

Case Study: Illinois' Fourth Congressional District (1990s)

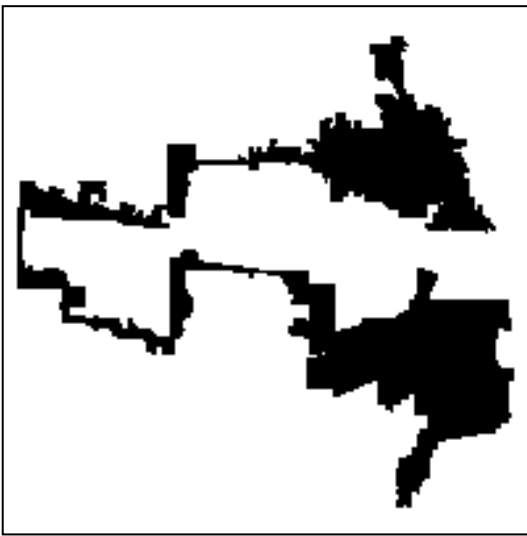
Executive Summary: *In Illinois the creation of District 4, “the earmuff” district, was controversial due to its irregular shape. The courts have upheld the irregular shape in order to protect the voting rights of the Latino community. The shape and compactness of a district are important considerations, but they do not necessarily prevent the creation of an irregularly shaped district in order to protect the voting rights of a community of interest.*

In Illinois, the legislature is responsible for redistricting. The Illinois legislature has a history of failing its legislative responsibility and enacting congressional redistricting plans to reflect population changes. . From 1901 to 1945, Illinois did not enact any congressional redistricting plans to reflect population changes. When the 1990 Census data was released, Illinois was still under a congressional redistricting plan enacted by the state legislature was in 1961. That plan was finally struck down by a state court in 1965. Additional information about Illinois' history of congressional and state legislative redistricting between 1970 and 2008 is [available here](#).

The 1990 congressional redistricting proved no different for Illinois. The legislature not only failed to enact a plan by June 30, 1991, as required by the state constitution, but did not even bring a plan to the floor for debate. Members of both political parties and groups of Latino and African-American voters filed separate lawsuits in federal court for a new redistricting plan. Those lawsuits were consolidated into a single case. The burden for congressional redistricting fell to federal and state courts when the Illinois legislature did not enact lawful redistricting plans.

The 1990 Census revealed that Illinois lost population over the decade and thus lost two congressional seats, dropping from 22 to 20 representatives. Overall, the state had a net increase of about four thousand people since the 1980 Census, but experienced a substantial net loss of the non-Hispanic white population.

In stark contrast, the Latino population had grown tremendously statewide. In Cook County (where Chicago is located), the Hispanic total population grew by 39 percent over the 1980 figure, to nearly 700,000 people. Yet, Latinos did not comprise a majority in any of the congressional districts under the existing plan. Due to Latino growth, all of the parties in the lawsuit agreed that a majority Latino congressional district needed to be drawn in Cook County to comply with Section 2 of the Voting Rights Act.



[The congressional plan adopted by the federal court in *Hastert v. State Board of Elections*](#) (“Hastert”) included District Four, the majority Latino district pictured to the left. The district had a Hispanic total population of

65 percent and a Hispanic voting age population of about 59 percent.

Some commentators labeled it the “earmuff district.” Despite the district’s irregular shape, the federal court found that it was compact. The district connected most of the Latino community in Cook County, which was “clustered in two dense enclaves, one on Chicago’s near northwest side and another on the near southwest side.” The two clusters of Latinos were less than one mile from each other at their closest point.

The federal court in *Hastert* explained that the geographic separation of the two clusters of Latinos was “not indicative of the existence of two distinct communities, but appears to have occurred as a result of [other] physical and institutional barriers.” They were “separated by Chicago’s major east-west highway, the Eisenhower Expressway, as well as by expanses of land developed by the University of Chicago-Illinois Circle and various major medical institutions.” Therefore, the court found that the Latino population was large enough to be a majority in a geographically compact district such as District Four.

The federal court in *Hastert* also found additional evidence that supported the creation of District Four to comply with Section 2 of the Voting Rights Act. Latino voters in the district usually had the same candidates of choice, and therefore were “politically cohesive.” Their candidates of choice were typically defeated by the candidates of choice of non-Hispanic white voters. Few Latinos had been elected to office statewide. In addition, [an earlier federal court](#) had found that the ward map drawn for the Chicago City Council in 1982 “cracked” the compact Latino population that could have been a majority in at least one district by dividing it between several districts. [Another federal court](#) had determined that Latinos had been the victims of intentional discrimination in the state legislative redistricting plan adopted following the 1980 Census. There was evidence of discrimination against Latinos in other areas, including education and housing.

