

A Brief Review of Voting Rights in Boston

by Alan Jay Rom



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Although the right to vote has been described as a fundamental right, racial minorities have had to struggle in the courts during the 1970s and 1980s to participate in the political process on an equal basis with whites in Boston, the "Cradle of Liberty." That struggle has resulted in two victories due to the violation of the principle of "one person, one vote." Where minorities have claimed that their voting strength has been "diluted," however, the courts have yet to rule in their favor.

The 1970s

The 1970s saw Boston politicians summoned to court for the denial of equality of educational opportunities in *Morgan v. Hennigan*,¹ the Boston school desegregation case. While that case commanded national and international attention, another case proceeded more quietly through the courts, challenging the at-large system of electing the Boston School Committee, which had denied black children equal educational opportunities. A group of black voters sought to end the at-large electoral system that elected the officials responsible for these policies.² Plaintiffs claimed that this system "effectively cancel[ed]

out, dilute[d] and minimize[d] the voting strength of the Boston black community in School Committee elections."³ Because of the history of racial discrimination, as recounted in *Morgan, supra*, the failure of a black to win election to the School Committee in this century, and the Committee's lack of response to the concerns of blacks, the electoral system had denied blacks equal participation in the political process, violating the Equal Protection Clause of the Fourteenth Amendment to the Constitution and the Voting Rights Act of 1965.⁴ In other words, the nonpartisan feature of Boston's elections foreclosed blacks from the traditional avenue for political participation, isolating and reducing any effective black political power. The District Court concluded that blacks had access to the political system because they were, and had been, able to register and vote and become candidates in School Committee elections. The fact that no black had been elected to the School Committee during this century was attributed to low black voter registration and participation, negative reaction by the general public to court-ordered school busing, and because blacks had not run "sophisticated, computerized" campaigns.

The Court of Appeals affirmed the District Court decision but admitted that since its "decision is close, [we do so] provisionally and without prejudice to plaintiffs' right to reopen their claim in the future."⁵ The court recognized a long line of decisions which left "no question that blacks in Boston have historically been the victims of discrimination in many significant aspects of their existence."⁶ It further acknowledged that "[c]ertain mechanical features of the at-large system for selecting the School Committee make it possible to submerge . . . cognizable minority interests," and that "[t]ogether with other factors . . . the absence of any

black-supported winners is some indication that the system may have had the effect of minimizing minority interest."⁷

The court recognized the key issue of the dispute. Either the District Court was correct in concluding that the "Lack of success by black-supported candidates . . . [was] more readily explained by low black voter participation and the strong feeling engendered by the busing issue," or, as appellants claimed, the District Court "erred in its assessment of the racial significance of the school desegregation issue."⁸ In reaching a decision, however, the court focused on the most important factor, observing that "[w]hatever the cause of the defeat of black candidates, a School Committee has emerged that has often been unresponsive to the needs of the black population."⁹

Given the length of court involvement in *Morgan, supra*, it is ironic that the Court of Appeals disagreed with the District Court's view. It found that the court's intervention in *Morgan, supra*, reduced the need for electoral reform, observing:

The contrary is more likely to be true. Court control of the schools is a more drastic remedy than taking whatever steps, if any, may be proper to ensure full and equal participation in the political process by all groups. To the extent the School Committee demonstrates a continuing inability to run the schools, except under court control, in such a manner as to provide equal education to all elements of the community, this would tend to fortify plaintiffs' position that Boston's at-large system is operating to exclude the black community from access to the political process.¹⁰

The 1980s

A movement began in the mid-1970s to reform the at-large electoral system politically. A 1977 statute made it possible for certain

Massachusetts cities to change their systems from at-large elections to a combination of nine districts and several at-large seats. District lines drawn pursuant to this statute had to be "compact, and . . . contain . . . as nearly as may be, an equal number of inhabitants, . . . be composed of contiguous existing precincts, and . . . be drawn with a view towards preserving the integrity of existing neighborhoods."

