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Voting Matters: APIAs, Latinas/os and Post-2000 Redistricting in California

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INTRODUCTION: DOES VOTING MATTER?

Does voting matter? Of course you say, voting matters. And it matters more to members of ethnic and racial minority groups such as Asian Pacific Islander Americans (APIAs),¹ Latina/os,² and African Americans who have until re-

¹ Asian Pacific Islander American (APIA) is meant to encompass Asian and Pacific Islander American groups as classified by the 2000 Census. See Jessica S. Barnes & Claudette E. Bennett, *The Asian Population: 2000*, 2002 U.S. CENSUS BUREAU 1 (“The term ‘Asian’ refers to people having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent (for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam). Asian groups are not limited to nationalities, but include ethnic terms as well.”) However, using a pan-ethnic umbrella term like APIA is problematic in that it makes generalizations, and as April Chung has pointed out, “it is impossible to make any generalization about the APA population without finding a sub-group within the APA population that provides the exception. . . . APAs as a whole are proportionately the largest noncitizen population in the United States, but in 1990, only thirteen percent of Pacific Islanders were foreign-born.” See also April Chung, *Noncitizen Voting Rights and Alternatives: A Path Toward Greater Asian Pacific American and Latino Political Participation*, 4 UCLA ASIAN PAC. AM. L.J. 163, 163 n.3 (1996); Glenn D. Magpantay, *Asian American Voting Rights and Representation: A Perspective From the Northeast*, 28 FORDHAM URB. L.J. 739 (2001).

² We use the term “Latina/os” instead of the census term “Hispanic” and it is used in an pan-ethnic sense to include people from Mexico, Puerto Rico, Cuba, the Spanish-speaking countries of South and Central America and the Dominican Republic. “Latina/o” is a term specifically utilized by LatCrit scholars to expose the interdependency of categories such as race, ethnicity, nationality, and gender.

cently been marginalized electorally and have often been the object of political animus and overt racial discrimination. While some indicia of direct political disenfranchisement may have been on the decline after the passage of the landmark Voting Rights Act of 1965 (VRA),³ subtler forms of political disenfranchisement of APIAs and Latina/os remain.

One goal of this Essay is to draw attention of LatCrit scholars to the fundamental importance of securing political representation. Political access is a condition precedent to seeking transformation of virtually every issue that has been articulated by LatCrit scholars in the preceding six LatCrit Symposia.⁴ There has, however, been a curious “blind spot” in the expanding LatCrit canon regarding the promises and perils of electoral participation and representational politics.⁵ What does it mean that electoral representation and issues like redistricting and reapportionment have been largely absent from the LatCrit conversation?

This curious omission is mirrored by the discourse of voting rights, the so-called “Law of Democracy”⁶ in the legal academy, which, unlike LatCrit, seems fixated on the Black/White paradigm. Where are the Latina/os? Where are the APIAs in the scholarship analyzing cases arising under the 14th Amendment

³ Voting Rights Act of 1965 as amended, 42 U.S.C. §§ 1973-74 et seq. (1994) (Pub. L. No. 189-110, 79 Stat. 437 (1965) as amended) [hereinafter VRA].

⁴ See Symposium, *LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship*, 2 HARV. LATINO L. REV. 1 (1997) (LatCrit I); Symposium, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 UCLA CHICANO-LATINO L. REV. 1 (1998) (LatCrit II); Symposium, *Comparative Latinas/os: Identity, Law and Policy in LatCrit Theory*, 53 U. MIAMI L. REV. 575 (1999) (LatCrit III); Symposium, *Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections*, 23 U.C. DAVIS L. REV. 751 (2000) (LatCrit IV); Symposium, *Class in LatCrit: Theory and Praxis in a World of Economic Inequality*, 78 DENV. U. L. REV. 467 (2001) (LatCrit V); Symposium, *Latinas/os and the Americas: Centering North-South Frameworks in LatCrit Theory*, 54 U. FLA. L. REV. (forthcoming 2003); 54 RUTGERS L. REV. (forthcoming 2003). See also Colloquium, *International Law, Human Rights and LatCrit Theory*, 28 U. MIAMI INTER-AM. L. REV. 177 (1997); Colloquium, *Spain, The Americas and Latino/as: International and Comparative Law in Triangular Perspective*, 9 U. MIAMI INT'L & COMP. L. REV. 1 (2000-01); Joint Symposium, *Culture, Language, Sexuality and Law: LatCrit Theory and the Construction of the Nation*, 5 MICH. J. RACE & L. 787 (2000); 33 U. MICH. J.L. REFORM 203 (2000); Joint Symposium, *LatCrit Theory: Latinas/os and the Law*, 85 CAL. L. REV. 1087 (1997); 10 LA RAZA L.J. 1 (1998).

⁵ Deborah Ramirez, Kevin R. Johnson, Sylvia P. Lazos Vargas, and Rachel F. Moran are notable exceptions.

⁶ SAMUEL ISSACHAROFF ET AL., *THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* (2d ed. 2001).

and the VRA of 1965? The invisibility in legal scholarship of both Latina/o and APIA struggles for political presence and representation is both frustrating and telling.

The developing case law is revealing as well. The *Gingles v. Thornburg* case,⁷ seminal in defining actionable voting rights cases for minorities, was written in a black-white context where racism manifested itself in extremely segregated residential and voting patterns. Demographics, political empowerment of minorities, and the law have all changed in the ensuing years. Certainly, in states such as California, where no one group is the majority population, the hole left by civil rights case law is gaping. What legal protections can the VRA afford in this new context of improving race relations but continuing institutional racism? *Cano v. Davis*⁸ seems to suggest that Latina/os are so well represented in local California politics that both a VRA section 2 vote dilution claim and a 14th Amendment Equal Protection claim lack factual support.⁹ The recent elections of California Assembly members George Nakano, Carol Liu, Wilma Chan, and Judy Chu might similarly preclude the success of such claims being made on behalf of APIA communities as well. Is it really that electorally rosy for Latina/os and APIAs in California, such that they have no basis to raise voting rights challenges based on legal arguments such as vote dilution and claims of being the target of intentional discrimination by the political powers that be? Or is it the case that the Courts have yet to fashion legal interpretations that account for multi-ethnic, politically-shifting populations?

This Essay seeks to spark scholarly discussion and activism regarding Latina/o and APIA electoral and political power within (and without) LatCrit. Scholars such as Professors Deborah Ramirez,¹⁰ Rachel F. Moran,¹¹ Kevin R. Johnson,¹² and Sylvia R.

⁷ 478 U.S. 30 (1986).

⁸ 211 F. Supp. 2d 1208 (C.D. Cal. 2002) (per curiam).

⁹ *Id.*

¹⁰ Deborah Ramirez, *Multicultural Empowerment: It's Not Just Black and White Anymore*, 47 STAN. L. REV. 957 (1995).

¹¹ Rachel F. Moran, *Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond*, 8 LA RAZA L.J. 1 (1995); Rachel F. Moran, *What If Latinos Really Mattered in the Public Policy Debate?*, 85 CAL. L. REV. 1315 (1997).

¹² Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and Legal Irrelevance of Race*, 70 WASH. L. REV. 629 (1995); Kevin R. Johnson, *Civil Rights and Immigration:*

Lazos Vargas¹³ have begun touching on important issues and this Essay builds on their work by explicitly introducing electoral representation as an issue relevant to LatCrit Scholarship.

While the specific focus of this Essay is on the work of APIA activists engaged in the redistricting process in California after the 2000 census, the implications for Latina/os in states such as California, New York, New Jersey, Texas, Florida, and Illinois should be evident.

Before we begin, a few points need to be made. First, broad-based electoral policy-making may have a distinct political downside for ethnic and racial minorities. Politicians and well-funded bigots have used the proposition process to enact laws that unwind many of the Civil Rights gains of minority groups by appealing to racist fears and playing on social wedge issues. Ballot measures such as California's Proposition 187 or 209, or Colorado's Ballot Measure 2 are prime examples of this. As Derrick Bell has pointed out, the so-called "direct democracy" of referenda initiatives and ballot measures is a way for majority voters to use the anonymity of the ballot box to strike directly at perceived "gains" that members of minority communities may make in the electoral process.¹⁴ Any strategy that does not account for potential "white" backlash may need further analysis.

Second, internal solidarity and inclusive representation within an ethnic or racial minority are important preconditions to coalitions among ethnic or racial minority groups. As cooperation be-

Challenges for the Latino Community in the Twenty-First Century, 8 LA RAZA L.J. 42 (1995); Kevin R. Johnson, *Immigration and Latino Identity*, 19 UCLA CHICANO-LATINO L. REV. 197 (1998); Kevin R. Johnson, *Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement*, 1993 BYU L. REV. 1139; Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 UCLA L. REV. 1509 (1995); Kevin R. Johnson, *Puerto Rico, Puerto Ricans, and LatCrit Theory: Commonalities and Differences Between Latina/o Experiences*, 6 MICH. J. RACE & L. 107 (2000); Kevin R. Johnson, *Racial Hierarchy, Asian Americans and Latinos as "Foreigners," and Social Change: Is Law the Way to Go?*, 76 OR. L. REV. 347 (1997); Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101 (1997).

¹³ Sylvia R. Lazos Vargas, *Deconstructing Homo[ogeneous] Americanus: The White Ethnic Immigrant Narrative and Its Exclusionary Effect*, 72 TUL. L. REV. 1493 (1998); Sylvia R. Lazos Vargas, *Democracy and Inclusion: The Role of the Judge and the Pluralist Polity*, 58 MD. L. REV. 150 (1999); Sylvia R. Lazos Vargas, *Judicial Review of Initiatives and Referendums in Which Majorities Vote on Minorities' Democratic Citizenship*, 60 OHIO ST. L.J. 399 (1999).

¹⁴ Derrick A. Bell, Jr., *The Referendum: Democracy's Barrier to Racial Equality*, 54 WASH. L. REV. 1, 6, 8, 9, 13-21, 24-26 (1978).

tween the Mexican American Legal Defense and Educational Fund (MALDEF) and the array of APIA groups represented by the Coalition of Asian Pacific Americans for Fair Redistricting (CAPAFR) illustrate, activist groups must cultivate the avenues of communication and spaces for debate. Prior to being able to engage in productive coalition-building, communities of color must build an inclusive and representative process internally.¹⁵

Finally, it is important to remember we are in an era of conservative retrenchment and resistance. Activists must work with the sometimes demoralizing legal cases and precedents meted out by the increasingly conservative federal courts. Because we are living in what has been called a “post-Civil Rights” era, creativity and imagination are essential to finding ways to make the existing cases and legislation work for, rather than against, the electoral empowerment of communities of color. Just as with the U.S. Constitution, all American law is a living, evolving set of norms reponding to societal changes as it is institutionally pushed and pulled by activists, legal scholars, and our communities.

If APIAs, Latina/os and other communities of color do not rise to the challenge of reshaping politics to be truly representative and inclusive at all levels of state and local government, members of those communities should be prepared to be excluded from decisions affecting the provision of the most essential of government services: decent housing, education and health care.

To what extent are state legislatures, local governments and other institutions designed to exclude undocumented immigrants from access to vital resources such as quality K-12 education? Are local zoning ordinances designed to concentrate on recent immigrants who are racial minorities in property-tax poor areas? Are state and local ordinances designed to exclude non-English speaking members from participating in or accessing health care, education and other essential services? If so, only representatives dedicated to change the effects of those ordinances will be able to initiate fundamental transformation and change in those patterns. An important answer to all these questions lies in who is in control of the funding and drawing of the relevant ordinances and regulations. It matters who your local school board members are; who your city council members are; who your county supervisors and commissioners are; and who your state

¹⁵ ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST CIVIL RIGHTS AMERICA* (1999).

assembly and state senators are. The authors believe that meaningful political participation beginning (but not ending) with fair representation is an absolutely necessary and crucial precondition to achieving and implementing the substantive social justice and anti-subordination agenda of LatCrit.

Does voting matter? If one accepts that our American democracy depends on full electoral representation and participation at the voting booth and in the halls of power to be effective, the answer must be “yes.”

With that being said, this Essay first gives some background on redistricting, then discusses earlier legislative iterations of the census with regard to Latina/os and APIA communities. The Essay then moves to a detailed discussion of CAPAFR’s involvement with the post-2000 California redistricting process and assess that involvement. Finally, this Essay draws some conclusions as to APIA involvement with redistricting and its implications for Latina/o and APIA political representation in the near future.

I

OVERVIEW OF REDISTRICTING

Redistricting is an esoteric, under-appreciated process with tremendous consequences that bear heavily on all groups. In the past, some minority groups, particularly APIAs and Latina/os, have not paid enough attention to this process and experienced the after effects much too late to seek redress. The effects of lack of political representation in APIA and Latina/o communities are evident in the social, cultural, and economic marginalization of group members, both historically and presently.

This Essay’s main focus is to examine the emergence of an APIA political presence from the early 1990s to post-2000. A subsidiary focus is to examine parallel struggles within the Latina/o community for a political presence in groundbreaking cases such as *Garza v. County of Los Angeles*¹⁶ that the APIA community has sought to build upon.

Over the past decade in different but related ways, Californian Latina/os and APIAs have prioritized redistricting into their respective political agendas. For Latina/os in California, the participation in the redistricting process began as much as three

¹⁶ 918 F.2d 763 (9th Cir. 1990).

decades ago, and has born fruit that was undeniably evident in the 2001 statewide redistricting process. For APIAs, the sphere of influence has gone from nonexistent to the point where a California legislator was quoted as saying, “compared to the other special interest groups working on reapportionment, the Asians have their act together.”¹⁷ This Essay does *not* accept uncritically this positing of APIAs as a ‘voting rights model minority,’ but seeks to describe the conscious strategy advanced by APIA groups in the post-2000 census redistricting process, and present redistricted maps that would not only represent the true diversity of California’s population, but also a vision of electoral participation that refused to perpetuate racial wedge politics.

The following section outlines basic redistricting principles including the process itself and the bearing it has had on the APIA community in the years that lacked strong APIA participation.

A. *The Census*

The United States takes a census every ten years. The Census Bureau attempts to be as inclusive of all people in the United States as possible, attempting to count not only citizens but also non-citizens with temporary or permanent residency status, refugees, the homeless, and undocumented residents.¹⁸ One of the main purposes of the decennial Census is to provide an updated population count for purposes of determining the fair allocation of House of Representative seats to states. The U.S. Constitution stipulates that the lower house of Congress have a fixed number of seats, whose allocation generally follows the principle of one-person, one-vote.¹⁹ The 435 seats in the House of Representatives are divided among the fifty states based on state population. The larger the state population, the more congressional representatives they receive.²⁰ Each decennial census reveals

¹⁷ Maeley Tom, *APIAs . . . Making Gains in the Highest Stake Political Game—Redistricting* 5 (2001) (quoting an anonymous legislator in the California State Assembly) (on file with author).

¹⁸ California State Assembly Committee on Elections, Reapportionment, and Constitutional Amendments, *Redistricting Process Background Information*, available at http://www.assembly.ca.gov/acs/committee/c7/publications/2001_backgrnd.pdf (last visited July 1, 2002) [hereinafter *Redistricting Process Background Information*].

¹⁹ *Baker v. Carr*, 369 U.S. 186 (1962) (holding that the one person, one vote principle derives from U.S. Const. Art. I, § 2, Cl. 3).

²⁰ The actual process of reapportioning seats in the U.S. House of Representatives follows a complex formula whose explanation is beyond the scope of this report.

which states have gained or lost population. That relative gain or loss translates directly into a gain or loss of congressional seats. The process of reallocating these seats is known as reapportionment.²¹

In 1964, the U.S. Supreme Court declared the same principle of population equality be applied not only to congressional but also to state legislative districts.²² Reallocation of districts at the congressional level, coupled with the population changes in existing districts mandates the redrawing of district boundaries at the congressional, state, city, and local levels in order to achieve districts with the same, or close to the same, number of people. This process of redrawing district lines to ensure each district has equal population is called redistricting.²³

In the 2001 reapportionment process of the 435 congressional seats, California received an additional congressional seat for a total of fifty-three to reflect its relative increase in population over the past decade. The California legislature and the governor had to pass a new fifty-three-seat congressional district plan in which each congressional district had exactly 639,088 people, or close to that number in it.²⁴ California also needed to redis-

The United States has used five different formulas in its history, with the current formula known as the "method of equal proportions." The Supreme Court upheld this formula, which has been in place since 1940, in the 1992 unanimous ruling in *United States Dep't of Commerce v. Montana*, 503 U.S. 442 (1992). A detailed report on this formula can be found at <http://www.census.gov/srd/papers/pdf/rr92-6.pdf>. Simple proportion allocations do not work for two reasons. For one, no fractional seats exist in Congress, necessitating a rounding system for these somewhat ambiguous seats. More importantly, the guarantee that each state will have at least one seat in the House of Representatives is always upheld even if its share of the nation's population is 'worth' less than half a seat. Steven K. Doig, *Reapportionment, Reporting Census 2000 A Guide for Journalists*, available at <http://cronkite.pp.asu.edu/census/apportion.htm> (last modified July 25, 2000).

²¹ MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND ET AL., THE IMPACT OF REDISTRICTING IN YOUR COMMUNITY: A GUIDE TO REDISTRICTING 8 [hereinafter IMPACT OF REDISTRICTING]. See also ROBERT B. MCKAY, REAPPORTIONMENT: THE LAW AND POLITICS OF EQUAL REPRESENTATION 6 (1965) ("Apportionment has ordinarily been described as the allocation of legislative seats by a legislative body to a subordinate unit of government, and districting as the process of drawing the final lines by which each legislative district is bounded.").

²² *Reynolds v. Sims*, 377 U.S. 533 (1964); see also TANIA AZORES & PAUL ONG, REAPPORTIONMENT AND REDISTRICTING IN A NUTSHELL (1991). The California Constitution requires state legislative redistricting after the U.S. Census. See Cal. Const., art. XXI, § 1; see also *Wilson v. Eu*, 823 P.2d 545 (Cal. 1992) (inferring that the one person, one vote applicability to States derives from the Equal Protection Clause of the 14th Amendment).

²³ IMPACT OF REDISTRICTING, *supra* note 21, at 8.

²⁴ John Ellis, *Valley Residents Want Politics Out of Redistricting*, FRESNO BEE,

trict its eighty State Senate districts to achieve an ideal population of 846,791 each and its forty Assembly districts to approach 423,396 people in each.²⁵ All three levels of government had to be redistricted in time for the 2002 election.²⁶ In order to facilitate redistricting decision-making, the Census Bureau provides each state with more detailed census data, specifically, ethnicity and voting age population, broken down by census tract and census block.²⁷

For example, the 2000 Census released the counts for California. California's total population count was 33,871,648.²⁸ The Latina/o population was counted at 10,966,566 (32.4%); the APIA population was counted at 3,752,596 (11.1%);²⁹ and the African American population was counted at 2,263,882 (6.7%).³⁰

Inevitably, some persons are not counted, resulting in a census undercount. Although the exact size of the undercount has been disputed, it is generally agreed that more of this undercount lies in communities with a high proportion of poor, non-English speakers, racial and ethnic minorities, many of whom are recent immigrants.³¹ Many of these recent immigrants are from Asian

May 12, 2001, at B1. See also *Redistricting Information for 2001*, available at <http://republican.assembly.ca.gov/Issues/Districting/index.htm>.

²⁵ See *California State Senate Districts 2002*, available at <http://www.ncec.org/redistricting/Cass02stat.pdf> (Senate ideal population); *California State House Districts*, available at <http://www.ncec.org/redistricting/Cash02stat.pdf> (Assembly ideal population); see generally *Redistricting Information for 2001*, *supra* note 24.

