IN SEARCH OF THE "CROWN JEWEL" IN THE "CRADLE OF LIBERTY"

by Alan Jay Rom [1]

"The right to vote is the crown jewel of American liberties,
and we will not see its luster diminished."[2]

Although the right to vote has been described as the "crown jewel of American liberties," 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 for 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,[3] the Boston school desegregation case. While that case commanded national and inter- national attention, another case proceeded more quietly through the courts challenging the at-large system of electing the Boston School Committee which 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.[4] Plaintiffs claimed that this system [5] "effectively cancel[ed] out, dilute[d] and minimize[d] the voting

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[1] Staff counsel to the Lawyers'Committee for Civil Rights Under Law of the Boston Bar Association since 1977.

[2]. Ronald Reagan, 18 Weekly Comp. Pres. Doc. 846 (June 29, 1982) (During signing of the 1982 Voting Rights Act Amendments), quoted in Parker, "The `Results' Test of Section 2 of the Voting Rights Act: Abandoning the Intent Standard, " 69 Va. L. Rev. 715 (1983).

[3] 379 F. Supp. 410 (D. Mass. 1974).

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

4. There were five seats on the Boston School Committee from 1906 until 1981. The at-large system allowed anyone from any part of the City to run for election who could collect 2,000 signatures of registered voters. A preliminary election reduced the candidates to ten, or half the number to be elected in the general election in November.

strength of the Boston black community in School 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.[7] In other words, the non-partisan feature of Boston's elections foreclosed blacks from the traditional avenue for political participation, isolating and reducing any effective black political power.[8] 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.[9]

The Court of Appeals affirmed the District Court decision, but admitted that since its

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[7]. 42 U.S.C. Sections 1971 and 1973

[8]. At the time of Black Voters, supra, several Supreme Court and lower court decisions helped to define whether the effect of the at-large system was "to minimize or cancel out the voting strength of racial or political elements of the voting population." Burns v. Richardson, 384 U.S. 73 (1966). In Whitcomb v. Chavis, 403 U.S. 124 (1970), the Supreme Court rejected the notion that "safe districts," per se, were unconstitutional. However, in White v. Regester, 412 U.S. 755 (1972), the Court found the multi-member (at-large) systen was unlawful because it operated to exclude participation based on race. The political party in question did not repre- sent blacks and blacks could not participate in it. In an often-quoted opinion the old Fifth Circuit, in Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973), discussed what have since been referred to as the "Zimmer factors" to determine whether minorities have been unlawfully excluded from the electoral or political process. The District Court applied those factors to Boston electoral politics by asking the following questions: "(1) Do blacks in Boston comprise an identifiable group for purposes of this suit?
(2) Do the elected candidates look for support from blacks? (3) Are those elected aware of and responsive to the needs of blacks? (4) Has there been a history of racial campaign tactics by successful candidates? (5) Are School Committee elections characterized by bloc voting along racial lines? (6) Has there been a history of invidious racial discrimination in Massachu-setts, especially in the area of voting? (7) Is the challenged election system characterized by procedures that discourage or deny access of blacks to the political process? (8) Is "bullet" voting, a tactic permitting minorities to maximize the potential of their voting power, allowed under the present system? (9) Is there a ballot "place" rule in Boston's School Committee elections? (10) Is there a majority vote requirement before a candidate can move from a preliminary to the final election? (11) What is the proportion of successful black candidates, or black sponsored candidates, in relation to the community's ethnic and racial population breakdown, both in the primary and final elections? (12) Who decides who may be a candidate for the Boston School Committee? Is the opportunity to run for election open to all, or is it controlled by political parties or other private power sources? (13) Do blacks find themselves isolated, culturally or otherwise, from Boston's mainstream? (14) Is there legitimate, rational support for the state policy favoring multi-member or at-large districts? (15) Are black registration and voting rates substantially lower than the rates of the population as a whole?"
Black Voters, 421 F. Supp. at 173.

[9]. On appeal, it was argued that the District Court analyzed the case as if it involved multi-member districts of the Legislature, and different considerations applied in non-partisan, at-large local elections. The Constitution and Voting Rights Act are violated, appellants argued, when such at-large voting systems operate against a racial group.

"decision is close, [we do so] provisionally and without prejudice to plaintiffs' right to reopen their claim in the future..."[10] The District Court was directed to retain jurisdiction and, after at least one year, "hold supplemental proceedings ... [and] take account of whether the situation ... has improved or has worsened ... ." Id. 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."[11] 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 interests."[12]

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."[13] 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 CommitteeCommittee elections."[6] Because the history of racial discrimination, as

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[10]. 565 F.2d 1, 7 (1st Cir. 1977).

