

Case Study: Arizona's Independent Redistricting Commission (2000s)

Executive Summary: *In 2000, Arizona voters approved the creation of an independent redistricting commission as a way to take the politics out of redistricting and create plans that would empower voters. An important lesson learned is that even independent redistricting commissions can result in redistricting plans that discriminate against underrepresented communities.*

In 2000, Arizona voters approved Proposition 106, a ballot measure that amended the state constitution to establish the Arizona Independent Redistricting Commission (IRC). Proposition 106 reassigned the role of redistricting from the legislature to the IRC, which is composed of two Republicans, two Democrats and an independent who serves as the chair. The IRC is required to use the following redistricting criteria:

- Compliance with the United States Constitution and the Voting Rights Act;
- Equal population between districts, to the extent practicable;
- Districts that reflect communities of interest;
- Preservation of geographic features and city boundaries; and
- Competitive districts that create no significant detriment to the other stated goals.

Latinos fueled much of Arizona's population growth in the 2000 Census. In 1990, Arizona had more than 3.6 million people, including 688,338 Latinos who comprised 18.8 percent of the state's total population. By 2000, Arizona's population had increased to more than 5.1 million people. Latinos accounted for over 41 percent of the state's population increase, increasing to 1,295,617 people, or about 25.2 percent of the state's total population. Latinos expected to see increased opportunities to elect their candidates of choice in new districts to represent their communities of interest.

In the summer of 2001, the IRC held a series of public hearings around the state. Later that year, the IRC adopted congressional and legislative district plans. In January 2002, Arizona submitted the plans to the U.S. Department of Justice for Section 5 preclearance.

In March 2002, a coalition of communities of color filed a lawsuit challenging the IRC's redistricting plan. Later that month, the U.S. Department of Justice issued a request for more information, asking Arizona to show that the plan "did not have the purpose and would not have the effect of denying or abridging the right to vote on the account of race, color, or membership in a 'language minority group.'" In May 2002, additional lawsuits were filed, including one by Arizona Indian tribes alleging that the redistricting plan violated Section 2 of the Voting Rights Act.

[On May 20, 2002, the U.S. Department of Justice objected to the IRC's 2001 state legislative redistricting plan, declining to preclear the plan under Section 5.](#) Because the

IRC plan was a statewide redistricting plan, it could not be approved piecemeal. However, the Department of Justice clarified that its objection was based upon a decrease in electoral opportunities for Latino voters in certain areas of Arizona.

Under Section 5 of the Voting Rights Act, the Department of Justice compares the proposed redistricting plan with the redistricting plan that it is replacing (what is called the “benchmark” plan) to determine whether to “preclear” (or approve) the proposed redistricting plan. The Department will object to a proposed redistricting plan in two circumstances:

Intentional Discrimination: If the redistricting body enacted the redistricting plan with the intent to discriminate against underrepresented voters, the Department of Justice will object. Intentional discrimination can be established by either direct or circumstantial evidence.

Retrogression / Backsliding: The Department of Justice will object if the redistricting plan places underrepresented voters in a worse position to elect candidates of their choice than what this group of voters had under the benchmark plan – what is called “retrogression” or is sometimes referred to as “backsliding.” In conducting retrogression analysis for a statewide redistricting plan, the Department determines the number of districts in which communities of color are able to elect their candidates of choice, with the individual districts referred to as “benchmark districts.” The Department then compares the number of districts in the proposed redistricting plan in which underrepresented voters are likely to have an equal opportunity to elect their candidates of choice. If the proposed plan has fewer districts providing communities of color with equal opportunities to elect than under the benchmark plan, then the proposed redistricting plan is retrogressive.

The state legislative plan adopted following the 1990 Census served as the “benchmark” plan. The Department of Justice determined that under the benchmark plan, Latinos were a majority of the total population in seven districts (Districts 5, 7, 8, 10, 11, 22, and 23) and a majority of the voting age population in four districts (Districts 10, 11, 22, and 23). Latino voters were able to elect their candidates of choice in all seven of the districts under the benchmark plan.

[The Department of Justice found that the IRC’s 2001 state legislative plan placed Latino voters in a worse position than they were in under the benchmark plan.](#) Despite increasing from 18.8 percent of the total population to 25.2 percent in the 2000 Census, the IRC’s 2001 state legislative redistricting plan reduced the number of districts in which Latinos could elect their candidates of choice from seven to only four. According to the Justice Department’s objection, the IRC’s 2001 state legislative plan resulted in retrogression by Latinos in four geographic areas:

Proposed Districts 13 and 14: Benchmark District 22, located in southwest Phoenix, had a Latino voting age population of 65 percent. The

IRC's plan split benchmark District 22 between proposed Districts 13 and 14, resulting in voting age populations of 51.2 percent and 50.6 percent, respectively. The Department of Justice found that historically in Arizona, a district with a Latino voting age population of around 50 percent was insufficient to allow Latino voters to elect their candidates of choice. The Department further observed that "the fragmentation of benchmark District 22 into two districts eliminates one district where Hispanic voters had consistently elected their candidates of choice." The IRC "failed ... to compensate for the loss of Hispanic electoral opportunity in the benchmark district."

Proposed District 15: Benchmark District 23, located in central Phoenix, had a Latino voting age population of 72.2 percent and resulted in the election of at least three Latino candidates of choice. The IRC's plan replaced the benchmark district with proposed District 15, which had a Latino voting age population of only 43.6 percent.