²⁶ *Redistricting Process Background Information*, *supra* note 18.

²⁷ This is known as the Public Law (PL) 94-171 data and is the official database used for redistricting. The Census Bureau divides each state into "census tracts." In California, there are 7,049 census tracts, which are further broken down into "census blocks." California has 533,163 such blocks. For the most part, these tracts and blocks do not violate city or county boundaries. See *Redistricting Process Background Information*, *supra* note 18.

²⁸ U.S. Census 2000 Summary File (SF1) 100-Percent Data, DP1 Profile of General Demographic Characteristics: 2000 Geographic Area: California, at http://factfinder.census.gov/bf/_lang=en_vt_name=DEC_2000_SF1_U_DP1_geo_id=04000US06.html.

²⁹ *Id.*

³⁰ *Id.*

³¹ Glenn D. Magpantay, *Asian American Voting Rights and Representation: A Perspective from the Northeast*, 28 *FORDHAM URB. L.J.* 739 (2001); see also *Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316 (1999) (holding that the Census Act proposed the purposed use of statistical sampling in calculating the population for purposes of apportionment); GLENN D. MAGPANTAY & PHILIP M. LIU, *ASIAN AMERICAN LEGAL DEFENSE & EDUCATION FUND, COUNTING ASIAN AMERICANS: AN EVALUATION OF CENSUS 2000 PROGRAMS AND POLICIES* (2001); MARK GIRSH & KEN STRASMA, *NAT'L COMM. FOR AN EFFECTIVE CONG., 1990 CENSUS UNDERCOUNT BY CONGRESSIONAL DISTRICT* (Sept. 20, 1998), available at

and Latin American countries. While there are many demographic distinctions, there are many striking parallels as well.³² Since states like California, New York, and Florida have more recent immigrants and minorities than most, they are more likely to have populations that are undercounted.³³

Adjustment of census reports to reflect the undercount resulted in a lawsuit that reached the U.S. Supreme Court. In *Dep't of Commerce v. U.S. House of Representatives*,³⁴ the Court held that the census data could not be statistically adjusted for purposes of reapportionment, but could be adjusted for purposes of redistricting and distribution of funds under federal formulas.³⁵

B. Voting Rights Law

In voting rights law, there are several principles that fall into four categories that this Article will address in order: (1) the “one person, one vote” standard; (2) the Voting Rights Act of 1965 and subsequent amendments; (3) the 2000 census: multiple

www.ncec.org/under.pdf; U.S. COMM'N ON CIVIL RIGHTS, BRIEFING ON THE CIVIL RIGHTS IMPLICATIONS OF THE RECENT SUPREME COURT DECISION ON SAMPLING AND THE CENSUS BEFORE THE U.S. COMM'N ON CIVIL RIGHTS (Feb. 12, 1999), available at <http://www.connectlive.com/events/civilrightscommission/sampling021299.html> (Statement by Karen K. Narasaki, Exec. Dir., Nat'l Asian Pac. Am. Legal Consortium) [hereinafter U.S. COMM'N ON CIVIL RIGHTS]; Steven A. Holmes, *New York Hardest Hit by Census Flaws*, N.Y. TIMES, Sept. 18, 1998, at B6; Glenn D. Magpantay, *Flawed Census Figures*, N.Y. TIMES, Jan. 1, 2001, at A12.

³² Chung, *supra* note 1, at 174-75.

³³ *Id.*; see also Holmes, *supra* note 31.

³⁴ 525 U.S. 316 (1999); see also Pamela S. Karlan, *The Fire Next Time: Reapportionment After the 2000 Census*, 50 STAN. L. REV. 731 (1998); Maki Becker, *Asians Watching Census, Legal Defense Fund Wary of Undercount*, N.Y. DAILY NEWS, July 6, 2000, at 1; Mae M. Cheng, *Down for the Count, Low Response to Census in Queens' Minority Communities*, NEWSDAY, Apr. 7, 2000, at A7; Steven A. Holmes, *The Big Census Issue: Using Sampling in Redistricting*, N.Y. TIMES, Feb. 14, 2000, § 1, at 24; Steven A. Holmes, *The Politics of Race and the Census*, N.Y. TIMES, Mar. 19, 2000, at A3; Claire Hsiang, Editorial, *Burned at the Ballot Box*, N.Y. TIMES, May 11, 1996, at 19; Rose Kim, *Voting Block; Asian-Americans Say Foul-Ups Kept Them From Polls*, NEWSDAY, May 10, 1996, at A3; Glenn D. Magpantay, *Flawed Census Figures*, *supra* note 31; David Stout, *Census Takers Uneasy as Mail Response Lags*, N.Y. TIMES, Apr. 5, 2000, at A16; BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, REPORT TO CONGRESS—THE PLAN FOR CENSUS 2000 (1997), available at <http://www.uscensus2000.com/main/plans/plan2000.pdf>; U.S. COMM'N ON CIVIL RIGHTS, *supra* note 31.

³⁵ The adjustment of the Census data to include the undercounted is politically controversial because the adjustment would tend to increase populations in Democratic states and areas. U.S. COMM'N ON CIVIL RIGHTS, *supra* note 31.

race categories; and (4) “traditional redistricting principles.”³⁶

1. *One person, one vote*

Redistricting adheres to a one-person, one-vote standard for both federal and state districts.³⁷ This principle, perhaps the most fundamental requirement in this process, calls for population equality among districts.³⁸ Congressional districts must follow a relatively strict standard allowing for only minimal variances in population between districts, whereas state and local election districts follow a considerably looser standard.³⁹

While there is no minimum acceptable level of deviation for congressional plans, the deviation should be nearly equal, or as equal “as is practicable.”⁴⁰ The leading case on population equality of congressional districts is *Karcher v. Daggett*⁴¹ that holds that deviations must be justified by a state’s need to achieve a legitimate redistricting goal.⁴²

³⁶ See, e.g., *Bush v. Vera*, 517 U.S. 952 (1996); *Shaw v. Hunt*, 517 U.S. 899 (1996); *Miller v. Johnson*, 515 U.S. 900 (1995); *Shaw v. Reno*, 509 U.S. 630 (1993).

³⁷ *Reynolds v. Sims*, 377 U.S. 533 (1964).

³⁸ The concept of equal representation states that each voting citizen has an equal opportunity to elect the candidate of his or her choice. For example, if a situation arises where there are 100 people in one district and ten people in another, then those in the second district have a vote that weighs ten times more than those in the first district. To alleviate this problem, an equal population requirement has been applied to redistricting to ensure that each citizen’s vote carries a relatively equal weight. Hence, the concept of one person, one vote arose. See *Reynolds*, 377 U.S. at 557-58.

³⁹ Two standards are used to measure population equality. “Overall population deviation” or “total population deviation” refers to the most widely used measure—the difference between populations of the most heavily and least heavily populated districts. This is expressed as a percentage of the ideal, or average, population of a district. For example, a state with perfect population equality for its 2000 residents and five districts would have districts with exactly 400 people in each. If the state’s five districts had populations of 380, 390, 400, 400, and 410 respectively, it would have deviations of 0, 0, 10, 10, and 20. Thus, the overall population deviation would be 40, which can also be expressed as ten percent of the ideal population of 400. The second, less used measure for population equality is “average population deviation,” the average of each district’s deviation from the ideal. To use the above example, a state with district populations of 380, 390, 400, 400, and 410 and therefore deviations of 0, 0, 10, 10, and 20 would have an average population deviation of 8. This can also be expressed as two percent of the ideal population of 400. The courts most often use total population deviation as the benchmark to determine whether or not a deviation is too high to be constitutionally acceptable. J. Gerald Hebert et al., *The Realists’ Guide to Redistricting: Avoiding the Legal Pitfalls*, 2000 A.B.A. SEC. ADMIN. L. & REG. PRAC. 1-2.

⁴⁰ *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964).

⁴¹ 462 U.S. 725 (1983).

⁴² See *id.* This ruling required two questions to be answered to determine if a

Currently, the largest population deviation accepted by the courts occurs in the Texas Congressional plan (0.82%). It should be noted, however, that this deviation resulted from a court-drawn plan that came on the heels of the *Bush v. Vera*⁴³ Supreme Court decision.⁴⁴ Thus, the 2000 round of redistricting provided a remedy for the unconstitutional racial gerrymandering in the Houston and Dallas areas.⁴⁵

As compared to congressional reapportionment, federal law is not as strict on state legislative redistricting. While state districts must conform to the “one person, one vote” standard, its application is more flexible. A total population deviation of up to ten

congressional plan complies with art. I, § 2 of the U.S. CONST., which has been interpreted to mean that only minimal deviations are acceptable in congressional districting plans. The first question asks if population differences among districts have been reduced or eliminated altogether by a good-faith effort to draw districts of equal population. The second question asks whether or not a state that did not make a good-faith effort to achieve equality can prove that each significant variance among districts was necessary to achieve some legitimate goal. States making good-faith efforts draw districts with virtually no deviations. States can also enact redistricting plans under the second of *Karcher*'s two “steps,” where larger total population deviations must be justified by some legitimate goal. This ultimately raises the question of legitimacy, and which goals qualify as such. As long as a state consistently applies a legislative policy without discrimination, the following goals *may* justify some variance:

- Compactness
- Respecting municipal boundaries
- Respecting county boundaries if counties are small enough to represent communities of interest
- Respecting precinct boundaries
- Preserving the cores of prior districts, and
- Avoiding contests between incumbents.

A successful defense against a population inequality charge includes relating each overpopulated or underpopulated district to one of the aforementioned legitimate state policies. The courts can weigh several different factors in examining the case, including size of deviation, importance of the state's interests, consistency with which the plan reflects those interests overall, and the possibility that alternative plans can protect those interests while still retaining population equality. If the state fails to provide legitimate justification and specifically relate that justification to each district in question, the courts will likely find the plan unconstitutional. Such was the case in *Karcher*, where a congressional plan with a total deviation of only 0.6984% was not justified by a consistently applied legislative policy. Hebert et al., *supra* note 39, at 2-4.

⁴³ 517 U.S. 952 (1996).

⁴⁴ The actual ruling that prompted the court-drawn plan came from *Vera v. Bush*, 933 F. Supp. 1341, 1348 n.9 (S.D. Tex. 1996) (three-judge court). *Bush v. Vera* struck down three districts (the 30th District in Dallas with a black majority, the 18th District in Houston with a black majority, and the 29th District in Houston with a Hispanic majority) as unconstitutional racial gerrymanders. 517 U.S. 952 (1996).

⁴⁵ Hebert et al., *supra* note 39, at 5.

percent is considered acceptable without any justification.⁴⁶ Deviations below ten percent may still be challenged if shown to be unconstitutional, or the product of some arbitrary or irrational state policy.⁴⁷

California has a history of holding itself to a higher standard than other states. An example of this occurred in 1973. The California Supreme Court in *Legislature v. Reinecke*⁴⁸ appointed special masters to develop a redistricting plan for the California legislature and a reapportionment plan for congressional seats after the Legislature's plans failed to win the governor's approval. The courts approved specific criteria for the redistricting that included population equality as nearly equal as possible in congressional districts and 'within one percent of the ideal' in legislative districts.⁴⁹ However the motivation behind this stricter application of the population equality standard stems from the large size of California districts.⁵⁰ A one or two percent variance in population affects a much larger group of persons in California than in other states.⁵¹

Justifications above ten percent generally follow the same guidelines for permissibility in the courts as with congressional districts. However, these justifications, like the districts themselves, are given more leeway in the state legislative redistricting process than in congressional reapportionment contexts.⁵²

⁴⁶ As in the earlier example of five districts with ideally 400 people each, any plan with a total population deviation of forty persons or less (10% of 400) presumably is acceptable to the courts. To clarify, the deviations of all five districts are tallied, and that total must be less than forty (or ten percent of the ideal). *Id.* at 7.

⁴⁷ *Id.*

⁴⁸ 516 P.2d 6, 9 (1973).

⁴⁹ *Redistricting Process Background Information*, *supra* note 18.

⁵⁰ *Reinecke*, 516 P.2d at 6.

⁵¹ To illustrate: in three other cases where reasonable equality of state legislative districts was called into question—*White v. Regester*, 412 U.S. 755, 756-62 (1973); *Gaffney v. Cummings*, 412 U.S. 735, 740-52 (1973); *Mahan v. Howell*, 93 U.S. 979 (1973)—the ideal size of legislative districts ranged from 46,485 to 74,645. The ideal California assembly district has a population of 249,661—nearly three times the size of the largest ideal in the other three districts. *Reinecke*, 516 P.2d at 15-16. This affirms the fact that a one or two percent deviation means a lot more to a California district than to those in other states.

⁵² A prime example involves preservation of political subdivisions, a noteworthy goal for a state or legislative districting plan. In *Brown v. Thompson*, 462 U.S. 835 (1983), the Supreme Court upheld Wyoming's state legislative plan despite an average deviation of 16% and a total deviation of 89%. Wyoming's state constitution mandates that every county be separately represented in the legislature, prompting the Court to uphold the plan based on longstanding and consistent application of that legitimate state policy. However, this rationale did not hold up in the redistrict-

2. Voting Rights Act (VRA) of 1965, as Amended

This section provides an overview of the VRA,⁵³ focusing specifically on sections 2 and 5. In particular, section 203, which was amended in 1992, will be assessed to determine its effects on voting rights and the redistricting process.

The VRA placed heavy emphasis on the Fifteenth Amendment, that prohibited any techniques that “[deny] or [abridge] . . . the right of any citizen of the United States to vote on account of race or color.”⁵⁴ The VRA also imposed additional requirements and procedures on state redistricting. Noncompliance with VRA requirements often results in protracted litigation, which has been the focus of an important line of Supreme Court decisions

ing plan following the 1990 Census. In *Gorin v. Karpan*, 775 F. Supp. 1430 (D. Wyo. 1991) (three-judge panel), the district court struck down a plan with total deviations of 83% and 58% in the House and Senate plans, respectively. The court ruled that the state constitutional requirement of county preservation could not be elevated “to such an extreme extent over the ‘one person, one vote’ requirement of the Federal Constitution.” The Wyoming case serves as a reminder, however, that state constitutions must be consulted to determine the constitutionality of districting plans. Hebert et al., *supra* note 39, at 8.

⁵³ VRA, *supra* note 3. Section 2 of the VRA forbids any voting qualification or prerequisite to voting that denies or abridges the right of any citizen of the United States to vote on account of race or color. Section Five forbids certain state and local governments from implementing any new voting procedures (such as newly drawn districts) without first allowing the U.S. Attorney General an opportunity to object so as to ensure that any proposed changes will not lead to a retrogression in the position of racial minorities exercising their electoral franchise.

The 1965 VRA was amended in 1975 to expand protection to language minorities. Specifically, section 203 allows a community to qualify for bilingual voting assistance if they meet the following requirements:

a. (1) More than five percent of the voting-age citizens in a jurisdiction belong to a single language minority community and have limited English abilities, or (2) More than 10,000 voting-age citizens in a jurisdiction belong to a single language community and have limited English abilities (this provision was added in the 1992 Amendments to the VRA), and

b. The illiteracy rate of the citizens in the language minority is higher than the national illiteracy rate.

The 1982 Amendments to the VRA were in response to the Supreme Court case, *City of Mobile v. Bolden*, 446 U.S. 55 (1980), in which the Court held that § 2 of the VRA did not authorize a remedy in vote dilution cases absent proof that the discriminatory dilution was intentional. *See also* Rep. of the S. Comm. on the Judiciary that “concluded that [the Bolden] . . . intent test places an unacceptably difficult burden on plaintiffs [in § 2 cases, and] . . . diverts the judicial [inquiry] from the crucial inquiry whether minorities have equal access to the electoral process to a historical question of individual motives.” *See* S. Rep. No. 97-417, at 16 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 193.

⁵⁴ 42 U.S.C. § 173(a). *See also* FLORENCE ADAMS, *LATINOS AND LOCAL REPRESENTATION* 5 (2000); DERRICK A. BELL, JR., *RACE, RACISM & AMERICAN LAW* 571-651 (4th ed. 2000); Ramirez, *supra* note 10.

over the past decade.⁵⁵ Of particular concern to redistricting are sections 2 and 5, that seek to prevent minority vote dilution and retrogression, respectively.⁵⁶

Section 2 of the VRA applies to all jurisdictions. It prohibits states from imposing any standard that deprives minorities of an equal opportunity to participate in the political process (i.e. to elect candidates of their choice).⁵⁷ In the redistricting context, minority vote dilution occurs when states minimize minority group influence in the political process by “packing” or “cracking” minority group populations.⁵⁸ “Packing” is the overconcentration of minority group populations into one or two districts for the purpose of minimizing their sphere of legislative influence. “Cracking” occurs when minorities are dispersed among different districts so no one district has enough minorities to influence the political process.⁵⁹

In the decades following the initial passage of the VRA, due to a 1982 Congressional amendment to the VRA, the Supreme Court shifted its stance from the requirement of discriminatory intent to prove a section 2 violation that it took in 1980,⁶⁰ to-

⁵⁵ See *Bush v. Vera*, 517 U.S. 952 (1996); *Shaw v. Hunt*, 517 U.S. 899 (1996); *United States v. Hays*, 515 U.S. 737 (1995); *Miller v. Johnson*, 515 U.S. 900 (1995); *Shaw v. Reno*, 509 U.S. 630 (1993).

⁵⁶ Heather K. Gerken, *Understanding the Right to an Undiluted Vote*, 114 HARV. L. REV. 1663 (2001); see also Angelo Ancheta & Kathryn Imahara, *Multi-Ethnic Voting Rights: Redefining Vote Dilution in Communities of Color*, 27 U.S.F. L. REV. 815 (1993); Su Sun Bai, *Affirmative Pursuit of Political Equality for Asian Pacific Americans: Redefining the Voting Rights Act*, 139 U. PA. L. REV. 731 (1991); Magpantay, *supra* note 1; Judith Reed, *Of Boroughs, Boundaries and Bullwinkles: The Limitations of Single Member Districts in a Multiracial Context*, 19 FORDHAM URB. L.J. 759 (1992).

⁵⁷ *Thornburg v. Gingles*, 478 U.S. 30 (1986); BRUCE E. CAIN, *THE REAPPORTIONMENT PUZZLE* (1984); Richard M. Pildes & Richard G. Niemi, *Expressive Harms, “Bizarre Districts” and Voting Rights: Evaluating Election District Appearances after Shaw v. Reno*, 92 MICH. L. REV. 483 (1993).

⁵⁸ IMPACT OF REDISTRICTING, *supra* note 21, at 18. KATHLEEN L. BARBER, *A RIGHT TO REPRESENTATION: PROPORTIONAL ELECTION SYSTEMS FOR THE TWENTY-FIRST CENTURY* 66 (2000).

⁵⁹ BARBER, *supra* note 58, at 66 (“When single-member districts are used, representation in the city or state as a whole depends on the way the population is geographically distributed and on how the district or ward lines are drawn. . . . Traditional techniques of gerrymandering have often determined the composition of a council or a state legislative house, either by bunching (often called “packing”) partisan, ethnic, or racial groups into a district so that votes contributing to unnecessarily large majorities are wasted; or by spreading minority populations thinly across several districts so that they do not constitute a majority in any district (“cracking”).

⁶⁰ *City of Mobile v. Bolden*, 446 U.S. 55 (1980).

wards a standard requiring only the proof of discriminatory effect,⁶¹ not intent.⁶² The current test for deciding minority vote dilution comes from the results of *Thornburg v. Gingles*.⁶³ The Supreme Court set forth three factors, known as the *Gingles* test, that a minority group must prove in order to establish a section 2 violation:

- The minority group is sufficiently large and geographically concentrated to make up a majority in an single-member district⁶⁴
- The group is politically cohesive, or it usually votes for the same candidates,⁶⁵ and
- In the absence of special circumstances, the white majority votes together to defeat the minority's preferred candidate.⁶⁶

If the minority group challenging redistricting decisions suc-

⁶¹ See *Gingles*, 478 U.S. at 35 (“Congress substantially revised § 2 to make clear that a violation could be proved by showing discriminatory effect alone. . .”).