[11]. Id. at 5. In addition to "discrimination in education-the realm of responsibility of the School Committee," Id., the court acknowledged the existence of discrimination in the areas of housing, municipal services, and employment, citing Boston Chapter, NAACP, Inc. v. Beecher, 504 F.2d 1017 (1st Cir. 1974) (firefighters); Associated General Contractors of Massachusetts, Inc. v. Altshuler, 490 F.2d 9 (1st Cir. 1973) (construction trades); and Castro v. Beecher, 459 F.2d 725 (1st Cir. 1972) (police).

[12]. Id., n. 11.

[13]. Id., n. 12.

5. 421 F. Supp. at 167.

has emerged that has often been unresponsive to the needs of the black population."[14]

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 element 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.[15]

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."[16]

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[14]. Id. at 6.

[15]. Id. at 7. This decision, with its direction to the District Court to retain jurisdiction for one year, was rendered on 17 October 1977, just two weeks before the general election for School Committee. John O'Bryant, was elected in November 1977, becoming the first black to be elected to the School Committee in this century. As a result, the plaintiffs did not take up the court's invitation to reopen the proceedings.

[16]. Chapter 549 of the Acts of 1977, G.L. c.43, Sections 128-134. Section 131 allows for the city council and school committee to be composed of "nine members elected from equally populous districts and ... one member elected at large for every 120,000 residents of the city in excess of 150,000."

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, 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),[17] (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).[18]

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.[19] 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

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[17]. The 1980 minority population was 126,229 or 22.42% Black, 36,068 or 6.40% Hispanic, 15,150 or 2.69 Asian and Pacific Islander, 1,302 or .23% American Indian, Eskimo and Aleutian, and 26,376 or 4.68 other.

[18]. There were no racial statistics of the 1975 state decennial census, but a review of the 1970 federal census shows that Boston's 1975 population was decidedly more white than it was in the 1980 federal decennial census: 104,707 or 16.33% Black, 17,984 or 2.805% Hispanic, and 11,655 or 1.818% for all other racial minorities. There can be little doubt as to why the City Council preferred to draw district lines based on the 1975 figures. If the City relied on the 1980 population census, it would have been entitled to only three at-large seats under Chapter 549 of the Acts of 1977. After suit was brought, the Legislature corrected this "oversight" by passage of Chapter 605 of the Acts of 1982. The amended statute called for four at-large seats regardless of population (over 150,000) and attempted to require the use of the state decennial census for all state and local (i.e. Boston, retroactively) redistricting.

[19]. 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). The coalition of groups included the Latino Political Action Committee, Black Political Task Force, and Boston People's Organization.

were drawn.[20] 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"[21] 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."[22] Accordingly, the court granted plaintiffs' motion for summary judgment.

Plaintiffs returned to court for the second part of the case in November 1984.[23] Because plaintiffs' claims 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

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[20]. Applying the 1980 census to the district lines drawn by the City Council, the variance between the largest and the smallest districts was 23.6%. To determine the ideal population of a district, the total city population is divided by nine. The Supreme Court allows local and state government 5% leeway above and below the resulting number per district.

[21]. 568 F. Supp. at 1017. The court made it clear there is a "common sense preference for the use of the most recent census data available in legislative apportionment." Id. at 1018. The City offered several reasons for using the 1975 census but each was rejected. The City argued that the state census is used for state legislative apportionment, that the City Council believed that the 1975 census was more accurate than the 1980 federal census (which was under challenge in the courts), and that all of the proposals submitted to it were based on the 1975 state census (though it had informed everyone that the use of the 1975 census for map-drawing was required). It also tried to justify the use of the 1975 state census by reliance on a statute (not in existence at the time of the redistricting) requiring its use. See n.17, supra.

[22]. 568 F.Supp. at 1019. Within three days, the Massachusetts Attorney General moved to intervene and sought a stay of the court's injunction. The District Court considered and denied the request for a stay. Id. at 1020. While the Attorney General unsuccessfully submitted requests for stays to the First Circuit, 716 F.2d 68, and Supreme Court Justices Brennan and Rehnquist, 463 U.S. 1319, the City Council made the minimum changes necessary to comply with the principle of "one person, one vote."

[23]. Joining the coalition of plaintiff groups was the Asian Political Caucus. In a preliminary skirmish, the City Council sought, successfully, to be dismissed from the case on the ground that there was absolute "legislative" immunity and no legislative directive had abrogated this immunity. This ruling applied to the City Council, its members, and the Mayor in his legislative capacity. However, the Mayor's effort to remove himself completely, based on "immunity," was denied, because, in his executive capacity, he had obligations regarding the enforcement or implementation of the district plan. 581 F. Supp. 478, 482-83. (D. Mass. 1984).

