SD	AD	Population	% SD
	Other	93,669	10.09%
	Total	928,725	
Senate District 19	37 & 44	731,153	78.72%
	Other	197,697	21.28%
Senate District 20	47 & 52	935,935	100.00%
	Total	935,935	
Senate District 21	33 & 36	732,438	78.73%
	Other	197,844	21.27%
	Total	930,282	
Senate District 22	48 & 49	830,864	89.41%
	Other	98,434	10.59%
	Total	929,298	
Senate District 23	40 & 42	700,948	75.06%
	Other	232,859	24.94%
	Total	933,807	
Senate District 24	51 & 53	832,858	89.22%
	Other	100,652	10.78%
	Total	933,510	
Senate District 25	41 & 43	779,295	84.07%
	Other	147,640	15.93%
	Total	926,935	
Senate District 26	50 & 66	693,823	74.78%
	Other	233,934	25.22%
	Total	927,757	
Senate District 27	38 & 45	661,103	70.66%
	Other	274,553	29.34%
	Total	935,656	
Senate District 28	56 & 67	615,858	66.22%
	Other	314,214	33.78%
	Total	930,072	
Senate District 29	55 & 65	860,630	92.99%
	Other	64,864	7.01%
	Total	925,494	
Senate District 30	54 & 59	746,789	80.95%
	Other	175,707	19.05%
	Total	922,496	
Senate District 31	60 & 61	940,612	100.00%
	Total	940,612	
Senate District 32	57 & 58	799,741	85.68%
	Other	133,665	14.32%
	Total	933,406	
Senate District 33	63 & 70	691,539	74.60%
	Other	235,433	25.40%
	Total	926,972	
Senate District 34	69 & 72	865,549	93.28%
	Other	62,344	6.72%
	Total	927,893	
Senate District 35	62 & 64	648,351	69.37%
	Other	286,264	30.63%
	Total		
Senate District 36	73 & 76	929,664	99.10%

SD	AD	Population	% SD
	Other	8,419	0.90%
	Total		
Senate District 37	68 & 74	933,149	99.48%
	Other	4,837	0.52%
	Total	937,986	
Senate District 38	71 & 75	711,498	76.52%
	Other	218,262	23.48%
	Total	929,760	
Senate District 39	77 & 78	756,686	81.54%
	Other	171,358	18.46%
	Total	928,044	
Senate District 40	79 & 80	677,330	72.44%
	Other	257,725	27.56%

BOE District	Senate District	Total Population	% BOE
1st Board of Equalization District	01, 04, 05, 06, 08, 12, 14, 16,	8,432,631	90.14%
	Other	922,690	9.86%
	Total	9,355,321	100.00%
2nd Board of Equalization District	02, 03, 07, 09, 10, 11, 13, 15,	8,778,555	95.21%
	Other	441,802	4.79%
	Total	9,220,357	100.00%
3rd Board of Equalization District	19, 22, 24, 25, 26, 27, 30, 32,	8,599,043	92.57%
	Other	690,160	7.43%
	Total	9,289,203	100.00%
4th Board of Equalization District	23, 28, 29, 31, 34, 36, 37, 38,	8,769,249	93.40%
	Other	619,826	6.60%
	Total	9,389,075	100.00%

STATE OF CALIFORNIA

CITIZENS REDISTRICTING COMMISSION

FINAL REPORT ON 2011 REDISTRICTING

APPENDIX 6

AUGUST 15, 2011

The Citizens Redistricting Commission's final certified maps for 2011 are submitted in the following electronic formats:

.SHP
.DBF
.CDF
.KMZ

Each set of files (Assembly, Senate, Congress, and Board of Equalization) has been compressed into a single zipped folder. This zipped folder has then been run through a hash generator using a SHA-1 algorithm to create a digital signature capable of confirming bit-level data accuracy. Files were compressed using the native tool available through the Microsoft Windows 7 (Service Pack 1) operating system. The SHA-1 digital signature was created using the freeware application WinHasher 1.0.

Hash Digest:

Assembly

crc_20110815_assembly_certified_statewide.zip

SHA-1: 323d2c56df6bf3ad6b3b4e58fd7c5d0338a476b8

Senate

crc_20110815_senate_certified_statewide.zip

SHA-1: 14cd4e126ddc5bdce946f67376574918f3082d6b

Congress

crc_20110815_congress_certified_statewide.zip

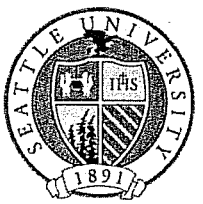
SHA-1: 1893c0695a42454a202f5b1ef433abff6b491db9

Board of Equalization

crc_20110815_boe_certified_statewide.zip

SHA-1: 3dd8d0f1325818b92429f987c03668ba036ece1d

EXHIBIT E



SCHOOL OF
LAW

Citizens Redistricting Commission
901 P Street, Suite 154-A
Sacramento, CA 95814

June 28, 2011

Dear Commission:

I am submitting this written comment requesting that the California Citizens Redistricting Commission [hereinafter cited as Commission] modify its first draft for the State Senate Districts located within certain counties subject to the Section 5 preclearance requirement of the federal Voting Rights Act, 42 U.S.C. § 1973c (Monterey, Kings and Merced) and adjoining counties.[1] At issue are the areas included within current Senate District 12, 15 and 16. The proposed Senate Districts may not meet the Section 5 and Section 2, 42 U.S.C. § 1973, standards of the federal Voting Rights Act.

Under Section 5, a covered jurisdiction has the statutory duty to submit all changes affecting voting, including redistricting plans,[2] and secure approval from the federal government. There are two procedures available to secure this approval. The submitting jurisdiction has the choice of pursuing one or the other and can also pursue both simultaneously. Under the first procedure, the covered jurisdiction can submit the proposed voting change to the United States Attorney General for approval or administrative preclearance. Under the second procedure, the covered jurisdiction can file an action in the United States District Court for the District of Columbia seeking judicial preclearance. Under either procedure, the submitting jurisdiction has the statutory duty to demonstrate that the proposed change affecting voting does not have a discriminatory effect on minority voting strength and was not adopted pursuant to a discriminatory intent. With respect to the discriminatory effect prong of Section 5, the covered jurisdiction must prove that the proposed voting change does not result in a retrogression, or a worsening, of minority voting strength. In addition, with respect to the discriminatory intent prong of Section 5, the covered jurisdiction must prove that there was no discriminatory intent in the enactment of the proposed change. As a result of the 2006 amendments to the federal Voting Rights Act, both the Attorney General and the United States District Court for the District of

[1] Any reference to Seattle University School of Law is for purposes of identification only. This written comment and accompanying materials contain Mr. Joaquin G. Avila's personal statements, viewpoints and arguments. Any reference to Seattle University School of Law should not be construed to suggest or imply that these statements, viewpoints and arguments are supported or endorsed by Seattle University and/or Seattle University School of Law. Seattle University and/or Seattle University School of Law have not authorized the inclusion of these statements, viewpoints and arguments in this written comment and accompanying materials, nor do they represent the statements, viewpoints and arguments of Seattle University and/or Seattle University School of Law.

[2] 28 C.F.R. § 51.13(e) (redistricting plans subject to Section 5 approval).

NATIONAL VOTING RIGHTS ADVOCACY INITIATIVE

Joaquin G. Avila, Executive Director

[redacted], Seattle, WA 98122-1090 [redacted]

Columbia will be guided by the evidentiary requirements of *Village of Arlington Heights v. Metropolitan Housing Development*, 429 U.S. 252 (1977) in assessing whether the proposed voting change was enacted pursuant to a discriminatory intent.

Under Section 2, a standard, practice, or procedure cannot be implemented if it results in a discriminatory effect on minority voting strength. Apart from a discriminatory effect prong Section 2 also incorporates a discriminatory intent prong. The Senate Report accompanying the 1982 amendments to Section 2 of the federal Voting Rights Act specifically states that "[a] Plaintiff may establish discriminatory intent for purposes of this Section, through direct or indirect circumstantial evidence, including the normal inferences to be drawn from the foreseeability of Defendant's actions which is 'one type of quite relevant evidence of racially discriminatory purpose.' *Dayton Board of Education v. Brinkman*, 443 U.S. 526, n. 9 (1979)." Sen. Report No. 97-417, at page 23 , note 108.

Although the proposed Senate Districts that encompass the areas currently included within current Senate Districts 12, 15 and 16 do not appear to result in a violation of the Section 5 retrogression standard,[3] there is nevertheless a potential violation of the discriminatory purpose prong of both Section 2 and Section 5 of the federal Voting Rights Act, 42 U.S.C. § 1973 for reducing the opportunity of the Latino community to have a meaningful opportunity to elect a candidate of their choice in potential cross-over Senate District 15.

Under the proposed Coast Senate District in the first draft Senate Districts, the Latino CVAP is only 16%. Yet under a proposal that was submitted by the Silicon Valley Latino Democratic Forum, it is possible to create a 38.6% Latino CVAP district. Such a difference of 22% is significant and when measured under the intent evidentiary standard of either Section 5 or Section 2. This significant difference a major voting rights problem and should be corrected.