⁶² But see *Holder v. Hall*, 512 U.S. 874 (1994) (holding that a section 2 claim could not be maintained against an at-large method of choosing County Commissioners in the absence of intentional discrimination).

⁶³ 478 U.S. 30 (1986).

⁶⁴ See *Campos v. City of Houston*, 113 F.3d 544, 548 (5th Cir. 1997) (holding that citizen voting age population data is an appropriate measure to use in determining if an effective majority-minority district can be created); *Negron v. City of Miami Beach*, 113 F.3d 1563, 1569 (11th Cir. 1997); *African-Am. Voting Rights Legal Def. Fund v. Villa*, 54 F.3d 1345, 1348 (8th Cir. 1995) (concluding that 60% of the voting age population or 65% of the total population is reasonably sufficient to provide an effective majority); *Romero v. City of Pomona*, 883 F.2d 1418, 1426 (9th Cir. 1988).

⁶⁵ A recent example of racial cohesion would be the 97% of Latina/os who voted for Los Angeles mayoral candidate Antonio Villaraigosa. See *Cano v. Davis*, 211 F. Supp. 2d 1208 (C.D. Cal. 2002) (per curiam) (“In 1990 there were only seven Latinos in the state legislature and none in statewide office. But as 1990 close[d], there [were] six in the senate alone, twenty-three total in the legislature. The State Assembly ha[d] seen it's first and second Latino speakers, and a Latino—Cruz Bustamente—was elected lieutenant governor for the first time [in the twentieth century.”]. The plaintiffs in *Garza* made a successful showing that there was racially polarized voting in Los Angeles County. See *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990).

⁶⁶ *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Ed.*, 4 F.3d 1103, 1128 (3d Cir. 1993) (finding that white v. white elections are less probative on the third *Gingles* prong); *League of United Latin Am. Citizens, Council No. 4344 v. Clements*, 999 F.2d 831 (5th Cir. 1993) (white v. white elections less probative); *Westwego Citizens for Better Gov't v. Westwego*, 872 F.2d 1201 (5th Cir. 1989) (elections with black and white candidates are most probative to show racial polarization); *Citizens for a Better Gretna v. Gretna*, 834 F.2d 496, 502 (5th Cir. 1987) (allowing use of exogenous elections to make a showing for the third prong of the *Gingles* test); *Johnson v. Hamrick*, 155 F. Supp. 2d 1355, 1375 (N.D. Ga. 2001) (allowing both exogenous and endogenous elections as evidence).

cessfully establishes these three circumstances, the Supreme Court in *Johnson v. DeGrandy*⁶⁷ held that the next question is whether, “under the ‘totality of circumstances,’ the minority group had less opportunity than other members of the electorate to participate in the electoral process and to elect representatives of their choice.”⁶⁸

Section 5 of the VRA applies only to those jurisdictions where the U.S. Department of Justice (DOJ) has found a history of discrimination in voting towards minority groups. These “covered” jurisdictions (usually a county) must submit any law that could affect voting to the DOJ for review.⁶⁹ Required submissions include redistricting plans, changes in location of polling places,

⁶⁷ 512 U.S. 997, 1010 (1994) (while the three *Gingles* factors are necessary to prove a VRA § 2 violation, they are not all that is required, if the *Gingles* showing is successfully made, then a court must then ask the “totality of the circumstances” to see if minority voter’s power is actually diluted). The Court wrote that “[F]actfinders cannot rest uncritically on assumptions about the force of the *Gingles* factors in pointing to dilution.” *Id.* at 1013. See also *Zimmer v. McKeithan*, 485 F.2d 1297 (1973), which the DeGrandy Court cited approvingly as laying out “totality of circumstances” factors listed in the S. Jud. Comm. Rep. on the 1982 Amendments to VRA § 2, S. Rep. No. 97-417, at 28-29 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 206-07. These additional *Zimmer* factors are:

- (1) the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise participate in the [political] process;
- (2) the extent to which voting in the elections of the state or political subdivision is racially polarized;
- (3) the extent to which the state or political subdivision has used unusually large election districts, majority voting requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
- (4) if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
- (5) the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
- (6) whether political campaigns have been characterized by overt or subtle racial appeals;
- (7) the extent to which members of the minority group have been elected to public office in the jurisdiction;

Additional factors that have had probative value are: “whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority;” and “whether the policy underlying the state or political subdivision’s use of such voting qualifications, prerequisite to voting, or standard, practice or procedure is tenuous.” S. Rep. No. 97-417, at 28-29 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 206-07.

⁶⁸ IMPACT OF REDISTRICTING, *supra* note 21, at 17.

⁶⁹ In California, section 5 applies to Kings, Merced, Monterey, and Yuba counties.

changes affecting voter registration, and changes affecting eligibility or qualifications for voting and running for office.⁷⁰ Section 5 requires “preclearance” for redistricting plans affecting covered jurisdictions, in essence certifying that the voting law changes show no discriminatory, or retrogressive, effect.⁷¹

Section 203 of the VRA requires certain jurisdictions to provide bilingual oral and written assistance in the languages of limited-English proficient communities.⁷² A recurrent problem has been English-speaking and reading ability and the availability of multilingual voting materials and multilingual pollworkers to answer questions. Many recently naturalized citizens, in particular Latinas/os and Asians, lack the ability to read English, let alone fully comprehend voting materials.⁷³ This often discourages these citizens from exercising their fundamental right to vote. In 1975, Congress enacted VRA section 203, “recognizing the link between language barriers and low voter turnout.”⁷⁴ Counties or cities were required to provide assistance if the voter eligible population of a single language minority was greater than five percent of the voting-age citizen population, and the illiteracy rate of the citizens in the language minority group was higher than the national illiteracy rate.⁷⁵

Many jurisdictions with significant Latina/o populations had to comply with section 203. However, APIA communities found the five percent threshold to be too high. Thus, outside of Hawaii, in 1990 no APIA language community could qualify for sec-

⁷⁰ IMPACT OF REDISTRICTING, *supra* note 21, at 32.

⁷¹ Preclearance can be obtained either by submission of a plan to the DOJ or by declaratory judgment in the U.S. District Court for the District of Columbia that the changes do not violate section 5. For many reasons, including expense and time, it is much easier to seek preclearance through the DOJ process than through the court system. IMPACT OF REDISTRICTING, *supra* note 21, at 33.

⁷² Although not directly tied to the redistricting process, section 203 of the Voting Rights Act plays an important role in voting rights for minority group populations. Since the redistricting process requires community involvement, which is fostered by increased voter education and turnout, any measure that strengthens the voting power of a minority group ultimately influences redistricting.

⁷³ Chung, *supra* note 1, at 163 (“Most citizens with limited proficiency are only able to vote when voting materials are in their native language.”). For an example of bungled bilingual ballots in New York City Elections in 2000, see Editorial, *Bungled Ballots in Chinatown*, N.Y. TIMES, Jan. 1, 2001, at A12; see generally TIMOTHY P. FONG, THE CONTEMPORARY ASIAN AMERICAN EXPERIENCE: BEHIND THE MODEL MINORITY 269-70 (1998).

⁷⁴ IMPACT OF REDISTRICTING, *supra* note 21, at 46.

⁷⁵ *Id.* at 47.

tion 203's protections.⁷⁶

However, due to extensive advocacy on the part of civil rights groups in 1992, Congress amended and reauthorized section 203. The amendments kept the old five percent threshold, but added a numerical benchmark that could be attained, along with the illiteracy requirement.⁷⁷ This numerical benchmark required that there be more than 10,000 voting-age citizens in a jurisdiction who belong to a single language community with limited English proficiency. As a result, APIAs, American Indians, Alaska Natives, and additional Latina/o voters were able to receive the benefits of section 203.⁷⁸ Ensuring compliance has been a slow and sometimes difficult process, but overall these communities are benefiting from the expanded scope of this section in the VRA.⁷⁹

3. *The 2000 Census: Multiple Race Categories*

Historically the collection of census data about APIAs has been intermittent and spotty:

The first United States decennial census in 1790 collected data on race, but no distinction was made for people of Asian descent. Data have been collected on the Chinese population since the 1860 census and on the Japanese population since the 1870 census. The racial classification was expanded in the

⁷⁶ Nat'l Asian Pac. Legal Consortium, *Bilingual Voting Assistance: How To Use the Voting Rights Act*, available at <http://www.napalc.org>.

⁷⁷ IMPACT OF REDISTRICTING, *supra* note 21, at 46. See VRA, *supra* note 3, § 203.

⁷⁸ It should be noted that section 203 of the VRA applies to Asian Americans, but not Pacific Islanders. Hence the abbreviation APIA is not appropriate in this case. IMPACT OF REDISTRICTING, *supra* note 21, at 47.

⁷⁹ The National Asian Pacific American Legal Consortium (NAPALC), with the assistance of the Asian American Legal Defense and Education Fund (AALDEF), the Asian Pacific American Legal Center (APALC), and the Asian Law Caucus (ALC), compiled a report on the status of bilingual assistance to Asian Pacific American voters under section 203. They based their findings on exit polls taken during the November 1996 election. The report was released May 18, 1997. They found that thousands of APIA voters in New York and California were fully able to exercise their right to vote. Exit polls in California revealed that sixty percent of those using oral assistance were first time voters; in New York, the figure was nearly fifty percent. Despite these promising figures, NAPALC found that jurisdictions in the two states still are not in full compliance with the law. Problems still exist in the training of election workers on the election process, section 203 requirements, and cultural sensitivity. Also, problems exist in the recruitment and placement of bilingual poll workers. Poll sites also failed to clearly indicate the availability of assistance. Translated materials need to be more easily accessible, and translators need to be more identifiable.

1910 census to obtain separate figures on other groups such as Filipinos and Koreans. However, data on these other groups were collected on an intermittent basis through the 1970 census. Asian Indians were classified as White and the Vietnamese population was included in the “Other” race category in the 1970 census.

In the 1980 census, there were six separate response categories for Asians: Asian Indian, Chinese, Filipino, Japanese, Korean, and Vietnamese. . . . [F]or Census 2000, a separate “Other Asian” response category was added with a write-in area for respondents to indicate specific Asian groups not included on the questionnaire.⁸⁰

The 2000 Census had a major change with a tremendous potential effect on redistricting.⁸¹ For the first time, respondents could check more than one box in the category for race.⁸² This created up to 126 racial and ethnic categories, a significant increase from the nine categories possible in the 1990 Census.⁸³

The opportunity to check more than one box in the racial category question was meant to alleviate in part problems faced by multi-racial respondents. While it may be clear-cut to some as to which race they identify with more, the concept of forcing a multi-racial person to choose only one race denied them an opportunity to self-identify. This lack of choice could have potentially strong cultural and political implications for that respondent, and, in some cases, it may even prevent them from responding. Additionally, if a person checked more than one race in the past, the Census Bureau made an arbitrary decision about which race category to which that person would be assigned.⁸⁴

By allowing census respondents to “choose,” the Census Bureau theoretically receives more complete data due to a more comprehensive collection method and a potentially more compliant respondent pool. Minority group populations will likely gain

⁸⁰ Barnes & Bennett, *supra* note 1, at 2.

⁸¹ Another change was the separation of Pacific Islanders into a category separate from Asians. In 2000, Pacific Islanders had the opportunity to check a separate box and indicate their ethnicity/national origin.

⁸² Barnes & Bennett, *supra* note 1, at 2.

⁸³ This change reflects the October 30, 1997 decision by the Office of Management and Budget (OMB) to incorporate multiple-race reporting into the federal statistic system. *IMPACT OF REDISTRICTING*, *supra* note 21, at 36; Barnes & Bennett, *supra* note 1.

⁸⁴ Barnes & Bennett, *supra* note 1, at 3.

numbers because multi-racial persons will not be left out by choice of the Census Bureau or themselves. Theoretically, this increase in numbers subsequently gives minority groups more influence in districts and ultimately, a better opportunity to elect candidates of their choice. The increased accuracy in the PL 94-171 data on race used by the DOJ for redistricting purposes also gives legislators a realistic picture of the districts they create, hopefully improving the redistricting process.

The PL 94-171 data used in the 1990 Census differs significantly in composition from that of the 2000 Census. The decision to allow persons to check multiple race boxes made the 1990 Census data, as it stood, incompatible with the 2000 data. The ability to compare data over time is critical to the enforcement of civil rights laws as it is to enabling any kind of demographic analysis. In order to make this new data comparable to pre-2000 Census racial categories, the government devised a method for allocating each of the multiple race responses back into a single race category.⁸⁵ On March 9, 2000, OMB issued Bulletin No. 00-02, of which part II addresses how multiple-race responses will be allocated for use in civil rights monitoring and enforcement (i.e. the census count).⁸⁶

The following eight categories represent the new groupings the DOJ uses for the PL 94-171 Data:

- Non-Hispanic, White (and no other category)
- Non-Hispanic, Black/African American (including all African American/White responses)
- Non-Hispanic, Asian (including all Asian/White responses)
- Non-Hispanic, American Indian/Alaska Native (including all American Indian-Alaska Native/White responses)
- Non-Hispanic, Native Hawaiian or Other Pacific Islander (including all Hawaiian or Pacific Islander/White responses)

⁸⁵ U.S. Census Bureau, Brief, *Overview of Race and Hispanic Origin: 2000*, 2KBR101-1, March 2001, available at <http://www.census.gov/population/www/cen2000/briefs.html>.

⁸⁶ United States Dep't of Justice, *Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act*, 42 U.S.C. § 1973c, 66 FED. REG. 5411 (Jan. 18, 2001), available at http://www.usdoj.gov/crt/voting/sec_5/fedregvoting.htm (last visited July 3, 2002) [hereinafter *Guidance Concerning Redistricting and Retrogression*]. See also NAT'L CONFERENCE OF STATE LEGISLATURES, REDISTRICTING LAW 2000 (1999); Magpantay, *supra* note 1.

- Non-Hispanic, Some Other Race (including all Some Other Race/White responses)
- Non-Hispanic, Other Multiple-Race (where more than one minority race is listed)
- Hispanic⁸⁷

Any respondent checking both a minority race box and a white race box is assigned to the minority racial category.⁸⁸ Thus, the numbers for Black/African American, Asian, American Indian/Alaska Native, Native Hawaiian or Other Pacific Islander, and some “other race” reflect the total of the single race responses *and* the multiple race responses in which the minority race box and the white race box were checked.⁸⁹ All respondents choosing more than one minority race box comprise the “Other Multiple-Race” category.⁹⁰ For example, a respondent choosing both Black/African American and Asian will be assigned to that category. As in the past, the DOJ analyzed Hispanics as a separate group for purposes of enforcement of the VRA.⁹¹

4. *Traditional Redistricting Principles*

The major court cases of the 1990s discussed in the next section highlight the importance of an evolving concept known as “traditional redistricting principles.” These principles serve as a guide and provide a set of “requirements” that must be met by proposed redistricting plans in order to avoid legal challenges. They include:

- Compactness and contiguity of districts⁹²
- Respecting political subdivisions⁹³
- Respecting communities of interest⁹⁴
- Protecting incumbents,⁹⁵ and
- Meeting political goals.⁹⁶

⁸⁷ Barnes & Bennett, *supra* note 1, at 2.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 2-3.

⁹¹ *Id.*

⁹² On the “compactness” requirement, see *Bush v. Vera*, 517 U.S. 952, 959-60 (1996); on the “contiguity” requirement, see *Shaw v. Reno*, 509 U.S. 630, 646 (1993).

⁹³ On the requirement that districts preserve existing political boundaries, see *Abrams v. Johnson*, 521 U.S. 74, 98 (1997).

⁹⁴ On the requirement that districts encompass “communities of interest,” see *Miller v. Johnson*, 515 U.S. 900, 915 (1995).

⁹⁵ On protecting incumbents, see *Abrams*, 521 U.S. at 98.

⁹⁶ On preserving a political parties dominance via redistricting, see *Davis v. Bandemer*, 478 U.S. 109 (1986).

Compactness refers to the shape of the district—how tightly the lines are drawn and whether the district’s edges are smooth.⁹⁷ This requirement may come into conflict with the satisfaction of the VRA, that requires the creation of “majority-minority” districts to avoid minority vote dilution or to comply with section 5 in a covered jurisdiction.⁹⁸ In order to draw these districts, compact shape may often be sacrificed in order to pull together enough of the minority group population to form a “majority-minority” district. However, in the *Shaw v. Reno*⁹⁹ line of cases discussed in the next section, districts that lack requisite “compactness” may be vulnerable to racial gerrymandering lawsuits.¹⁰⁰

The importance of compactness is based on the idea that political representation in our system is linked to the notion that geographical communities share common interests. The perception that elected officials can better serve their constituents if they are in the same geographic region also contributes to the importance of compactness.¹⁰¹

No one specific measurement for compactness has been estab-

⁹⁷ *Guidance Concerning Redistricting and Retrogression*, *supra* note 86.

⁹⁸ *Miller*, 515 U.S. 900. In *Miller*, the Justice Department withheld preclearance for Georgia’s 1990 redistricting until Georgia added three majority-minority districts, white voters sued and the Court held that evidence that a legislature had used race as a predominant factor in redistricting triggered strict scrutiny under the Equal protection clause.

Using as its new test ‘race as a predominant factor’, the Court concluded that race was the predominant rationale behind the *Miller* redistricting plan. The Court then invoked strict scrutiny to ascertain whether the plan was narrowly tailored to serve a compelling state interest. Deciding that complying with the Voting Rights Act might be a compelling state interest, the Court concluded that the plan was not narrowly tailored. . . . [and] found the districts unconstitutional.

BELL, *supra* note 54, at 631; *Shaw v. Hunt*, 517 U.S. 899 (1996) (*Shaw II*). *Shaw II* rejected the North Carolina’s proffered justifications (to ameliorate the effects of past discrimination, and to comply with sections 5 and 2 of the VRA for District 12 (first examined by the court in *Shaw I*) as not compelling state interests (there was no evidence to show district’s shape with past discrimination, the Court disagreed with the Justice Department’s interpretation of section 5 and because there was no geographically compact population, there was no potential for liability under section 2). *Bush v. Vera*, 517 U.S. 952 (1996). In *Bush*, Justice O’Connor stated that using race as a factor in redistricting does not in and of itself give rise to strict scrutiny, however, it cannot be a predominant factor. *See id.* She also stated that compliance with section 2 of the VRA could be a compelling state interest, however, districting would have to be narrowly tailored to survive. *See id.*

⁹⁹ 509 U.S. 630 (1993).

¹⁰⁰ *Bush*, 517 U.S. 952; *Miller*, 515 U.S. 900.

¹⁰¹ *Guidance Concerning Redistricting and Retrogression*, *supra* note 86.

lished. Only Colorado and Iowa have tried prescribing particular methods to measure it.¹⁰² While a visual test often serves as an initial means of evaluating compactness in a district, mathematical formulas also exist to aid in this endeavor.¹⁰³ The contiguity requirement simply means that each district is its own “land mass.” With the exception of islands and bodies of water, districts should not be separated and all parts of the district should touch.¹⁰⁴

A “community of interest” is another principle frequently cited in redistricting cases.¹⁰⁵ This term refers to populations with common or shared interests. What constitutes a “community of interest” varies, but the following present possible shared interests:

- Income levels
- Educational backgrounds
- Housing patterns and living conditions (urban, suburban, rural)
- Cultural and language backgrounds
- Employment and economic patterns
- Health and environmental conditions, and
- Other issues of concern (i.e. crime, education, etc.).¹⁰⁶

The census, in conjunction with information from public redistricting hearings and general knowledge of the region, can pro-

¹⁰² IMPACT OF REDISTRICTING, *supra* note 21, at 23-24.