Although dissatisfied with the revised district plan, plaintiffs realized that it was too close to election day to seek an injunction based on the principle of dilution, so the 1983 municipal elections proceeded under that plan.

Between Black Voters and Latino PAC, Congress passed the 1982 Voting Rights Act amendments which overturned the Supreme Court decision in City of Mobile v. Bolden, 446 U.S. 55 (1980). That case had required proof of intentional discrimination in dilution cases. The new standard of proof, similar to the pre-Bolden "White" and "Zimmer" factors was "totality of circumstances."

[took] on additional significance [and were] tied particularly closely to plaintiffs' claims of packing and fragmenting."[24]

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."[25] 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." [26]

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 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

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[24] 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). The court recognized Section 2's shifting of emphasis from the focus in Zimmer, supra, by placing primary focus on these two factors. The court did consider other factors important "as a means of assessing the historical, sociological, and political climate in which the electoral scheme functions." Id.

[25]. 609 F. Supp. at 743. Despite findings that (1) more minorities fall below the poverty level than white families; (2) that less minorities hold high school diplomas than whites; (3) that the median income of minorities is lower than whites; (4) that the life expectancy of minorities is shorter than whites, and infant mortality higher; and (5) that blacks are largely confined to the geographic core of the city, the court concluded that "such discrimination has not significantly impaired the ability of Blacks ... to participate in the City's political life. Id.

[26]. Id. at 744. The court revisited the other factors discussed in Black Voters, supra, see n.7. The court found that minorities had been able to run for office over the previous twenty years and that open racial hostility had abated, finding that there was no "indication that the use of racial tactics has been a part of the City's elections since 1977." Id. at 745.

characterize Boston's electorate."[27]

The court first considered plaintiffs' claim that Blacks were packed in two districts, constituting 82% of one district and 66% in another.[28] 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."[29] 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,"[30] 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

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[27]. Latino PAC II, 609 F.Supp. at 745.

[28]. Plaintiffs had asserted that when blacks and Latinos were aggregated in these two districts, the percentages increased to 88% and 81%. An important legal issue is whether such aggregation was permissible in considering dilution claims. The court rejected plaintiffs' undisputed claims that blacks, Latinos and Asians had a "community of interests" (e.g. education, housing, employment and municipal services) so that they would "vote as a bloc," Id. at 747. This was despite uncontroverted testimony from representatives of each minority that they had many interests that coincided and that these groups had worked together (including bringing this suit as a coalition). Plaintiffs pointed to the election of a Hispanic to the School Committee from a predominantly black district and the court's own findings that minorities (as well as whites) bloc-voted along racial lines.

[29] Id. at 746. From plaintiffs' point of view, the court's misunderstanding of the analysis of minority voting rights under the Voting Rights Act was best evidenced by the court's next statement: "In fact, the evidence reveals that, Whites are packed to an even greater extent than Blacks in the City's seven remaining districts; the average White population in districts other than 4 and 7 is 83.8%." Id. This was precisely the problem, from plaintiffs' point of view, and the purpose of the Voting Rights Act was to analyze dilution of minority voting rights, not those of Whites. The concept of packing whites is not valid in the context of the Voting Rights Act, the Fourteenth and Fifteenth Amendments and remedies designed to protect cognizable minority groups. See generally United Jewish Organizations v. Carey, 430 U.S. 144 (1977).

[30]. This ignored plaintiffs' claim that Latinos had the potential to become a significant political influence, were they not fragmented over five districts. In essence, the court found that the right of Latinos and Asians to have an impact on political decisions affecting their districts was legally irrelevant if they did not have an effective majority (65 percent) to elect candidates of their choice. A coalition could not be formed unless there was evidence that the minority groups voted similarly for candidates or on issues that affected both groups.

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."[31] 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 reelection to the School Committee at-large. Moreover, the court claimed that minorities "determined the winners"[32] in two other districts.

The Court of Appeals concluded that the record of the District Court "adequately supports the ... findings ..."[33] 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."[34] 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."[35] The court, similarly, rejected

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[31]. Id. at 747. Further, the court reasoned that the Voting Rights Act neither "entitles a minority group to be included in a single legislative district, ... nor requires the electoral segregation of any segment of the majority population whose views conflict sharply with those of the minority." Id.

