Lawyer: 1st Circuit answers ‘unique question of law’ in redistricting case A quick word with … Normand Benoit

Description

Fallout from the city of Cranston’s 2012 redistricting plan, which included 3,433 prison inmates in one voting ward’s population count, evolved into a legal fight that ultimately reached the 1st U.S. Circuit Court of Appeals.

Last month, in D*avidson, et al. v. City of Cranston, Rhode Island*, a 1st Circuit panel reversed U.S. District Court Judge Ronald R. Lagueux’s May 2016 summary judgment ruling for the plaintiffs, who had challenged the plan on constitutional grounds. In their complaint, four Cranston residents and the American Civil Liberties Union of Rhode Island claimed the redistricting plan violated the 14th Amendment’s equal protection clause because it inflated the voting strength of those who resided in the ward that included the prison, while diluting the voting strength of the other wards.

Lagueux’s ruling also enjoined Cranston from holding elections based on the redistricting gave the city 30 days to propose a new plan.

In ordering that summary judgment be entered for Cranston on remand, the 1st Circuit said it relied on the “methodology and logic” of the U.S. Supreme Court’s E*venwel v. Abbott* decision, which held that a state or locality can draw legislative districts based on total population.

The 1st Circuit noted that *Evenwel* did not alter Supreme Court precedent that apportionment claims involving only minor deviations from mathematical equality among districts require a showing of invidious discrimination, which was not alleged in *Davidson*. The opinion noted that the maximum deviation of population in Cranston’s wards is less than 10 percent when the inmates are included in Ward Six. When the prisoners are excluded, the population deviation between the largest ward and Ward Six is about 35 percent.

“Without such a showing of discrimination, *Evenwel* reinforces that federal courts must give deference to decisions by local election authorities related to apportionment,” Judge Sandra L. Lynch wrote on behalf of the 1st Circuit.

The plaintiffs have since filed a petition for rehearing en banc.

Normand G. Benoit, senior counsel at Partridge, Snow & Hahn in Providence, successfully represented Cranston at the 1st Circuit and was the lead attorney at the trial court level. He recently spoke with Lawyers Weekly about the case.

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Q. What were some of the main challenges of the case?

A. It was a unique question of law. It’s always a challenge when you have a case that’s almost one of first impression. We were also up against very able counsel on the national level. The plaintiffs were represented by attorneys from Demos, which is a public interest outfit out of Washington, D.C. We had the ACLU’s national voting rights attorneys also involved. And some prisoners’ rights groups were involved. We were up against some very, very competent counsel. The other challenges were those you have probably in any case — which is analyzing the case [and] determining the best strategy and defense. We determined early on that this was a question of law, and the law was on our side.

Q. What were some of the key issues or wrinkles in the case?

A. Unfortunately, Cranston found itself to be what I'll call a legal guinea pig. The plaintiffs have a national public interest slash political agenda, which is that they are against what they call prison gerrymandering. Their real complaint is that certain states like New York, for example, as a matter of policy puts prisons in rural districts in upstate New York. Therefore, they are counted in the so-called Republican districts, and not counted in those communities that tend to be more urban. They claim that disadvantages the voting strength of people in the urban areas and enhances the strength of the people in the rural areas.

Cranston was a convenient guinea pig because the numbers were such that you had 3,200 prisoners in one ward that totaled 14,000 people and change.

Q. Why was it important for Cranston to include the inmates in the redistricting plan?

A. The city had no choice. Its charter, which had been approved by the people back in the early 1960s and validated by the General Assembly, specifically said that in apportioning the wards for the Cranston City Council and the Cranston School Committee, they were supposed to follow the most recent census figures. That's all Cranston did. The plaintiffs kept harping that the council chose to do this. But it was in the charter; it was either ignore the charter or move forward and defend the case.

Q. What was the impact of the fact that the plaintiffs advanced a vote-dilution claim and the amici advanced a claim that the plan impermissibly weakened the political power of communities of color?

A. It ended up hurting them in the sense that the amici also made filings in the Supreme Court in the Evenwel case. The amici ended up highlighting one of our main arguments, which was that the *Evenwel* case was dispositive. While that matter didn't involve prisons, the Supreme Court was certainly acutely aware that prisoners were part of the total population. The 1st Circuit sua sponte invited amicus briefs to be filed. I think it shows that they had a real interest in the case and its legal issues.

Q. At what stage of your case did the Supreme Court issue Evenwel?

A. Initially, we had filed a motion to dismiss, but Judge Lagueux denied that so we went through a period of discovery. We both filed cross motions for summary judgment. While those were pending and awaiting oral argument, the Supreme Court took up Evenwel. Lagueux put our cross motions on hold, apparently for the reason that he wanted to see what the *Evenwel* court did.

Evenwel came down in April, and shortly thereafter Lagueux issued an order for supplemental briefs. He ended up ruling against us even though we thought Evenwel was controlling and dispositive in our favor.

Q. The 1st Circuit indicated that Evenwel did not answer the precise question at issue in your case. Why do you think it was dispositive and applicable?

A. What happened in *Evenwel* was the Legislature in Texas had apportioned based on census data. The Supreme Court indicated that it was a permitted methodology. While it didn't involve prisoners per se, it was a permitted way or metric to use to apportion. Historically, most reapportionments are based on the census. There were only two cases that held that merely using and following the census absent discrimination is illegal. There was a Florida federal District Court case pre-*Evenwel* and Lagueux's ruling in *Davidson* after Evenwel.

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