District Four remedied the voting discrimination against Latinos and was permissible despite its shape. The federal court in *Hastert* explained:

The location of the Chicago Hispanic community in two highly concentrated enclaves on either side of the 7th Congressional District on Chicago’s near northwest and near southwest sides necessarily requires an off configuration to accommodate the creation of an Hispanic district ... dictated under the Voting Rights Act. “Uncouthness,” as defined by the Supreme Court, is not an aesthetic concept. Rather, an uncouth district configuration typically serves merely as a signal to a court that it should more closely scrutinize a districting plan... In this instance, the configuration has been drafted to satisfy constitutional and statutory goals and principles.

After the [United States Supreme Court’s 1993 decision](#) that for the first time authorized racial gerrymandering challenges to districts in which minorities were a majority of the residents, voters filed a lawsuit in federal court seeking to strike down District Four. A

different panel of federal judges heard the case in *King v. State Board of Elections* (“King”). In 1996, the federal court in *King* found that the consideration of race and ethnicity was the predominant reason for how District Four was drawn. Nevertheless, the court concluded that the district’s strange shape was permissible because it was necessary to remedy an established violation of Section 2 of the Voting Rights Act.

Later in 1996, the United States Supreme Court directed the federal court in *King* to reexamine its decision in light of the Supreme Court’s two most recent racial gerrymander rulings.

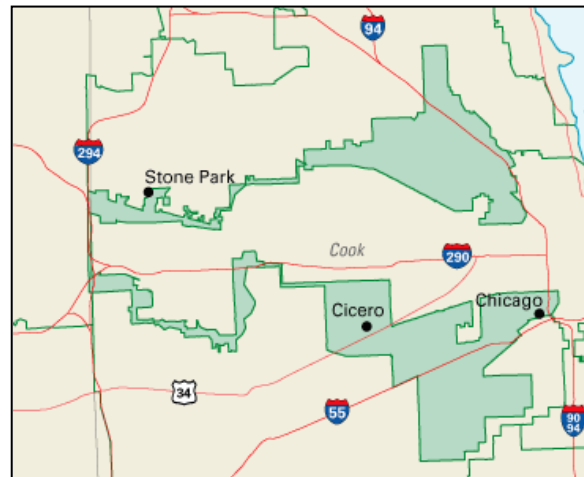
In 1997, [the federal court in *King* reaffirmed its ruling](#) the previous year that District Four was required by Section 2 of the Voting Rights Act, despite its irregular shape. The court concluded that although the race and ethnicity of the voters were the main reasons for the district’s shape, the district was constitutional. First, the court found that compliance with Section 2 was a compelling interest. Next, the court explained why District Four was narrowly tailored to achieve that interest:

The *Hastert* court adopted a single majority-minority district which was limited in size to the minimum number of Hispanic residents generally believed necessary to counteract the effects of racial bloc voting and ensure that the Hispanic electorate had a reasonable opportunity to elect a candidate of its choice. It further determined that the district’s extraordinary configuration was required to preserve shared communities of interest and protect ... three African-American super-majority districts against impermissible [backsliding].

District Four also was reasonably compact, despite its shape. Eighty percent of the district’s population was in the two Latino areas that served as a single community of interest.

The *King* court pointed to the Supreme Court’s explanation that in remedying a violation of Section 2 of the Voting Rights Act, the remedial district did not have to be subjected to “endless ‘beauty contests’” by being compared to more regularly shaped districts. Instead, the shape of District Four was permissible because it did not “subordinate traditional districting principles” (See Redistricting Fundamentals) to race or ethnicity substantially more than what was “reasonably necessary” to comply with Section 2. Therefore, District Four, the so-called “earmuff district,” was constitutional.

Following the 2000 Census, the shape of District Four (pictured in green to the right) was kept largely intact. In addition to its compact features, described above, District Four is the smallest district in terms of area for any congressional district



outside of New York City and San Francisco.

According to the 2000 Census, District Four is about 74.5 percent Latino. Congressman Luis Gutierrez has represented the district since 1993. Illinois' Fourth Congressional District provides several important lessons for Latinos seeking to obtain fair representation in the redistricting process:

Latinos can increase their representation even in states that lose congressional seats: District Four illustrates that Latinos have opportunities to increase their representation in Congress and in state and local governments wherever the Latino population has increased. In states where Latinos have fueled the population growth, such as Arizona, Florida, Nevada, and Texas, most – if not all – of the new congressional seats should serve Latino communities of interest to ensure that Latinos receive fair representation.

The same principle also holds true in states with rapidly growing Latino populations that kept the same number of congressional seats (such as California, Colorado, and New Mexico) or even lost seats following the 2010 apportionment (such as Illinois, New Jersey, and New York).

In the 1990s, Illinois lost two congressional seats and would have lost even more without strong Latino population growth in Cook County. Because of that growth, the federal court was compelled to draw a majority-Latino congressional district to remedy a violation of Section 2 of the Voting Rights Act. As a result, Illinois Latino voters for the first time were able to elect their candidate of choice to Congress.