¹⁰³ Three of the most commonly used mathematical measures are known as dispersion, perimeter, and population. Dispersion method determines to what extent a district is spread out by comparing the area of the district to the area of the smallest circle that can be drawn around it. The perimeter method measures the length of a district’s borders—the smoothest borders being the most compact. Population method calculates the regularity of distribution of population in and around a district by comparing the population inside the district with the population just outside of the district. *Id.* at 24-25.

¹⁰⁴ *Id.* at 25.

¹⁰⁵ On the requirement that districts encompass “communities of interest,” see *Miller*, 515 U.S. at 915.

Drawing districts on the basis of Asian American communities of interest is not simply a legal fiction nor a proxy for race. Asian American communities of interest may be viewed as smaller subsets of the Asian American community. Race and ethnicity, along with income level, educational level, English ability, and other socio-economic characteristics, in addition to external factors and common community concerns and issues, must be used to prove that specific Asian American communities are communities of interest.

Magpantay, *supra* note 1, at 768.

¹⁰⁶ *Guidance Concerning Redistricting and Retrogression*, *supra* note 86.

vide adequate information to determine these “communities of interest.”

States and local jurisdictions are also permitted to express and meet political goals, which may include protection of a political party or incumbent, even if these goals result in majority-minority districts.¹⁰⁷ States may do this even if they are aware of the race of the voters in the district, as in *Hunt v. Cromartie*¹⁰⁸ (where political gerrymandering was allowed because the most loyal Democrats happened to be black Democrats).¹⁰⁹

Ultimately, redistricting plans need to be consistent within each state and local jurisdiction. If certain “traditional redistricting principles” have been more or less adhered to in the past, then any plan that differs significantly from the “traditional” principles of the jurisdiction may be called into question. Moreover, “communities” of interest not previously supported by redistricting plans can use the state’s tendency to bend “traditional redistricting principles” to advocate for compromise of those principles in their favor.

C. *Latina/os and APIA Communities and the 1980s Redistricting Experience in California*

Unfortunately, for many people, particularly in the Latina/o and APIA communities, redistricting has been a formal and abstract legal process far removed from their daily lives.¹¹⁰ As such, people in these communities may fail to fully appreciate the importance of redistricting, let alone even understand what the process entails.¹¹¹ This lack of participation leads to redistricting

¹⁰⁷ *Id.* at 26.

¹⁰⁸ 526 U.S. 541, 551 (1999).

¹⁰⁹ *Guidance Concerning Redistricting and Retrogression*, *supra* note 86.

¹¹⁰ Chung, *supra* note 1.

¹¹¹ For many APIA and Latino communities, even the concept of participation at the voting booth may be unfamiliar, let alone developing an understanding of the impact of redistricting. On traditionally low Asian American voter turnout, see Paul Ong & Don T. Nakanishi, *Becoming Citizens, Becoming Voters: The Naturalization and Political Participation of Asian Pacific Immigrants*, in *REFRAMING THE IMMIGRATION DEBATE* 292 (Bill Ong Hing & Ronald Lee eds., 1996).

To understand the relatively low electoral participation of Asian Americans, one needs to take into account their sizeable foreign-born population. In 1980 the proportion of foreign-born Asian Americans was 73 percent in the United States, 67 percent in California, and 63 percent in Los Angeles County. . . . New immigrants face numerous obstacles that limit their electoral participation, including limited English ability, unfamiliarity with the political system, and ignorance of the political issues.

that seriously disadvantages Latina/o and APIA community political representation on important issues ranging from education, housing, training programs, medical care, and immigration.¹¹²

Disenfranchisement through redistricting takes a few identified forms. As mentioned before, legislators or redistricters can create districts that split or “crack” minority group communities, preventing them from asserting political strength arising from their numbers.¹¹³ In other instances, where a minority group has sufficient numbers to influence or even become the majority in more than one district, legislatures may “pack” them into a single district to minimize their sphere of influence, so that there will be a “token” minority representative in the legislature, but who will always be outvoted on issues of particular interest to the relevant minority community.¹¹⁴ To avoid these situations, Latina/o and APIA community members need to become more involved in the redistricting process. Civil rights advocacy groups like MALDEF and APALC can also encourage voter registration and participation by demonstrating, via outreach and education

YEN LE ESPIRITU, *ASIAN AMERICAN PANETHNICITY: BRIDGING INSTITUTIONS AND IDENTITIES* 57-58 (Sucheng Chan ed., 1992). See also Sun Bai, *supra* note 56, at 739 n.39; Lena H. Sun, *Some Asian Americans Fear Reduced Political Involvement After DNC Flap*, WASH. POST, Nov. 20, 1996, at A6.

Low levels of Latino electoral participation have a tendency to be self-perpetuating. Once the perception arises that Latinos do not vote, candidates, campaigns, and parties have no reason to reach out to these communities. Without outreach, the many “new” voters in these communities are not socialized into the political system and become chronic nonvoters.

Rodolfo O. de la Garza & Louis DeSipio, *Save the Baby, Change the Bathwater, and Scrub the Tub: Latino Electoral Participation After Seventeen Years of Voting Rights Act Coverage*, 71 TEX. L. REV. 1479, 1508 (1993).

¹¹² Chung, *supra* note 1.

¹¹³ IMPACT OF REDISTRICTING, *supra* note 21, at 18.

When single-member districts are used, representation in the city or the state as a whole depends on the way the population is geographically distributed and on how the district or ward lines are drawn. . . . Traditional techniques of gerrymandering have often determined the composition of a councilor or a state legislative house, either by bunching (often called “packing”) partisan, ethnic, or racial groups into a district so that votes contributing to unnecessarily large majorities are wasted; or by spreading minority populations thinly across several districts so that they do not constitute a majority in any district (“cracking”).

Barber, *supra* note 58, at 66.

¹¹⁴ These two are examples of minority vote dilution. Whether a claim can be made that such dilution has occurred depends on a legal showing of a violation of section 2 of the Voting Rights Act. The three preconditions to make such a claim were outlined by the Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986). See IMPACT OF REDISTRICTING, *supra* note 21, at 17-18.

about the redistricting process, to let community members know how important and valuable their vote is.¹¹⁵

Ultimately, successful involvement in redistricting can lead to the creation of districts where minority groups are able to elect representatives of their choice. Traditionally, these districts have been “majority-minority” districts, or districts whose “majority” is comprised of members of different ethnic or racial minority groups.¹¹⁶

Along with African Americans, Latina/os and APIAs have traditionally not had a voice in the redistricting process.¹¹⁷ While there have been and continue to be geographically dense areas of Latina/o population, prior to the 1990s, there were no areas in California with concentrated APIA populations that were large enough to constitute a majority of a district.¹¹⁸ Coupled with the historically low participation of the APIA community in the political process, these conditions made legislative decisions to fragment the potential voting power of APIA communities easier.¹¹⁹

The California Legislature’s 1981-82 redistricting resulted in Los Angeles’ Koreatown neighborhood being split between three congressional, four senatorial, three assembly, and three city council districts.¹²⁰ With the exception of the geographically small area of Little Tokyo, that remained in one congressional, senatorial, and assembly district, all other APIA communities in California were fragmented at one or more levels.¹²¹

The Latina/o population had its vote similarly diluted by Los

¹¹⁵ See IMPACT OF REDISTRICTING, *supra* note 21; see also Kim G. Geron & James S. Lai, *Beyond Symbolic Representation: A Comparison of the Electoral Pathways and Policy Priorities of Asian American and Latino Elected Officials*, 9 ASIAN L.J. 41 (2002).

¹¹⁶ Barber, *supra* note 58, at 131-43; see also Magpantay, *supra* note 1, at 762-63.

¹¹⁷ For instance, the New York City redistricting plan of the 1980s divided Chinatown between two state assembly districts. Despite objections filed by the Asian American Legal Defense and Education Fund (AALDEF) raising concerns about the Asian American community’s ability to elect a candidate of its choice, the redistricting plan was approved. IMPACT OF REDISTRICTING, *supra* note 21, at 10.

¹¹⁸ AZORES & ONG, *supra* note 22, at 4; CAPAFR Fact Sheet: *Priorities, CAPAFR Redistricting*, at http://www.apalc.org/CAPAFR_Priorities.pdf (redistricting affecting Los Angeles County after the 2000 Census).

¹¹⁹ WILLIAM WEI, *THE ASIAN AMERICAN MOVEMENT* (1993); Chung, *supra* note 1, at 271-72.

¹²⁰ LELAND T. SAITO, *RACE AND POLITICS: ASIAN AMERICANS, LATINO, AND WHITES IN A LOS ANGELES SUBURB* (1998); WILLIAM TAMAYO, *THE VOTING RIGHTS OF ASIAN AMERICANS* 9-10 (1991); see also WEI, *supra* note 119.

¹²¹ See generally SAITO, *supra* note 120.

Angeles County Supervisorial redistricting.¹²² MALDEF brought a groundbreaking lawsuit, *Garza v. County of Los Angeles*,¹²³ that forced a redrafting of the county supervisor districts. Rodolfo Acuña writes that,

In June 1990, U.S. District Judge David V. Kenyon, after a lengthy and costly trial ruled in *Garza v. County of Los Angeles* that the [Los Angeles County Board of] Supervisors had violated the federal Voting Rights Act by intentionally denying Latinos an equal opportunity to elect candidates of their choice to the county Board of Supervisors. . . . The *Garza* case revealed much about Euroangelenos and their attitude toward Mexicans. Suffering from historical amnesia, many of them continued to view Latinos as foreigners and questioned the suit against the Board of Supervisors: ‘Why should Mexicans have representation on the board?’ Whites—and often Blacks—seemed to think that civil rights was not a Latino issue. Breaking through this historical and institutional ignorance was a major challenge. . . . While judges presume discrimination against African Americans, they tend to see Chicanos and other Latinos as latecomers without a history of discrimination or civil rights struggle, and efforts to raise the history of the Chicano struggle for civil rights are often met with hostility. . . . [N]umbers alone do not automatically bring political strength or influence. . . . [but] usually intensify nativism toward Latinos among Euroamericans.¹²⁴

Eventually, as a result of the *Garza* litigation, the supervisorial districts were redrawn to create a district where the Latina/o population had a viable opportunity to elect a candidate of its choice. Gloria Molina was elected to the L.A. County’s Board of Supervisors.

For the APIA community, especially in the 1980s, political change was not easily achieved through the courts. Where there were examples of electoral success, they were usually dependent on effective cross-racial coalition building. This was true in the

¹²² *Id.* at 138.

¹²³ *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990) (intentional discrimination may be shown if a legislative body chooses fragmentation of a minority population as an avenue to preserve incumbencies, and there is some injury to the protected group.); *see also* *Thornburg v. Gingles*, 478 U.S. 30 (1986) (to show that redistricting has a racially discriminatory effect on a minority group, the group must show (1) that a majority black, Hispanic or other minority single-member district can be created, and (2) that past racial bloc voting has stopped minority voters from electing candidates); *see also* de la Garza & DiSipio, *supra* note 111.

¹²⁴ RODOLFO F. ACUNA, ANYTHING BUT MEXICAN: CHICANOS IN CONTEMPORARY LOS ANGELES 72-73 (Mike Davis & Michael Sprinker eds., 1997).

April 1988 election of Judy Chu, a former community activist and teacher, to the Monterey Park City Council. Exit polling

[i]ndicated that Chu received 88 percent of the Chinese vote and 75 percent of the Japanese American vote. But since Asian Americans made up only 35 percent of the city's electorate, success required significant support from others as well. And Chu got that support, receiving one in three European American and Latino votes.¹²⁵

II

1990s—GROWING PAINS

Despite the generally bleak picture that has been painted for effective representation in their communities, APIA participation in the 1990 redistricting process resulted in significant gains. A number of factors led to these early gains. Population increases, particularly stemming from large numbers of Southeast Asian immigrants, gave them strength in numbers that were absent as recently as the 1980s.¹²⁶ This prompted APIAs to organize together in an effort to curb redistricting plans that would dilute their voting strength.¹²⁷

In California, the 1990 census revealed an APIA population of approximately ten percent of the total population.¹²⁸ The statewide 1991 Assembly Redistricting plan proposed by the legislature would have cut the city of Torrance into two districts, splitting in half an APIA population that had doubled from 1980 to 1990 and constituted over twenty percent of the city population. APALC and other advocacy groups collected testimony and prepared briefs to present to the California Supreme Court's Special Masters, who were determining the boundaries of the new districts, to push for a unified City of Torrance. This turned out to be the *only* change accepted by the Special Masters and incorporated into the approved map. Their efforts paid off when,

¹²⁵ WEI, *supra* note 119, at 264 (citing APALC's 1988 Exit Poll); *see also* Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Society*, 81 CAL. L. REV. 863 (1993). Chu had come to prominence in Monterey Park by leading the challenge to the city's English-only sign ordinances—an issue that resonated with many immigrant communities and progressive voters.

¹²⁶ BILL ONG HING, *MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY, 1850-1990*, at 121-38 (Gordon H. Chang ed., 1993).

¹²⁷ SAITO, *supra* note 120, at 159.

¹²⁸ TIMOTHY P. FONG, *THE CONTEMPORARY ASIAN AMERICAN EXPERIENCE: BEYOND THE MODEL MINORITY* 42 (Charlyce Jones Owen et al. eds., 1998).

in 1998, the 53rd Assembly District elected George Nakano, a Japanese American and the only APIA assemblyman from Southern California at the time.¹²⁹

In 1990, two coalitions, one in northern California and another in Los Angeles, each called the Coalition of Asian Pacific Americans for Fair Redistricting (CAPAFR), were formed.¹³⁰ This marked the first time that the APIA community formally participated in the redistricting process. With some communication between the two regional coalitions, each engaged in providing public awareness efforts, solicited community involvement, and developed technical proposals for their respective areas.¹³¹

As compared to some other minority groups, the APIA (and the Latina/o) community is extremely heterogeneous, encompassing a wide variety of different cultures, languages, histories of immigration and socio-economic backgrounds.¹³²

To bridge the diverse interests of different ethnic groups, different generations, and communities with different socio-economic backgrounds, and more recent immigrant communities required finesse and sensitivity on the part of APIA activists, as well as a commitment to significant and substantial outreach.

¹²⁹ In New York, the 1991 Congressional redistricting held Latino and APIA voters together in District 12. Plaintiffs challenging the constitutionality of this district under *Shaw v. Reno*, 509 U.S. 630 (1993), brought suit in *Diaz v. Silver*, 978 F. Supp. 96 (E.D.N.Y. 1997). AALDEF represented Asian American voters, intervening in the suit to defend the district. They argued that Asian Americans in Manhattan's Chinatown and Brooklyn's Sunset Park constituted a community of interest based on common language, class, and lifestyle. The court accepted this argument and kept the district intact. *IMPACT OF REDISTRICTING*, *supra* note 21, at 12.

¹³⁰ SAITO, *supra* note 120, at 18-20.

¹³¹ Tom, *supra* note 17, at 2.

¹³² For the APIA community, the language barrier presents a significant hurdle, considering the large percentage (sixty-nine percent) of the APIA population who are foreign-born. Accordingly, these first efforts resulted in some successes, which will be discussed later. However, full participation in the redistricting process eluded the APIA community for a variety of reasons. Chung, *supra* note 1, at 168. With certain Southeast Asian groups, new immigrants may lack literacy in both English and their native language.

For many recent immigrants, especially Southeast Asians, their focus may be more on subsistence and financial survival, causing them to overlook the importance of politics to their well-being. Dan Nakanishi, *The Next Swing Vote? Asian Pacific Americans and California Politics*, in *RACIAL & ETHNIC POLITICS IN CALIFORNIA* 144 (Bryan O. Jackson & Michael B. Preston eds., 1991); Chung, *supra* note 1, at 171-72. These groups stand in stark contrast with those ethnic groups with multiple generations in the United States, including the more established and politically organized Japanese American community and portions of the Chinese American population. Wei, *supra* note 119, at 241-70.

Because of the challenges faced in building a coalition of all the APIA voices, developing a unified front was not always assured, even with conscientious efforts to maintain substantive outreach. For example, the Northern California CAPAFR faced challenges in uniting all of their constituent voices under one redistricting plan proposal. Individuals emerged who lobbied their legislators about their own district agenda. This created confusion as to which CAPAFR group “truly” represented the voice of the APIA community of California.¹³³

APIAs also lacked a statewide organization with advocacy experience possessing the stature and history of organizations such as MALDEF and NAACP-LDF. Unlike Latinas/os and African Americans, APIAs lacked a history of successful voting rights and redistricting litigation that would serve as a potential threat to legislators that did not address APIA needs.¹³⁴ By comparison, the Latina/o community in California had the litigation record of MALDEF and other organizations that had effectively brought several high profile redistricting court cases in the 1980s, establishing their presence as a community to be reckoned with.¹³⁵

Finally, the APIA community was disadvantaged in the 1990s redistricting process because it could not produce a statewide redistricting proposal. Without a statewide organization, the APIA communities’ interests were represented by two separate regional coalitions—a CAPAFR in the San Francisco/San Jose area

¹³³ See generally Chung, *supra* note 1.

¹³⁴ SAITO, *supra* note 120, at 158-59 (“Historically, politicians have divided geographic concentrations of racial groups into many districts, diluting their political influence. Redistricting was a key issue for Asian Americans, who have experienced extreme fragmentation under previous plans. There was no Asian American in the 120-member state legislature between 1980 and 1992.”).

¹³⁵ See ACUNA, *supra* note 124, at 152. This litigation success cannot be underestimated. MALDEF’s representation of Latino voters, using the Voting Rights Act’s sections 2 and 5, created a strong incentive for legislators to negotiate.

MALDEF was established in 1968 to use advocacy and litigation for social change in education, employment, and politics based on the model established by the NAACP and its independent Legal Defense Fund Some of MALDEF’s major cases involving politics include victories against at large elections in the Supreme Court case *White v. Register* (1973), involving the Texas House of Representatives, and the Ninth Circuit Court of Appeals decision *Gomez v. City of Watsonville* (1988), involving city council elections. Victories against gerrymandered districts include *United States and Carillo v. Los Angeles* and *Garza v. The County of Los Angeles in the 1980s*.

SAITO, *supra* note 120, at 138-39.

and a CAPAFR in the Los Angeles area.¹³⁶ Since there was no true statewide coordination, each CAPAFR group could only present proposals for a few districts in the region. A lack of APIA representatives in the California legislature, a lack of understanding about the APIA electorate, and a lack of a statewide APIA voice made it easy for legislators to ignore APIA interests in the 1990s. Instead, legislators responded to party and incumbent interests as well as to minority groups such as MALDEF and the Black Legislative Caucus Members led by Willie Brown Jr. as the Speaker of the Assembly.¹³⁷

While CAPAFR's success was limited by its lack of a statewide proposal, CAPAFR was able to achieve a modicum of influence by working with MALDEF. CAPAFR in Southern California focused on an APIA community of interest made up of the four cities in Los Angeles' San Gabriel Valley with large and fast growing Asian American populations. APALC and MALDEF worked to hold the four cities—Monterey Park, Alhambra, Rosemead, and San Gabriel—together within the largely Latina/o 49th Assembly District.¹³⁸ Because Latinas/os constituted a large percentage of the population and APIAs had a sufficiently large and growing population, any candidate would need to make coalitions with both Latinas/os and APIAs in order to run a successful campaign. This also opened the possibility that a strong APIA candidate could emerge who had worked at building these coalitions and thus was positioned to win. That was the case in 2000, when Judy Chu won election to the California Assembly representing the 49th District.