Spearheaded by a coalition of minorities and white progressives, the Campaign for District Representation failed in its first bid in the 1977 November election to take advantage of the new statute. The drive for district representation gained political momentum and was eventually successful in November 1981 when a second black, Jean McGuire, was elected to the School Committee.

Thereafter, different political interests drew their own versions of district maps and submitted them to the City Council, which was charged with complying with the election mandate. Despite the existence of the 1980 federal census (562,994), (the census tract data having been converted to wards and precincts by the Boston Redevelopment Authority (BRA)), the City Council informed all potential "map-makers" that they were required to use the 1975 state decennial census for Boston (637,986).

The district plan adopted by the City Council was challenged by three groups and several individual voters in *Latino Political Action Committee (PAC) v. City of Boston*.¹¹ The basis of the challenge was twofold. First, plaintiffs claimed that the City Council was required to use the 1980 federal decennial census, the latest available census of the population. The second premise of the case was that minority voting strength was diluted by the way district lines were drawn. This was done either by "packing" blacks into two districts so as to negate, or

minimize, their political influence in surrounding districts, or by "cracking," or spreading, Latinos and others over several districts, and diminishing their political strength. The court bifurcated the case, treating the constitutional "one person, one vote" issue first.

The District Court held that the City Council was required to "use . . . the most recent and most accurate figures available"¹² and issued an injunction against holding elections based on the districts drawn with the 1975 figures. The court concluded that "the population variance in the voting districts established under the new plan [was] *per se* invalid. The voting districts as apportioned are, therefore, unconstitutional."¹³ Accordingly, the court granted plaintiffs' motion for summary judgment.

Plaintiffs return to court for the second part of the case in November 1984. Because plaintiffs' claim of dilution focused on the placement of the district lines, the court found that the "factors of racial polarization and the extent to which minorities have been elected to office [took] on additional significance [and were] tied particularly closely to plaintiffs' claims of packing and fragmenting."¹⁴ Therefore, the analysis began with those factors affecting the ability of minorities to participate in the political process.

The court found it "abundantly clear that Boston's minorities continue to suffer socioeconomic disadvantages."¹⁵ Nonetheless, the black population has been "enfranchised for more than a century" and has "never been subjected to poll taxes, literacy tests, or other such barriers to registration, whose lingering effects continue to inhibit political participation in other parts of the country."¹⁶

Next, the court discussed factors affecting the ability of minorities to influence the political process under the challenged plan. In considering the issue of

racially polarized voting, the court observed, "[w]here bloc voting is shown to exist, . . . its operation within the context of the particular districting scheme . . . is ordinarily the linchpin of a vote dilution claim" because "the placement of the district lines may dilute minority voting power by packing minority residents into a limited number of districts, or by fragmenting the minority population among several districts." The court then found that "a moderate degree of racial polarization continues to characterize Boston's electorate."¹⁷

The court first considered plaintiffs' claim that blacks were packed in two districts, constituting 82% of one district and 66% of another. Since case law had established 65% as an "effective majority" in minority vote dilution cases, both districts clearly complied with the lower limits. It was the upper limit that came into question. If it is too high, then black votes are wasted where they might have made a difference elsewhere. The 82% black district was allowed because the court could not find any evidence that "the packing of blacks . . . resulted in their having less [sic] opportunities than other voters to participate in the political process."¹⁸ The court rejected plaintiffs' fragmenting claims as well, reasoning that since Latinos did not have a sufficient population to form "even a bare majority in one district," they could not be legally fragmented.

Plaintiffs' claim that the combination of the South End, Chinatown, and South Boston into one district as per the revised plan, resulted in the dilution of minority voting strength was also rejected. The court stated for example, that the Asian population was so small that its voice "would be politically submerged regardless of the district to which it was assigned."¹⁹ The court also noted that in addition to the fact that minorities won election to the

School Committee and City Council from both minority districts in 1983, two blacks won re-election to the School Committee at-large. Moreover, the court claimed that minorities "determined the winners"²⁰ in two other districts.