There are two major factors that should guide the Commission's assessment of whether to follow the redistricting plan for proposed Senate Districts 12, 15, 16. The first concerns the

[3] According to Redistricting Partners, comparing the Latino Citizen Voting Age Population figures for both the current Senate Districts and their functional equivalent proposed Senate Districts there is no numerical retrogression of the Section 5 standard. Under Section 5, a proposed redistricting plan cannot result in retrogression of minority voting strength. *See* 28 C.F.R. §51.54 (b) (as amended April 15, 2011, Federal Register, Vol. 76, No. 73, Rules and Regulations at 21248-21249). As noted in the table below, the Latino Citizen Voting Age Population (LCVAP) comparisons are nearly identical for Senate Districts 12, 15 and 16 and their functional equivalent proposed Senate Districts:

Section 5 Retrogression Comparisons				
	LCVAP			LCVAP
Current S.D. 16	50.9%		Kings S.D.	51.0%
Current S.D. 12	37.6%		Merced S.D.	40.0%
Current S.D. 15	16.0%		Coast S.D.	16.0%

issue of electability. In current Assembly Districts 23 and 28, the Latino CVAP percentages are comparable to the Latino CVAP in the proposed Senate District 15. The Latino CVAP in Assembly District 23 using the 2009 American Community Survey is estimated to be 34.6% while the Latino CVAP in Assembly District 28 is estimated to be 44.3%. Both of these Assembly Districts are currently represented by Latino elected officials (Assembly District 23 – Campos; Assembly District 28 – Alejo). Accordingly a Latino CVAP for proposed Senate District 15 of 38.6 % is well within the range that the Latino community in this area would have an equal opportunity to participate in the political process and elect a candidate of its choice.

The second reason for reassessing the Latino CVAP concentration of the Commission's Coast Senate District is the fact that there is a history of discrimination affecting the right to vote in California and in particular in Monterey County. What follows is an excerpt describing the history of voting discrimination. This excerpt was presented to the United States Department of Justice urging the Attorney General to institute a Section 2 lawsuit against the Los Angeles County Board of Supervisors for adopting a discriminatory supervisor redistricting plan in 2001. Due to time constraints there was no opportunity to edit the excerpt for incorporation into the present letter.

I. History of Discrimination That Touches Upon the Right to Vote.

California and Los Angeles County have experienced voting discrimination. Discussion on this factor will be divided into two sections. The first section will focus on voting discrimination on a statewide basis.[4] The second section will focus on Los Angeles County.

a. Statewide Voting Discrimination.

After the Mexican American War, Latinas/os in the Southwest were first incorporated within the governmental structure of the United States, where they were "quickly conquered [and] subjected to an alien political system in an alien culture."[5] In California, the Gold Rush caused the Anglo population to increase at the expense of the Latina/o population reducing their political influence in California politics. Prior to the Mexican American War, the Latina/o and indigenous populations constituted nearly all of the population in California. With the gold rush, the percentage of Latinas/os during the time of period of 1850-1870 dropped from 15% to 4%. With this drop in population percentage, Latinas/os statewide political influence also dropped. For example in 1849, out of the 48 delegates who were charged with the responsibility of

[4] *Gomez v. City of Watsonville*, 863 F. 2d 1407, 1418 (9th Cir. 1988) (appropriate to introduce evidence relating to statewide historical discrimination that touched upon the right to vote), *reversing*, Civ. Act. No. WAI C-85-20319 (N.D.Cal. 1985), *cert. den.*, 489 U.S. 1080 (1989).

[5] David Weber, ed., Foreigners in Their Native Land at 140 (University of New Mexico Press) (1973).

drafting the constitution, 8 were Latina/o. Yet, from 1850 to 1870, only four Latinas/os served in the state legislature.[6]

The political transition that was occurring throughout the state during this time period can best be exemplified by examining the City of Santa Barbara, a local community in Santa Barbara County located north of Los Angeles. Latinas/os initially were elected to the governing city council. As a majority of the electorate, this community was successful in securing representation on the city council. However, as the decades progressed elections became racially polarized when Anglos sought office. There were clear differences between the Anglo and Latina/o community as they sought to control the local political power structure. As noted by a local prominent resident:

> "The Americans have very little influence in the elections, but in a few years they will have all the power and they won't consult the Californians about anything . . . The Californians have a majority of the votes. When they are united [which was usually the case when an Anglo and Mexican candidate view for the same position] they can elect whomever they wish."[7]

However, this Latina/o dominance of political affairs in California was short-lived. In Santa Barbara, the substantial increase of the Anglo population resulted in a decrease in Latina/o political influence.

A major turning point in Santa Barbara was the 1874 city elections that resulted in the first white mayor and signaled the political demise of the Latina/o voting bloc.[8] The white political forces sought the reincorporation of the city. In an unusual twist, as part of the reincorporation effort, the method of election for the city council was changed from an at-large method of election to a districting system. Under the at-large method of election, the Latina/o community exercised greater control by selecting a greater number of city officials. However, under the new districting plan, the Latina/o community which previously had an impact on the selection of the entire city council was confined to the selection of one city council member:

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[6] *Id.*, at 148-149.

[7] Albert Camarillo, Chicanos in a Changing Society, From Mexican Pueblos to American Barrios in Santa Barbara and Southern California, 1848-1930 at 23 (internal quotation marks omitted) (Harvard University Press, Cambridge) (1979):

> "By 1855 Anglos began to contest the political power arrangements of Mexican Santa Barbara. Through the columns of the *Gazette* the editors and other Anglos directed attacks against bad city politics and the Mexican practice of bloc voting. . . . The 1866 city, county, and state elections are examples of Mexican election control. . . . Although Anglos were able to elect representatives to the Common Council in 1857, they remained a subordinate political force in the city and county throughout the 1850's and early 1860/s." (internal quotation marks and footnotes omitted)

[8] *Id.*, at 71-72.

"The new wardship system brought to an end the influence Chicanos once wielded in local general elections; now they were able to elect only one city councilman, whose voting power was negated by a four-to-one margin."[9] The political representation changes in Santa Barbara were a reflection of the transition occurring statewide.

This transition was facilitated by two events that contributed to the political disenfranchisement of Latinas/os in California during the latter part of the 1800s. The first event occurred with the adoption of the California Constitution of 1879 that rescinded the requirement of publishing official documents in both English and Spanish. Initially the Constitution of 1849 mandated such a requirement. However, the State Legislature and local governments soon ignored this requirement.[10] Thus important governmental documents were no longer published in Spanish. The presence of an English only governmental process undoubtedly contributed toward the political alienation experienced by the Latina/o community.

This alienation was further exacerbated by the adoption in 1894 of an English literacy requirement as a prerequisite to vote. The literacy requirement was aimed primarily at the Asian population.[11] According to historical accounts, the English literacy test was not systematically used until the 1950s and 1960s when the device was directed against the Latina/o population.[12] Whether it was directed only against Latinas/os until the mid-twentieth century or not, there was sufficient exclusion of the Spanish speaking population from the political process that litigation was initiated in the 1960s against the enforcement of this constitutionally mandated literacy test in *Castro v. State of California*.[13] In *Castro* the California State Supreme Court did not invalidate this English literacy requirement. Instead the Court required that the literacy requirement could be applied in the Spanish language. The *Castro* decision did not have an immediate impact. In the same year that the decision was issued, 1970, Congress extended the 1965 Voting Rights Act for a five year period. The 1970 reauthorization suspended the use of

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[9] *Id.*, at 71. As part of the continuing campaign to limit Latina/o political participation in Santa Barbara, Chicanos were excluded from participation in the county's Democratic Party convention in the early 1880s. *Id.*, at 75.

[10] Bruce C. Bolinger, California Election Law During the Sixties and Seventies: Liberalization and Centralization, West's Annotated California Election Code, at 68.

[11] *Id.*, at 59.

[12] Roger Daniels, Eric F. Petersen, "California's Grandfather Clause: The 'Literacy in English' Amendment of 1894, Southern California Quarterly, Vol. L, No. 1, at 51, 55 (March 1968):

> "There is every reason to suspect that the provision remained largely a dead letter: certainly it was not enforced among the Italians of San Francisco in the first decades of this century nor against Yiddish speaking Los Angeles Jews in the years after 1920, nor even against the newly naturalized Issei after 1952. The sole enforcement, and that largely sporadic, seems to have been against a group more native than the nativists themselves: the Spanish speaking Mexican-Americans whose recent increased political activity has resulted in the first significant use of the Gilded Age voting restriction."