In the end, the Democratic State Legislature and Republican Governor Pete Wilson could not agree on the redistricting plan, thereby relinquishing the task of redrawing the lines to the courts.¹³⁹ Although CAPAFR's lack of a statewide organized ef-

¹³⁶ Tom, *supra* note 17, at 2.

¹³⁷ *Id.*

¹³⁸ SAITO, *supra* note 120; TIMOTHY P. FONG, *THE FIRST SUBURBAN CHINA-TOWN: THE REMAKING OF MONTEREY PARK CALIFORNIA* (1994).

¹³⁹ FONG, *supra* note 138; JOHN HORTON, *THE POLITICS OF DIVERSITY: IMMIGRATION, RESISTANCE, AND CHANGE IN MONTEREY PARK, CALIFORNIA* (1995); SAITO, *supra* note 120. *See also* NATIONAL ASIAN PACIFIC AMERICAN POLITICAL ALMANAC (Don T. Nakanishi & James C. Lai eds., 10th ed. 2001-02); Pei-te Lien, *Ethnicity and Political Participation: A Comparison Between Asian and Mexican Americans*, 16 *POLITICAL BEHAVIOR* 237 (1994); Nakanishi, *supra* note 132, at 144; Vincent Parillo, *Asian Americans in American Politics*, in *AMERICA'S ETHNIC POLITICS* 89 (Joseph S. Roucek & Bernard Eisenberg eds., 1982); Carole J. Uhlaner

fort hurt them during their presentations to the state legislature, their arguments before the California Supreme Court's Special Masters enabled them to win a significant victory in the 53rd Assembly District in the South Bay of Los Angeles County.

CAPAFR of Southern California successfully argued that Torrance's APIA community, which had doubled in population from 1980 to 1990, should be kept together within a district.¹⁴⁰ Their testimony resulted in the only change made to the Assembly map by the Special Masters and ultimately in the election of George Nakano in 1998. Mr. Nakano was the only APIA assembly member in Southern California at the time.

Much was to be gleaned from the participation of APIAs for the first time in the redistricting process in the 1990s. First, the lack of a true statewide proposal undoubtedly hurt APIA interests when presenting to the legislature. More unity in CAPAFR, along with a larger sphere of influence, was in order for 2000-2001. Second, these additional regional intragroup coalitions needed to be inclusive enough for APIA's to present a unified voice, requiring a great deal of organization and networking across the APIA community. Finally, as suggested by CAPAFR's collaboration with MALDEF in holding together an APIA community of interest in the San Gabriel Valley of Los Angeles County, the APIA community needed to commit to a strategy that embraced building and sustaining intergroup cross-racial coalitions.¹⁴¹

et al., *Political Participation of Ethnic Minorities in the 1980s*, 11 *POLITICAL BEHAVIOR* 195 (1989); Carole J. Uhlaner, *Political Participation and Discrimination: A Comparative Study of Asians, Blacks, and Latinos*, in *POLITICAL PARTICIPATION AND AMERICAN DEMOCRACY* 138 (William Crotty ed., 1991). See also Tania Azores & Philip Okamoto, *Asian Pacific American Awareness and Involvement in Redistricting* (UCLA Asian Am. Studies Center 1991); Paul Ong et al., *Redistricting and Political Empowerment of Asian Pacific Americans in Los Angeles: A Position Paper* (UCLA Asian Am. Studies 1991); TAMAYO, *supra* note 120. See generally *supra* note 30 and accompanying text.

¹⁴⁰ Torrance's APIA community included a large Japanese American population that was well established and had a consistent voting record that made it a cognizable community of interest. Additionally, the city of Torrance was a large South Bay interest, with a fully functioning independent City Council and school system.

¹⁴¹ On the difficulty of building and sustaining intergroup coalitions, see James A. Regalado, *Community Coalition-Building*, in *THE LOS ANGELES RIOTS: LESSONS FOR THE URBAN FUTURE* 230 (Mark Baldassare ed., 1994).

Coalition failures in this period have been due to a combination of conceptual, structural and organizational problems: (1) improperly understanding the complexity of race and class relations and issues . . . inclusive of a reliance on and not going beyond building middle class membership and con-

Groups like MALDEF and NAACP-LDF had much more experience in the redistricting process than CAPAFR, and much could be learned from working with these groups. Also, a unified proposal presenting the interests of all three groups would eliminate the possibility that individual group interests would be pitted against each other by the legislature. More importantly, a cross-racial coalition strategy would embody the larger goal of achieving voting rights through adherence to larger social justice principles. In the 2001 round of redistricting, grass-roots work addressing both intra-group and inter-group unity proved beneficial for APIA interests in the redistricting process.

III

2000-2001—THE EMERGENCE OF AN APIA POLITICAL PRESENCE

By the year 2000, the United States' in general, and California's, in particular, demographic landscape underwent important changes.¹⁴² The growth rates of minority group populations, particularly the APIA and Latina/o communities, made California a state with no majority population.¹⁴³ Stated another way, California is now a racially pluralist state. These demographic

stituencies; (2) becoming too comfortable with critically unchallenged concepts of pluralism and multiculturalism; (3) being oblivious to the degree to which traditional theories and beliefs of representative democracy and public policy formation are not working for communities of color; (4) failures to broadly recognize and confront the degree to which anti-democratic corporatist approaches have failed those most in need of economic development and job creation; (5) failure to set clear and strategic goals, realizable objectives, and targeted activities and outcomes; and (6) being unwilling to overcome provincial outlooks and agendas.

Id. See also Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility and Interracial Justice*, 3 *ASIAN PAC. AM. L.J.* 33 (1995).

¹⁴² Barnes & Bennett, *supra* note 1, at 4.

Census 2000 showed that the United States population was 281.4 million on April 1, 2000. Of the total, 11.9 million, or 4.2 percent, reported Asian. This number included 10.2 million people, or 3.6 percent, who reported only Asian and 1.7 million people, or 0.6 percent, who reported Asian as well as one or more other races. . . . The Asian population exceeded the U.S. level of 4.2 percent of the total population in nine states. Five states were in the West—Hawaii (58 percent), California (12 [sic] percent), Washington (6.7 percent), Nevada (5.6 percent), and Alaska (5.2 percent); two states were in the Northeast—New Jersey and New York (both 6.2 percent); and two states were in the South—Maryland (4.5 percent) and Virginia (4.3 percent).

Id.

¹⁴³ *Id.*

changes, along with changes in the law and political climate, created a new environment for the 2000-2001 California redistricting process.¹⁴⁴ The following sections elaborate these changes, with the last section providing a closer look at the role CAPAFR and organizations like APALC played in engaging the APIA community in a relatively successful redistricting process.

A. Demographics

The 2000 Census revealed that, at a 47.53% growth rate, the APIA community is the fastest growing ethnic community in California.¹⁴⁵ According to the PL 94-171 data, APIAs represent 11.81% of the total population in California.¹⁴⁶ This figure of nearly twelve percent marked a significant increase from the 9.11% recorded in the 1990 Census.¹⁴⁷

Given the lessons learned from the 1990 process and the increased population in several other major cities, APALC made a commitment to build a stronger, more unified CAPAFR that would help build representation in areas beyond Los Angeles and San Francisco.¹⁴⁸ For the 2000-01 redistricting campaign, APALC expanded CAPAFR to include nine regions covering seven counties in California: Sacramento, San Francisco, Alameda, Santa Clara, Los Angeles Metro, L.A. South Bay, L.A. San Gabriel Valley, Orange County, and San Diego.¹⁴⁹

¹⁴⁴ See Timothy A. Hodson, Ph.D., *Disappearing Constraints: Voting Rights and Gerrymandering in 1991 and 2001*, CAL. POL. & POL'Y 67 (1998).

¹⁴⁵ Tom, *supra* note 17, at 3. See also Appendix A.

¹⁴⁶ This figure, as well as the other demographic data in this report, refers to the Department of Justice (DOJ) measure for population data. This is the data used by the DOJ to evaluate redistricting submissions under section 5 of the Voting Rights Act. Thus, the Asian Pacific American Legal Center uses this data for its redistricting proposals. However, one might run across the figure 12.5% for percent APIAs in California. This figure is an inclusive percentage which incorporates all multi-racial APIAs, specifically those who check both an APIA and Hispanic box on the census. See Appendix A for complete demographic data on the APIA population in California for both the 1990 and 2000 Census counts.

¹⁴⁷ By comparison, California's white, Latino, and African American populations were 46.70%, 32.38%, and 6.70%, respectively. U.S. Census Bureau, *P010: Hispanic Origin by Race—Universe: Persons, American FactFinder*, available at http://factfinder.census.gov/servlet/DTable?ds_name=&geo_id=D&mt_name=DEC_1990_STF1_Po1o&_lang=en (July 3, 2002).

¹⁴⁸ ASIAN PAC. AM. LEGAL CENTER, COALITION OF ASIAN PACIFIC AMERICANS FOR FAIR REDISTRICTING, EXECUTIVE REPORT 1 (2002) [hereinafter CAPAFR REDISTRICTING EXECUTIVE REPORT].

¹⁴⁹ For maps of preexisting districts, proposed districts, and actual post-2000 districts, see Appendix D. See also Leon Drovín Keith, *Asians Seek New Districts for Clout*, SAN JOSE MERCURY NEWS, Aug. 10, 2001, at 27A.

The selection of these regions came at no surprise given the demographical data. Seven of the top eight largest APIA populations by county are CAPAFR counties.¹⁵⁰ Four CAPAFR counties rank in the top ten for percentage increase in APIA population.¹⁵¹ Furthermore, the three non-county CAPAFR regions are a part of Los Angeles County, which has the largest APIA population in the state and nation.¹⁵² The following demographic data illustrates the significant increases of APIA presence in these communities.

Sacramento County. In 1990, Sacramento County had 92,131 APIAs, or about 8.85% of the total population.¹⁵³ The 2000 Census revealed a population of 150,706, or 12.32%.¹⁵⁴ The APIA population in Sacramento grew 63.58% in the ten years separating the two census counts.¹⁵⁵

San Francisco, Alameda, and Santa Clara Counties. San Francisco County had 205,686 APIAs in 1990, representing 28.41% of the county population.¹⁵⁶ By 2000, the population had grown 21.11%.¹⁵⁷ The 249,109 APIAs now represent 32.07% of San Francisco.¹⁵⁸ Alameda County, which includes the city of Oakland, boasted one of the highest APIA growth rates of all the CAPAFR regions.¹⁵⁹ The 2000 Census revealed 318,543 APIAs, an increase of 72.36% from the 184,813 APIAs in 1990.¹⁶⁰ The county's APIA population now represents 22.06%, an increase from 14.45% in 1990.¹⁶¹ Santa Clara, which includes the city of San Jose and the Silicon Valley cities of Santa Clara, Cupertino, and Mountain View, had the highest APIA growth rate of the nine CAPAFR regions.¹⁶² The 1990 Census showed 251,496 APIA persons (16.79% of the total population).¹⁶³ This figure jumped to 450,278 persons (26.76% of the total population), an

¹⁵⁰ See Appendix A.

¹⁵¹ See Appendix A.

¹⁵² See Appendix A.

¹⁵³ United States Census Bureau, *United States Census 2000*, at 39-44, available at <http://ftp.census.gov> [hereinafter *Census 2000*]; see also Appendix A.

¹⁵⁴ *Census 2000*, *supra* note 153, at 39-44; see also Appendix A.

¹⁵⁵ *Census 2000*, *supra* note 153, at 39-44; see also Appendix A.

¹⁵⁶ *Census 2000*, *supra* note 153, at 39-44; see also Appendix A.

¹⁵⁷ *Census 2000*, *supra* note 153, at 39-44; see also Appendix A.

¹⁵⁸ *Census 2000*, *supra* note 153, at 39-44; see also Appendix A.

¹⁵⁹ *Census 2000*, *supra* note 153, at 39-44; see also Appendix A.

¹⁶⁰ *Census 2000*, *supra* note 153, at 39-44; see also Appendix A.

¹⁶¹ *Census 2000*, *supra* note 153, at 39-44; see also Appendix A.

¹⁶² *Census 2000*, *supra* note 153, at 39-44; see also Appendix A.

¹⁶³ *Census 2000*, *supra* note 153, at 39-44; see also Appendix A.

increase of 79.04%.¹⁶⁴

L.A. County. In 2000, Los Angeles County boasted the largest APIA population (1,200,521, or 12.61% of L.A. County) of the nine regions.¹⁶⁵ This figure reflects a 32.24% increase from the 1990 total of 907,810 (10.24% of the county).¹⁶⁶ A significant portion of the increase can be attributed to the growth in L.A. County's San Gabriel Valley, another CAPAFR region.¹⁶⁷ As defined by CAPAFR, the San Gabriel Valley's main APIA community of interest comprises four main cities: Alhambra, Monterey Park, Rosemead, and San Gabriel.¹⁶⁸

In 1990, the 95,980 APIAs represented 41.44% of the population in these four cities.¹⁶⁹ The 2000 Census saw APIAs increase to 124,082, or 51.88%.¹⁷⁰ This growth rate of 29.28% may not be the highest of the nine regions, but is important because APIAs are now a majority in these four cities and a significant population in the surrounding region. These four cities were united in 1991; the 2001 effort sought to ensure this unity and add additional communities of APIA growth.¹⁷¹

L.A. Metro. CAPAFR's efforts in the Los Angeles Metro Area focused mainly on unifying the ethnically cohesive communities of Chinatown, Koreatown, Little Tokyo, and Philippine Town so that each would be made whole rather than being "cracked" between districts.¹⁷²

L.A. County South Bay. L.A. County's South Bay region, which produced California's only APIA assembly member in the 1990s, saw a relatively modest population gain of 19.62%.¹⁷³ As CAPAFR did in the San Gabriel Valley, CAPAFR focused on four cities—Torrance, Gardena, Carson, and Long Beach—when addressing the needs of the region.¹⁷⁴ Whereas APIAs com-

¹⁶⁴ *Census 2000*, *supra* note 153, at 39-44; *see also* Appendix A.

¹⁶⁵ *Census 2000*, *supra* note 153, at 39-44; *see also* Appendix A.

¹⁶⁶ *Census 2000*, *supra* note 153, at 39-44; *see also* Appendix A.

¹⁶⁷ *Census 2000*, *supra* note 153, at 39-44; *see also* Appendix A.

¹⁶⁸ *Census 2000*, *supra* note 153, at 39-44; *see also* Appendix A.

¹⁶⁹ *Census 2000*, *supra* note 153, at 39-44; *see also* Appendix A.

¹⁷⁰ *Census 2000*, *supra* note 153, at 39-44; *see also* Appendix A.

¹⁷¹ See Appendix B for a detailed table on the populations in the Los Angeles County's San Gabriel Valley.

¹⁷² ASIAN PAC. AM. LEGAL CENTER, OVERVIEW OF STATEWIDE ASSEMBLY MAP—BY REGION, in CAPAFR REDISTRICTING EXECUTIVE REPORT, *supra* note 148, at 3.

¹⁷³ *Census 2000*, *supra* note 153, at 39-44; *see also* Appendix A.

¹⁷⁴ *Census 2000*, *supra* note 153, at 39-44; *see also* Appendix A.

prised 17.34% of the South Bay in 1990, they now comprised 19.34%.¹⁷⁵ Further, APIAs in Torrance now comprise 30.39% of the city population, underscoring their ability to elect George Nakano in 1998.¹⁷⁶

Orange County. Orange County contains another one of the fastest growing APIA populations, featuring a ten-year growth rate of over seventy percent. The 1990 Census revealed 240,756 persons of APIA descent, or 9.99%.¹⁷⁷ The 2000 Census showed that the 415,030 APIAs in Orange County now comprise 14.58%, a 72.39% rate of growth in the ten years separating the two counts.¹⁷⁸ Much of this growth stemmed from emerging populations in Little Saigon and Koreatown.

San Diego County. In San Diego, the 2000 Census revealed that 284,875 APIAs resided in that county, up from 185,144 in 1990.¹⁷⁹ APIAs now comprise 10.12% of the county, an increase from 7.41% in 1990.¹⁸⁰ The APIA community in San Diego saw their numbers grow 53.87% over the ten-year period.¹⁸¹

APIAs show strong signs of a community whose population is on the rise. With growth rates spanning from twenty-one percent to nearly eighty percent, APIA presence in California could not be ignored in the post-2000 round of redistricting.¹⁸² CAPAFR sought to ensure that the state legislature's 2000-01 redistricting plan would not do so. In addition to rapidly changing demographics, there were also significant legal and legislative changes in voting rights and redistricting.

¹⁷⁵ *Census 2000*, *supra* note 153, at 39-44; *see also* Appendix A.

¹⁷⁶ The 53rd Assembly District unified Torrance in the 1991 redistricting as referred to earlier when discussing CAPAFR's initial experience in the redistricting process. A detailed table on the populations in L.A. South Bay can be found in Appendix C.

¹⁷⁷ *Census 2000*, *supra* note 153, at 39-44; *see also* Appendix A.

¹⁷⁸ *Census 2000*, *supra* note 153, at 39-44; *see also* Appendix A.

¹⁷⁹ *Census 2000*, *supra* note 153, at 39-44; *see also* Appendix A.

¹⁸⁰ *Census 2000*, *supra* note 153, at 39-44; *see also* Appendix A.

¹⁸¹ For demographic data from the 1990 Census, see UNITED STATES CENSUS BUREAU, AGE AND SEX FOR THE ASIAN OR PACIFIC ISLANDER POPULATION: 1990, SAN DIEGO COUNTY, CALIFORNIA, at http://factfinder.census.gov/servlet/QTTable?_ts=62107703130 (last visited Feb. 4, 2003). The demographic data from the 2000 Census comes from the APALC demographic database, which uses the DOJ measure for calculating population that was alluded to earlier and will be explained further when changes in the law regarding the census are discussed. This data can be found in Appendix A.

¹⁸² *Census 2000*, *supra* note 153, at 39-44; *see also* Appendix A. .

B. Law—Existing Redistricting Standards and Recent Changes

Before the 1990s, the Supreme Court's interpretation of the VRA required states to be cognizant of race in redistricting in order to avoid having their plans struck down for dilution of minority voting strength under the VRA's section 2.¹⁸³ In the 1990s, the Supreme Court decided a series of cases that dramatically changed the landscape of voting rights and redistricting. This trend began in 1993 with *Shaw v. Reno*.¹⁸⁴ *Shaw* involved a situation arising in North Carolina where the state had not seen a Black representative elected to the state legislature since Reconstruction, despite having a twenty percent African American voting age population.¹⁸⁵ North Carolina's Twelfth Congressional District ran from the northeast to southwest parts of the state, forming a snake-like pattern that followed the winding route Interstate 85 for nearly 160 miles.¹⁸⁶ The North Carolina legislature clearly drew this district in order to concentrate enough African Americans in a single district to form a majority-African American district and receive a VRA-required preclearance from the DOJ.¹⁸⁷ The Court struck down the district as a racial gerrymander, ruling that such gerrymanders are unconstitutional and are not permissible, even for remedial purposes (such as compliance with VRA section 5).¹⁸⁸

The Court went a step further in June 1995 with its ruling in *Miller v. Johnson*.¹⁸⁹ Justice Kennedy, writing for the majority, stated that the Court would use "strict scrutiny" in voting rights cases to decide whether districts were narrowly tailored to achieve a compelling state interest.¹⁹⁰ This case involved Georgia's Eleventh District, where the Georgia legislature attempted to link African Americans in rural Savannah to those in metropolitan Atlanta.¹⁹¹ Justice Kennedy did not accept the claim that this district unified actual "communities of interest," claiming they were "worlds apart in culture."¹⁹² Taken together, *Shaw*

¹⁸³ *Thornburg v. Gingles*, 478 U.S. 30 (1986).

