

S196493, S196852

IN THE SUPREME COURT OF CALIFORNIA

JULIE VANDERMOST,

GEORGE RADANOVICH, ET AL.
Petitioners,

vs.

DEBRA BOWEN, SECRETARY OF STATE
OF CALIFORNIA
Respondent,

CITIZENS REDISTRICTING COMMISSION.
Real Party in Interest.

**PETITIONER JULIE VANDERMOST'S OPPOSITION TO
CONSOLIDATED MOTION TO STRIKE AND OBJECTIONS
TO DECLARATIONS OF T. ANTHONY QUINN**

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Real Party in Interest Citizens Redistricting Commission

(“Commission”) moves to strike the declaration of Dr. T. Anthony Quinn. In an impressive display of chutzpah, Commission argues that Dr. Quinn, a man with three decades of specialty knowledge and experience in California political, demographic, and redistricting issues is unqualified to render an expert opinion on these issues. Commission further argues that Dr. Quinn’s testimony is inadmissible legal opinion and unsupported by fact. Commission’s argument fails for numerous reasons:

First, Commission ignores Dr. Quinn’s extensive knowledge and experience in California politics, California demographics, and California redistricting and instead chooses to “cherry pick” a few lines from Dr. Quinn’s curriculum vitae unrelated to this dispute. Commission also ignores that Dr. Quinn previously qualified as a redistricting expert before a California court. Commission further attempts to distract the Court from Dr. Quinn’s extensive expertise by arguing he is not a Voting Rights Act expert. This is merely a diversionary tactic, since Petitioners do not proffer Dr. Quinn as a Voting Rights Act expert.

Second, Dr. Quinn’s testimony analyzes, among other things, political lines, demographics, communities of interest, and population growth trends. These issues are sufficiently beyond common experience to assist the Court in its resolution of this dispute. That Dr. Quinn’s testimony also embraces the ultimate issues in this case – Commission’s improper maps – does not render his testimony inadmissible.

Third, Dr. Quinn clearly establishes he derived his opinions from his special knowledge, education, and experience. To supplement his knowledge and experience, however, he cites numerous additional sources, including the United States Census, demographic maps, Commission’s own experts’ studies, and other published works. Commission complains that

Dr. Quinn's report does not cite public comment from Commission's hearings. So what? Commission offers no explanation why public comment should be a prerequisite to admissibility.

For these reasons, more fully discussed below, Commission's argument fails and the Court should deny it's Motion accordingly.

II. ARGUMENT

A witness is qualified to testify as an expert if he has "special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates." (Cal. Evid. Code §720(a).) Similarly, an expert may render an opinion where the opinion is

(a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and

(b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion.

(Cal. Evid. Code §801.) Under these standards, Dr. Quinn's is a qualified expert whose expert opinion is admissible.

A. Dr. Quinn Has Special Knowledge, Skill, Experience, Training, And Education In The Fields Of California Politics, California Redistricting, And Political Demography.

Petitioners submit Dr. Quinn as an expert in the fields of California Politics, California Redistricting, and Political Demography. The Quinn

Declaration in Radanovich Case (“Radanovich Decl.”), p. 1; Quinn Declaration in Vandermost Case (“Vandermost Decl.”), p. 1. Dr. Quinn’s declaration clearly establishes his special knowledge, experience, and education that will assist the Court:

- **Education**: Dr. Quinn has extensive education in the fields of political science. He received a bachelor’s degree in Government from Georgetown University in 1963, and his PhD in Political Science from Claremont Graduate University in 1979. (Radanovich Decl., p.1; Vandermost Decl., p.1.)
- **Employment**: Dr. Quinn’s employment experience in California Politics, Redistricting, and Demographics is significant. Dr. Quinn served as a Commissioner of California Fair Political Practices Commission and the Bi-Partisan Commission on the Political Reform Act of 1974. (Radanovich Decl. p.2; Vandermost Decl.. p.2.) (He also served as Vice President of the public advocacy firm Goddard Claussen Porter Novelli. (Radanovich Decl.. p.2; Vandermost Decl. p.2.) Further, he served for a number of years as the Caucus Director and the Chief Consultant for Elections and Reapportionment of the Assembly Republican Caucus. (Radanovich Decl.. p.2; Vandermost Decl.. p.2.)
- **Experience**: Importantly, Dr. Quinn has rendered expert advice and consulted on a number of redistricting cases. Most recently he was qualified as an expert on California Politics, Redistricting, and Demographics in the 2001 redistricting case *Andal v. Davis, Kennedy v. Davis, Nadler v. Davis*, Sacramento Superior Court Case Nos. 01CS01397, 02CS01045, and 02CS01046 (2003). (Radanovich Decl., p.1; Vandermost Decl., p.1.) He also served as a technical and

demographic consultant in the 1980s California reapportionment cases *Assembly v. Deukmejian*, *Senate v. Eu*, *Burton v. Eu*, *Democratic Congressional Delegation v. Eu*, and *Badham v. Eu*. (Radanovich Decl., p.3; Vandermost Decl., p.3.) He served as a demographics research consultant in the Sacramento Superior Court Case *Folsom City Council v. State Board of Education* (1996). (Radanovich Decl., p.3; Vandermost Decl., p.3.)