[13] 2 C.3d 223, 85 Cal.Rptr. 20, 466 P.2d 244 (Cal. Supreme Ct. 1970).

all such tests or devices across the country for a five year period.[14] The ban on literacy tests became permanent during the 1975 Amendments to the Voting Rights Act.[15]

From the adoption of the literacy test in 1894 to the 1950s, there are no published court cases involving voting discrimination against Latina/o voters.[16] The absence of such cases can be attributable to two major factors. First, in California there was no civil rights litigation organization that had the resources and expertise to initiate cases involving Latina/o voter exclusion, either due to outright physical intimidation, acts based upon discrimination related to racial or ethnic identities, or based upon language discrimination. In fact *Castro* was the first case of Latina/o exclusion from the political process. Second, one of the major obstacles confronting Latina/o communities as they became numerically minority communities was racially polarized voting. The only legally effective check against racially polarized voting consists of filing actions based upon minority vote dilution.[17] However, there was no precedent during this time period that recognized such claims. Finally, the absence of published cases does not automatically equate to the absence of such cases. There may have been voting discrimination cases filed during this time period that were not published, or were settled through an unpublished consent decree, or dismissed as a result of an ameliorative change in the method of election. In any event, no cases were filed until the *Castro* decision in California seeking to address issues of voting discrimination directed against Latinas/os.[18]

The judicial acceptance of minority vote dilution claims was established by the Supreme Court in 1973 in *White v. Regester*.[19] The Supreme Court held for the first time that at-large or multimember districts violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *White* invalidated at-large or multimember legislative districts in Bexar County, Texas, on the grounds that these districts diluted the voting strength of Mexican Americans in the San Antonio greater metropolitan area.[20] After the *White* decision, at-large election challenges at the local governmental level were instituted across the Southwest. In

[14] Public Law 91-284 (Sec. 6), 84 Stat. 314 (1970).
[15] Public Law 94-73 (Sec. 102), 89 Stat. 400 (1975).
[16] The only reported decision during this time period involved an interpretation of the State Constitution and the Treaty of Guadalupe Hildalgo regarding the conferring of citizenship status on former Mexican citizens. *See People ex rel. Kimberly v. De La Guerra*, 40 Cal. 311 (Cal. Supreme Court 1870).
[17] In California, local initiatives can be pursued to secure changes to the method of election. For example, an at-large method of election permits racially polarized voting to have a disproportionate effect on the selection of elected officials. A districting form of elections can minimize such effects and result in the election of candidates preferred by the minority community. However such an option is not available where elections are characterized by polarized voting and the minority is a numerical minority.
[18] Perhaps the earliest published case filed in California dealing with issues of discrimination affecting the Latina/o community was *Lopez v. Seccombe*, 71 F.Supp. 769 (S.D.Cal. 1944) (desegregation of swimming pool in the City of San Bernardino). The next case was *Mendez v. Westminster School Dist. Of Orange County*, 64 F.Supp. 544 (C.D.Cal 1946), *affirmed*, 161 Fed.2d 774 (9th Cir. 1947) (school desegregation case).
[19] 412 U.S. 755 (1973).
[20] *White* also invalidated such districts in the Dallas area because of minority vote dilution directed against African Americans.

California, the first at-large election challenge based upon the Fourteenth Amendment was filed against the City of San Fernando.[21] The action was unsuccessful and resulted in establishing difficult evidentiary standards for minority communities seeking to demonstrate that at-large methods of election were unconstitutional. As a result of the *Aranda* decision, there were no at-large election challenges filed in California during the 1970s.

The constitutional standard became more difficult when the Supreme Court in *City of Mobile v. Bolden* ruled that litigants had to demonstrate a discriminatory intent in either the enactment of an at-large election system or its maintenance in order to prove that a given at-large election system was unconstitutional.[22] As a result of the *City of Mobile* decision, many at-large election challenges across the country were dismissed.[23] The impact of this decision prompted Congress to amend Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, and eliminate the necessity of proving a discriminatory intent pursuant to a constitutional standard. Congress amended Section 2 to incorporate a discriminatory effects standard as the basis for successfully challenging at-large methods of election that diluted minority voting strength.[24]

After Section 2 was amended, Latinas/os filed the first case in California against the City of Watsonville.[25] In *Gomez v. City of Watsonville*, the local Latino community had been unsuccessful in securing the election of their Latino preferred candidates to the city council. This lack of success was due to the city's use of an at-large method of election within the context of racially polarized voting patterns that diluted the voting strength of the Latino community. The case was ultimately successful on appeal to the United States Court of Appeals for the Ninth Circuit. In California, the *Gomez* decision served to renew efforts at the community level to eliminate discriminatory at-large methods of elections.[26] After the success of the City of Watsonville case, at large election challenges were filed in other parts of California.[27] However,

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[21] *Aranda v. Van Sickle*, 600 F.2d 1267 (9th Cir. 1979), *cert. den.*, 446 U.S. 951 (1980).
[22] 446 U.S. 55 (1980).
[23] *See supra* note 16, S.Rept. 97-417, at 26 ("The impact of *Bolden* upon voting dilution litigation became apparent almost immediately after the Court's decision was handed down on April 22, 1980. As the Subcommittee heard throughout its hearings, after *Bolden* litigators virtually stopped filing new vote dilution cases. Moreover, the decision had a direct impact on voting dilution cases that were making their way through the federal judicial system.").
[24] P.L. 97-205, 96 Stat. 131 (1982).
[25] *See supra* note 103.
[26] While the City of Watsonville case was pending on appeal, a challenge was filed to the conversion from district based elections to a modified at-large election system for the City of Stockton. The case was ultimately unsuccessful. *Badillo v. City of Stockton*, Civ. Act. No. CV-87-1726-EJG (E.D.Cal. 1987), *affirmed*, 956 F.2d 884 (9th Cir. 1992).
[27] This litigation encompassed the following areas: City of Salinas, *Armenta v. City of Salinas*, Civ. Act. No. C-88-20567 WAI (N.D.Cal. 1988) (successful); Coalinga-Huron Unified School District, *Valenzuela v. Coalinga-Huron Unified School District*, Civ. Act. No. CV-F-89 428 REC (E.D.Cal. 1988) (successful); City of San Diego, *Perez v. City of San Diego*, Civ. Act. No. 88-0103 RM (S.D.Cal. 1988) (successful); City of Chula Vista, *Skorepa v. City of Chula Vista*, 723 F.Supp. 1384 (S.D.Cal. 1989) (unsuccessful); City of National City, *Valladolid v. City of National City*, 976 F.2d 1293 (9th Cir. 1992) (unsuccessful); Alta Hospital District, *Reyes v. Alta Hospital District*, Civ. Act. No. CV-F-90-620-EDP (E.D.Cal. 1990) (successful); City of Oxnard, *Soria v. City of Oxnard*, Civ. Act. No. 90-

this period of Section 2 enforcement in California was short-lived. Two major unsuccessful at-large election challenges served to discourage any further litigation by private parties.[28] These two cases involved challenges to the at-large method of election in the El Centro School District and the City of Santa Maria.[29] These cases consumed substantial resources and in the case of the Santa Maria litigation a final decision was not rendered until ten years after the case had been filed.

As a result of the El Centro and Santa Maria litigation experiences, no private litigants have filed any more at-large election challenges since ***1992*** under the federal Voting Rights Act of 1965.[30] The absence of private litigants is significant since as during the time period from 1977 to 2004, out of the total voting cases filed in the United States District Courts (5.538), the private bar has filed 5,040 or 91%.[31] This figure demonstrates that the private bar has been largely responsible for enforcement of minority voting rights.[32]

5239 R (C.D.Cal. 1990) (voluntarily dismissed, no result); City of Dinuba, *Reyes v. City of Dinuba*, Civ. Act. No. CV-F-91-168-REC (E.D.Cal. 1991) (successful); Cutler-Orosi Unified School District, *Espino v. Cutler-Orosi Unified School District*, Civ. Act. No. CV-F-91-169-REC (E.D.Cal. 1991) (successful); Dinuba Elementary School District, *Reyes v. Dinuba Elementary School District*, Act. No. CV-F-91-170-REC (E.D.Cal. 1991) (successful); Dinuba Joint Union High School District, *Elizondo v. Dinuba Joint Union High School District*, Civ. Act. No. CV-F-91-171-REC (E.D.Cal. 1991) (successful); Salinas Valley Memorial Hospital District, *Mendoza v. Salinas Valley Memorial Hospital District*, Civ. Act. No. C-92-20462 RMW (PVT) (N.D.Cal. 1992) (voluntarily dismissed, no result); Monterey County Superior Court, *Trujillo v. State of California*, Civ. Act. No. C-92-20465 RMW (EAI) (N.D.Cal. 1992) (voluntarily dismissed, no result).

[28] The only other at-large election challenge filed in California was initiated by the United States Department of Justice. Since 1990, the United States Department of Justice has filed one case challenging an at-large method of election. *U.S. v. City of Santa Paula*, (cited in Voting Section website, http://www.usdoj.gov/crt/voting/litigation/caselist.htm#sec2cases (last visited July 27, 2006).

[29] *Aldasoro v. El Centro School District*, 922 F.Supp339 (S.D.Cal. 1995) & *Ruiz v. City of Santa Maria*, Civ. Act. No. 92-4879 JMI(SHX) (C.D.Cal. 1992), *reversed*, 160 F.3rd 543 (9th Cir. 1988), *cert. denied*, 527 U.S. 1022 (1999), *trial on the merits*, Findings of Fact and Conclusions of Law – Granting Judgment to City (filed August 16, 2002).

[30] There have been a small number of jurisdictions which have voluntarily converted from an at-large method of election to a district-based election system. *See e.g.*, Hartnell Community College District in Monterey County, the San Jose/Evergreen Community College District, and the Salinas Union High School District in Monterey County. This number is miniscule when compared to the overwhelming number of jurisdictions which still retain an at-large method of election. *See infra* note 136 and accompanying text.

