

LITIGATION HIGHLIGHTS

May 1992

There have been a number of new developments in our cases since the last meeting in January. In addition, there has been a flurry of activity related to our Voting Rights Project as redistricting heats up for the November elections. Finally, we have a number of cases in development that appear ripe for filing during the next few months.

NEW DEVELOPMENTS:

Hispanics For Fair And Equitable Reapportionment (H-FERA) v. Griffen: This case involves the racial gerrymandering of the Latino community in Buffalo. The Latino population is about 10,000 strong and is primarily located in one part of the city. Under the new redistricting plan for the Buffalo City Council, the community was split between two councilmatic districts. H-FERA claimed that the districting was a racially-biased effort to dilute the voting strength of the Latino community in violation of the Voting Rights Act. On H-FERA's motion for a preliminary injunction, the District Court judge dismissed the complaint. He found that even if the Latinos were all placed in one district, they could not elect a Latino because they would not constitute a majority of voters in the district which must have over 30,000 persons. The judge held that Latinos could not state a claim for voter dilution.

PRLDEF was asked and agreed to handle the appeal and argument before the United States Court of appeals for the Second

Circuit. In February, the Circuit Court issued an opinion reversing the lower court. The Court of Appeals held that the trial court should have heard evidence about the discriminatory gerrymandering. The Court did not directly address the legal issue of whether Latinos must comprise a majority of a single member district in order to claim voter dilution. But, by remanding the case, the decision implicitly recognizes that there may be a violation of the Voting Rights Act when only a Latino "influence" district is at issue. Influence districts are very important outside of New York City where there are substantial Latino populations, but not large enough to command a majority in any single state or local legislative district.

Paganucci v. New York: This case grows out of the settlement in Hispanic Society v. New York City Police Department. In Hispanic Society, we obtained quota promotions for Latinos and African Americans to the rank of sergeant. At the time of the settlement, the same attorney who filed Paganucci had filed a case called Marino v. New York. He claimed that since his clients had scored as well on the test as those minorities promoted under the Hispanic Society settlement, his clients should receive similar promotions in order to meet the requirements of New York State civil service law and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. In addition, he appeared at the hearing on the settlement in Hispanic Society and made the same argument. The District Court dismissed Marino as an impermissible

collateral challenge to the settlement and rejected the arguments that he presented in Hispanic Society. The attorney appealed both Marino and Hispanic Society although his clients were not a party in Hispanic Society. The Second Circuit affirmed the dismissal of Marino and dismissed the appeal in Hispanic Society. The Supreme Court did the same, although it split 4-4 on Marino.

Subsequent to Marino, the Supreme Court (5-4) in a case called Martin v. Wilks permitted collateral attacks. As a result, this attorney filed Paganucci reiterating his earlier claims. We intervened in Paganucci and moved for summary judgment and to have the attorney sanctioned on the ground that his claims were frivolous. The District Court granted our motions, finding that the claims were barred and were no less meritless than when they had been originally made and rejected by the court in Hispanic Society. Nevertheless, this attorney plows ahead and has appealed again.

Huertas v. East River Housing Corp.: This old case is active again. As you may recall, this housing discrimination case was settled in 1987. The defendants are four Lower East Side housing cooperatives that were built with garment industry union sponsorship and subsidized by the City. At the time of settlement, less than 3% of the 4500 units had Latino or African American tenants. The settlement required the cooperatives to sell 40% of their one bedroom vacancies and 50% of their two and three bedroom vacancies to Latinos and African Americans.

A year after the settlement, the defendants stopped

accepting new applicant. We made a motion to enforce the settlement. Because of the long standing history of discrimination by these defendants, the current list of applicants did not fully reflect the demand for these moderately priced apartments. We argued that the racially-infected lists must be given an opportunity to be cleansed over the period of the settlement. The Court agreed. Nevertheless, the defendants have appealed. Apparently, they were upset that the Court made mention of their discriminatory practices in his decision.

REDISTRICTING:

New York City: We drew preliminary maps for State Legislative and Congressional seats and held a city-wide meeting with community leaders on September 17, 1991 to discuss them. Individual borough meetings were held to refine the State Legislative seats during the month of October. On December 2, 1991, we submitted our initial proposal for New York City districts to New York State Legislative Task Force. We also submitted a proposal for Assembly districts in Nassau, Suffolk and Westchester counties.

On March 5, 1992 we submitted proposed Latino congressional districts to the Task Force.

New York State Legislative Districts: The New York State legislature passed redistricting legislation for the New York State Assembly and Senate in late March, 1992. On May 4, 1992 the Governor signed the legislation over our opposition.

The Legislature's plan clearly discriminates against Latino voters in New York City. In attempting to protect incumbents, it dilutes Latino voting strength. It creates, at best, out of New York City's sixty-one (61) Assembly districts, only eight (8) Assembly districts in which Latinos may get elected. In a city where 24.4% of the population is Latino, it is unconscionable that Latinos will have, at most, 13% of the representation.

The plan discriminates against Latino voters, especially in its creation of Assembly districts. Although five Assembly districts in the Bronx currently have majority Latino voting age populations of 61.9%, 61.2%, 59.0%, 51.6%, and 52.8%, respectively, the legislature's plan creates only four majority Latino seats. This is clearly retrogressive and violates of the Voting Rights Act. The Bronx plan also reflects the legislature's intent to protect incumbent Assembly members at the expense of Latino voters.

The Legislature's plan divides the Latino community in the Lower East Side. The current Lower East Side district is 19% white. But the Legislature's division creates essentially two white districts and is intended to protect two white incumbents.

