and huge budgets—79,000 bureaucrats work for the county. Each supervisor represents 1.7 million people—constituencies which are three times the size of the congressional district and larger than that of the governors in fifteen states. These are also the reasons why the members of Board of Supervisors were willing to spend $12 million to fight this case—to sustain power.
18. *See* Thornburg v. Gingles, 478 U.S. 30 (1986).
19. *Id.* at 49.

comprise 50.1% of the population. In California, this analysis is thrown off by this region's multi-cultural diversity. A 50% minority district is hard to achieve when you have Anglo, African-American, Asian, and Latino populations overlapping in most areas of the region.

The second rule requires proof of minority bloc voting.[20] There is much controversy about how this is proven. The bottom line requires proof that Latinos support Latino candidates. This is made difficult because voting data is available only at the precinct level. In addition, an expert must estimate who the voters are in a district. In most cases, one must estimate the proportion of Latinos in a district based on the aggregate vote from that district. Moreover, there statistical assumptions are made based on voting behavior in districts that are highly Latino. In the Los Angeles County case, the data was sparse because few Latinos had ever run for a seat on the County Board of Supervisors. Fortunately, the district court judge allowed the plaintiffs to use non-partisan voting examples that were not at the county level. These other elections helped to show that Latinos are a politically cohesive group.

The third factor requires proof of white bloc voting.[21] Statistically speaking, this involves the same type of analysis to prove minority bloc voting. However, this third prong requires proof that Anglos *will not* vote for Latinos candidates. Thus, the same problems arise where there is no area that is 100% Anglo. For example, in a similar case on which I am working in El Centro, California, the population includes 63% Latinos; there are no all-white precincts. Every time we analyze polarization for Anglos, we must conduct complex analyses because the Anglo and Latino populations are so residentially integrated. Needless to say, this makes the statistical game very difficult.

As an expert witness, my emphasis has been on the first *Gingles* prong—proving that there is a sufficiently large Latino population for a Latino district to be created. When I started on the *Garza* case, I was told that a minority district was not possible even though there were 2.7 million Latinos in Los Angeles County when the suit was brought. This was true because the County was using the 1980 Census data. However, the district court judge allowed the use of adjusted estimates of the population. Using the current estimates of the population, the plaintiffs were able to show that the Latino population in the area had grown enough to go past the 'threshold 50% mark.

---

20. *Id.*
21. *Id.*

My perspective is different than that of an attorney. Working on redistricting cases is very difficult because it involves a particular approach to electoral change that is not necessarily comfortable. Redistricting involves change from above. When I became involved in the Los Angeles County redistricting case, I knew the ramifications would be far-reaching and dramatic. One disconcerting aspect of the litigation was that we rarely worked directly with the Latino community. Attorneys made legal decisions and the experts fought each other over possible redistricting changes, but the community to be affected was never made part of those discussions. Even at the remedy stage, where the attorneys and experts sought to develop a plan that the courts might accept, no one asked Latinos in the communities about their concerns. This is one of the problems of impact litigation. Nevertheless, the attorneys and experts involved in redistricting cases believe that they are doing the right thing for the right reasons, as well as keeping community interests in mind.

The redistricting process also involves vigorously contested issues. Professors and people in academia tend to be polite and mutually respective of opposing view points. However, when I get involved in a court case, I oppose other experts and in turn, they try to find flaws in my work. In the Los Angeles County case, some colleagues on the UCLA campus were on the opposing side. For almost a year and a half, we were involved in vigorous adversarial relationships; in the end, these confrontations were very difficult to smooth over. Some colleagues in the demography department remain disgruntled over the *Garza* case.