[31] Source: Annual Report of the Director of the Administrative Office of the United States Courts, Reports of the Proceedings of the Judicial Conference of the United States, Years 1977 - 1996, Tables C 2. Judicial Business of the United States, 1997 - 2004 Annual Reports of the Director, Administrative Office of the U.S. Courts. All websites lasted visited July 27, 2006. http://www.uscourts.gov/judbus2004/appendices/c2.pdf (September 30, 2004, Table C-2, at p. 133); http://www.uscourts.gov/judbus2003/appendices/c2.pdf (September 30, 2004, Table C-2, at p. 127); http://www.uscourts.gov/judbus2002/appendices/c02sep02.pdf (March 31, 2002, Table C-2, at p. 45) (includes within private cases category, two cases listed under "Diversity of Citizenship" sub-category); http://www.uscourts.gov/judbus2001/appendices/c02sep01.pdf (March 31, 2001, Table C-2, at p. 45); http://www.uscourts.gov/judbus2000/appendices/c02sep00.pdf (September 30, 2000, Table C-2, at p. 136); http://www.uscourts.gov/judbus1999/c02sep99.pdf (September 30, 1999, Table C-2, at p. 137);

Due to the difficulties associated with filing at-large election challenges under the federal Voting Rights Act of 1965, an effort was pursued to create a state voting rights act in California. The State Act was designed to permit the filing of legal actions in state court against at-large methods of election without having to demonstrate the costly and difficult evidentiary standards required under the federal Act. This effort was successful. In 2002, the California State Voting Rights Act became law.[33]

The State Voting Rights Act addresses the problem of racially polarized voting within the context of at-large elections. The Act applies to all levels of governments: cities, school districts, special election districts, and judicial districts.[34] The plaintiffs' burden is to demonstrate that racially polarized voting prevents the ability of a protected class to elect candidates of their choice or to influence the outcome of an election. To date only two actions have been filed utilizing the State Voting Rights Act. One of the actions was successfully settled involving the Hanford Joint Union High School District.[35] The other, involving the City of Modesto, is on appeal after a local Superior Court declared the State Act unconstitutional.[36]

This extensive recitation of minority vote dilution and at-large elections is necessary to provide a context for the existing voting discrimination that exists on a statewide basis. As previously noted, no action challenging an at-large method of election has been filed by a private party since 1992 – over 14 years ago. The significance of this complete absence of such litigation is only evident when the magnitude of the problem is reviewed.

(A). Statewide Voting Discrimination – Local Governmental Level

In California, the at-large method of election is the election method of choice in over 90% of all local governmental entities. The total number of these jurisdictions in California is an

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http://www.uscourts.gov/dirrpt98/c02sep98.pdf (September 30, 1998, Table C-2, at p. 143); http://www.uscourts.gov/judicial_business/c02sep97.pdf (September 30, 1997, Table C-2, at p. 129).

[32] *See also* B. Grofman and C. Davidson, eds., Controversies in Minority Voting, The Brookings Institute (1992), at 241 (Gregory A. Caldeira, "Litigation, Lobbying, and the Voting Rights Bar") ("Members of the voting rights bar outside the federal government institute perhaps 95 percent of these [voting rights] cases in any particular year. Enforcement of voting rights is, therefore, very much an activity of the private sector.").

[33] Calif. Elections Code §§ 14025 – 14032.

[34] The state act only applies to at-large election challenges and not to redistricting actions. *Id.*

[35] *Gomez v. Hanford Joint Union High School District*, Civ. Act. No. 04-Co284 (Kings County Superior Court, Cal. 2004).

[36] *Sanchez v. City of Modesto*, Case No. 347903 (Stanislaus County Superior Court, Cal. 2004) (Minute Order dismissing case, March 25, 2005), *appeal pending*, No. F048277 (Court of Appeal of the State of California, Fifth Appellate District).

astounding 4,352 governmental entities.[37] The use of at-large elections and their potential dilutive effect on minority voting strength has been well documented.[38] As previously noted, the potential dilutive effect often results in an under-representation of Latinas/os in local governing bodies, such as city councils, school boards of education, and special election district governing boards. Although Latinas/os in 2000 constituted 32.4% of the state's population,[39] yet in 2004 there were only 535 Latinas/os[40] or 11% out of 4,850 elected local school board members[41] and there were only 357 Latinas/os or 14.2% out of 2,507 elected officials[42] serving on city councils. Accordingly, if there was complete diversity, then Latinas/os would constitute about 2,384 elected representatives on these local governing boards. Instead Latina/os number 892 or only about 37.4% of their potential. Such a substantial disparity suggests that there are problems surrounding the issue of Latina/o political representation and that there are obstacles preventing Latinas/os from attaining an equal opportunity to participate in the political process and achieve full minority political empowerment.

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[37] U.S. Bureau of Census, Statistical Abstract of the United States 2004-2005, Table 418 – Number of Local Governments by Type- States: 2002, at State and Local Government Finances and Employment 263, 124th Edition (October 2004). As of April 2005, there are a total of 478 municipalities: 108 chartered cities, and 370 general law cities. http://www.cacities.org/index.jsp?zone=locc&previewStory=53 (last visited) Out of the total number of cities, only 27 or 5.6% conduct elections by districts. http://www.cacities.org/resource_files/23513.DISTELEC.doc (last visited July 27, 2006) (the City of Coachella is erroneously listed as conducting district elections). As of July 1, 2004, there were 979 elementary to high school public school districts. Based upon a 1995 survey, 65% of these districts conduct at-large elections, 20% have candidate residency districts and at-large voting, and 15% have district elections. California School Board Association, Susan Swigart, Director of Member Services – e-mail dated May 17, 2005, to Joaquin G. Avila. In a 1987 survey of school districts, it was estimated that over 95% of school districts conducted their elections on an at-large election basis. *See* "Watsonville's new crop," Golden State Report, at 27 (September 1987). Recently, the preliminary results of a survey conducted for a project sponsored by the California Research Policy Center entitled "Systems of Election, Latino Representation, and Student Outcomes in California Schools" shows that in 14 California counties containing significant Latina/o populations (Tulare (50.8%), San Benito (47.9%), Monterey (46.8), Merced (45.3%), Madera (44.3%), Fresno (44.0%), Kings (43.6%), Kern (38.4%), Santa Barbara (34.2%), Ventura (33.4%), Stanislaus (31.7%), San Joaquin (305%), Santa Cruz (26.8%) and San Luis Obispo (16.3%), there are 170 school districts ranging from a 10% Latina/o population concentration to an 86% concentration which did not have a single Latina/o school board member in 2004. At-large elections were conducted in 168 of those school districts. It is also estimated that there are over 1,000 water districts and over 500 special election districts. Although there are no exact numbers, most of these water districts and special election districts conduct their elections on an at-large basis.

[38] *See supra* note 5, *Thornburg*, 478 U.S. at 47, at n. 13.

[39] U.S. Bureau of the Census, Table GCT-P6, Race and Hispanic or Latino: 2000; Data Set: Census 2000 Summary File 1 (SF-1) 100 – Percent Data. http://www.census.gov/ (last visited July 27, 2006).

[40] National Association of Latin Elected Officials Education Fund, 2004 National Directory of Latino Elected Officials, at 22 (2004).

[41] California School Board Association, Susan Swigart, Director of Member Services – e-mail dated May 17, 2005, to Joaquin G. Avila (total number of school board members).

[42] California Secretary of State – 2005 Cal. Roster, http://www.ss.ca.gov/executive/ca_roster/ (last visited July 27, 2006).

This history of discrimination that touches upon the right to vote also affects Latinas/os and their representation on county boards of supervisors.[43] Providing Latinas/os with an equal opportunity to participate in the political process and elect candidates of their choice at the county board of supervisor levels has been difficult in California. In order to assess this difficulty a demographic and political representation context must be provided. The following table provides the percentage concentration of Latina/o communities in California counties and the level of Latina/o board of supervisor representation.[44]

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[43] In California, counties are governed by boards of supervisors. *See* Cal. Gov. Code §§ 23005, 25000, 25207. Supervisors are elected from election districts designated as supervisor districts. *Id.*, § 25040.

[44] 2000 Census, *supra* note 10, Table P4. The Latina/o political representation percentage was obtained by visiting the county's homepage website and the elections results website for the Gubernatorial Primary Election held on June 6, 2006, for each of the counties (websites visited July 28, 2006). Imperial County - http://www.co.imperial.ca.us/Supervisors/Supervisors.htm; election results - http://www.imperialcounty.net/Election/2006-06-06/Summary%20Report%20FINAL.pdf. Tulare County - http://www.co.tulare.ca.us/government/board/default.asp; election results - http://www.tularecoelections.org/Junevnyr/ElectionResult.htm. San Benito - http://www.san-benito.ca.us/; election results – no website – Joaquin G. Avila checked with elections department by phone – July 28, 2006). Monterey County - http://www.co.monterey.ca.us/supervisors.htm; election results - http://montereycountyelections.us/Election_Result.htm. Colusa County - http://www.colusacountyclerk.com/board_of_supervisors/Default.asp; election results - http://www.colusacountyclerk.com/elections/documents/RESULTSelection_004.pdf. Merced County - http://web.co.merced.ca.us/bos/district1.html; election results - http://web.co.merced.ca.us/elections/june62006results.html. Los Angeles County - http://molina.co.la.ca.us/; election results - http://rrccmain.co.la.ca.us/1275_CountyContest_Frame.htm. Madera County - http://www.madera-county.com/supervisors/index.html; election results - http://www.madera-county.com/eresults/electionjun2006.pl?cgifunction=Search. Fresno County - http://www.co.fresno.ca.us/0110a/default.asp; election results - http://www.co.fresno.ca.us/2850/Results/results-1.htm. Kings County - http://www.countyofkings.com/bos/index.htm; election results - http://www.countyofkings.com/acr/elections/results/Current%20Results/Election%20Result_idx.htm. San Bernardino County - http://www.co.san-bernardino.ca.us/bos/; election results - http://www.co.san-bernardino.ca.us/rov/current_elections/060606/default.asp?ElectionID=96&ElecDateID=. Kern County - http://www.co.kern.ca.us/bos/; election returns - http://elections.co.kern.ca.us/elections/results/June06/default.htm. Riverside County - http://www.countyofriverside.us/portal/page?_pageid=133,304409,133_310673&_dad=portal&_schema=PORTAL; election results - http://www.election.co.riverside.ca.us/docs/Non-Partisan%20SOV.pdf. Santa Barbara County - http://www.countyofsb.org/cao/cob/hearings/board.asp; election results - http://sbcvote.com/elect/resources/results6_2006/results-1.htm. Ventura County - http://portal.countyofventura.org/portal/page?_pageid=234,1&_dad=portal&_schema=PORTAL; election results - http://recorder.countyofventura.org/Election%20Result.htm. Stanislaus County - http://www.co.stanislaus.ca.us/BOARD/Board.htm; election returns - http://stanvote.com/pastresults/06-06-2006.htm. Orange County - http://www.oc.ca.gov/supervisors/supervisors.asp; election results - http://www.oc.ca.gov/ELECTION/Live/pri2006/results.htm. San Joaquin County - http://www.co.san-joaquin.ca.us/; election results - http://www.sjcrov.org/results.html. Glenn County - http://www.countyofglenn.net/Board/Board.asp; election returns - http://www.countyofglenn.net/_elect/vote_results.asp. Santa Cruz County – http://www.co.santa-cruz.ca.us/bds/ctysupvs.htm; election results - http://www.votescount.com/jun06/frame12.htm. San Diego - http://www.sdcounty.ca.gov/general/bos.html; election results - http://www.co.san-diego.ca.us/voters/Eng/archive/200606bull.pdf. Yolo County - http://www.yolocounty.org/org/bos/board.html;