The Court of Appeals concluded that the record of the District Court "adequately supports the . . . findings. . . ."²¹ It held that the 82.1% and 66.37% black districts were "not so high as [to] automatically . . . demonstrate a denial of 'equal access' to the electoral process."²² The court also noted that "appellants did not demonstrate the ready availability of a practical alternative plan that would significantly increase the 'effectiveness' of minority votes without interfering with other legitimate line drawing considerations."²³ The court, similarly, rejected plaintiffs' fragmenting claims regarding the Hispanic community, finding them "weaker" than the packing claims.²⁴

Current Events

The most recent voting rights challenge arose from the controversy surrounding the 1985 state decennial census submitted by the City of Boston. A coalition of minority groups challenged the redistricting schemes for the City Council, School Committee, and the Massachusetts House of Representatives in *Black Political Task Force, et al. v. Michael J. Connolly, et al.*²⁵ The challenge claimed that minorities were undercounted in the 1985 census, that district lines for the three legislative bodies violated the Fourteenth Amendment's "one person, one vote" principle, and that the Massachusetts House of Representatives districting scheme diluted minority voting strength through packing.

Plaintiffs' claim of the undercounting of minorities grew out of an elongated dispute between the City of Boston and the Secretary of State concerning the accuracy

of the 1985 census figures submitted by Boston. The Legislature passed an act establishing the Decennial Census Commission to resolve the dispute that studied the issue and issued a report in May 1986. The report concluded that Boston's figures were inaccurate and the process used to develop those figures was significantly flawed. Having rejected Boston's figures and its methodology, the Commission developed a statistically sound formula for estimating the 1985 Boston population. It found that the best estimate of the population in 1985 was 601,095.

Before the City Council adopted its redistricting plan, plaintiffs submitted what they believed to be a statistically sound analysis of the proper distribution of the 1985 population as determined by the Commission. Though the City Council's expert agreed with plaintiffs' analysis, it was rejected by the City Council.

The Legislature relied on the distribution of population as determined by the Decennial Census Commission. The House plan also "packed" blacks into two overwhelmingly minority districts. The court bifurcated the case, treating that "one person, one vote" issues first and postponing the dilution issues until a later date, if necessary. A one-day hearing was held before a three-judge court, and two months later the court rendered its decision. The decision upheld the use of the Decennial Census Commission's distribution of the population but invalidated the House of Representatives' district plan, finding that 62 of the 160 districts violated the "one person, one vote" principle of the Equal Protection Clause. The Secretary of State was enjoined from "publishing or distributing any legislative nomination papers, forms, ballots or other materials" that relied upon the old district lines.

The court summarized three major concerns:

The House Redistricting Plan adopted shows: (1) a number of

similar — indeed, even more extreme — deviations from the *prima facie* ten percent standard demonstrated by pairing the Ninth Suffolk and Twelfth Norfolk Districts; (2) deviations which are pervasive throughout the House plan; and (3) deviations which affect a substantial percentage of Massachusetts voters.

Slip Opinion, at 33.

The court examined possible justifications for the deviations, though the deviations had passed the constitutional point where any was permissible. Though the attorney general argued that one purpose was to maintain political boundaries, the court found that the plan "shows no rigorous adherence to a policy of respect for the boundaries of political subdivisions." The court expressed the hope that a new map would avoid further court involvement and directed the plaintiffs to submit their proposal to the court.

Epilogue

It took the power of the federal court to resolve this controversy. When the minority and Republican plaintiffs informed the court that they would join together in submitting a constitutional plan for the Commonwealth and the courts agreed to try both issues before nomination papers would issue, the House yielded to the Constitution and laws of the United States and a constitutional plan was enacted and signed into law on April 1, 1988.²⁷ As minorities have known for many years, they must continue to struggle for the "crown jewel" in the "Cradle of Liberty."