¹⁸⁴ 509 U.S. 630 (1993) (*Shaw I*).

¹⁸⁵ *See id.*

¹⁸⁶ *See id.*; *see also* *Hunt v. Cromartie*, 526 U.S. 541 (1999) (*Shaw III*); *Shaw v. Hunt*, 517 U.S. 899 (1996) (*Shaw II*).

¹⁸⁷ *See Shaw III*, 526 U.S. 541; *Shaw II*, 517 U.S. 899; *Shaw I*, 509 U.S. 630.

¹⁸⁸ *See Shaw III*, 526 U.S. 541; *Shaw II*, 517 U.S. 899; *Shaw I*, 509 U.S. 630.

¹⁸⁹ 515 U.S. 900 (1995).

¹⁹⁰ *Id.* at 920; Adams, *supra* note 54, at 13.

¹⁹¹ *Miller*, 515 U.S. 900.

¹⁹² *Id.*

and *Miller* hold that states may not use race as the predominant factor in creating a redistricting plan and that a court should apply strict scrutiny when traditional districting principles, such as incumbency, compactness, contiguity, and respect for political subdivisions, are subordinated to racial interests in redistricting plans.¹⁹³

The Court continued this stance in 1996 with two cases decided on the same day. In *Bush v. Vera*,¹⁹⁴ three majority-minority Congressional districts, two majority-black and one majority-Hispanic, were struck down by the Court.¹⁹⁵ *Bush v. Vera* stated that the Texas legislature had focused too much on ethnicity and too little on “traditional districting principles,”¹⁹⁶ and declared that it was impermissible to use race as a proxy for political party preference.¹⁹⁷

*Shaw v. Hunt*¹⁹⁸ (*Shaw II*) resulted from the appeal of the original *Shaw* case. The Court struck down North Carolina’s Twelfth District again on the same grounds as the three districts in the *Bush v. Vera* case, and iterated a requirement that districts drawn on the basis of race to increase the voting power of a minority group must demonstrate a compelling state interest for justification.¹⁹⁹ Furthermore, Chief Justice Rehnquist stated for the majority that VRA section 2 liability did not exist in this situation because of a lack of geographical compactness of minority groups.²⁰⁰ Thus, District 12 became “a[n] unnecessary remedy [to] a nonexistent violation. . . .”²⁰¹

Shaw I, *Miller*, *Shaw II*, and *Bush v. Vera* were important rulings on race and redistricting. As it stands, *if* race plays a large role in drawing districts that violate traditional redistricting principles, a jurisdiction must provide sufficient justification, such as

¹⁹³ *Id.* But cf. *Easley v. Cromartie*, 532 U.S. 234, 241-42 (2001) (holding that to prevail on a *Shaw* claim “[r]ace must not simply have been ‘a motivation for the drawing of a majority minority district,’” *Bush v. Vera*, 517 U.S. 952, 959 (1996) (emphasis in original), “but ‘the “predominant factor” motivating the legislature’s districting decision.’” *Hunt v. Cromartie*, 526 U.S. 541, 547 (1999) (emphasis added in *Easley*). “Plaintiffs must show that a facially neutral law ‘is “unexplainable on grounds other than race.”” *Id.* at 546.).

¹⁹⁴ 517 U.S. 952 (1996).

¹⁹⁵ *Id.*

¹⁹⁶ ADAMS, *supra* note 54, at 13.

¹⁹⁷ *Redistricting Process Background Information*, *supra* note 18.

¹⁹⁸ 517 U.S. 899 (1996).

¹⁹⁹ *Redistricting Process Background Information*, *supra* note 18.

²⁰⁰ *Shaw v. Hunt*, 517 U.S. 899, 918 (1996) (*Shaw II*).

²⁰¹ MARK MONMONIER, BUSHMANDERS & BULLWINKLES 45 (2001).

a compelling state interest (obtaining a VRA section 5 preclearance is presumably *not* such a compelling interest), for creating the race-conscious districts.²⁰² Despite the Supreme Court's hostility to race-conscious redistricting rules in states like New York, Florida, Texas, and California, race continues to be a major preoccupation of the Supreme Court in voting rights and redistricting cases. In so ruling, the Supreme Court narrowed the scope of protections afforded by the Voting Rights Act.

IV

COALITION OF ASIAN PACIFIC AMERICANS FOR FAIR REDISTRICTING (CAPAFR) AND THE CALIFORNIA DEMOCRATIC PARTY: GOALS AND ACHIEVEMENTS IN THE REDISTRICTING PROCESS

A. *The Political Situation of APIAs*

Following the 2000 Census, California's Democratic Party controlled both the state legislature and the governor's office.²⁰³ This presented a significant challenge to *any* interest group, particularly racial/ethnic civil rights groups such as APALC, MALDEF and NAACP-LDF, hoping to influence the process significantly in their favor to the extent that it was not in line with party interests.²⁰⁴ A presumption existed among the elected leadership ranks of the legislature at the time that the 2001 redistricting would only further cement Democrats as the dominant party and incumbents as a whole in the state legislature and California Congressional delegation.²⁰⁵ Maeley Tom, assessing the political climate at the time, quoted Sen. President Pro Tem John L. Burton as saying, "Democratic dominance is so heavy that there may not be many more Democratic seats to create without endangering other Democrats."²⁰⁶ Groups such as APALC, MALDEF and NAACP-LDF faced the additional hurdle of the

²⁰² IMPACT OF REDISTRICTING, *supra* note 21, at 19.

²⁰³ See generally Charles M. Price, *New Twist to an Old Game?*, STATE GOV'T NEWS 20 (Aug. 2000); see also UCLA ASIAN PAC. AM. STUDIES CENTER, NATIONAL ASIAN PACIFIC AMERICAN POLITICAL ALMANAC, 2001-02 (10th ed. 2001).

²⁰⁴ Steve Lawrence, *New Districting for Democrats*, ASIAN WEEK, Sept. 7, 2001; Noam Levey, *Assembly Issues Redistricting Plan Proposal Preserves Status Quo, Including Democrat Dominance*, SAN JOSE MERCURY NEWS, Aug. 30, 2001, at 21A.

²⁰⁵ See, e.g., Carl Ingram, *Democrats Have Luck of Draw in Redistricting*, L.A. TIMES, Aug. 19, 2001, at pt. 2, p. 7; Steve Lawrence, *Plan Protects Demo's Seats*, THE DAVIS ENTERPRISE (Davis, Cal.), Aug. 30, 2001; Tom, *supra* note 17, at 1.

²⁰⁶ See Tom, *supra* note 17, at 1.

unsettled state of judicial pronouncements on the relevance of race as a factor in redistricting. As explained in the previous section on law and court cases in the 1990s, race may be a factor in redistricting, but not the *dominant* factor.²⁰⁷ This distinction is still being clarified in the courts, leaving a gray area that will only be cleared up by further litigation or legislation.

In the 1990s, APIAs saw their population grow at a faster rate than any other racial/ethnic group over the past ten years. In spite of the difficulties presented by the political situation in 2001, APIA leaders felt their population increase and a stronger, more organized CAPAFR would put them in a better position to influence post-2000 redistricting. APALC also strategically used the emerging redistricting concept of “communities of interest” as an organizing tool for APIA communities to arbitrate their unique community characteristics and, where relevant, their shared political destiny with other APIAs or communities of color. Their advocacy efforts were also strengthened by the presence of APIA assembly members and the Asian Pacific American Legislative Staff. George Nakano, one of four APIAs in the Assembly (representing the 53rd District in the South Bay), also served on the Assembly Election and Reapportionment Committee.²⁰⁸ The other members of the APIA Legislative Caucus included Wilma Chan (16th Assembly District), Carol Liu (44th Assembly District), and Judy Chu (49th Assembly District). This represented the largest coalition of APIAs in the state legislature. As we will soon see, an expanded CAPAFR was able to effect change in a redistricting process mired by an unfavorable climate in the legislature and governor’s office.

B. Lessons from Post-1990 Redistricting

Recognizing that the APIA community needed more thorough preparation for the 2000 Redistricting process, the organizing to re-start CAPAFR began early. In 1998, under the leadership of APALC, they created a widespread network of APIA communities organized around the 2000 Census.²⁰⁹ CAPAFR absorbed nearly every major APIA organization spanning community, civil rights, and public policy activities that were potentially interested

²⁰⁷ *See id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 2.

in redistricting.²¹⁰ Their efforts produced nine regional coalitions: Sacramento, San Francisco, Alameda, Santa Clara, Los Angeles Metro, Los Angeles San Gabriel Valley, Los Angeles South Bay, Orange County, and San Diego.²¹¹ The unity within the organization proved vital in validating CAPAFR's political presence in the state capitol.²¹² Ultimately, CAPAFR sought to overcome the major barriers that the APIA community faced in the 1991 redistricting and began developing the ability to speak with one voice on redistricting.²¹³

C. *Post-2000 Objectives*

APALC took a proactive position to organize CAPAFR. As early as April 2000, APALC began meeting with community-based APIA groups in each region to set up redistricting training. In October 2000, APALC convened the first statewide meeting of representatives from each region. They met to discuss local regional priorities that would be expressed collectively in a statewide Assembly map proposal. APALC's early start to this process enabled them to visit more than once to help refine each regional proposal. In spring and summer 2001, they assisted in the preparation and presentation of community testimony before six out of the eight Assembly Committee on Elections, Reapportionment, and Constitutional Amendments Committee regional hearings.²¹⁴ Working together with the other organizations in CAPAFR, APALC set out to accomplish the following goals: (1) fair representation; (2) coalition building; and (3) political empowerment.²¹⁵

1. *Fair Representation*

Fair representation meant organizing the APIA community in each of the nine target regions to ensure that the corresponding regional CAPAFR accurately represented the diversity in com-

²¹⁰ *Id.* See also Neela Banerjee, *Maps, Lines and Growing Red Tape: Political Activists Push for More API Representation*, ASIAN WEEK, May 25-31, 2001, available at http://www.asianweek.com/2001_05_25/bay2_redistricting.html; Leon Drouin Keith, *Asians Seek New Districts for Clout*, SAN JOSE MERCURY NEWS, Aug. 10, 2001, at 27A.

²¹¹ Tom, *supra* note 17.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ Kathy Feng, *Interim Report on Redistricting Work: Report Period 07/01/00-06/30/01* (APALC 2001), at 1.

²¹⁵ CAPAFR REDISTRICTING EXECUTIVE REPORT, *supra* note 148, at 1.

position of the community.²¹⁶ First and foremost, APALC developed a process that sought inclusion of all community groups and members, with special attention to traditionally excluded ethnic and other groups. By committing to an inclusive process, APALC helped CAPAFR develop a more representative voice for APIAs. APALC employed the concept of “communities of interest” in trainings to allow community members to express what bound their communities together, what interests were important, and what other communities shared those interests. APALC also conducted voter research on preferences and needs (i.e. bilingual assistance). In March and November 2000, APALC conducted exit polls of APIA voting behavior in Southern California.²¹⁷ The March 2000 Exit Poll surveyed 3000 voters in fourteen cities/areas in Los Angeles and Orange Counties.²¹⁸ The November 2000 Exit Poll surveyed 5000 voters in sixteen Southern California cities/areas, representing the largest sample of voters APALC had surveyed to date.²¹⁹ These exit poll results were vital to analyzing the patterns of voting and voting challenges facing APIA voters.²²⁰

Fair representation also meant strengthening CAPAFR’s technical capacity. Because previous efforts at proposals were only regional, a significant increase in mapping and data collection was in order this time around. The APALC research and demographic team that created the maps used for the statewide redistricting network trainings, trained under the guidance of Leo Estrada, MALDEF’s chief demographer and redistricting expert in the 1990s. Since APALC’s staff were also trained alongside MALDEF’s new redistricting staff, this also presented an excellent opportunity for intergroup networking with an experienced key player in the redistricting process.²²¹

2. *Cross-Racial Coalition-Building*

The second goal of CAPAFR, coalition building, became rela-

²¹⁶ *Id.*

²¹⁷ *Survey Says . . . A Report of the Asian Pacific American Legal Center’s Exit Poll Project*, APALC: Voting Rights/Anti-Discrimination Unit, Mar. 2002, available at http://www.apalc.org/Exit_Poll_Newsletter.pdf [hereinafter *Survey Says*]. See also UCLA ASIAN AMERICAN STUDIES CENTER, 2001-02 NAT’L ASIAN PAC. AM. POLITICAL ALMANAC, 36-41 (Don T. Nakanishi & James S. Lai, Ph.D. eds., 2001).

²¹⁸ *Survey Says*, *supra* note 217, at 2.

²¹⁹ UCLA ASIAN AMERICAN STUDIES CENTER, *supra* note 217, at 36.

²²⁰ Feng, *supra* note 214, at 6.

²²¹ *Id.*

tively easier to achieve due to the joint training sessions. By receiving the same training on mapping software, the maps produced by CAPAFR would be readily compatible with those of MALDEF, and vice-versa. The dramatic changes in the legal and political landscape governing redistricting warranted a more collective effort to shape the legislature's plan. Recall the attitude among legislators that this process would only further cement California Democrats and all incumbents into positions of power, thus precluding significant advance to racial/ethnic civil rights groups interested more in fair representation than Democratic Party hegemony such as APALC, MALDEF, and NAACP-LDF.²²² Thus, APALC engaged in strong efforts to strengthen ties with other redistricting stakeholders. They regularly convened meetings with groups like MALDEF, Southwest Voters, Antonio Velasquez Institute, NAACP-LDF, NAACP, the League of Women Voters, the Pat Brown Institute, Lawyers' Committee for Civil Rights, and the American Jewish Committee to share information, understand each other's concerns, and explore possible strategies for collaboration.²²³

In December 2000, APALC facilitated a joint meeting with staff members and researchers from the major California civil rights organizations. Representatives from all three major civil rights organizations (APALC, MALDEF, NAACP-LDF) discussed plans for synchronizing efforts as well as providing the means for ongoing, regular meetings.²²⁴ These meetings eventually blossomed into a collaboration on a joint redistricting handbook, entitled *THE IMPACT OF REDISTRICTING IN YOUR COMMUNITY: A GUIDE TO REDISTRICTING*.²²⁵

The collaboration on the redistricting handbook set the stage for a full day conference, entitled "Making Our Communities Count: United for a Fair Redistricting Process," jointly sponsored by APALC, NAPALC, NAACP-LDF, and MALDEF. This conference targeted community leaders, organizers, and interested constituents to discuss the importance of collaboration

²²² See, e.g., A.G. Block, *Puzzle Pieces Together*, CAL. J., Mar. 2001, at 11; Michael Finnegan, *Latinos May Gain Few Seats in Redistricting*, L.A. TIMES, Aug. 26, 2001, at B1; Noam Levey, *Davis Ok's New District Maps*, SAN JOSE MERCURY NEWS, Sept. 28, 2001, at 1B.

²²³ Feng, *supra* note 214, at 2.

²²⁴ *Id.* at 3.

²²⁵ *IMPACT OF REDISTRICTING*, *supra* note 21. A copy of this handbook, which has been cited throughout this Essay, can be ordered at <http://www.napalc.org>.

and coalition. Attendees engaged in mapping exercises, discussed the effects of changes in redistricting law and litigation strategies, and most importantly, interacted with one another.²²⁶ The event took place May 12, 2001 in Los Angeles, with many CAPAFR regional representatives attending and taking the opportunity to meet with their counterparts from other ethnic communities. Throughout the summer, the three organizations continued working on a statewide Assembly district map. This effort culminated in the first unified Assembly proposal presented before the Assembly Committee on Elections, Reapportionment, and Constitutional Amendments on September 4, 2001.²²⁷

3. *Political Empowerment*

Political empowerment, the third goal of CAPAFR in the 2001 Redistricting process, involved preparing regional CAPAFRs to present at hearings, to legislators, and to the media to ensure APIA community and coalition interests were represented in the redistricting process.²²⁸ To this end, the APALC developed a strategy of training and building up regional partners in three phases: (1) developing awareness; (2) providing legal training and mapping workshops; and (3) organizing strategic planning meetings.²²⁹

In spring 2000, APALC began the first phase of outreach meetings intended to pique the interest of key community organizations for the redistricting process. This initial phase consisted of an overview of the law, current political climate, and demographic changes that have spurred a new level of APIA community involvement.²³⁰ Its purpose was to ensure that the second

²²⁶ *Id.*

²²⁷ *Joint Hearing Assembly Elections, Reapportionment & Constitutional Amendments Committee & Senate Elections & Reapportionment Committee*, (Cal. 2001) (Transcript of Public Hearing on Redistricting), available at <http://www.assembly.ca.gov/acs/committee/C7/transcripts/ercapht0904.pdf>.

²²⁸ CAPAFR REDISTRICTING EXECUTIVE REPORT, *supra* note 148, at 1.

²²⁹ Feng, *supra* note 214, at 4.

²³⁰ In Northern California, the Alameda/Contra Costa County efforts were facilitated by the East Bay Voter Education Committee, Sacramento County by a community coalition of over fifty groups known as CAPITAL, San Francisco by the Asian Law Caucus and APIA Health Forum, and Santa Clara/Silicon Valley by the Asian Law Alliance. In Southern California, APALC worked with coalitions of interested constituents in Los Angeles County's three regions, Orange County Asian Pacific Islander Community Alliance assisted Orange County, and Southwest Center for Asian Pacific Law (SCAPL) supported groups in San Diego County. *Id.*

phase had ample participation from a wide range of participants.

Phase two trained participants in redistricting law and terminology, eventually engaging them in map drawing exercises. Since this phase was intended to identify communities of interest, subsequent meetings were needed in each region. APALC's demographic research team presented maps with overlays of particular demographic data, from which participants discussed creating maps specific to their region. These maps merged together into a final proposal from each region.²³¹

Once the regional coalitions could coherently express their regional interests with a unified voice, APALC began Phase Three: solidifying the regional coalitions into a statewide network and engaging in both regional and statewide strategic planning.²³² This effort culminated in the first statewide meeting in October 2000. In spring and summer 2001, APALC assisted each region in preparing and presenting cogent community testimony at six out of eight Assembly Committee on Elections, Reapportionment, and Constitutional Amendments' regional hearings.²³³

The benefits of political empowerment stem beyond the obvious gains of a unified statewide proposal and more representation of APIA communities of interest in the redistricting plan. The regional CAPAFR's involvement in the statewide redistricting process enabled several of the groups to take on other levels of redistricting specific to their region. Sacramento, Santa Clara (San Jose), San Diego, Orange County, and Los Angeles' San Gabriel Valley organized around city or county redistricting, and several of the regional CAPAFRs testified on senate and congressional redistricting as well.²³⁴

Political empowerment extends beyond the redistricting realm. As mentioned before when discussing the benefits of redistricting, communities benefit from more educated and involved constituents with a stronger ability to advocate on their behalf. Ultimately, those non-voting citizens who choose to vote as a result of this process reflect the far-reaching positive gains that redistricting can have in increasing the political participation of

²³¹ See maps in Appendix D.

²³² Feng, *supra* note 214, at 5.

²³³ John Ellis, *Valley Residents Want Politics Out of Redistricting*, THE FRESNO BEE, May 12, 2001, at B1; Carl Ingram, *The State Democrats Have Luck of Draw in Redistricting*, L.A. TIMES, Aug. 19, 2001, at B7; Aurelio Rojas, *Asian Americans Flex Political Muscle*, THE SACRAMENTO BEE, May 22, 2001, at A3.

