NO. S196852

IN THE SUPREME COURT OF CALIFORNIA

GEORGE RADANOVICH
Petitioner,
CHARLES PATRICK
Petitioner,
GWEN PATRICK
Petitioner,
OMAR NAVARRO
Petitioner
TRUNG PHAN
Petitioner
vs.
DEBRA BOWEN, SECRETARY OF STATE
OF CALIFORNIA
Respondent,
CITIZENS REDISTRICTING COMMISSION
Real Party in Interest.

PETITIONERS RADANOVICH, ET. AL. REPLY TO REDISTRICTING COMMISSIONS OPPOSITION TO VERIFIED PETITION FOR EXTRAORDINARY RELIEF IN THE FORM OF MANDAMUS OR PROHIBITION

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I. INTRODUCTION

The Commissions opposition fails to address the instances of direct and circumstantial evidence that shows that the commission violated the 14th Amendment of the United States Constitution, the Federal Voting Rights Act and the California Constitution. The Petition and supporting declarations establish that the Commission's maps clearly and unmistakably violate: (1) the 14th Amendment of the U.S. Constitution because the Commissioner racially gerrymandered certain districts to protect incumbents, (2) by failing to draw districts in compliance with Sections 2 and 5 of the Federal Voting Rights Act, the commission violated Federal law by denying Latino and African-Americans minorities effective representation and the opportunity to elect candidates of choice; and finally (3) Article XXI, §§2(d)(3), (4) and (5) of the California Constitution, by (a) failing to respect the compactness and contiguity requirements of sections 2(d)(3) and (5) and failing to respect the geographic integrity and local communities of interest of counties and local regions disparate populations in violation of section 2(d)(4).

The constitutional violations in this case are significant. The failure to create Section 2 African-American Congressional Districts in the heart of Los Angeles makes it very conceivable that this area will have not African-American representation in the next ten years. The Latino population has grown by 50%. Based on voting population and Voting Rights Act considerations, there should

have Congressional District in Los Angeles City. The Commissions racial gerrymander of 3 LA County African-American Congressional Districts has drastically impacted the Voting Rights of California's fastest growing voting block of Latino's since 1980.

II. PETITIONER PROFFERED EVIDENCE TO MEET THE *GINGLES* CRITERIA FOR BOTH AFRICAN AMERICAN AND LATINO CAUSES OF ACTION

Respondents contend that Petitioners fail to proffer evidence to meet the third *Gingles* precondition as it applies to a VRA Section 2 claim related to African Americans in Los Angeles. (Reply p. 117). Correspondingly, it should be noted that Respondents acknowledge, "...*Gingles* conditions likely were satisfied as to African Americans in Los Angeles County, and thus the Commission does not dispute that point (here)." (*Id* fn 65). Respondents also acknowledge that as applied to the Latino community, the three *Gingles* preconditions are met.

This third prong of *Gingles* requires, "...the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, ...usually to defeat the minority's preferred candidate." (*Thornberg v. Gingles,* 478 U.S. 30 (1986) 50-51). Commission's legal counsel recognizes that the use of the term "white majority" need not pertain solely to situations wherein the majority are white; rather the majority could be composed of other racial groups (G. Brown, July 13, 2010 Memorandum, p.3 fn. 3). At issue is the impact of the Latino CVAP upon the African Americans' ability to elect candidates of their choice under the VRA.

Contrary to Respondents contention that Petitioner does, "...not address racially polarized voting as to *African Americans* (emphasis in original) in Los Angeles County or elsewhere in California, particularly with respect to the third *Gingles* precondition." (Reply p 118) the Baretto Study, which is extensively cited by Petitioner addresses that issue as it, applies to Latino and African-American voting patterns.

