

A great history of our at-large system and litigation challenging it from attorney (and former TX A.G. candidate), David Van Os ...who, being from San Antonio-also dispels the notion that SMDs are unpopular, disenfranchise or don't produce minority candidates such as opponents have promoted. Note past inclusion of MALDEF and NAACP in the fight to rid our City of the racist at-large system. Also note the Statesman urging voters in 1953 to go TO the racist system in 1953--just as they are now urging us to not move away from it: Mr David Van Os ...now living in San Antonio-also dispels the notion that SMDs are unpopular, disenfranchise or don't produce minority candidates such as opponents have promoted.

A History Lesson on Representative Government in the City of Austin

By David Van Os

I was the lawyer who represented the NAACP and sometimes LULAC in long-running litigation to invalidate the Austin at-large system under the Constitution and the Voting Rights Act.

We dissected the "gentlemen's agreement" that reserved one seat on the City Council for African-Americans and one seat on the City Council for Hispanics. The "gentlemen's agreement" is not just a myth or metaphor. It began with real agreements.

But the communities of color were not parties to the "gentlemen's agreement". The "gentlemen's agreement" was a consensus arrived at among the white business community in the early 1970s that they would not fund any white candidates for Places 5 or 6, in order to set aside those seats for Hispanic and African-American candidates, respectively.

It was for racist purposes. The specific motivation was to let the "Blacks and Mexicans" have one seat each in order for the City to be able to defend the voting rights lawsuits that everybody knew were coming, and thus preserve the at-large system. It was not for the purpose of ceding representation to the communities of color, it was for the purpose of maintaining the at-large system. That was what the business interests wanted because they believed maintaining the requirement for candidates to campaign city-wide would maintain the need for business money to run campaigns and thus keep promoting the elections of candidates friendly to the business interests.

The result was that one Hispanic and one African-American were able to get elected in each Council election as long as they were the choices of the majority of white anglo voters and the white business community.

This is where the alliances between conservative white business interests and certain elements of the communities of color started to bloom. The white anglo grassroots voters did not contribute campaign dollars to the Hispanic and African-American candidates

like they did to the Anglo candidates. So Hispanic and African-American candidates learned to look to the business interests to finance their campaigns, and the business interests were pleased at the opportunities to purchase City Council candidates who turned into compliant City Council Members.

At the same time, ironically, the Anglo-dominated grassroots progressive movement was successful in winning the majority of Council seats in several elections in the 1970s and 1980s, and really changed the political climate of Austin overall in a gradual sea change. It was the progressive takeover of Austin-Travis County politics. City Council politics through the series of elections won by the progressive grassroots in the 70s and 80s did in large part forge the rise of liberal Democratic predominance in Travis County, which by the early 1990s became pretty much politically institutionalized.

On behalf of the NAACP I filed a long-anticipated voting rights lawsuit against the City in 1984. MALDEF came into the case a few weeks later, represented by lawyer Jose Garza of San Antonio. The case was hotly litigated back and forth between the trial and appellate courts for the next 5 years. There were also at least two charter referendums during that period of time asking the voters to approve a change to single-member Council districts. The referendums failed because they could not draw the favorable margins out of the white liberal precincts that those precincts gave to the Austin Progressive Coalition slates. Many white progressive voters were fooled by the illusion of equal access to the political process created by the two minority-held Council seats - just as the business moguls who manipulated the "gentlemen's agreement" into being foresaw. After two trials and two appeals we ultimately lost the lawsuit for the precise reason that the business interests intended - the courts held that since one Hispanic and one African-American were consistently getting elected to the Council, thus occupying 2 out of 7 or 28% of the Council, the communities of color therefore had equal access to the political process so there was no Voting Rights Act violation.

Jose Garza and I argued vigorously that channeling minority political access into two designated Council seats in elections whose outcomes were controlled by the majority white community rather than by the minority communities themselves was NOT equal access to the political process as the Voting Rights Act guaranteed. A few years earlier we would have won the day with that argument. But the federal district court in Austin was now occupied by a new Reagan-appointed Republican judge, James Nowlin, who was not sympathetic to our plea that the Voting Rights Act guaranteed the communities of color self-determination rather than paternalism.

The trial evidence demonstrated overwhelmingly that the candidates who got elected in those two seats were chosen by the white business community, not by the communities of color that they supposedly represented. Former City Council Members who were beneficiaries" of the "gentlemen's agreement" testified on behalf of the plaintiffs. Former City Councilman Jimmy Snell, the second African-American to serve on the Austin City Council and later - and at the time of the trial - the first African-American County Commissioner in Travis County history, now deceased, was particularly courageous on the witness stand. He described how the white business interests told him when he ran for

the Council that they had made sure there would be no white candidates against him in Place 6, but that he had to tow the line. In a dramatic courtroom moment, Snell described Carole McClellan (she of later more names) as Mayor, warning him when on the Council that he had to vote the way she wanted him to vote on behalf of the interests of the white business community or they would make sure his political funding dried up.

