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Elections: Seventh Circuit Upholds Redistricting Which Deviates Up to 8.7 Percent from Population Average and Undermines "Independent" Aldermen

League of Women Voters v. City of Chicago, No. 13–2977 (7th Cir. July 9, 2014)

The Seventh Circuit has upheld the dismissal of an action brought against the City of Chicago by the League of Women Voters which alleged redistricting improprieties, finding that a maximum deviation of 8.7 percent from average ward populations did not raise constitutional questions and that prejudice to various aldermen was an inherent incident of the gerrymandering process.

Following the 2010 census the City of Chicago sought to reapportion its fifty aldermanic wards. Under state law, the City Council was required to garner the approval of forty-one aldermen in order to avoid a referendum on the redistricting plan. In January 2012 the Council approved the redistricting map, slated to apply beginning in 2015, by a vote of forty-one to eight. According to the 2010 census, the City's population was 2,695,598, which, if divided equally, would result in 53,912 people in each ward. The wards created by the 2015 map deviated from the average population per ward by a maximum of 8.7 percent.

The League of Women Voters of Chicago and fourteen Chicago citizens (League) challenged the redistricting, alleging that the deviations of 8.7 percent between wards violated the Equal Protection Clause, and that the 2015 map discriminated against "independent" aldermen, with the Second and Thirty–Sixth Wards being redrawn to a greater degree than others in an attempt to oust those aldermen.

The district court dismissed, holding that the League had alleged at most temporary disenfranchisement, which does not give rise to equal protection concerns. On the equal-population claim, the court found that the League failed to show a prima facie case of

unconstitutionality, noting that a population deviation below 10 percent is considered minor and does not establish a prima facie case. The court also found that disfavoring certain aldermen is an inherent part of the political process and an inevitable result of redistricting.

HELD: The Seventh Circuit affirmed.

DISCUSSION: The Equal Protection Clause principle of "one person, one vote" requires that officials be elected from voting districts with substantially equal populations. *Reynolds v. Sims*, 377 U.S. 533 (1964). To achieve this result, the government must "make an honest and good-faith effort"--but mathematical precision is not required. *Gaffney v. Cummings*, 412 U.S. 735, 743 (1973).

The Supreme Court has held that a population deviation greater than 10 percent "creates a prima facie case of discrimination" *Brown v Thomson*, 462 U.S. 835, at 842–43 (1983), deviations below ten percent are considered minor and plaintiffs cannot "establish a violation of the Equal Protection Clause from population variations alone." *White v. Regester*, 412 U.S. 755, 764 (1973). A plan with a minor maximum population deviation is presumed to be constitutionally valid absent a showing of "arbitrariness or discrimination." *Roman v. Sincock*, 377 U.S. 695, 710 (1964).

To overcome the presumption, the League made three allegations. First, it pointed to a statement made by one alderman who claimed that the map was created in order "to have the largest number of City Council members available so that we would not have a referendum." The Circuit Court was unmoved: "One alderman's statement can hardly be said to establish that the whole City Council acted arbitrarily in designing the map. At most, the statement reflects that Alderman O'Connor wanted this bill to pass into law, a proposition that required a substantial majority of votes."

The League also claimed that the City Council majority drew the 2015 map to "oust" independent aldermen from their respective districts. Citing Justice Stevens' concurrence in the summary affirmance of *Larios v. Cox*, 300 F.Supp.2d 1320 (N.D.Ga.) (per curiam), summarily aff'd, 542 U.S. 947 (2004), they argued that political discrimination alone can serve to rebut the presumption of constitutional validity for maps with deviations below ten percent. However, the Seventh Circuit found Larios to be inapplicable. The district court's concern in Larios was that the voters ' ability to elect their representatives was diminished, not that individual representatives were immune from the political process. It noted that voters with particular ideologies were being disfavored: "Republican-leaning districts [were] vastly more overpopulated as a whole than Democratic-leaning districts." Id. at 1331.

Such is not the case here. The Constitution "guarantees the opportunity for equal participation by all voters in the election of [their representatives]." *Reynolds*, 377 U.S. at 566 (emphasis added). It is not meant to insulate individual politicians from the threat of political reprisal once redistricting occurs. The fact remains that the equal-population requirement is meant to protect "an individual's right to vote." Id. at 568 (emphasis added).

Redistricting is an inherently political process; indeed, the Supreme Court has noted that "[p]olitics and political considerations are inseparable from districting and apportionment. The reality is that districting inevitably has and is intended to have substantial political consequences." *Gaffney*, 412 U.S. at 753; see also *Larios*, 300 F.Supp.2d at 1354 ("a redistricting process need not be free of politics in order to be constitutional."). As in any election

or redistricting scheme, there are bound to be winners and losers. Simply alleging that two aldermen—who were of the same party as those seeking to "oust" them—were at the short end of the proverbial stick is not enough to overcome a presumptively constitutional map and establish a prima facie violation of voters' equal protection rights.

Finally, the League asserted that the new map departed from traditional redistricting criteria. But it failed to allege how any of these "grotesque shapes and boundaries" harmed voters. "The suggestion that a map that is not compact or genuinely contiguous violates equal protection principles simply misstates the law, for "'compactness or attractiveness has never been held to constitute an independent federal constitutional requirement.'" *Gaffney*, 412 U.S. at 752 n. 18.

The League also claimed that the City implemented the new boundaries prematurely, resulting in a denial of equal protection under the Fourteenth Amendment. They based this assertion on various letters and statements from individual aldermen to show that the City had enacted a widespread policy of early implementation—but the League admitted that the Council "has not expressly approved by resolution or ordinance . . . the new ward boundaries."

This allegation was essentially a *Monell* claim, seeking to invoke the rule that prohibits municipal agencies from implementing policies that cause constitutional injuries under 42 U.S.C. § 1983. There are only three ways in which a municipality can be held liable under section 1983: (1) an express policy that would cause a constitutional deprivation if enforced; (2) a common practice so widespread and well settled that it constitutes a custom or practice; or (3) an allegation that the injury was caused by a person with final policymaking authority. *Estate of Sims v. Cnty. of Bureau*, 506 F.3d 509, 515 (7th Cir.2007).

In the absence of a formal resolution or allegation that an individual with policymaking authority had caused the deprivation, the League had to allege a common, unwritten practice put in place by the City that nonetheless had the force of law. They could not do so--minimal correspondence by individual aldermen was far from proving a custom or usage with the force of law.

http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2014/D07-09/C:13-2977:J:Kanne:aut:T:fnOp:N:1377430:S:0 (last accessed July 17, 2014).