Proposed District 23: The IRC's proposed District 23 was created from portions of six benchmark districts in Phoenix and outlying areas of Maricopa and Pinal Counties. More than 74 percent of the proposed district's population came from benchmark District 7, where Latinos had comprised 30.2 of the voting age population and were able to elect their candidates of choice. Proposed District 23 reduced the percentage of Latino voting age population to 25.7 percent by removing large Latino populations in the towns of San Manuel and Oracle and adding the predominately non-Latino community of Apache Junction. The Department of Justice found that the removal of these Latino populations not only had a retrogressive effect, but "may also have been taken, at least in part, with a retrogressive intent."

Proposed District 29: Proposed District 29 was drawn primarily from benchmark District 10, located in central and south Tucson. Benchmark District 10, which had a Latino voting age population of 55.3 percent, had allowed Latino voters to consistently elect their candidates of choice. The IRC decreased the Latino voting age population to 45.1 percent in proposed District 29, without providing any "credible evidence" that Latino voters would continue to have an equal opportunity to elect their chosen candidates.

The Department of Justice indicated that the IRC could remedy the retrogression by restoring three of the benchmark districts in which Latino voters had an equal opportunity to elect their candidates of choice, by creating three viable new districts providing Latinos with those opportunities elsewhere in Arizona, or by some combination of those methods. The IRC responded to the Justice Department's objection by restoring three of the proposed Districts (13, 14, and 23) to their benchmark levels. [In September 2002, a federal judge approved the IRC's changes.](#)

This case study provides several important lessons for Latinos seeking to obtain fair representation in the redistricting process:

Redistricting commissions can discriminate against Latinos and other communities of color: Proponents of IRCs often argue that they are better than traditional legislative redistricting bodies because they depoliticize the process. Consistent with that argument, Arizona's IRC says its "[mission is to administer the fair and balanced redistricting of the Congressional and Legislative districts for the State of Arizona.](#)" However, the Department of Justice's 2002 objection to the IRC's state legislative redistricting plan shows that independent commissions are equally capable of discriminating against communities of color. Even though the population growth among Arizona's Latinos had far outpaced that of non-Latinos, the IRC did not create any additional Latino opportunity districts. Instead, the IRC eliminated nearly half of all of the state legislative districts in which Latinos had an equal opportunity to elect their candidates of choice. Latinos must remain vigilant during the redistricting process, even when IRCs are responsible for redrawing the lines.

Section 5 plays an important role in blocking discriminatory redistricting plans: Section 5 blocked Arizona's IRC from implementing its discriminatory 2001 proposed redistricting plan. The IRC's 2001 proposed plan was never used, which prevented non-Latino candidates of choice from being elected from fragmented Latino communities and benefiting from the power of incumbency. In the process, it ensured that the hard-fought gains that Latino voters had achieved in securing some representation in the state legislature were not rolled back. Section 5 is an especially powerful tool in securing equal opportunities for communities of color to elect their candidates of choice because the burden is on the submitting redistricting body – in this example, Arizona's IRC – to establish the lack of discriminatory purpose or effect.

The core of existing Latino opportunity districts should be preserved wherever possible: Population changes in a state or local community make it inevitable that district boundaries will need to be adjusted following each census. That is the nature of redistricting. Nevertheless, the need for redistricting should not be used by officials as an excuse for carving up or fragmenting Latino communities, such as what Arizona's IRC did in its 2001 proposed legislative plan by removing the predominately Latino towns of San Manuel and Oracle from benchmark District 7. Instead, wherever possible, the existing core of districts encompassing Latino communities of interest should be preserved. Typically, that is not difficult to do, especially in states like Arizona where there has been tremendous growth in the Latino population and the Latino communities are geographically compact.

Statewide plans should be considered as a whole in assessing discrimination: Determination of whether a statewide redistricting plan discriminates against Latino voters requires looking at the plan as a whole, and not just individual districts. Discrimination can be established in states like Arizona that are covered by Section 5 of the Voting Rights Act if the state cannot demonstrate that Latino voters will have an equal opportunity to elect their candidates of choice in at least as many proposed districts

as they could under the benchmark plan. All states must comply with Section 2 of the Act, which requires that the redistricting plan provide Latinos and other communities of color with an equal opportunity to elect their chosen candidates. If past voting patterns show that Latinos are likely to be disproportionately underrepresented compared to their percentage of the state's population, that evidence can help establish a violation of Section 2.

Latinos have to fight to keep the fragile electoral gains they have made: What makes the Arizona case study so telling is that the number of districts in which Latinos could elect their candidates of choice decreased from 7 to 4 even though the Latino population increased from 18.8 percent to 25.2 percent from 1990 to 2000. Latinos had to fight to keep the representation they had, instead of securing an increase in representation consistent with their population growth.

Latino involvement in the redistricting process is critical to preventing discrimination: Despite the claims by Arizona's IRC to "a fair and balanced" redistricting process that treated all Arizonans equally, the IRC's 2001 proposed legislative plan would have significantly reduced the voice of over one-quarter of the state's population: Latinos and Native Americans. Active Latino involvement in the redistricting process, including attendance at public hearings, submission of Section 5 comments to the United States Department of Justice, and volunteering to serve as parties in lawsuits brought against the state and the IRC, blocked the IRC's discriminatory 2001 proposed legislative plan. This reaffirms the point that Arturo Vargas, Executive Director of the NALEO Educational Fund, has said about redistricting: "Redistricting is about the redistribution of power, and power is not given away, *it is taken*. Latino community leaders need to ensure that our community gets its fair share of representation by participating in redistricting and being faithful to the interests of the community."