²³⁴ Rojas, *supra* note 233, at A3.

APIA community.²³⁵

D. Influence on the Post-2000 Redistricting Process

The preparation of APALC and other regional organizations under the umbrella of CAPAFR worked towards the toughest battle of the redistricting process: influence. While community awareness and consistent messages were vital to the APIA community, ultimately CAPAFR needed to connect their collective interests with that of state legislators on the Assembly Committee for Elections, Reapportionment, and Constitutional Amendments. As articulated to the legislature, their two main goals were “defensive” and “districts that would fairly represent [APIA] communities.”²³⁶

To that end, CAPAFR demonstrated political savvy by recognizing that redistricting is essentially a political insider’s game. In order for CAPAFR to be considered a prominent player in the redistricting process, the organization needed a daily presence in Sacramento to compete with the other stakeholders’ presence and, more importantly, to be positioned to respond immediately to changing circumstances.²³⁷ CAPAFR addressed this issue by hiring a professional political consultant, Maeley Tom, to provide this political presence within the state capitol at the onset of the process.²³⁸ Ms. Tom served as a liaison to key legislative members and staff as needed.²³⁹ The key benefit of Ms. Tom’s work came in the form of valuable strategic and tactical advice on how to focus and shape CAPAFR’s message to legislators—insight that only a seasoned political veteran could provide.²⁴⁰

CAPAFR used the network created by both their individual efforts and that of their political consultant to strategically engage in strong advocacy and to fight for the representation of existing APIA communities. During one of the most heated debates involving Assembly District 49 (the East Los Angeles and San Gabriel Valley area represented by Judy Chu), CAPAFR testimony at hearings, their meetings with legislators, as well as their strong alliance with MALDEF were primarily responsible

²³⁵ Chung, *supra* note 1.

²³⁶ Tom, *supra* note 17, at 3.

²³⁷ *Id.*

²³⁸ Feng, *supra* note 214.

²³⁹ *Id.* at 4.

²⁴⁰ *Id.*

for a fair resolution.²⁴¹

CAPAFR also called in ethnic and mainstream media to help publicize these issues in order to exert additional political pressure on the decision-makers.²⁴² CAPAFR's advocacy efforts were further strengthened by the presence of the Asian Legislative Staff Caucus, led by Assemblyman George Nakano (53rd Assembly District), who also served on the Assembly Committee for Elections, Reapportionment, and Constitutional Amendments. The presence of Nakano and three other APIA Assembly members, especially during behind the scenes redistricting negotiations, proved vital in enhancing the strength and voice of the APIA community.²⁴³

In spite of all the strategic planning and effort, CAPAFR still faced an uphill struggle influencing the legislature, given its predisposition to redrawing districts to solidify incumbent protection. However, CAPAFR still managed to take more victories than losses.²⁴⁴ CAPAFR proposed their first statewide Assembly district plan, balancing APIA community priorities with other "communities of interest," in particular, Latina/o communities compliance with the VRA, as well as "traditional redistricting principles."²⁴⁵ CAPAFR also demonstrated crucial preparation at each redistricting hearing, producing maps and analysis that garnered praise from legislators and the Sacramento press corps, among others.²⁴⁶ And CAPAFR presented a unified chorus of many diverse APIA community voices around a single proposal.

CAPAFR's advocacy led to the unification of many key communities of interest in the 2001 Assembly lines. The following communities of interest were kept intact:

- AD 16 (Alameda): North Oakland and its African American community were made whole and joined with Oakland²⁴⁷
- AD 22 (Silicon Valley): Cupertino, Sunnyvale, and

²⁴¹ *Id.*

²⁴² *Id.*; see also Hanh Kim Quach, *Asians Draw the Line*, O.C. REGISTER (Orange County, Cal.), Sept. 9, 2001; Hanh Kim Quach, *Redistricting Called Out of Bounds*, O.C. REGISTER (Orange County, Cal.), Sept. 5, 2001; John Marelius, *Redistricting All Over the Map*, THE SAN DIEGO UNION-TRIBUNE, Sept. 8, 2001; Richard Winton, *Asian Americans Flex Growing Political Muscle*, L.A. TIMES, Sept. 12, 2001, at B1.

²⁴³ Feng, *supra* note 214, at 4.

²⁴⁴ *Id.*

²⁴⁵ CAPAFR REDISTRICTING EXECUTIVE REPORT, *supra* note 148, at 1.

²⁴⁶ Ingram, *supra* note 233; see also Proposed and Adopted Maps in Appendix D.

²⁴⁷ See Appendix D-1.

Mountain View were unified and made whole²⁴⁸

- AD 45 (Los Angeles): Philippine Town and Chinatown, each split in two by the 1990 lines, were made whole²⁴⁹
- AD 49 (Los Angeles): Monterey Park, Alhambra, El Monte, Rosemead, San Gabriel, San Marino, and South El Monte in the west San Gabriel Valley were unified in one assembly district²⁵⁰
- AD 68 (Orange County): Little Saigon and Koreatown, each split in two by the 1990 lines, were made largely whole²⁵¹
- AD 75 (San Diego): Mira Mesa, split in two by the 1990 lines, was made whole²⁵²
- AD 78 (San Diego): Paradise Hills, the eastern portion of Chula Vista, and Bonita were united in one district.²⁵³

The 2001 Assembly district plan also incorporated many of their coalition-based proposals to build districts with a vision of many different, multiracial communities with shared interests living and working together. Assembly District 16 (Oakland) and Assembly District 49 (Los Angeles) are prime examples of such communities. Additionally, CAPAFR presence made a difference in the final lines drawn for several districts, including Districts 9, 12, and 53. APALC, the leading organization in the CAPAFR coalition, played a vital role in bringing together MALDEF Southwest Voters, NAACP-Legal Defense Fund, and the African American Redistricting Committee to share resources and ideas.²⁵⁴ This effort culminated in the first unified Assembly proposal presented before the legislature on September 4, 2001.²⁵⁵

The complete summary of the proposed and adopted changes to districts in CAPAFR regions, along with detailed maps showing both the 1991 and 2001 lines, can be found in Appendix D. Ultimately, CAPAFR was unable to unite Los Angeles' Koreatown, which was frustratingly split into three Assembly districts. They also ran into political opposition by certain legisla-

²⁴⁸ See Appendix D-2.

²⁴⁹ See Appendix D-3.

²⁵⁰ See *id.*

²⁵¹ See Appendix D-4.

²⁵² See Appendix D-5.

²⁵³ See *id.*

²⁵⁴ See IMPACT OF REDISTRICTING, *supra* note 21.

²⁵⁵ *Id.*

tors who split San Jose's Berryessa community into four districts, including AD 20, 23, and 24.²⁵⁶

However, upon comparing CAPAFR's performance in the redistricting effort with some of the political losses endured by some Latino communities²⁵⁷ and three incumbent Assemblywomen, CAPAFR efforts are worth noting. Consider the plight of three incumbent Democratic assemblywomen. These women, each preparing to run for the state senate, found that the new lines diluted their former senate districts, leaving them with no viable district in which they could run.²⁵⁸ Privately, these women Democrats admitted they made a big mistake by not being more personally involved in the process and not having major groups advocate for their interests.²⁵⁹ APIAs were not overlooked in the post-2000 California redistricting process.

CAPAFR established itself as "a credible statewide network of the APIA community to the state legislature during its most personal, critical and sensitive political process,"²⁶⁰ attaining a new level of political recognition for the California APIA community. In fact, during the last set of Assembly hearings held by the Senate and Assembly on Redistricting, Assemblyman John Longville, the Chairman of the Assembly Committee on Elections, Reapportionment, and Constitutional Amendments, complimented APIA community presentations and involvement:

[I] must commend you for the extraordinary job that CAPAFR has done in providing assistance to us. . . . After sitting through the eight hearings that I had in the time before we began drawing maps as well as now the second day of these hearings, there is no individual or organization that has come forward with such an extraordinarily well done amount of research and clear obvious efforts to reach out and work out problems between different communities of interest and make maps that work for everybody, and I want to commend you for the extraordinary effort that you've put into this. Recognizing that lawyers will see different things, it's obvious you've done some extraordinary work. We may not be able to obvi-

²⁵⁶ Tom, *supra* note 17, at 4; Levey, *supra* note 222; Noam Levey & Mike Zapler, *Berryessa Community Split Among Four Districts*, SAN JOSE MERCURY NEWS, Oct. 7, 2001, at A1; Hong Quoc Nguyen, *Redistricting is Unfair to Valley's Asian Americans*, SAN JOSE MERCURY NEWS, Oct. 3, 2001.

²⁵⁷ See *Cano v. Davis*, 211 F. Supp. 2d 1208 (C.D. Cal. 2002).

²⁵⁸ Aurelio Rojas, *Redistricting Boundary Plan Criticized: Minority and Women's Groups Say the New Lines Ignore Their Interests*, THE SACRAMENTO BEE, Sept. 11, 2001, at A3.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

ously accommodate every single thing, but greatly appreciate the work you've done.²⁶¹

CAPAFR saw growth and success in their organization over the past decade, holding their own in a process that all but shut them out only ten years earlier. As articulated by Maeley Tom, "the legislative experience, political relationships and respect CAPAFR has gained within the halls of the state capitol should not go to waste."²⁶²

However, more preparation will be needed for the post-2010 round of redistricting. For one, CAPAFR must continue building and strengthening its organizational and personal ties with groups like MALDEF and NAACP-LDF in order to ensure a broader coalitional approach to advocacy in the next redistricting process. A consistent and growing relationship with MALDEF and NAACP-LDF, along with the sharing of information and mapping tools, is absolutely essential in order to avoid grim scenarios where redistricting is cast as a zero-sum game. The opportunity to speak with one voice, not merely as an APIA community but also as a part of a broadly based cross-racial coalition, was of tremendous benefit to all groups this time around and will be vital to widening their sphere of influence in the Assembly. CAPAFR should also take measures to ensure that its political strategy and technological capability to crunch data and produce electoral maps continues to be up to par. Success in the 2001 Assembly plan warrants further expansion into the other statewide redistricting processes, such as the redistricting process for U.S. Congressional, California Senate, and local districts. Most importantly, groups like CAPAFR, MALDEF and NAACP-LDF are in a position to make legislators accountable for their actions during this process by informing their respective constituencies which legislators supported or opposed their efforts.²⁶³

However, this cannot come about until the APIA community and other communities of color, utilize their power to vote. Specifically, APIAs can only flex their political muscle and enhance the strength of CAPAFR by showing up in significant numbers at the polls.²⁶⁴ CAPAFR's constituent organizations should put ad-

²⁶¹ CAPAFR REDISTRICTING EXECUTIVE REPORT, *supra* note 148.

²⁶² Tom, *supra* note 17, at 5.

²⁶³ *Id.*

²⁶⁴ *Id.*

ditional resources into voter registration efforts as well as continuing the push for further compliance with Section 203 in all covered jurisdictions. Nonetheless, CAPAFR in 2002 is in a prime position to capitalize on its newfound political presence as a statewide coalition of APIA communities and further advance the causes of the communities they serve.²⁶⁵

CONCLUSION

This piece began with the observation that, despite their growing population, in mainstream accounts of voting rights, Latinas/os and APIAs do not appear in leading casebooks.²⁶⁶ Nevertheless, there has been much significant activism in states like California, Texas, New York, Florida, and Illinois, which have undergone rapid demographic transformation in the 1990s.²⁶⁷ The 2000 Census reflects the degree of this demographic transformation in California.

Dramatic legal changes in voting rights law from a line of Supreme Court cases beginning with *Shaw v. Reno*, radically altered the legal backdrop against which post-2000 redistricting occurred. In the post-2000 legal environment, race may not be used as a predominant factor in redistricting, particularly if “traditional redistricting principles” such as “compactness” or “continuity” are ignored. However, while race may not be a predominant factor, the Supreme Court has also refused to hold that race is categorically forbidden as a factor in redistricting decisions. This leaves legislators and racial/ethnic civil rights groups in a difficult and ambiguous position when considering or advocating for electoral representation for communities of color.

This essay focused on the experience of Latinas/os and APIAs as they pushed for electoral acknowledgement of their respective communities through the decennial redistricting process. In the 1980s and 1990s Latina/o groups like MALDEF pursued groundbreaking voting rights litigation in *Garza v. County of Los Angeles*, demanding representation.²⁶⁸ In the 1990s, APIA groups made steps towards electoral recognition via the redistricting

²⁶⁵ *Id.*

²⁶⁶ Ramirez, *supra* note 10, at 957; William R. Tamayo, *When the Colored are Neither Black nor Citizens: The United States Civil Rights Movement and Global Migration*, 2 *ASIAN L.J.* 1 (1995).

²⁶⁷ Geron & Lai, *supra* note 115.

²⁶⁸ See *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990); *Garza v. County of Los Angeles*, 756 F. Supp. 1298 (C.D. Cal. 1990).

process, but were unable to completely surmount intragroup tensions to successfully present a single voice when articulating a redistricting agenda. However, by the 2000 redistricting process in California, APIAs were not only able to smooth out their internal splits but were also able to work in alliance with groups such as MALDEF and NAACP-LDF to present redistricting proposals for the Bay Area, Sacramento County, L.A. County and San Diego County that were largely accepted by the California legislature in the post-2000 round of redistricting.²⁶⁹

In conclusion, hopefully this essay will spark a discussion within LatCrit scholarship about the importance of securing political power. As the situation of both Latinas/os and APIAs in California illustrates, the process of gaining political influence is a long one, fraught with setbacks and disappointments, but not without concomitant successful moments. As the U.S. demographic mix becomes more complex, it underlines the necessity of coalitions such as that undertaken by MALDEF, CAPAFR, and NAACP-LDF to create a set of common and compatible redistricting tools (such as mapping techniques and technologies and population information) to avoid turning redistricting into a zero-sum game where no one wins.²⁷⁰

However, it is not enough, and never will be enough, that former “outsiders” become “insiders” (whether African Americans, Latinas/os or APIAs) if the same old political “machine” just grinds on and on. It is important how political power is secured because that in turn has an effect on how political power is exercised. The authors would contend that CAPAFR’s efforts to build an inclusive, democratic and participatory network to inform the redistricting proposals will ultimately result in people being elected to these districts who will and must be more responsive to their full constituency. It remains to be seen the degree to which, if at all, elected Latina/o or APIA politicians in a state like California, are willing to work for transformation of the system or become entrenched defenders of “business as

²⁶⁹ See Proposed and Adopted Maps in Appendix D.

²⁷⁰ See John O. Calmore, *Race-Conscious Voting Rights and the New Demography in a Multicultural America*, 79 N.C. L. REV. 1253 (2001); Leo F. Estrada, *Making the Voting Rights Act Relevant to the New Demographics of America: A Response to Farrell and Johnson*, 79 N.C. L. REV. 1283 (2001); Walter C. Farrell, Jr. & James H. Johnson, Jr., *Minority Political Participation in the New Millenium: The New Demographics and the Voting Rights Act*, 79 N.C. L. REV. 1215 (2001); YAMAMOTO, *supra* note 15.

usual.”²⁷¹

Lani Guinier and Gerald Torres write:

[V]oting is also a meaningless ritual when it is not tied to power in any substantial way, when it simply signifies assent to choices others have engineered or arranged. Even assuming voting’s efficacy as a means of civic engagement, it is rendered empty by voters’ inability to have a voice in how their votes are allocated, or by any assurance that their vote will make a difference. Hollow promises that “every vote counts,” incantations of “count every vote,” and stories of extraordinary elections decided by a handful of votes merely function as exceptions that prove the rule in the face of the overwhelming and lopsided reelection rates of state and federal legislatures.

...
....

A focus on individual candidates winning individual elections ignores the evidence that democratic collective action usually begins on the ground. It is most likely to be sustained and meaningful when it is chosen by the people themselves rather than imposed on them by others acting on their behalf. . . . [T]he hard work of democracy is really found in mobilizing the interactive and engaged participation of ordinary people at the grassroots level.²⁷²

So, APIA and Latina/o politicians and organizers are at the cusp of a very interesting moment in a state like California. Will they be able to engage with the dominant political “machine” and transform it, or will they be transformed into mere cogs in that “machine?” Will they become tokens or pioneers? Tokens enjoy their privileged, elite, elevated and often, entrenched status, and may sometimes be accused of pulling the ladder they used up after themselves to enhance their own power. Pioneers (in the finest, not the worst, sense of the word) may find themselves initially isolated in institutions such as the California Assembly but must work to transform the terms of admission and entry so that many others may follow them. “Transformers” or “Cogs”? Tokens or Pioneers? It is perhaps too early to venture a guess, but undoubtedly whatever the answer(s) may be, it will be closely tied to the answer to the provocative question of whether voting matters.

²⁷¹ VICTOR M. VALLE & RODOLFO D. TORRES, *LATINO METROPOLIS* (2000); Geron & Lai, *supra* note 115.

²⁷² LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* 207 (2002).

APPENDIX A
CALIFORNIA 2000

Asian Pacific Islander Population by CAPAFR County,
Census 2000

County	Population	API Pop. (DOJ)	Percent API (DOJ)
Los Angeles	9,519,338	1,200,521	12.61%
Santa Clara	1,682,585	450,278	26.76%
Orange	2,846,289	415,030	14.58%
Alameda	1,443,741	318,543	22.06%
San Diego	2,813,833	284,875	10.12%
San Francisco	776,733	249,109	32.07%
Sacramento	1,223,499	150,706	12.32%
<i>California Total</i>	<i>33,871,648</i>	<i>3,998,592</i>	<i>11.81%</i>

Percent Increase in Asian Pacific Islander Population
by CAPAFR County, 1990-2000

County	Percent Increase in API Pop. (DOJ)	Numeric Increase in API Pop. (DOJ)
Los Angeles	32.24%	292,711
Santa Clara	79.04%	198,782
Orange	72.39%	174,274
Alameda	72.36%	133,730
San Diego	53.87%	99,731
San Francisco	21.11%	43,423
Sacramento	63.58%	58,575
<i>California Total</i>	<i>47.53%</i>	<i>1,288,239</i>

*Asian Pacific Islander Population by CAPAFR County,
Census 1990*

County	Population	API Pop. (DOJ)	Percent API (DOJ)
Los Angeles	8,863,164	907,810	10.24%
Santa Clara	1,497,577	251,496	16.79%
Orange	2,410,556	240,756	9.99%
San Francisco	723,959	205,686	28.41%
San Diego	2,498,016	185,144	7.41%
Alameda	1,279,182	184,813	14.45%
Sacramento	1,041,219	92,131	8.85%
<i>California Total</i>	<i>29,760,021</i>	<i>2,710,353</i>	<i>9.11%</i>

Source: U.S. Census Bureau, Compiled by the Asian Pacific American Legal Center, (213) 977-7500.

APPENDIX B
SAN GABRIEL VALLEY, CALIFORNIA
Asian Pacific Islander Population—San Gabriel Valley,
Census 2000

City	Population	API Pop. (DOJ)	Percent API (DOJ)
Alhambra	85,804	40,831	47.59%
Monterey Park	60,051	37,370	62.23%
Rosemead	53,505	26,178	48.93%
San Gabriel	39,804	19,703	49.50%
<i>SGV Total</i>	<i>239,164</i>	<i>124,082</i>	<i>51.88%</i>

Percent Increase in Asian Pacific Islander Population—
San Gabriel Valley, 1990-2000

City	Percent Increase in API Pop. (DOJ)	Numeric Increase in API Pop. (DOJ)
Alhambra	30.40%	9,518
Monterey Park	7.08%	2,472
Rosemead	47.69%	8,453
San Gabriel	65.59%	7,659
<i>SGV Total</i>	<i>29.28%</i>	<i>28,102</i>

Asian Pacific Islander Population – San Gabriel Valley,
Census 1990

City	Population	API Pop. (DOJ)	Percent API (DOJ)
Alhambra	82,106	31,313	38.14%
Monterey Park	60,738	34,898	57.46%
Rosemead	51,638	17,725	34.33%
San Gabriel	37,120	12,044	32.45%
<i>SGV Total</i>	<i>231,602</i>	<i>95,980</i>	<i>41.44%</i>

Source: U.S. Census Bureau, compiled by the Asian Pacific American Legal Center, (213) 977-7500.

