

8-14-2011

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Recommended Citation

Kevin Washburn, *Hoping for a Smooth [Redistricting] Process This Time*, *Albuquerque Journal* (2011).
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Hoping for a Smooth Process This Time

By Kevin K. Washburn

Albuquerque Journal
August 14, 2011

With the state Legislature preparing to turn to redistricting, it is a good time to pause and remember how important this work is for our state. Redistricting is a high-stakes endeavor. It involves our most sacred public right, the right to choose representation in our democracy. And since our democracy is almost entirely representative in form, it is keenly important to get it right. Representation is what gives each citizen a voice in our collective political future.

Thirty years ago, after the 1980 census, redistricting dramatically changed the New Mexico's legislative landscape. Though it was profound, redistricting then was not smooth. Perhaps because of the importance of the subject, the redistricting battle then attracted some of the leading legal lights in our state.

On one side were Charles Daniels, now chief justice, and two law professors, Luis Stelzner and Joe Goldberg, who have gone on to become leading members of the legal community.

On the other side was Paul Kelly, who is now the highest-ranking federal judge in the state, assisted by law professor Michael Browde.

The redistricting plan ultimately adopted was largely the product of litigation in federal court. Dozens of other eminent attorneys and parties were involved, but lead counsel for the plaintiffs was Joe Goldberg, then a young and energetic law professor. In more recent years, Goldberg has become a national figure in antitrust law, but back then he was a veritable pro bono attorney general, bringing several successful lawsuits against public entities to obtain justice for the underprivileged.

In that 1982 redistricting litigation, now known as *Sanchez v. King*, Goldberg and his colleagues sued to have each of the 112 districts created by the New Mexico Legislature thrown out.

The problem was that the Legislature did not use actual census figures, allegedly because the census tracts did not coincide with legislative district boundaries. Instead, the Legislature employed a "votes-cast formula" to count the number of residents in each district for apportionment purposes.

The problem the court found with the Legislature's original formula was that it undercounted people who voted less frequently, a group dominated by racial and ethnic minorities. When the Legislature tried to fix the problem, it failed again. Goldberg and his colleagues succeeded in

having 19 House districts under the new districting plan invalidated. At each of these stages, a federal district court, sitting in an unusual three-judge panel, found that the Legislature had run afoul of the Voting Rights Act and the U.S. Constitution by violating the principle of “one person, one vote.”

The results of that litigation were profound. In a few short years after *Sanchez v. King*, the number of Hispanic legislators in the state House of Representatives doubled. In a state now nearly half Hispanic/Latino, these citizens are represented well in the Roundhouse.

Today, our Legislature is composed of a public-spirited group of men and women from most of the large ethnic and racial communities in our state. Is diversity important? Yes, and we have recent evidence as to why.

In the difficult economic environment of the last three years, the Legislature has managed to make almost no one happy. In almost no other context does broad unhappiness define success, but consider that none of the painful decisions or financial cuts made by the Legislature have been tainted by serious claims of racial prejudice.

This is a testament to the trust that the people in our state have toward our Legislature. The Legislature’s diversity is key to its trust among the citizens. And though our diverse Legislators disagree on many important issues, they realize that, despite our differences, “we are all in this together.”

The redistricting process 30 years ago was difficult, but it produced a better Legislature and a better New Mexico. I wish the Legislature good luck this fall in ensuring that each of our citizens gets an equal vote as New Mexico changes and grows. And I hope that these results are obtained more smoothly this year than they were 30 years ago.

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