[32]. Id. at 748. These two districts, #3 and #8, had a 22.05% and 18.96% minority population, respectively, when the minority groups were aggregated. The court previously ruled against such aggregation.

[33]. 784 F.2d 409, 410 (1st Cir. 1986). The court read plaintiffs' characterization of dilution as "`minimization, cancellation or submergence of minority voting strength below what might otherwise have been.'" (Emphasis, the court's.) The court believed that plaintiffs meant that such dilution "encompass[ed] virtually any other theoretically possible system of drawing voting lines that might give a minority group more voting power." Id. at 412. Such an interpretation led the court to declare that this was not plausible, "for it would require courts to make the very finest of political judgments about possibilities and effects-judgments well beyond their capacities." Id. But plaintiffs did not argue that interpretation. Rather, they argued that, whatever the configuration, Boston could not minimize minority voting strength in drawing district lines. What "might otherwise have been" could encompass any number of configurations that would pass legal muster. Just as plaintiffs were not saying that a map would have to "maximize their strength," the City could not legally minimize their strength. There is a permissible area between those poles, but the court did not accept this, thereby leaving the City free to minimize minority voting strength.

[34]. Id. at 413-14. Even if minorities were able to aggregate, the court declared that "the figures of 87.88 percent and 81.43 percent [were not] so high as to be automatically unlawful." (Emphasis, the court's) The court reasoned that, where there was racially polarized voting, packing "to some degree may help, not hurt, minority voters." Id. at 414. The court reasoned that because "Black or minority voters do not vote as completely cohesive blocs, more "packing" [was] needed to assure ... a Black representative... ." Id. (Emphasis supplied) "Given the difficulties of measuring such factors as "the cohesiveness of bloc voting" or "the degree of polarization", particularly if Blacks, Hispanics and Asians are treated as a single group, we cannot say the difference between the 75 percent "packing" figures the appellants concede to be lawful and actual minority concentration in district 4 is so great as to undermine the district court's conclusion." Id.

[35]. Id. The court noted that the third minority district urged by the appellants contained an insufficient number of minorities to make it a "safe district." Id.

plaintiffs' fragmenting claims regarding the Hispanic community, finding them "weaker" than the packing claims.[36]

THE LATEST CHAPTER

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 Representa-tives in Black Political Task Force, et al. v. Michael J. Connolly, et al.[37] 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 a lengthy dispute between the City of Boston and the Secretary of State concerning the accuracy of the 1985 census figures submitted by Boston.[38] The Legislature passed an act establishing the Decennial Census Commission to resolve the dispute which 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.

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[36]. Id. at 415. Citing Terrazas v. Clements, 581 F. Supp. at 1340, the court commented that there was "no obvious, practical way of creating a district with an Hispanic population majority without 'creating a district that runs...tentacle-like corridors." Id.

[37]. 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. The cases are reported at 679 F. Supp. 109 (D. Mass. 1988).

[38]. The Secretary of State maintained that the 620,889 figure submitted by Boston was too high. The 1980 federal census found 562,994 residents and a July, 1984 Bureau of the Census update noted 570,719 persons.

It found that the best estimate of the population in 1985 was 601,095.[39]

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.[40] Though the City Council's expert agreed with plaintiffs' analysis,[41] it was rejected by the City Council.[42]

The Legislature relied on the distribution of population as determined by the Decennial Census Commission.[43] The House plan also "packed" blacks into two overwhelmingly minority districts.[44] The court bifurcated the case, treating the "one person, one vote" issues first and postponing the dilution issues until a later date, if necessary.[45] A one-day hearing was held before a three-judge court,[46] and two months later the court rendered its decision. The decision

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[39]. Plaintiffs did not challenge what the Commission did up to this point. However, having determined the total population, the Commission realized that it had to determine in which wards and precincts the 601,095 population lived for reapportionment purposes. Rather than use a statistically acceptable method for achieving this goal, the Commission retrieved the flawed Boston census that it had previously discarded. It reasoned that the 601,095 figure represented approximately a 65 percent increase of the difference between the 1980 federal decennial census and the 1985 state decennial census submitted by Boston. The population figures for each precinct were adjusted to reflect the 65% increase and its percent of the whole. Thus, the new precinct numbers would add up to the new ward numbers.

[40]. The study calculated net births (births minus deaths by race between 1980 and 1985 and added this number (12,096) to the 1980 federal census, yielding a total of 575,090. When the latter figure is subtracted from Commission's total population figure, the resulting 26,005 represents net migration into Boston between 1980 and 1985. The study further assigned a weight to migration by race as determined by the net births figures, which were known by race, and studies conducted by the Boston Redevelopment Authority (BRA). The increased population of 38,101 was assigned to precincts according to the 1980 census figures, which the BRA had been distributed by race to wards and precincts.