APPENDIX C
SOUTH BAY, CALIFORNIA

Asian Pacific Islander Population—South Bay, Census 2000

City	Population	API Pop. (DOJ)	Percent API (DOJ)
Long Beach	461,522	63,301	13.72%
Torrance	137,946	41,915	30.39%
Carson	89,730	22,987	25.62%
Gardena	57,746	16,265	28.17%
<i>South Bay Total</i>	<i>746,994</i>	<i>144,468</i>	<i>19.34%</i>

Percent Increase in Asian Pacific Islander Population – South Bay, 1990-2000

City	Percent Increase in API Pop. (DOJ)	Numeric Increase in API Pop. (DOJ)
Long Beach	14.61%	8,067
Torrance	44.05%	12,818
Carson	15.66%	3,112
Gardena	(1.82)%	(301)
<i>South Bay Total</i>	<i>19.62%</i>	<i>23,696</i>

Asian Pacific Islander Population – South Bay, Census 1990

City	Population	API Pop. (DOJ)	Percent API (DOJ)
Long Beach	429,433	55,234	12.86%
Torrance	133,107	29,097	21.86%
Carson	83,995	19,875	23.66%
Gardena	49,847	16,566	33.23%
<i>South Bay Total</i>	<i>696,382</i>	<i>120,772</i>	<i>17.34%</i>

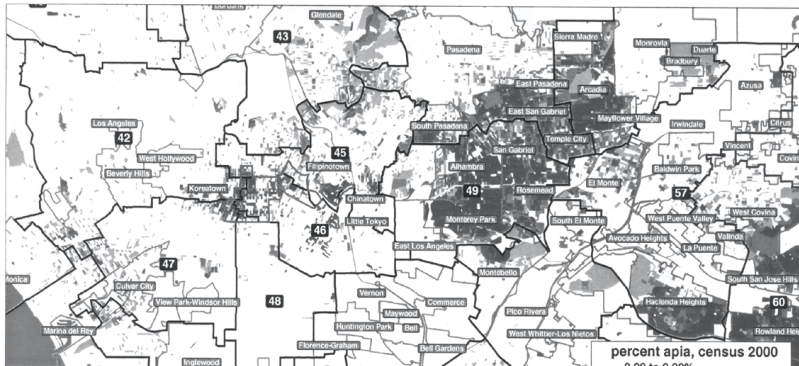
Source: U.S. Census Bureau, compiled by the Asian Pacific American Legal Center, (213) 977-7500.

APPENDIX D

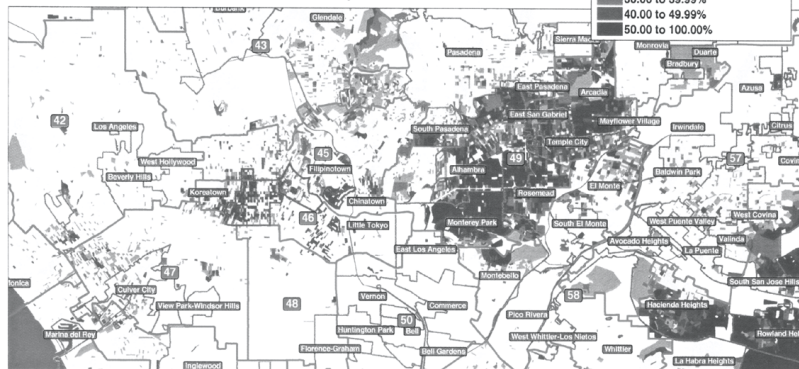
Appendix D consists of the attached seven maps detailing the changes within the districts in CAPAFR regions.

LOS ANGELES REGION california state assembly districts

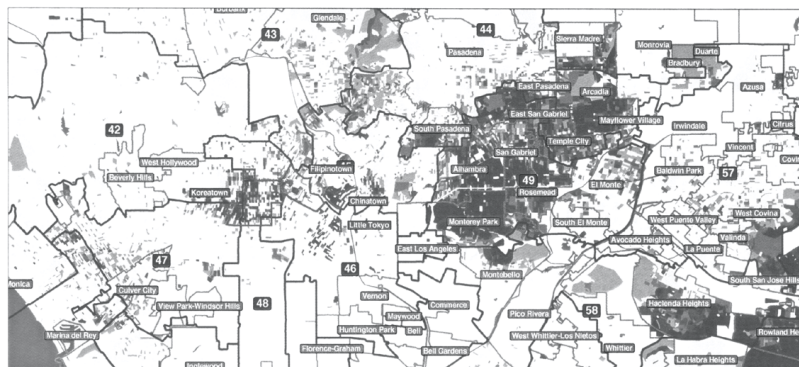
1991 California State Assembly Districts



CAPAFR Proposed California State Assembly Districts

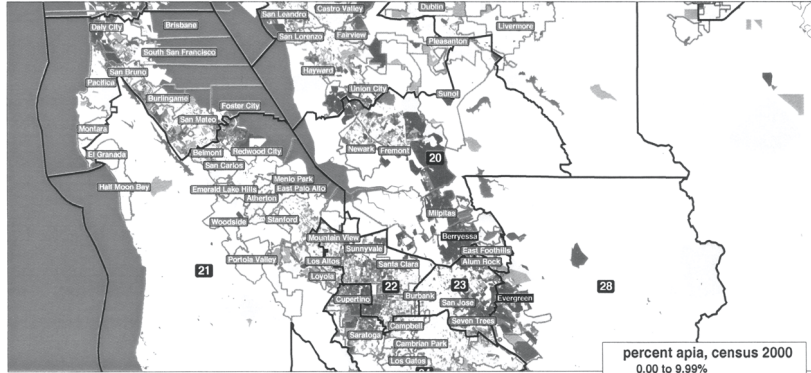


2001 California State Assembly Districts

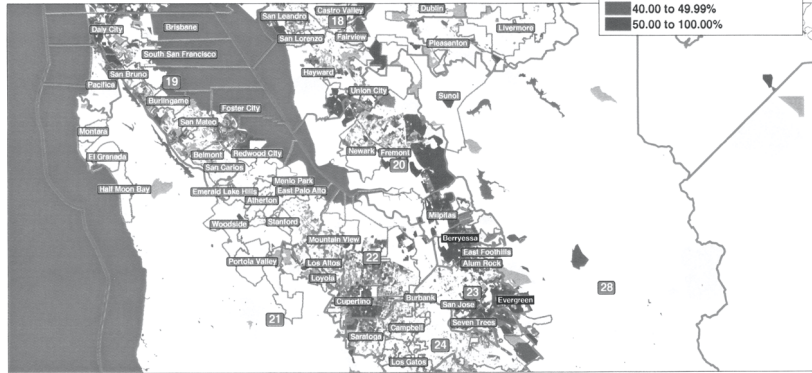


SANTA CLARA / ALAMEDA COUNTY REGION
california state assembly districts

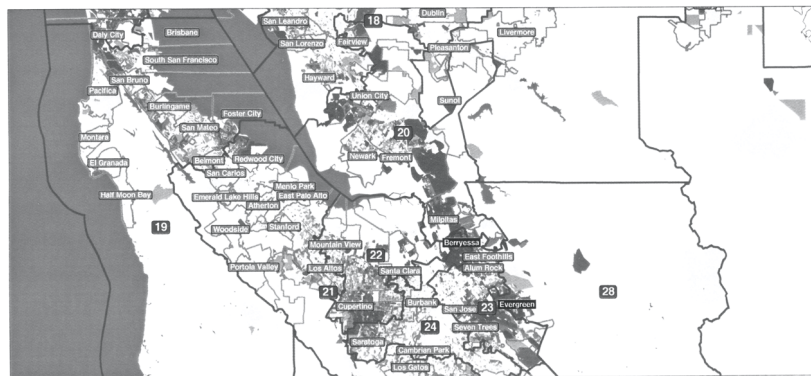
1991 California State Assembly Districts



CAPAFR Proposed California State Assembly Districts



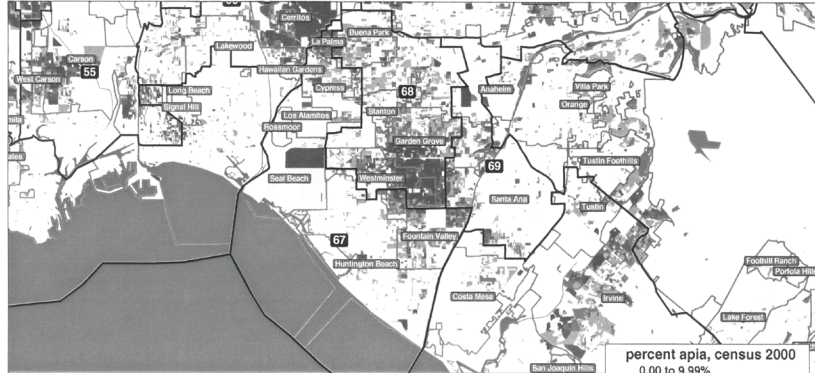
2001 California State Assembly Districts



Voting Matters: APIAs, Latinas/os and Post-2000 Redistricting in California 911

ORANGE COUNTY REGION
california state assembly districts

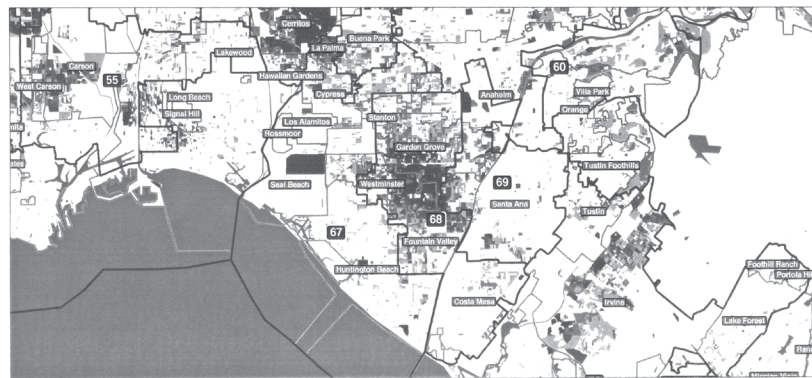
1991 California State Assembly Districts



CAPAFR Proposed California State Assembly Districts

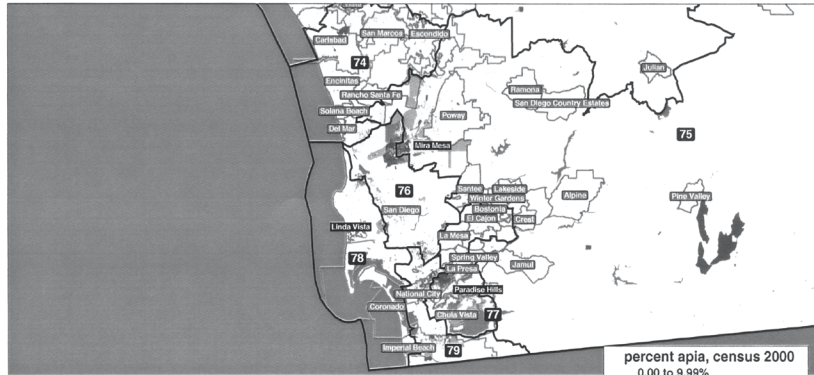


2001 California State Assembly Districts



SAN DIEGO REGION
california state assembly districts

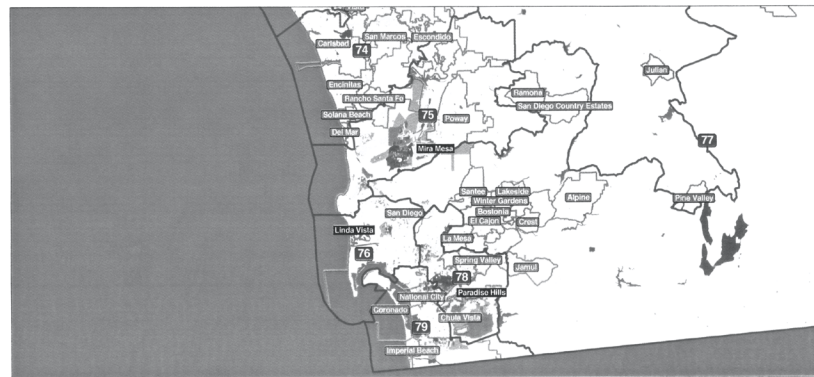
1991 California State Assembly Districts



CAPAFR Proposed California State Assembly Districts

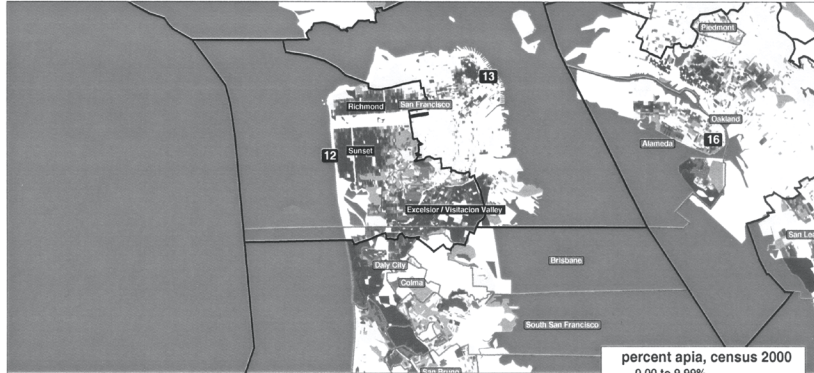


2001 California State Assembly Districts

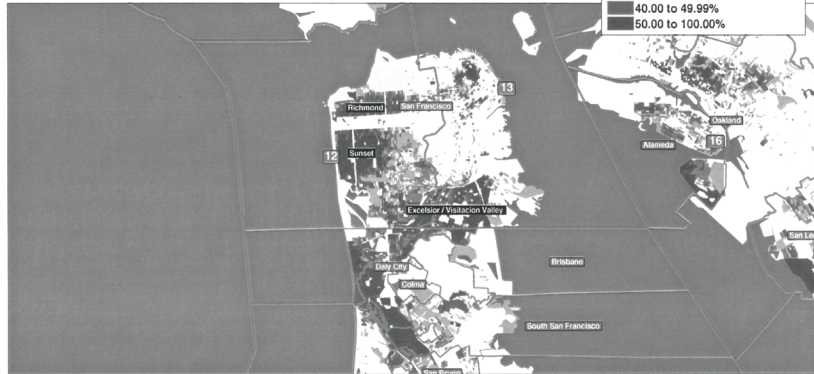


SAN FRANCISCO REGION
california state assembly districts

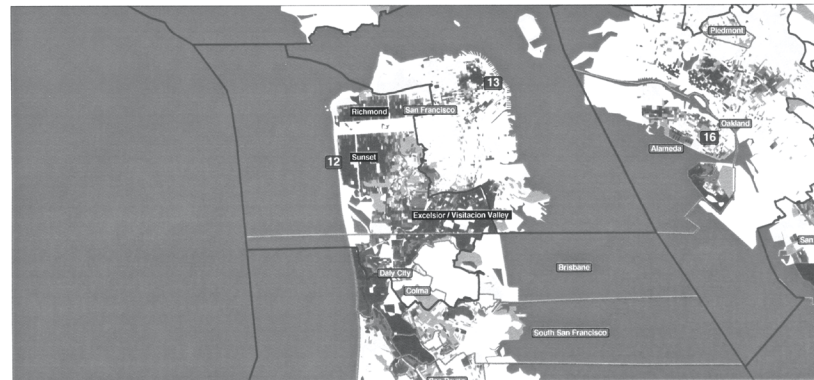
1991 California State Assembly Districts



CAPAFR Proposed California State Assembly Districts

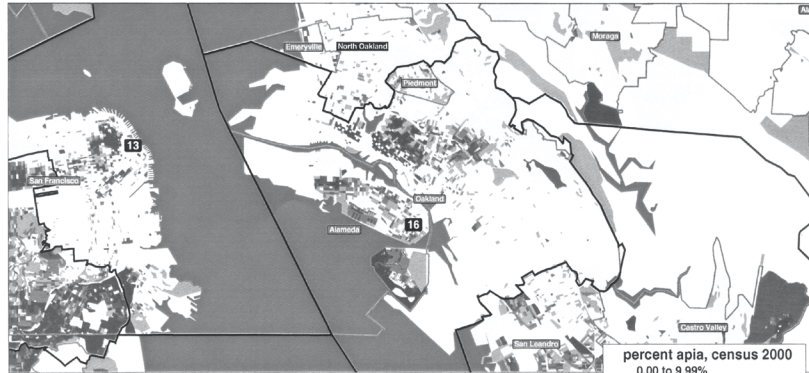


2001 California State Assembly Districts



OAKLAND REGION
california state assembly districts

1991 California State Assembly Districts



CAPAFR Proposed California State Assembly Districts



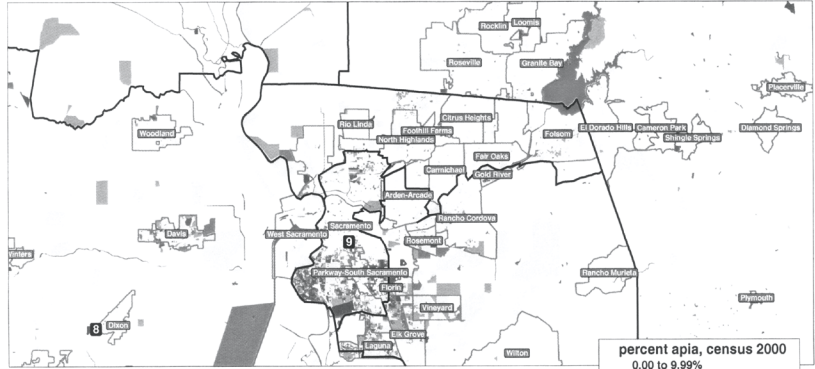
2001 California State Assembly Districts



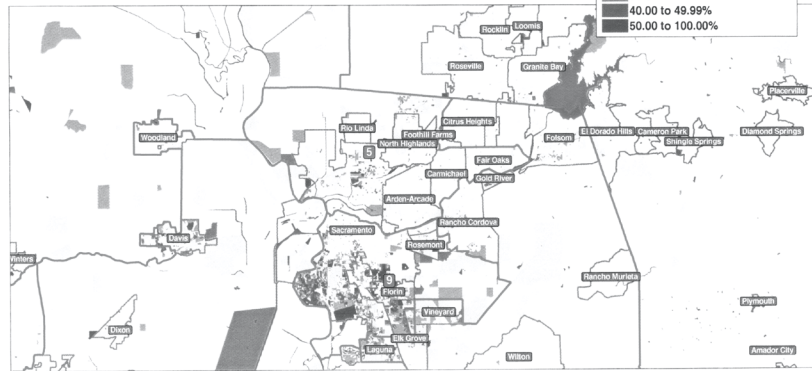
Voting Matters: APIAs, Latinas/os and Post-2000 Redistricting in California 915

SACRAMENTO REGION
california state assembly districts

1991 California State Assembly Districts



CAPAFR Proposed California State Assembly Districts



2001 California State Assembly Districts