- **Publications**: Dr. Quinn has an extensive body of published works on the issues of California Politics, Political Demographics, and Redistricting going back over thirty years. (Radanovich Decl., p.1; Vandermost Decl., p.1.)

Commission argues that Dr. Quinn is not a qualified expert on the Voting Rights Act. Commission misunderstands. Petitioners do not submit Dr. Quinn as a VRA expert. Rather, his expertise relates to California politics, demographics, and redistricting. (Radanovich Decl., p.1; Vandermost Decl., p.1.) Dr. Quinn’s testimony concerning VRA issues is merely supplementary and explanatory of the political, demographic, and history concerning elections in legislative and Congressional districts. In other words, Dr. Quinn’s testimony on VRA issues is strictly confined to his stated areas of expertise.

B. Dr. Quinn’s Testimony Addresses Issues Sufficiently Beyond Common Experience And Will Assist The Court.

Dr. Quinn’s testimony provides detailed analysis on a number of issues transcending common experience. Dr. Quinn’s analysis includes such topics as United States Census data (Radanovich Decl., ¶¶2, 9, 21, 26, 23; Supplemental Quinn Declaration in Vandermost case (“Vandermost Supp. Decl.”), ¶5), population concentration (Radanovich Decl., ¶¶9-10, 22, 26, 29; Vandermost Supp. Decl. at Senate Districts 1, 4, 8, 10, 11, 13,

14, 15, 16, 18, 19, 20, 22, 24, 27, 32, 33, 36), demographic trends (Radanovich Decl., ¶¶14), voting patterns (Radanovich Decl., ¶¶13, 15-17; Vandermost Decl., ¶52), and communities of interest (Radanovich Decl., ¶¶32, 43, 60, 65; Vandermost Decl., ¶¶14, 15, 19, 20, 23, 28, 30, 48, 49, 56, 60, 68, 69; Vandermost Supp. Decl. at Senate Districts 9, 14, 15, 16, 18, 19, 20, 21, 30, 31, 34, 35). Information about such topics falls outside an ordinary person's common knowledge and is therefore properly within the scope of expert testimony. (See *People v. McDonald* (1984) 37 Cal.3d 351, 367 (“expert testimony will be excluded only when . . . ‘the subject of inquiry is one of such common knowledge that men of ordinary education could reach a conclusion as intelligently as the witness.’”) (citing *People v. Cole* (1956) 47 Cal.2d 99, 103).)

Commission argues that Dr. Quinn's opinions are irrelevant because Dr. Quinn presents alternatives to Commission's maps and describes the electoral impact on incumbents. (Mot. at pp. 2-3.) Commission misses the point that Commission's maps violate Constitutional and statutory requirements for apportionment of political districts. Dr. Quinn presents alternative maps and describes the impact on incumbent elected officials merely to underscore the impropriety of Commission's maps. Because the main thrust of Dr. Quinn's testimony, however, speaks directly to the ultimate issues in this dispute, his opinions are both admissible and relevant.

C. Dr. Quinn Detailed The Factual Support For His Opinions.

Commission argues that Dr. Quinn's testimony is “unsupported by facts” and is impermissibly based on speculation. (Mot. at pp. 1-2.) Once again, a clear reading of Dr. Quinn's declarations belies this argument. Dr. Quinn testified that “I have thoroughly studied the product of [Commission's] certified Congressional maps,” and makes a similar

disclosure regarding Commission's Senate maps. (Radanovich Decl., p. 4; Vandermost Decl., p. 4.) Dr. Quinn also testified about his extensive education, knowledge and experience on political, demographic, and redistricting issues, from which his opinions were largely derived. (Radanovich Decl., pp. 1-4; Vandermost Decl., pp. 1-4.) This alone provides the requisite foundation for his opinions and conclusions. (Cal. Evid. Code §§802(b) (reasons for expert's opinion may include his "special knowledge, skill, experience, training, and education."), 803 (same).) However, to supplement this knowledge and experience, Dr. Quinn also cited numerous sources of data, including the United States Census (Radanovich Decl., ¶¶2, 9, 21, 26, 23; Vandermost Supp. Decl., ¶5), Commission's own report and its own experts, (Radanovich Decl., ¶¶12, 18, 55, 58, 59, 60, 62, 64, 68; Vandermost Decl., ¶¶51, 69, 73), other published works (Radanovich Decl., ¶¶13-17, 28; Vandermost Decl., ¶¶52, 85), and the Oxford Dictionary (Radanovich Decl., ¶43; Vandermost Decl., ¶11).¹ Dr. Quinn's testimony clearly establishes an adequate foundation for admissibility and that his opinions are not speculative.