"With respect to Black and Latino voting interest, numerous studies have found racial bloc voting especially during primary contests...Morgan Kousser analyses citywide elections for city council and finds very strong evidence of Blacks voting against Latino candidates in every single election, while Latino voters side heavily with Latino candidates for office....in May 2011 (by) the Warren Institute found that during the 2010 Democratic contest for Attorney General, Latinos voted overwhelmingly for Delgadillo and Torrico (Latino candidates) while Blacks voted overwhelmingly for Harris (Black candidate)....Analysis of the election results (2007 Special Election 37th CD) shows very clear, and statistically significant evidence of racially polarized voting. Blacks voted almost unanimously for two African American candidates Laura Richardson and Valerie McDonald and gave almost no votes at all to the Latino candidate Jenny Oropeza. In contrast, Latino voters in the district voted very heavily for Oropeza, and cast very few votes for the two major Black candidates in the contest." (Baretto Study, pp 3-4) See, *Lulac v. Perry* 548 U.S. 399 (2006) for

similar type of polarized voting, found to be sufficient to meet *Gingles* second and third requirements)

Coupled with this strong evidence of polarized voting by and between the African American community and the Latino community in Los Angeles, is the uncontested acknowledgement of the dramatic increased Latino population in Los Angeles, (now the major ethic group consisting of 47.7% of the LA County) and a dramatic decrease in the African American population. "Within Los Angeles County, almost no region has experienced more demographic change in the past 20 years than the central and southwest part of the county. From 1990-2009 cities like Compton and Inglewood both transitioned from majority-Black to now majority-Latino cities. Similar population changes emerged in the general region from Carson to Wilmington to Lynwood as well as through large segments of central Los Angeles city." (*Id.* p 3)

Respondents contend that it is merely speculation that the preferred African American candidate *might* not be elected in one or more of the challenged districts and as such is not sufficient to meet *Gingles* requirements. (Comm. Opp. p.120; see also Quinn Dec. ¶ 29) In *LULAC* the Court in dealing with a similar fact pattern held such prospective voting patterns to be sufficient to meet *Gingles* third prong. "Furthermore, the *projected* results in new District 23 show that the Anglo citizen voting-age majority will often, if not always, prevent Latinos from electing the candidate of their choice in the district. *Sessions, supra,* at 496-497. For all these reasons, appellants demonstrated sufficient minority cohesion and majority

bloc voting to meet the second and third *Gingles* requirements." (*Lulac v. Perry* 548 U.S. 399 (2006) at, 420)

Based upon these factors the Latino CVAP coupled with the long history of polarized voting by and between the Latino and African American community in Los Angeles County, and the strong evidences that the now Latino majority will vote sufficiently as a bloc to enable it—in the absence of special circumstances, … to defeat the African American minority's preferred candidate, Petitioner has proffered more than sufficient evidence to meet the third prong of the *Gingles* conditions.

III. PETITIONER PROFFERED NUMEROUS ARGUMENTS AND EVIDENCE THROUGHOUT ITS PETITION TO MEET VARIOUS CRITERIA OF THE *GINGLES* "TOTAL CIRCUMSTANCES"

Respondent contends Petitioner failed to offer evidence or argue the totality of circumstances under *Gingles.* Petitioner presented a several arguments and testimony in its petition to meet some of the Total Circumstances criteria.

The Commission's legal counsel set out in the July 13, 2010 G. Brown Memorandum a variety of the components which exemplified the Total Circumstances criteria. The first three which he referenced were also addressed by Petitioner.

Commission's Counsel, Mr. Brown states the first criteria is "Whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant area" (Citing to *LULAC,* 548 U.S. at 426".

As noted in his Declaration, Dr. Quinn clearly stated that, "Los Angles has a population that is 47.4 percent Latino and 8.3 percent African American, according to the 2010 U.S. Census. Yet the Commission's map creates three non-Section 2 African American district in Los Angeles and only five Section 2 Latino Districts" (Quinn Dec. ¶ 23). Dr. Quinn further testified, "Latinos were not provided representation commensurate with their population grown in Los Angeles County and especially in south and southwest Los Angeles County by the Commission's decision to save the three African American districts. Additional Section 2 Latino districts could have been drawn and should have been drawn." (Quinn Dec. ¶ 24).