Build a consensus between the political parties to include districts serving Latino communities of interest: In the *Hastert* federal lawsuit, Latinos in Illinois were able to convince both political parties that a district encompassing a majority of Cook County's Latino community of interest had to be included in the same district. All of the plans that were proposed included a majority-Latino district with features similar to those that were ultimately included in District Four.

Build a coalition with other minority groups to avoid a divide and conquer strategy: The *Hastert* litigation is also noteworthy because minority groups worked together to ensure that the district serving the Latino community of interest did not come at the expense of existing districts serving African-American communities of interest. Whenever possible, it is desirable for minority groups to work in harmony together to ensure that each receives fair representation. District Four's creation did not result in the loss of any representation for other minorities.

Establish the cohesiveness of the Latino community of interest: The touchstone for a "community of interest" is that the residents in that community share common interests, race or ethnicity, or a similar socio-economic status. One way to establish that is by showing that the residents generally support the same candidates. Latino cohesiveness will be necessary to show that a district is needed to remedy or avoid a violation of Section 2 of the Voting Rights Act.

In the *King* lawsuit, the plaintiffs claimed that there was no Latino community of interest in District Four because the northern part was largely Puerto Rican and the southern part was largely Mexican. However, two previous court decisions already had found that the Latino community in District Four had consistently supported the same candidates of interest, who were typically defeated by non-Hispanic white candidates.

Cohesiveness of the Latino community can be shown where Latinos of different ethnicities are included on the same slate of candidates. Evidence of common political endorsements from ethnic groups that may be in the same locale, such as Cubans, Mexicans, Puerto Ricans, and others from central and South America, also is helpful. Voting patterns likewise are important.

Cohesiveness may need to be established through the testimony of both lay witnesses (people who can testify about their own personal experiences) or through expert witnesses (typically political scientists) who can analyze election results.

If a district drawn for a Latino community of interest is irregular, explain why in the record: The shape and compactness of a district are important considerations, but they do not necessarily prevent the creation of an irregularly shaped district serving a Latino community. However, a so-called “uncouthly” shaped district can result in closer examination of that district by a redistricting body or a reviewing court.

The explanation for why District Four was irregularly shaped proved very important when the district was later challenged as a racial gerrymander. Critics of the district usually focus on just its shape, pointing out that it looks like an “earmuff” without addressing why that shape was necessary.

District Four was irregular, primarily for two reasons. First, the Latino community in north and south Chicago was divided by a major expressway and university and medical complexes. Keeping the community intact required the use of part of Interstate 294 to comply with the contiguity requirement. Nearly all of the district’s population (80 percent) was from the Latino community of interest, making the district relatively compact if the sparsely populated Interstate 294 connector was not included in the analysis.

Second, District Four kept in place three existing districts serving African-American communities of interest. Without the use of the Interstate 294 connector, District Four would have cracked a compact community of African-American voters. Therefore, the shape of District Four was necessary to comply with Section 2 of the Voting Rights Act, to provide fair representation to both Latinos and African-Americans.

As the *King* court pointed out, the United States Supreme Court permits strangely shaped districts that make traditional redistricting principles secondary to race or ethnicity no more than “reasonably necessary” to comply with Section 2 of the Voting Rights Act. Of course, it is always best to have a district with a compact appearance, although that is not

always possible – as the District Four example shows. Therefore, if the shape of a district that serves a Latino community of interest is irregular, make sure you get information into the record to explain why.

Include past findings of discrimination against Latinos in the record: The need for a district to serve the unique needs of a Latino community of interest should be supported by findings of discrimination against Latinos in that community. Typically, evidence that Latinos have suffered from discrimination in education, employment, housing, language, voting and in other areas can go far to explain why a Latino district is needed to comply with the Voting Rights Act. In addition, court findings of discrimination can be particularly compelling because the validity of those findings usually cannot be challenged in later cases.

Include evidence that officials have departed from redistricting principles in other districts or redistricting plans: Although many redistricting principles are required by state law, others are not. Often, those principles are recognized simply because they have been used in the redistricting process, even though they may not be specifically required by law. If someone opposing a district serving a Latino community of interest argues that the district departs from redistricting principles – whether required by law or not – often the best evidence to defeat their claim is to highlight where officials have not followed those redistricting principles.

In the *Hastert* litigation, the federal court found that although District Four split several political subdivisions (cities, towns, wards, and precincts), “other Illinois congressional districts split a comparable or greater number of subdivisions.” That evidence tended to show that preserving political subdivisions was not as important a redistricting criterion as other factors.

Again, it is always desirable, wherever possible, to draw a district representing a Latino community of interest that complies with most, or all, redistricting criteria. Where that is not possible, you should explain why and describe how the departure from those criteria is consistent with districts drawn elsewhere.