	Geography	Percent Latina/o	Percent Latina/o Board of Supervisors
1	Imperial County, California	72.2%	20.0%
2	Tulare County, California[45]	50.8%	0.0%
3	San Benito County, California	47.9%	20.0%
4	Monterey County, California[46]	46.8%	20.0%
5	Colusa County, California	46.5%	0.0%
6	Merced County, California	45.3%	0.0%
7	Los Angeles County, California	44.6%	20.0%
8	Madera County, California	44.3%	20.0%
9	Fresno County, California	44.0%	20.0%
10	Kings County, California	43.6%	20.0%
11	San Bernardino County, California	39.2%	20.0%
12	Kern County, California	38.4%	20.0%
13	Riverside County, California	36.2%	0.0%
14	Santa Barbara County, California	34.2%	40.0%
15	Ventura County, California	33.4%	0.0%
16	Stanislaus County, California[47]	31.7%	0.0%
17	Orange County, California	30.8%	20.0%
18	San Joaquin County, California	30.5%	20.0%

election returns - http://www.yoloelections.org/returns/. Santa Clara County - http://www.sccgov.org/portal/site/scc/menuitem.cf081aed392e35dfae3cdd102830a429?path=%252Fv7%252FSCC%2520Public%2520Portal%252Fsite_level_content&contentId=be0a08dfd33f6010VgnVCMP2200049dc4a92____; election returns - http://www.sccgov.org/elections/results/june2006/. Napa County - http://www.co.napa.ca.us/GOV/Departments/DeptPage.asp?DID=10100&LID=103; election results - http://www.co.napa.ca.us/GOV/Departments/DeptPage.asp?DID=13600&LID=971#cont94. Sutter County - http://www.co.sutter.ca.us/doc/government/bos/bos_home; election results - http://www.suttercounty.org/Government/depts/cr/elections/result11.htm. San Mateo - http://www.co.sanmateo.ca.us/smc/department/bos/home/0,,1864_2133,00.html; election results - http://www.shapethefuture.org/elections/results/june2006/June606Results.pdf.

[45] As a result of the June 6, 2006, election, Bob Perez is in a run-off election for Supervisor District 5. http://www.tularecoelections.org/Junevnyr/ElectionResult.htm (last visited July 28, 2006).

[46] In Monterey County, Assemblyman Simon Salinas was elected to County Supervisor District 3 in the June 2006 primary elections. Monterey County Elections, http://montereycountyelections.us/Election_Result.htm. http://montereycountyelections.us/election_returns/results20060606.pdf. He will assume office on January 1, 2007. As a result of his election, Monterey County will have two Latinos serving on the Board of Supervisors in 2007.

[47] As a result of the June 6, 2006, election, Gary Lopez is in a run-off election for Supervisor District 3. http://stanvote.com/pastresults/06-06-2006.htm (last visited July 28, 2006).

	Geography	Percent Latina/o	Percent Latina/o Board of Supervisors
19	Glenn County, California	29.6%	0.0%
20	Santa Cruz County, California	26.8%	20.0%
21	San Diego County, California	26.7%	0.0%
22	Yolo County, California	25.9%	0.0%
23	Santa Clara County, California	24.0%	20.0%
24	Napa County, California	23.7%	0.0%
25	Sutter County, California	22.2%	0.0%
26	San Mateo County, California	21.9%	0.0%

This table demonstrates a substantial level of Latina/o under-representation on county board of supervisors in counties having a significant Latina/o population concentration. Of particular note are the Counties of Tulare (50.8% - Latina/o), Colusa (46.5% - Latina/o), Merced (45.3% - Latina/o), Riverside (36.2% - Latina/o), and Ventura (33.4% - Latina/o) which do not have any Latina/o members on the county board of supervisors.

Unfortunately, in California, the most effective method for addressing this dearth of Latina/o representation on county boards of supervisors has been through litigation. The most significant challenge involved Los Angeles County.[48] As previously noted, in the *Garza* litigation the Latina/o community along with the United States Department of Justice jointly challenged a supervisor redistricting plan enacted in 1981.[49] The redistricting plan fragmented the predominantly Latina/o community located in East Los Angeles. The District Court found that elections in Los Angeles County were characterized by racially polarized voting and that the board of supervisors had intentionally fragmented a politically cohesive Latina/o community in order to maintain their incumbencies.[50] Also, as previously discussed, as a result of a new redistricting plan,[51] the first Latina was elected to the Board of Supervisors.[52]

A redistricting challenge of similar importance occurred in Monterey County. The 1990 Census showed that Latinas/os constituted 33.6% of County's population.[53] At the time of the 1991 county supervisor redistricting process, there had not been a single Latina/o serving on the

[48] *See supra* note 7.
[49] *See supra* note 7 and accompanying text.
[50] *See supra* note 7, 756 F.Supp. at 1304 – 1305, 1312 – 1318, 1328 – 1339.
[51] *Garza*, 918 F.2d at 768.
[52] *See supra* note 73.
[53] U.S. Census Bureau, 1990 Census, Data Set: 1990 Summary Tape File 1 (STF-1) – 100 – Percent Data: Table P001 – Persons – Universe: Persons; Table P008 – Persons of Hispanic Origin – Universe: Persons by Hispanic Origin.

board of supervisors since 1893.[54] After the completion of the county supervisor redistricting, the plan was submitted for Section 5 review.[55] Shortly thereafter Latinas/os filed an action based upon Section 5 and Section 2 of the Voting Rights Act of 1965. Since the redistricting plan had not received Section 5 preclearance, the plaintiffs argued that the court should enjoin the implementation of the plan in the upcoming 1992 elections. Alternatively, if the redistricting plan received Section 5 approval, the plan violated the Section 2 rights of Latinas/os by fragmenting a politically cohesive minority community.[56]

This Monterey County litigation was not a typical suit. After the lawsuit was filed, the United States Attorney General requested additional information from the County. This request prompted the county to seek a settlement with the Latina/o plaintiffs. A settlement was reached that avoided the fragmentation of the Latina/o community. However, as a result of a referendum petition, voter approval of the county ordinance incorporating the redistricting plan was necessary. The referendum was successful in invalidating the county ordinance. Thereafter, the County was permitted another opportunity to adopt a new redistricting plan.[57] The County was given until February 26, 1993, to secure the adoption of a redistricting plan and its subsequent Section 5 approval.[58] The new plan was adopted and submitted to the United States Attorney General for Section 5 approval. After receiving comments from the Latina/o community, the Attorney General issued a Letter of Objection.[59]

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[54] J. Morgan Kousser, Tacking, Stacking, and Cracking: Race and Reapportionment in Monterey County, 1981-1992, A Report for *Gonzales v. Monterey County Board of Supervisors*, Revised Version, September 9, 1992, at 25.

[55] *Gonzalez v. Monterey County*, 808 F.Supp. 727, 729 (N.D.Cal. 1992). Monterey County is subject to Section 5 preclearance. *See* 28 C.F.R. Part 51, Appendix. Section 5 of the 1965 Voting Rights Act, 42 U.S.C. § 1973c, requires covered jurisdictions to submit any change affecting voting to either the United States District Court for the District of Columbia or the United States Attorney General for a determination that the proposed change was not adopted pursuant to a discriminatory purpose and does not have a discriminatory effect on minority voting strength. A Section 5 enforcement action is filed in a local federal district court when the covered jurisdiction has not submitted a proposed voting change for Section 5 approval.

[56] *Gonzalez*, 808 F. Supp. at 729.

[57] After the invalidation of the previously agreed upon settlement plan, the County sought to have court approval of two alternative redistricting plans. One alternative redistricting plan was developed on behalf of a group of intervenors representing north county interests. However, the County endorsed this plan thereby raising a substantial question of whether the proposed redistricting plan was subject to Section 5 approval thereby requiring the convening of a three judge court. Since there was a substantial question presented, the proposed alternative was not valid as legitimate proposal until the Section 5 question had been addressed. Another proposal developed by the County's demographer with input by County's special counsel was also deemed to have the County's endorsement. As with the previous alternative plan, such endorsement raised a substantial question of whether this proposed alternative also was subject to Section 5 preclearance. Since both of these plans were not legally valid, the only valid plan available was a plan presented on behalf of the Latina/o plaintiffs. *Id.*, 808 F.Supp. at 729 – 736. However before any redistricting plan was to be adopted, the County was given another opportunity to formulate a new plan that met constitutional and statutory standards.

