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Case Note Addendum

Gárza v. County of Los Angeles

Robert G. Retana†

In our last issue, volume 3, Spring 1990, we presented a case note authored by Robert G. Retana on Gárza v. County of Los Angeles. The case note analyzed the trial court opinion. As the issue went to press, Gárza was just beginning to wind itself through the appellate process. In January, 1991, Gárza came to an end. We now offer an addendum to the earlier case note on Gárza so that our readers may be brought up to date on this history-making case.

On November 2, 1990, the Ninth Circuit Court of Appeals issued its opinion in Gárza v. County of Los Angeles,1 affirming in part the district court’s ruling against the County of Los Angeles, and holding that the County Board of Supervisors had violated the Voting Rights Act and the Equal Protection Clause in intentionally gerrymandering districts to minimize Latino voting strength. On January 7, 1991, the United States Supreme Court denied certiorari,2 upholding a redistricting plan designed to allow Latinos to equally participate in the election of members to the Los Angeles Board of Supervisors.

A. Background

In 1988, Latinos were joined by the United States of America in Gárza v. County of Los Angeles, a voting rights case which sought a redrawing of the districts for the Los Angeles County Board of Supervisors.3 Plaintiffs alleged violation of the Voting Rights Act and the Equal Protection Clause by the County which they contended had intentionally discriminated against Latinos in drawing district lines in 1981.4 They also alleged that the 1981 districting plan had diluted the voting strength of Latinos in Los Angeles County. Plaintiffs sought the creation of a district with a majority of Latinos for the 1990 Board of Supervisors.

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1. 918 F.2d 763 (9th Cir. 1990).
3. 918 F.2d at 765.
4. Id. at 766.
election.\textsuperscript{5}

After a three-month trial, the United States District Court found intentional discrimination in the 1981 reapportionment, and deliberate dilution of the Latino vote.\textsuperscript{6} The 1981 plan was found to be in violation of the Voting Rights Act, and the County was ordered to propose the redistricting sought by plaintiffs, which would include the creation of a district with a Latino voting majority.\textsuperscript{7} The district court made detailed findings regarding the history of the Los Angeles County Board of Supervisors, including the fact that the Board of Supervisors had engaged in intentional discrimination in the redistrictings that occurred in 1959, 1965 and 1971.\textsuperscript{8} The court also found that the 1981 redistricting was calculated in part to keep the effects of the prior discriminatory reapportionments in place, and to prevent Latinos from attaining a majority in any district in the future.\textsuperscript{9} Among the findings set forth by the district court was the following:

The Supervisors appear to have acted primarily on the political instinct of self-preservation. The court found, however, that the Supervisors also intended what they know to be the likely result of their actions and a prerequisite to self-preservation — the continued fragmentation of the Hispanic core and the dilution of Hispanic voting strength.\textsuperscript{10}

The County created a redistricting plan in response to the district court's order, which was rejected by the court as less than a good faith effort to remedy the existing violations.\textsuperscript{11} Instead, the court accepted a plan which created a district where the majority of the voting age citizens are Latino.\textsuperscript{12} The County then appealed.\textsuperscript{13}

The County argued that based on \textit{Thornburg v. Gingles},\textsuperscript{14} there can be no successful challenge to a districting system without showing that the minority group challenging that plan could have constituted a voter majority in a single member district.\textsuperscript{15} The County argued that in 1981 it was impossible to draw a district map with equal population in each district that contained a district with a majority of Latino voters.\textsuperscript{16}

\begin{itemize}
\item \textsuperscript{5} \textit{Id.} at 765.
\item \textsuperscript{6} \textit{Id.} at 766.
\item \textsuperscript{7} \textit{Id.}
\item \textsuperscript{8} \textit{Id.} at 766-67.
\item \textsuperscript{9} \textit{Id.} at 767-68.
\item \textsuperscript{10} \textit{Id.} at 768.
\item \textsuperscript{11} \textit{Id.}
\item \textsuperscript{12} \textit{Id.}
\item \textsuperscript{13} \textit{Id.} There was also a second appeal from a candidate for a district seat under the existing plan who sought to oppose the redistricting which would result in a new election in which other candidates could run for the seat she was seeking. \textit{Id.} at 769.
\item \textsuperscript{14} 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed. 2d 25 (1986).
\item \textsuperscript{15} 918 F.2d at 769.
\item \textsuperscript{16} \textit{Id.} at 769.
\end{itemize}
Plaintiffs argued that no such majority requirement should be imposed where there has been intentional dilution of minority voting strength.\textsuperscript{17} The County, therefore, also challenged the sufficiency of the district court's findings regarding discriminatory intent.\textsuperscript{18}