In this same vain, Respondent argues *DeGrandy* for the proposition that the Commission did have the duty to "maximize" the number of Section 2 CD's for the Latinos and arguably the same position would apply to the Commission's failure to form a Section 2 African American CD in L. A. County. As to the latter point, the Commission and Respondents acknowledge that a African American Section 2 district could have been formed along with two coastal districts; the Commission however opted out of this alternative and selected the maps with one coastal and two urban, neither of which were Section 2 districts. The rational submitted by Respondent is that their choice "...better reflected the socioeconomic and other interest that the Commission sought to group together where practicable..." (Comm. Opp. p 105). Perhaps the Commission did not have the duty to "maximize" the number of Section 2 African American districts but it

certainly had the obligation and clearly it had a readily available opportunity to form the African American Section 2 district. The Commission disregarded the higher valued criteria of compliance with the VAR for the far less critical "socioeconomic" interest which is contrary to the state Constitutional priorities set out at Article XXI.

As to the former point regarding the application of *DeGrandy* to the Latino Section 2 districts, again, the Commission may not have had the obligation to maximize the greatest possible number of Latino majority districts, but it did have an obligation under *DeGrandy* to provide substantial proportionality for the LA County Latino community. In that opinion, the Court recognized that there is not a dilution of the Hispanic voters, provided that there was substantial proportionality between the number of Section 2 districts and voting-age numbers. In *DeGrandy,* the Court found the various Section 2 districts represented between 45% - 50% of the applicable Hispanic voting age population and that was sufficient not to find an effective dilution of the Hispanic voters.

In contrast, Dr. Quinn provided testimony that the Latino population made up 47.4 % of L.A. County and the African American population 8.3 % of the County; yet the Commission let stand three non-section 2 CD's in which African Americans incumbents have historically continued to be elected in those districts for decades; yet there are only five Section 2 Latino Districts in L. A County; this clearly represents a dilution of the Latino voters in L. A County and is contrary to the Court's holding in *DeGrandy* which requires substantial proportionality; it is

not present relative to the Latino L.A. County community, contrary to Respondents argument.

The second "Total Circumstances" criteria referenced by Mr. Brown were the extent to which state or political subdivisions are racially polarized. This position has been well documented by Petitioner related to African Americans in L A County and needs no further elaboration at his stage. (See section I, supra; Quinn Declaration; Baretto Study).

IV. SOME COMMISSIONERS FAILED TO PROPERLY CONSIDER THE VOTING RIGHTS ACT OBLIGATIONS AND IT RESULTED IN THE COMMISSION'S FAILURE TO COMPLY WITH THE ARTICLE XXI CRITERIA OF THE STATE CONSTITUTION.

Contrary to Respondent's contention that the Commission carefully complied with the provisions mandated by the Constitution (Comm. Opp. p. 104) it is clear from comments and positions of certain Commissioners that there was a higher regard for political agendas rather than preventing voter dilution under the VRA. Placing such political agendas ahead of compliance with the VRA runs contrary to those requirements of Article XXI of the State Constitution which mandate compliance with the VRA as the second most critical redistricting criteria.

Respondents claim that the Commission diligently worked to evaluate whether Section 2 required them to draw majority-minority districts. (*Id.*) Respondents acknowledge that the Section 2 process heavily influenced the configuration of the L. A County districts (Comm. Opp. p. 105).

With that representation by Respondents in mind, it is of concern that with regard to the L.A County CDs, there were representations by Commissioners that appear to brush aside the obligation for compliance with the VRA. During a discussion of a VRA protected African American district that would keep the African American community together Commissioner Parvenu stated that, an African American VRA protected district "doesn't really do the African American community any justice...it actually benefits the African American community to not have those higher percentages." (Attached to the RJN as Exhibit "P", p. 45).

Again, Commissioner Parvenu stated the following: "My issue too is that I've been all over this state and I have patiently listened and advocated for other ethnic groups and their ability to have districts where they could be elected and keep their communities whole...what this does is reduces the areas where African American candidates can be elected from three to one packed into that one district. I see the logic of the geographic logic and placement, but it effectively disenfranchises, disengages, or makes opportunity district less available for African Americans to run and be candidates at a congress level in this part of the city. Been all over this state and it seems interesting to me that when it comes to this part of the city the VRA is now an instrument to be used against the African American population." (Citizens Redistricting Commission Transcript, July 24, 2011 attached to the RJN as Exhibit Q, p. 374). These are both examples of failing to comply with the VRA and construct an African-American Section 2 district in exchange for the more immediate political agenda of protecting the