[41]. Glenn L. Pierce, "Memorandum on Alternate Methodologies for Apportioning 1980-1985 Population Growth To Boston City Council Districts, Wards, and Precincts," (Center for Applied Social Research, Northeastern University) June 16, 1985.

[42]. When plaintiffs' population distribution is applied, the variance between the largest and smallest districts is 12.2 percent, a prima facie violation of the "one person, one vote" principle. Given the racial composition in the two predominantly black districts and the result in Latino PAC II, plaintiffs did not pursue the dilution claim against the City of Boston.

[43]. The variance between the largest and the smallest district, relying on the Commission's distribution formula was 18.31% Under plaintiffs' population distribution formula, that deviation would be 21.41%.

[44]. Districts 6 and 7 were at least 95 percent minority. District 6 was 89 percent black and 6 percent Latino. District 7 was 90 percent black and 7 percent Latino. Districts immediately adjacent to these two districts had significant minority populations, enough to constitute minority districts if minor changes were made in the district lines. See infra, n.54.

[45]. This was also done in Latino Pac I and II and makes sense. The issue of "one person, one vote" is one that can be treated on cross motions for summary judgment, while dilution is a complicated issue. The court might also expect that, if the plaintiffs' prevail on the apportionment issue, the legislative body would seriously consider the dilution issue seriously in the redrawing of district lines.

[46] Circuit Judge Coffin and District Judges Woodlock and Keeton.

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" which relied upon the old district lines.[47]

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.

679 F. Supp. at 124.[48]

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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 igorous adherence to a policy of respect for the boundaries of political subdivisions."[49] 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.[50]

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[47]. 679 F. Supp. 109 (D. Mass. 1988).

[48]. The court noted that the largest deviation was between the Seventeenth Middlesex and Twelfth Norfolk, a 21.9 percent variance. The court added that, "the questionable deviations from one person, one vote principles ... [are] inordinate, pervasive and ... have a direct effect on the relative electoral power of a substantial percentage of the Commonwealth's voters." Id. at 125.

[49]. Id. at 126. The court noted that "[e]ven if Massachusetts could show historically consistent adherence to a policy of respect for political subdivision boundaries and could further show, as it cannot, that its adherence to that policy ... produces the minimum divergence from the goal of equality, [case law] stands as a reminder that such divergence must also be `within tolerable limits'" Id. at 129.

[50]. 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 equality rather than approximating the limits of

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 court's 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 1 April 1988.[51] As minorities have known for many years, they must continue to struggle for the "crown jewel" in the "Cradle of Liberty."[52]

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tolerance. We trust that Massachusetts will do so 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 131.

[51] On 10 March 1988 the House Special Committee on Redistricting developed its plan and a public hearing was held on 12 March 1988. Plaintiffs presented testimony that the proposed redistricting plan continued to violate the "one person, one vote" principle in several instances and, worse still, continued to dilute minority voting strength in the City of Boston. Districts 6 and 7 are 82% and 96% minority, respectively, under the Special Committee's proposal for Boston. The Black Political Task Force plaintiffs had submitted two maps to the court and the Special Committee. Each map would have complied with the "one person, one vote" principle and created two additional districts where people of color could elect candidates of their own choice. The Republican plaintiffs submitted a map for the entire state which complied with both legal principles. The Special Committee's proposed map made more changes in Boston than plaintiffs Revised Map #1, packed minorities in two districts, split more communities than the Republican plaintiffs' statewide map, and exceeded the 10% limit in at least five districts, resulting in 33 district combinations in excess of the permitted 10% limit. The vote in the House on 14 March 1988 was again overwhelming in support of the Special Committee on Redistricting's plan.

No action was taken as the House rejected the Senate's desire to assist in the House redistricting scheme. Plaintiffs asked the Senate to reject any unconstitutional plan, such as the one submitted by the House. Major bills in both houses came to a standstill. The Governor was asked by the minority plaintiffs to veto any unconstitutional plan.

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 that 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 the 10 percent 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 percent black and 20 percent Latino. District 7 (Roxbury) was unpacked, somewhat, but Mattapan/South Dorchester was left as the House map had drawn it (54 percent minority).

[52] The coalition of plaintiffs continued to work together politically. They joined forces to support Nelson Merced, the former Executive Director of Alianza Hispana, a Latino multi-service center, and he won election to the newly-created Fifth Suffolk District, becoming the first Latino to be elected to the Massachusetts State Legislature.