[58] *Id.*, 808 F.Supp. at 729 – 736.

[59] Letter of Objection, dated February 26, 1993 (Monterey County, California). A letter of objection issues when the Attorney General determines that the submitting jurisdiction has not met its Section 5 burden of demonstrating that the proposed voting change does not have a discriminatory effect on minority voting strength and was not adopted pursuant to a discriminatory purpose. 28 C.F.R. § 51.44 (7-01-03 Edition).

The Attorney General concluded that Monterey County had not met its Section 5 burden. Although the new redistricting plan incorporated two supervisor districts each with a majority of Latina/o population, non-white Latinas/os comprised a plurality of the eligible voter population in each of the districts. Such an eligible voter population distribution was accomplished by fragmenting politically cohesive Latina/o voting communities in the City of Salinas and the northern part of the County. As noted by the Attorney General:

> "Your submission fails to disclose a sufficient justification for rejection of available alternative plans with total population deviations below ten percent that would have avoided unnecessary Hispanic population fragmentation while keeping intact the identified black and Asian communities of interest in Seaside and Marina. The proposed redistricting plan appears deliberately to sacrifice federal redistricting requirements, including a fair recognition of Hispanic voting strength, in order to advance the political interests of the non-minority residents of northern Monterey County."[60]

After the issuance of the Letter of Objection, the District Court implemented the plaintiffs' plan in a special 1993 election. As the result of the Letter of Objection and the implementation of a court-ordered, a Latino was elected to the Board of Supervisors for the first time in over a hundred years.[61]

The fragmentation of Latina/o political power was also engineered in Tulare County. As previously noted, Tulare County had a 50.8% Latina/o population and currently no Latina/o representative on the County Board of Supervisors.[62] During the time period from 1990 to 2000, Tulare County experienced an increase of 56,100 persons.[63] However, during this same time period the Latina/o community increased by 65, 953 persons, thereby accounting for all of the total population growth rate in Tulare County. In recognition of this significant growth rate members of the Latina/o community sought the creation of two county supervisor districts out of a total of five that would provide the Latina/o community with an effective opportunity to participate in the political process and elect candidates of its choice.

Unfortunately, the Board of Supervisors did not accede to this request. When the 2000 Census data and Spanish surname voter registration was applied to the redistricting plan adopted in the 1990s, Supervisor District 4 had a 72% Latina/o total population concentration and a 48% Spanish surname voter registration rate. Supervisor District 2 was the next highest district with a

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[60] *See supra* note 158, Letter of Objection at 3.
[61] Katie Niekerk, *Perkins, Salinas vie for Assembly seat*," Gilroy Dispatch, Oct. 21, 2004. http://www.gilroydispatch.com/news/contentview.asp?c=128571.
[62] *See supra* note 143 and accompanying Table.
[63] *See supra*, note 152, 1990 Census, Tables P001, P008 & note 23, 2000 Census, Tables P4.

54% Latina/o population concentration and a 34% Spanish surname voter registration rate. To provide the Latina/o community with greater political access, community representatives presented a proposal that would have increased the numbers of the second district (District 5) to a 72% Latina/o population concentration, a 67% Latina/o voting age population and a Spanish surname voter registration rate of 46%. The community proposal would have kept the District 4 Latina/o population percentage at 72% with a 68% Latina/o voting age population and a Spanish surname voter registration rate of 47%. Instead of providing the Latina/o community with a second supervisor district where the community would have a meaningful opportunity to participate in the political and elect candidates of its choice, the Board of Supervisors chose to fragment the Latina/o community into three districts.[64] This fragmentation continues to this day.

In summary, there has been a history of discrimination touching upon the right to vote that has affected the ability of Latinas/os to secure access to the political process at the local governmental level. This history has continuing effects given the patterns of racially polarized voting that have been documented in court cases. This history coupled with racially polarized voting has resulted in the complete absence of Latina/o political representation in many cities, school districts, and in county board of supervisors, containing significant Latina/o populations. This discussion on the first factor of a history of statewide discrimination, however, is not complete. Unfortunately this history must also include a reference to the failure of jurisdictions to comply with the requirements of Section 5 preclearance and bilingual elections mandated by the Voting Rights Act. This additional discussion will demonstrate that the factor of a statewide history of discrimination touching upon the right to vote is pervasive and long-standing.

(B). Statewide Voting Discrimination – the Absence of Section 5 Compliance

The Section 5 preclearance provision[65] has had a significant impact on Latina/o political empowerment in California. As a result of the application of a triggering formula incorporated in Section 4(b) of the Act, 42 U.S.C. § 1973 b(b), a jurisdiction, such as a state, county, city, school district, or special election district, must submit all changes affecting the right to vote enacted after a certain date to the United States Attorney General or the United States District Court for the District of Columbia for approval.[66] Since 1972, there have been six letters of objection issued by the United States Attorney General.

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[64] The Board plan did keep District 4 at the same level of Latina/o population and Spanish surname voter registration levels as incorporated in the 1990s plan. However the remaining portion of the Latina/o registered voter community was divided into Districts 1, 2, 3, and 5, with no such district having a Spanish surname voter registration rate of over 40%. Tulare County, Board of Supervisors, Amended Resolution No. 2001-0713 (In the Matter of Findings as to the Adjustment of Supervisorial Boundaries After the 2000 Census); Tulare County, Geographic Information Systems Maps and accompanying Demographic Information.

[65] 42 U.S.C. § 1973c. *See supra*, note 154.

[66] In California, there are only four counties subject to the Section 5 preclearance requirements: Monterey County, King County, Merced County, and Yuba County. 28 C.F.R. Part 51, Appendix.

The first letter issued in 1976 objected to the failure of Yuba County[67] to translate ballots and candidate qualification statements in accordance with the bilingual election requirements of the 1965 Voting Rights Act, as amended in 1975.[68] A similar letter of objection was issued against Monterey County in 1977.[69] The Attorney General objected to the plan adopted by Monterey County to comply with the Section 203 bilingual election requirements. The remaining letters involved objections to devices which have traditionally served to discriminate against minority voting strength. Two of the letters involved redistrictings of county supervisor districts in Merced County[70] and in Monterey County.[71] In both of these instances the ultimate result was the election of a Latina/o candidate for the board of supervisors. In Monterey County, as discussed above, the last time a Latina/o had been elected was over a hundred years ago. The remaining two letters merit an expanded discussion because these letters demonstrate that covered jurisdictions would have reverted to discriminatory election features but for the issuance of the letter of objections.

The City of Hanford is located in Kings County, a county subject to the Section 5 preclearance requirements. The City of Hanford had undertaken a series of annexations that had not been submitted for Section 5 approval on a timely basis. After an extended delay, the City of Hanford submitted these annexations for Section 5 preclearance.[72] The United States Attorney General issued a Letter of Objection.[73] The Attorney General concluded that the City of Hanford had not met its burden of demonstrating that the proposed annexations did not have a

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[67] Letter of Objection, May 26, 1976 (Yuba County, California).

[68] The bilingual election provisions apply to jurisdictions subject to Section 5 review if the jurisdictions meet certain language minority population thresholds and English proficiency levels. These are commonly referred to as Section 4(f)(4) jurisdictions. 42 U.S.C. § 1973b(f)(4). The bilingual election provisions also apply to jurisdictions meeting the language minority population thresholds and English proficiency levels irrespective of whether these jurisdictions are subject to Section 5 preclearance. These are generally known as Section 203 jurisdictions. 42 U.S.C. § 1973aa-1a. A Section 5 covered jurisdiction can be subject to both requirements. *See generally* 28 C.F.R. §§ 55.5 & 55.6 (specifies the population characteristics and language proficiency levels that are part of the triggering formula).

[69] Letter of Objection, March 4, 1977 (Monterey County, California).

[70] Letter of Objection, April 3, 1992 (Merced County, California).

[71] Letter of Objection, February 26, 1993 (Monterey County, California). *See also Gonzalez, supra*, note 154. The events surrounding the issuance of this Letter of Objection have been previously discussed. *See* text commencing with note 152.

[72] Annexations affect the size of voting constituencies and are thus subject to Section 5 preclearance. *City of Richmond v. U.S.*, 422 U.S. 358 (1975).

[73] Letter of Objection, April 5, 1993 (City of Hanford, Kings County, California). The Letter noted that this was the first instance that the City sought Section 5 approval of its annexations. Some of the annexations were adopted shortly after the City became subject to the Section 5 preclearance requirements. The operative date for submitting annexations was September 23, 1972. However, the City did not submit all of its annexations for Section 5 approval until 1993 – a lapse of **over twenty years**. The Letter also noted that other voting changes had not been submitted. Accordingly, the Department of Justice encouraged the City to comply with the Section 5 preclearance requirements: "We encourage the city promptly to take all steps necessary to bring the city into full compliance with Section 5." Letter at p. 1.

discriminatory effect on minority voting strength.[74] After an unsuccessful effort to seek a withdrawal of the Letter of Objection and an accompanying Section 5 lawsuit,[75] the City agreed to implement a district based method of election. This districting plan ultimately resulted in the election of one Latina and one Latino to the City Council in a city containing a significant Latina/o population. The effort by the City to seek a withdrawal of the letter of objection clearly indicates that the City would have continued to maintain its at-large method of electing members to the city council instead of voluntarily adopting a district based election system that would have provided Latinas/os access to the political process.