\textbf{B. Thornburg v. Gingles}

The Voting Rights Act,\textsuperscript{19} was amended by Congress in 1982 to provide a remedy for minorities whose vote had been diluted, without requiring proof that the majority had engaged in intentional discrimination.\textsuperscript{20} In \textit{Thornburg v. Gingles},\textsuperscript{21} the Supreme Court interpreted the new amendment, and established three requirements for liability under the Voting Rights Act for claims based on discriminatory effects: (1) geographic compactness of the minority group; (2) minority political cohesion, and (3) majority block voting.\textsuperscript{22}

The Court of Appeals in \textit{Gárza} noted that the \textit{Gingles} court did not consider claims that the disputed districting plan had been enacted deliberately to dilute minority voting.\textsuperscript{23} The \textit{Gingles} court was deciding whether multi-member districts being used had the effect of diluting minority voting, regardless of intent.\textsuperscript{24}

Thus, the court instituted the "possibility of majority" requirement in a case in which it was asked to invalidate a political entity's choice of a multi-member district system, and impose a system of single-member districts, and was not asked to find that the multi-member scheme had been set up with a discriminatory purpose in mind.\textsuperscript{25}

Because the plaintiffs in \textit{Gárza} were not alleging disparate impact from a seemingly neutral electoral scheme, but instead were claiming intentional dilution of the Latino vote, the Court of Appeals declined to impose the majority requirement desired by the County.\textsuperscript{26}

To impose the requirement the County urges would prevent any redress for districting which was deliberately designed to prevent minorities from electing representatives in future elections governed by that districting. This appears to us to be a result wholly contrary to Congress' intent in enacting Section 2 of the Voting Rights Act and contrary to the equal protection principles embodied in the fourteenth amendment.\textsuperscript{27}

\begin{itemize}
\item \textsuperscript{17} \textit{Id}.
\item \textsuperscript{18} \textit{Id}.
\item \textsuperscript{19} 42 U.S.C. § 1973.
\item \textsuperscript{20} 918 F.2d at 769-70.
\item \textsuperscript{21} 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed. 2d 25 (1986).
\item \textsuperscript{22} 478 U.S. at 50-51, 106 S.Ct. at 2766-67.
\item \textsuperscript{23} 918 F.2d at 770.
\item \textsuperscript{24} \textit{Id}.
\item \textsuperscript{25} \textit{Id}.
\item \textsuperscript{26} \textit{Id} at 771.
\item \textsuperscript{27} \textit{Id}.
\end{itemize}
Additionally, the Court of Appeals found that the detailed findings by the district court of intentional discrimination by the County Board of Supervisors was "amply supported by the evidence in the record." The Court of Appeals also found evidence of injury in the intentional splitting of the Latino vote, resulting in diminished opportunity for Latinos to participate in the political process. The court concluded that the intentional discrimination violated both the Voting Rights Act and the Equal Protection Clause.

C. Other Arguments

Among the various arguments rejected by the Court of Appeals was the County's assertion that the reapportionment plan approved by the district court was erroneous as a matter of law because it was based on overall population instead of the voting population. In addition to relying on the intent of the framers, the Court of Appeals noted:

There is an even more important consideration. Basing districts on voters rather than total population results in serious population inequalities across districts. Residents of the more populous districts thus have less access to their elected representatives. Those adversely affected are those who live in the districts with a greater percentage of non-voting populations, including aliens and children. Because there are more young people in the predominantly Hispanic District 1 . . . citizens of voting age, minors and others residing in the district will suffer diminishing access to government in a voter-based apportionment scheme.

The court noted that a districting plan based on voting population rather than total population would "abridge the rights of aliens and minors," recognizing that aliens are entitled to equal protection. This is significant in that a large segment of undocumented Latinos can now be counted in creating districts where Latinos constitute a majority of the population. When voting population is used it becomes more difficult to create a district where Latinos are a majority since many Latinos are non-citizens. Therefore, Gárza's holding has great potential to permit Latinos to assert their political clout by including all segments of the population.

D. Resulting Election

As a result of the Gárza litigation, Los Angeles County held a spe-
cial run-off election for the newly created 1st District on January 22, 1991. City Councilwoman Gloria Molina topped the nine-candidate field; State Senator Art Torres finished second. On February 19, 1991, Gloria Molina, by receiving 55% of the vote to 45% for Art Torres, became the first Latino to serve on the Board of Supervisors in over 100 years and the first woman ever elected to the Board.\textsuperscript{35}