NOTES

1. 379 F. Supp. 410 (D.Mass. 1974), *aff'd* sub nom. *Morgan v. Kerrigan*, 509 F.2d 580 (1st Cir. 1974), *cert denied*, 421 U.S. 963 (1975). (Liability)

2. *Black Voters v. McDonough*, 421 F. Supp. 165 (D. Mass. 1976), *aff'd*, 565 F.2d 1 (1st Cir. 1977).

3. 421 F. Supp. at 167.

4. 42 U.S.C. Sections 1971 and 1973.

5. 565 F.2d 1,7 (1st Cir. 1977). The District Court was directed to retain jurisdic-

tion and, after at least one year, "hold supplemental proceedings [and] take account of whether the situation has . . . improved or worsened . . ." *Id.*

6. *Id.* at 5.

7. *Id.*, n.11.

8. *Id.* n. 12.

9. *Id.* at 6.

10. *Id.* at 7.

11. 568 F. Supp. 1012 (D. Mass. 1983), *stays denied*, 716 F.2d 68 (1st Cir. 1983), sub nom. Bellotti v. Latino Political Action Committee, 463 U.S. 1319 (1983) (Brennan, Circuit Justice).

12. 568 F. Supp. at 1017.

13. 568 F. Supp at 1019.

14. *Latino PAC v. City of Boston (Latino PAC II)*, 609 F. Supp 739, 743 (D. Mass. 1985), *aff'd*. 784 F.2d 409 (1st Cir. 1986).

15. 609 F. Supp. at 743.

16. *Id.* at 744.

17. *Latino PAC II*, 609 F. Supp. at 745.

18. *Id.* at 746.

19. *Id.* at 747.

20. *Id.* at 748.

21. 784 F.2d 409,410 (1st Cir. 1986).

22. *Id.* at 413-14.

23. *Id.*

24. *Id.* at 415.

25. Civil Action no. 87-1886-WD. The coalition includes the Black Political Task Force, Massachusetts Latino Democratic Committee, Rainbow Coalition, and Asian Political Caucus. Shortly after the filing of this case, a similar challenge was filed by the Massachusetts Republican State Committee, Massachusetts Republican State Committee, et al. v. Michael J. Connolly, et al. Civil Action No. 87-1953-WD. The cases were heard together before a three-judge court because they both challenged state legislative apportionment.

26. The court concluded that "[t]he teaching of this experience should suggest that judicial intervention to secure adherence to constitutional obligations can be avoided when the state focuses its attention on approximating equity rather than approximating the limits of tolerance. We trust that Massachusetts will do in its future redistricting efforts thus obviating the need for continued involvement of a federal court in overseeing the Commonwealth's electoral arrangements." *Id.* at 50.

27. At a court hearing on 15 March 1988 the plaintiffs in both cases informed the court that they would continue to press the apportionment issue and the minority plaintiffs requested that the dilution issues be heard as soon as possible. The attorney general's office suggested that the Commonwealth would proceed with the electoral process under the new legislation without prior court approval. Plaintiffs asked the court to enjoin such action and the court enjoined nomination papers from being issued until a hearing was held on both the "one person, one vote" and dilution issues. When it was

represented to the court on 25 March 1988 that the minority and minority plaintiffs would submit a joint map that was constitutional and did not dilute minority voting strength, the court observed that if it is a choice between the map and one (House) that was *prima facie* unconstitutional, "[W]hat's the choice."

It was then, and only then, that the logjam began to break. The House decided that it was preferable to bring all of

its districts within 10% variance allowed by law instead of risking a "Republican"/minority map. It also decided to negotiate with the minority plaintiffs, and after three days of bargaining, an agreement was reached. District 5 (North Dorchester) was created to be 44% black and 20% Latino. District 7 (Roxbury) was un-packed, somewhat, but Mattapan/South Dorchester was left as the House map had drawn it (54% minority).

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