Any doubt as to whether covered jurisdictions in California would revert to discriminatory methods of election absent Section 5 preclearance is laid to rest with the attempted conversion from a district election system[76] to an at-large method of election for the Chualar Union Elementary School District in Monterey County. The Department of Justice issued a Letter of Objection which prevented this conversion from occurring.[77] The school district at one time had elected its board members pursuant to an at-large method of election. In 1995, when the Latina/o board membership consisted of a majority of the board, the method of election was changed to a district based election system. However, a dispute arose between the Latina/o board members and members of the white community. This dispute led to the effort to return to an at-large election system. The Department of Justice found that the cover letter accompanying the petition to change the method of election contained language that was expressed in a tone that ". . . raises the implication that the petition drive and resulting change was motivated, at least in part, by a discriminatory animus." Moreover the letter stated that under the previous at-large method of election, the Latina/o board members were susceptible to recall petitions, whereas under the district based election system, Latina/o board members have not been subject to recall. In Chualar, the absence of the protective features of Section 5 would have resulted in a reversion to the former discriminatory at-large method of election.

The letters of objections issued by the Department of Justice in California provide documentation of the withdrawal of proposed changes affecting voting that would have resulted in the a discriminatory effect against minority voting strength. However, in some instances there is no letter of objection because the covered jurisdiction has decided to eliminate the discriminatory features of the proposed change. Since there is an absence of a letter of objection, there is no official determination regarding the positive effect of Section 5 preventing the implementation of a questionable voting change. Such an example is again provided by Monterey County.

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[74] *Id.*, at 2. The annexations would have reduced the Latina/o population of the City from 35.9% to 29.4%.
[75] *Yrigollen v. City of Hanford*, Civ. Act. No. CV-F-93-5303 OWW (E.D.Cal. 1993).
[76] The district election scheme consisted of at least one district containing three school board members. This multimember district was predominantly Latina/o. Letter of Objection, March 29, 2002, at 2 (Chualar Union Elementary School District, Monterey County, California).
[77] *Id.*

In Monterey County election officials decided to reduce the number of polling places for the special gubernatorial recall election held on October 7, 2003. According to county officials, the number of polling places utilized in the November 2002 general election was reduced from 190 to 86 for the special recall election.[78] The Department of Justice ultimately approved the voting precinct consolidations only after Monterey County withdrew from Section 5 consideration five precinct and polling place consolidations.[79]

Apart from these six letters of objection, there is another major problem in these Section 5 covered jurisdictions: failure to comply with the submission requirements of Section 5. To achieve the purpose of eliminating voting discrimination, the Voting Rights Act of 1965 relies upon Section 5 covered jurisdictions to voluntary submit their voting changes for approval pursuant to Section 5. Based upon a long series of cases culminating in *Lopez (I)*,[80] Section 5 covered jurisdictions are under a legal mandate to submit their voting changes prior to implementation in any elections. In reality, many Section 5 covered jurisdictions are delinquent in the timely submission of their voting changes. Some jurisdictions, but for litigation, would not have submitted any voting changes. The covered jurisdictions in California are prime examples of this failure to comply.

Beginning in 1968, Monterey County began adopting a series of judicial district consolidations that resulted in reducing the number of judicial districts from nine to one countywide judicial district in 1983.[81] Only the voters residing in these judicial districts could vote for the judicial candidates for a particular judicial district. Several of these judicial districts included significant concentrations of Latina/o voters. If the judicial districts had not been consolidated, the possibility of electing Latina/o judges would have increased. Instead the judicial districts were ultimately consolidated into one countywide district where Latina/o voters were a numerical minority. These judicial district consolidations were not submitted for Section 5 approval. Even after a Section 5 enforcement action was instituted to require the submission of judicial district consolidations for Section 5 approval, these consolidations were not submitted for the requisite review. It was only after nine years of litigation and two Supreme Court decisions, *Lopez (I)* and *Lopez (II)*[82] that the required Section 5 approval was obtained.[83]

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[78] Monterey County Elections, Tony Anchundo, Registrar of Voters, "Expedited Request for Preclearance of Changes Affecting Voting in Monterey County California for the Special Statewide Election and the Special County-Wide Election Consolidated and Scheduled for October 7, 2003," at p. 2, August 14, 2003.

[79] U.S. Department of Justice, Second Letter of Approval, dated September 4, 2003. In the second Letter issued on September 4, 2003, the Attorney General noted that Monterey County had withdrawn the following consolidations: "Salinas 504, 601, 604 and 605 (Regency Court Seniors Apartment Recreation Room); Salinas 501 and 502 (Lamplighter Club Room); Natividad 1 and 2 and Santa Rita 4 and 5 (Sheriff's Posse Club House); Elkhorn and Lake 1 and 2 (Echo Valley School Library); and Pajaro 3, 4, 6, 7 and 8 (Full Gospel Church of Las Lomas)." Letter at p. 2.

[80] *Lopez v. Monterey County (I)*, 519 U.S. 9 (1996).

[81] *See generally*, *Lopez v. Monterey County*, 871 F. Supp. 1254 (N.D.Cal. 1994).

[82] *Lopez v. Monterey County (II)*, 525 U.S. 266 (1999).

[83] Similarly as previously noted, the City of Hanford waited over twenty years before submitting all of their annexations for the required Section 5 approval. *See supra* note 172.

This record of non-compliance with the submission requirements of Section 5 in California is consistent with the experiences of other jurisdictions and their failure to comply with the Section 5 requirements since the enactment of the 1965 Voting Rights Act. This record of non-compliance has been cited numerous times by the United States Commission on Civil Rights,[84] by congressmen and witnesses in testimony when the Act was reauthorized in 1970,[85] 1975,[86] and 1982,[87] by the Government Accounting Office,[88] and by Supreme Court precedent.[89]

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[84] United States Commission on Civil Rights, Political Participation, A study of the participation by Negroes in the electoral and political processes in 10 Southern States since passage of the Voting Rights Act of 1965, at 184 (1968) (Commission recommended that the Attorney General "... should promptly and fully enforce Section 5 ...."); U.S. Commission on Civil Rights, The Voting Rights Act: Ten Years After, at 28 ("Non-compliance with the Voting Rights Act through failure to submit changes remains a problem in enforcement of the act.") (January 1975); U.S. Commission on Civil Rights, The Voting Rights Act: Unfulfilled Goals (September, 1981), at 70–75 (chronicling extent of failure to submit voting changes for Section 5 preclearance).

[85] *Voting Rights Act Extension: Hearings on H.R. 4249, H.R. 5538, and Similar Proposals, to Extend the Voting Rights Act of 1965 with Respect to the Discriminatory Use of Tests and Devices Before Subcomm. No. 5 of the House Comm. on the Judiciary*, 91st Cong. 4 (statement of William McCulloch, Member, House Comm. on the Judiciary) ("Section 5 was intended to prevent the use of most of these devices. But apparently the States rarely obeyed the mandate of that section, and the Federal Government was too timid in its enforcement."), 18 (statement of Howard A. Glickstein, General Counsel and Acting Staff Director, U.S. Comm'n on Civil Rights: "Despite the requirements of section 5, the State of Mississippi made no submission to the Attorney General, and the new laws were enforced.") (1969). *See also Amendments to the Voting Rights Act of 1965: Hearings on S. 818, S. 2456, S. 2507, and Title IV of S. 2029, Bills to Amend the Voting Rights Act of 1965 Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary*, 91st Cong. 51–53 (statement of Frankie Freeman, Member, U.S. Comm'n on Civil Rights – Commissioner Freeman acknowledged that most states complied with Section 5, but did recognize that there were instances of non-compliance which could be addressed through litigation by the United States Attorney General) (1969).

[86] *Extension of the Voting Rights Act, Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501, Extension of the Voting Rights Act, Before the Subcommittee on Civil and Constitutional Rights of the Committee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives*, 94th Cong. 281 (statement of J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division) ("In summary, the protections of section 5, should be expanded because: first, it has been effective in preventing discrimination; second, it has never been completely complied with by the covered jurisdiction; and third, the guarantees it provides are more significant to the country than the slight interference to the Federal system which this powerful provision would incur.") (1975).

[87] *Extension of the Voting Rights Act: Hearings on Extension of the Voting Rights Act Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 97th Cong. 2117 (statement of Drew S. Days III, Assistant Attorney General, Civil Rights Division) (". . . I will not sit before you today and assert that even during what I think was a period of vigorous enforcement of the Act that the Department was able to ensure that every, or indeed most, electoral changes by covered jurisdictions were subjected to the Section 5 process. There was neither time nor adequate resources to canvas systematically changes since 1965 that had not been precleared, to obtain compliance with such procedures or even, in a few cases, to ascertain whether submitting jurisdictions had complied with objections to proposed changes. It was not uncommon for us to find out about changes made several years earlier from a submission made by a covered jurisdiction seeking preclearance of a more recent enactment.") (1982).