Ed Wendler, now deceased, courageously stepped forward and volunteered to the NAACP to take the witness stand. He put his law practice in jeopardy by describing in detail conversations in which he participated in the 1970s about making sure there would be no credible white candidates for two places on the Council in order to defeat the expected voting rights lawsuits over at-large elections and assure that the "minorities" who got elected would be "safe". Wendler named names and risked the loss of business clients and friendships in the cause of justice, equality, and truth. He was a real warrior for justice that day in the courtroom.

Meanwhile over the years a few of the "minority" candidates, like Gus Garcia, rejected the business paradigm for Hispanic and African-American candidates and stuck to their progressive political-economic-social roots when they won their elections. Sadly, most did not. The racist roots of the present Austin system go back much further than the 1970s. Before the charter change of 1953, the City Council was elected on a single plurality ballot that provided a crude form of proportional representation. All candidates ran together on one ballot. The City Council had 5 seats at that time. The top 5 vote-getters were the winners of the election. People did not run in designated places, there was no requirement of a 50%+1 majority, and there were no runoffs. The top five vote-getters by pure plurality were the newly elected Council.

In the late 1940s and early 1950s, all across the South there were African-Americans returning to civilian life from service in World War 2. Having fought for their country they were not too excited about returning to Jim Crow segregation. They began to assert themselves. For example in Austin in about 1948, a young African-American veteran by the name of Volma Overton refused to move to the back of a city bus.

Most of the municipal election systems at that time were not majority-place elections. They were plurality election systems. Under the single-ballot plurality systems African-American communities in the South, newly empowered by so many among their communities returning from the war with a new sense of self-esteem, began to experience a political renaissance. African-American citizens were starting to step forward and enter into local elections and assert voting strength and Austin was part of it.

In 1951 the Austin NAACP president, Arthur B. DeWitty, ran a vigorous race for the City Council. He finished sixth, just a few votes out of winning a seat on the Council. Most of the white community went into shock over a Black man coming so close to getting elected to the City Council. The Council proposed a charter revision - to discard the one-ballot plurality election system and institute designated places with a requirement that it took a 50%+1 majority to win, thus necessitating runoffs if no candidate won a majority the first time. This happened across the South for the purpose of thwarting the

newly rising Black political consciousness. The point of a designated place-majority system is that Black candidates could never win because at best they would get isolated head-to-head against white candidates in runoffs. This is the origin of the designated-place majority election system in the South. Notice that in most of the North and the Midwest, municipal elections are won by plurality, no majority vote requirement, no runoffs. The charter election was held about a year after the 1951 elections. The day before the charter election day, the front page of the Austin Statesman ran a special editorial column urging citizens to pass the charter change because the proposed new system was needed to prevent minority groups from being able to win elections to the City Council. The charter change passed. Arthur DeWitty didn't run for the City Council again. The nascent rising Black political consciousness came to a halt. No Black ran for the Austin City Council again until 1967 or 1969.

This history is documented in contemporary newspaper articles of the time and records of white civic leaders' openly expressed intentions and motivations. It was partly on the basis of this historical evidence that the federal courts ordered Travis County to be divided into single-member state legislative districts beginning with the 1974 primary elections. Previously the four state representatives from Travis County represented the whole county in a multi-member district and were all elected county-wide. A young Gonzalo Barrientos got elected to the legislature in 1974 from a new single-member southeast Travis County district. Wilhelmina Delco got elected from a new northeast Travis County single-member district. The Austin City Council at-large, majority-place system is thus historically rooted in overt, willful racism. It should be sent to the dustbin of history for that reason alone, and should have been sent there 20 years ago. But there are many other good, progressive reasons to go single-member. Having lived in San Antonio for 9 years in a pure single-member system, I can attest that it does indeed facilitate less expensive campaigning, fewer media driven campaigns, and more grassroots candidates and Council members. Certainly it does not bring Utopia. The business interests and lobbyists are still able to buy candidates and Council seats, but to a somewhat lesser extent. Today a majority of the San Antonio City Council are grassroots women. The city staff tries to bamboozle them just like in Austin, lobbyists try to stick to them like Velcro just like in Austin, but the election campaigns are highly grassroots, except for the citywide election for Mayor; there are bona fide grassroots progressive social justice activists on the Council; and the Council members clearly endeavor to be responsive to the concerns of neighborhood and community groups in their districts. It is commonsense that such results would arise, and they do in a lot of the district elections, though clearly not all and not all the time.

David Van Os