D. Dr. Quinn's Testimony Does Not Contain Impermissible Legal Opinion And Argument.

Commission next argues that Dr. Quinn's declarations "are comprised almost exclusively of legal arguments and legal opinion." (Mot. at p. 1.) It is axiomatic that an expert's opinion will not be inadmissible merely because it embraces the ultimate issues to be decided by the Court. For example, in *Wells Truckways, Ltd. v. Cebrian* (1954) 122 Cal.App.2d 666, the court explained:

¹ Commission argues that Dr. Quinn's testimony should be stricken because he did not cite to public testimony and comment made during the public-input process. Commission offers no reason why such testimony should be a prerequisite to *admissibility* of Dr. Quinn's testimony, or why it should outweigh objective data such as United States Census data.

“Rarely, if ever, does an expression of opinion by a so-called expert not amount to that which either the court or jury might adopt as a basis for the ultimate decision in the case. However, that does not mean that the witness is deciding the case or that in so testifying he is usurping the functions of the jury. He is merely giving an opinion, based upon his technical training, which the court may or may not accept as testimony that is proper and necessary to an enlightened consideration and a correct disposition of the ultimate issue.”

(*Id.* at p. 674.) Here, Dr. Quinn provides his professional opinion on a number of issues that support his overall conclusion that Commission violated the United States and California Constitutions, the Voting Rights Act, and the principles of compactness, contiguity, and division of cities including (but not limited to):

- The electoral consequences of properly-drawn lines (Radanovich Decl., ¶¶19, 31, 65);
- The availability of Constitutionally and statutorily mandated alternative lines (Radanovich Decl., ¶¶24, 26, 66; Vandermost Supp. Decl., (all paragraphs regarding Senate Districts)); and
- Communities of interest (Radanovich Decl., ¶¶32, 43, 60, 65; Vandermost Decl., ¶¶14, 15, 19, 20, 23, 28, 30, 48, 49, 56, 60, 68, 69; Vandermost Supp. Decl. at Senate Districts 9, 14, 15, 16, 18, 19, 20, 21, 30, 31, 34, 35).

Dr. Quinn’s testimony on each of these issues will assist the Court and is, therefore, admissible. Just because that testimony and opinion also culminates in the ultimate conclusion that Commission’s maps violate Constitutional and statutory law does not render his *entire* opinion inadmissible – the Court is free to assign its own weight to Dr. Quinn’s

testimony and his opinions.² (*Wells Truckways, Ltd., supra*, 122 Cal.App. at p. 674.)

III. CONCLUSION

For the foregoing reasons, Commission's motion must be denied.

Dated: October 17, 2011 Respectfully Submitted,

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² The authority Commission cites is inapposite. *Sheldon v. Appel Co. v. Albert & Olier* (1989) 47 Cal. 3d 863 involved an expert opining on the legal application of probable cause. Similarly, *Los Angeles Teachers Union v. Los Angeles City Bd. of Educ.* (1969) 71 Cal. 2d 551 involved the legal application of the First Amendment. Neither case involved political reapportionment or demographics issues. Moreover, here, as discussed, Dr. Quinn has opined on a number of issues that will assist the court in resolving this dispute. As such, his testimony is both relevant and admissible.

CERTIFICATE OF COMPLIANCE
PURSUANT TO CAL. R. CT. 8.204(c) AND 8.486(a)(6)

Pursuant to rule 8.204(c) and 8.486(a)(6), I certify that the foregoing brief is one-and-a-half spaced and is printed in 13-point Times New Roman Font. In reliance upon the word count feature of Microsoft Word, I certify that the attached, Petitioner Julie Vandermost's Reply to Consolidated Motion to Strike and Objections to Declarations of T. Anthony Quinn, contains 2,010 words, exclusive of those materials not required to be counted under Rules 8.204(c) and 8.468(a)(6).

Dated: October 17, 2011 Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Shannon Diaz, Declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within-entitled action; my business address is 455 Capitol Mall, Suite 600, Sacramento, California 95814. On October 17, 2011, I served the following document(s) described as:

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X **BY FEDERAL EXPRESS MAIL:** By placing said documents(s) in a sealed envelope and depositing said envelope, with postage thereon fully prepaid, in the United States mail, VIA FEDERAL EXPRESS MAIL SERVICE, in Sacramento, California, addressed to said party(ies).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 17, 2011 at Sacramento, California.



SHANNON DIAZ