In Northern Manhattan, the plan is also clearly intended to protect incumbents at the expense of Latino voters. It denies the Dominican community an opportunity to elect a representative of its choice and flies in the face of the precedent set when a Dominican City Council seat was created in that part of Manhattan.

In Queens, District 35 is currently 51.3% Latino and without an entrenched incumbent. The legislature's plan reduces the Latino population in District 35 to 32.67%.

With respect to the State Senate, the Bronx and Bronx/Manhattan districts could have been substantially stronger. The Brooklyn/Manhattan bi-county Senate district created by the legislature is a white majority district, where, instead, a majority-minority district with a population that was 79.91% non-white (of which 42.81% was Latino) could have been created. Stronger Senate districts should have been created.

We submitted a letter to the United States Department of Justice asking them to interpose an objection to the State legislative plan. We also met with the Department on May 19, 1992 to voice our objections.

Congressional Districts: PRLDEF v. Gantt - On March 31, 1992, we filed a lawsuit in federal court seeking to force the State Legislature to adopt a congressional plan, or in case that the legislature failed to redistrict, asking the court to redistrict the State's congressional seats itself. On April 7th, a three judge-panel of the United States District Court for the Eastern District of New York invited the initial parties to the litigation to file districting plans by April 27, 1992 and gave potential intervenors until May 4, 1992 to file additional proposed plans. On May 5, 1992, the court announced that since the legislature had still not adopted a congressional plan, the Court would appoint a special master to draft one for the Court.

At the same time, the federal court enjoined a parallel State court action, Reid v. Skelos, brought by the Democratic members of the New York City congressional delegation. However, they appealed directly to the United States Supreme Court which stayed the injunction pending appeal. With the State court action on again, we may need to intervene in that action.

Meanwhile, the Special Master in the federal court action has begun his work and expects to submit his plan to the Court on May 26th. We have submitted our recommended plans and are preparing comments on the other plans that have been submitted.

OTHER VOTING RIGHTS:

Bilingual Provisions of the Voting Rights Act: We have submitted testimony to congress to extend the bilingual assistance provisions of the Voting Rights Act. The current law will expire at the end of 1992. The proposed extension would be for 10 years and would also expand coverage to any jurisdiction with 10,000 Latinos who identify themselves in the census as having limited English language skills. Presently, only jurisdictions in which a full 5% of their total populations, have limited English abilities receive coverage. Thus, counties in New York, New Jersey and other places throughout the Northeast with substantial Latino populations are not covered by these bilingual provisions, but will now be covered if the Act is amended as proposed.

New York State Judiciary: A recent report by the Governor's

Task Force on Judicial Diversity concluded that New York State's electoral system for judges may violate the Voting Rights Act by diluting minority voting strength. Presently only 1.7% (10 of 1,129) of the justices on New York's Supreme Court are Latinos. These judges are elected at-large within the counties of New York. If there were single member districts, the breakdown would more closely reflect Latino voting strength.

The State legislature is investigating its response to the report, and PRLDEF testified at a public hearing in May. We advocated for the creation of single member districts for these judgeships.

CASES IN DEVELOPMENT

St. Luke's Roosevelt Hospital Center: The St. Luke's/Roosevelt Hospital Center has plans to close 200 medical surgical beds at St. Luke's in Harlem, and to move the maternity, pediatrics, and neonatal units to Roosevelt in midtown Manhattan. Clearly, the closing and transfer of the units will greatly disadvantage the Latino and African community surrounding St. Luke's.

As part of our Latina Rights Project, we and other groups had filed Title VI complaints with the U.S. Department of Health and Human Services against Hospital Center. However, with the transfer of the beds and the closing of the units scheduled for October, we are in the process of planning a litigation strategy with the possibility that we will be filing a lawsuit in August.

In the meantime, we are hopeful that the HHS will issue its opinion on our Title VI complaint and that the Hospital will agree to maintain the units and beds at St. Luke's.

Huntington, Long Island Schools: We have been working for the past year with a community group in Huntington, Long Island. They have complained about the special educational programs in the public school system. There is a total lack of consideration of the language skills of Latino children in evaluating them for placement in the program. Then, once in the program, Latinos are disproportionately placed in monolingual English self-contained classes, while whites in special education are placed in less stigmatizing pull-out programs. A complaint by the parents has resulted in a New York State Department of Education investigation of the treatment of Latinos and other minority students. The State's report finds numerous violations in the program, particularly the failure to assess the English language skills of the students.

The Superintendent of the Huntington schools has unfortunately brushed off the report claiming that the student files are merely incomplete and that there is nothing wrong. Huntington has so little respect for its Latino children that it refuses to accept New York State bilingual education funds.

We are in the process of preparing a Title VI discrimination lawsuit to enforce the rights of Latino children.

Domestic Violence: New York State requires that centers that provide services for victims of domestic violence have

bilingual staff or be able to refer clients to centers with such services. Nevertheless, there is only one center which provides such services in New York City and little else upstate. We have received several complaints from Latino groups about the great difficulty they have had in helping place their Spanish-speaking clients. We have been collecting data using Freedom of Information requests and may soon be able to file a system-wide challenge to the lack of services. At the same time, we wrote to the State commission responsible for these programs to complain and to request a meeting with the State to see if they will enforce their own rules. This effort is also part of our Latina Rights Project.

CONCLUSION

This has been a busy time for PRLDEF. Voting rights matters have been moving along at a furious pace and at the same time some of our oldest cases, filed in the mid-70's, have required our attention. Despite all of this, we been actively developing new cases, particularly as part of the Latina Rights Project.

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