[88] *GAO Report on the Voting Rights Act: Hearings on GAO Report on the Voting Rights Act Before the House Subcommittee on Civil and Constitutional Rights, of the Committee on the Judiciary*, 95th Cong. 84 (Report noted that the Department of Justice did not systematically identify and secure the submission of voting changes enacted by covered jurisdictions and that Department's efforts were at best "sporadic" and fell "far short of formal systematic procedures to make sure that changes affecting voting are submitted.") (1978).

This sordid history of non-compliance continues to this day in California. As demonstrated in the following tables, in Merced County, California, there are cities and special election districts that have not submitted their annexations for Section 5 approval. There are at least a total of 226 annexations that have not been submitted for Section 5 review.[90]

I.
II. Table 1
III. Merced County, California – Section 5 Non-Compliance
IV.

V. Type of Political Jurisdiction	**VI.** Number of Political Jurisdictions	**VII.** Type and Number of Voting Changes: **VIII.** Annexations	**IX.** Type and Number of Voting Changes: **X.** Formations	**XI.** Type and Number of Voting Changes: **XII.** Detachments	**XIII.** Type and Number of Voting Changes: Consolidations
XIV. Cities	**XV.** 5	**XVI.** 100	**XVII.**	**XVIII.**	**XIX.**
XX. Water Districts	**XXI.** 16	**XXII.** 80	**XXIII.**	**XXIV.**	**XXV.**
XXVI. Water Districts	**XXVII.** 6	**XXVIII.**	**XXIX.** 6	**XXX.**	**XXXI.**
XXXII. Other Districts	**XXXIII.** 2	**XXXIV.** 2	**XXXV.**	**XXXVI.**	**XXXVII.**
XXXVIII. Water Districts	**XXXIX.** 5	**XL.**	**XLI.**	**XLII.** 37	**XLIII.**
XLIV. Other Districts	**XLV.** 1	**XLVI.**	**XLVII.**	**XLVIII.**	**XLIX.** 1
L. Totals	**LI. 35**	**LII. 182**	**LIII. 6**	**LIV. 37**	**LV. 1**

LVI.

LVII.
LVIII. Table 2
LIX.

LX. Summary of Voting Changes Merced County, California		
LXI.	**LXII.**	**LXIII.**

[89] *See, e.g.*, *Perkins v. Matthews*, 400 U.S. 379, 393, n. 11 (1971) (in reviewing a table of submissions prepared by the Attorney General which demonstrated "... that only South Carolina has complied rigorously with § 5 . . .," the Court stated: "The only conclusion to be drawn from this unfortunate record is that only one State is regularly complying with § 5's requirement.").

[90] Joaquin G. Avila, Report on Section 5 Non-Compliance: The Absence of Federal Enforcement, Prepared for the Leadership Conference on Civil Rights Education Fund, June 24, 2006, at 5.

LVII. **LVIII. Table 2** **LIX.**		
LX. Summary of Voting Changes Merced County, California		
LXIV.	**LXV.** Annexations	**LXVI.** 82
LXVII.	**LXVIII.** Formations	**LXIX.**
LXX.	**LXXI.** Detachments	**LXXII.** 7
LXXIII.	**LXXIV.** Consolidations	**LXXV.**
LXXVI. Total Number of Voting Changes Not Submitted for Section 5 Review		**LXXVI LXXVI 26**

LXXIX.

As demonstrated by the examples provided by Monterey County, the City of Hanford, and Merced County, this record of Section 5 non-compliance has been present since the late 1960s. Such a record provides further evidence that there is a history of discrimination in California that touches upon the right to vote.

Additional evidence supporting a finding of a history of discrimination in California that touches upon the right to vote is found in the failure of these covered jurisdictions to pursue an action seeking an exemption from the Section 5 preclearance requirement. Seeking such an exemption is often referred to as a bailout lawsuit. Under the bailout provisions, covered jurisdictions can institute an action in the United States District Court for the District of Columbia seeking a judicial declaration that the covered jurisdictions are no longer subject to Section 5 preclearance.[91] Before such a declaratory judgment can issue the covered jurisdiction must meet several requirements.[92] For a ten year period prior to the filing of the declaratory judgment action, the covered jurisdiction must demonstrate, among other requirements, that all changes affecting voting have been submitted for Section 5 preclearance prior to implementation in the electoral process,[93] that the covered jurisdiction or its political subunits[94] must not have been the subject of a Letter of Objection or the denial of a declaratory judgment pursuant to Section 5,[95] that no judgments or consent decrees have been entered in any litigation affecting the right to vote,[96] and that the covered jurisdiction should ". . . have eliminated voting

[91] 42 U.S.C. § 1973(b)(a).
[92] *See generally* S.Rept. 97-417, *supra*, note 16, at 46-62.
[93] 42 U.S.C. § 1973(b)(a)(1)(D).
[94] 28 C.F.R. § 51.6 (7-1-03 Edition).
[95] 42 U.S.C. § 1973(b)(a)(1)(E).
[96] 42 U.S.C. § 1973(b)(a)(1)(B).

procedures and methods of election which inhibit or dilute equal access to the electoral process . . . "[97]

Compliance with these bailout provisions indicates that a covered jurisdiction is judicially certified to be free of any election structures or features that discriminate against minority voting strength. However in California, three of California's Section 5 covered jurisdictions, the Counties of Monterey, Merced, and Kings Counties, would not be eligible for this certification because of their failure to comply with Section 5 and their failure to remove all election systems that have the potential of discriminating against Latina/o voting strength. First, Merced County would have difficulty demonstrating that there are no discriminatory methods of elections within the County that deny minorities with equal access to the political process.[98] For example, the City of Los Banos has a total population of 25,869, based upon the 2000 Census, of which 13,048 or 50.4% are Latina/o.[99] The at-large method of election is implemented to select members to the City Council.[100] Despite this large concentration of Latinas/os within the City there is not a single Latina/o serving on the City Council.[101] Such an absence clearly suggests that the at-large method of electing members to the Los Banos City Council may have a dilutive effect on Latina/o voting strength and thus would impede the efforts of Merced County to seek a Section 5 bailout. In addition, based upon an on-site study of annexations for cities and special election districts, there are 226 annexations that have not been submitted for Section 5 approval. This factor would also prevent Merced County from successfully securing a Section 5 bailout.

The remaining two counties also would not be successful in securing a Section 5 bailout. In Kings County, the recent settlement involving the Hanford Joint Union High School District that resulted in the abandonment of the at-large method of election and the implementation of district elections would prevent Kings County from bailing out from Section 5 coverage.[102] In Monterey County, the recent Letter of Objection issued against the Chualar Union Elementary School District on March 29, 2002, would have a similar impact.[103]

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[97] 42 U.S.C. § 1973(b)(a)(1)(F)(i). *See also* S.Rept. 97-417, *supra*, note 16, at 54, note 184 and accompanying text: "The testimony before the House Subcommittee on Civil and Constitutional Rights in hearings last year and the Senate Subcommittee on the Constitution this year showed that in covered jurisdictions today there still exist many ' "grandfathered" ' voting procedures and methods of election which pre-date 1965 and which tend to discriminatory [*sic*] in the particular circumstances. These include unduly restrictive registration, multi-member and at-large districts with majority vote-runoff requirements, prohibitions on single-shot voting, and others."
Note 184.

[98] 42 U.S.C. § 1973(b)(a)(1)(F)(i).

[99] *See supra*, note 26, 2000 Census, Table P8.

[100] City of Los Banos, City Council Meeting Minutes, November 17, 2004 (accepting results of municipal elections showing that candidates are elected on an at-large election plurality basis).

[101] http://www.losbanos.org/council.php (last visited July 31, 2006).

[102] 42 U.S.C. § 1973(b)(a)(1)(B). *See supra*, note 195.

[103] 42 U.S.C. § 1973(b)(a)(1)(E). *See supra*, notes 194 and accompanying text.

In summary, this review of Section 5 compliance in California demonstrates that there is a history of discrimination touching upon the right to vote that dates as far back as the late 1960s. Moreover, this record reveals that the effects of this discrimination have a contemporary impact on Latina/o access to the political process. This contemporary impact is exacerbated by another device that has served to exclude Latinas/os from effective electoral participation – an English-only election process. By conducting elections solely in English, Latina/o voters who are not proficient in English are for all practical purposes denied their right to participate in elections. The next section of this letter will focus on how English-only elections are an integral component of this history of discriminations that touches upon the right to vote.

(C). Statewide Voting Discrimination – English-only Elections

English-only elections serve to exclude Latinas/os who are not proficient in the English language from exercising their right to vote. Historically the 1879 California Constitution served as a major impediment to the imposition of a bilingual election process by eliminating the requirement of translating official government documents into Spanish.[104] The adoption of the 1894 literacy test as a pre-requisite for voting also served as another major impediment.[105] The first effort to lay the foundation for a bilingual election process occurred with the *Castro* decision that permitted the use of the literacy test as long as the test was administered in Spanish as well.[106] This first effort culminated in the 1975 amendments to the 1965 Voting Rights Act that required a bilingual election process in political jurisdictions meeting certain requirements. These amendments included Section 203 and Section 4(f)(4) to permit citizens who did not speak or understand the English language to vote in their native language in parts of the country meeting certain language minority population thresholds and English proficiency levels.[107] Presently there are 25 counties in California subject to Section 203 that are required to provide an election process in a language other than English.[108] Of the Section 5 covered jurisdictions there are only three counties subject to the bilingual election requirements.[109]

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[104] *See supra* note 109 and accompanying text.
[105] *See supra* note 110 and accompanying text.
[106] *See supra* note 112 and accompanying text.
[107] *See supra* note 167.
[108] These counties and the minority language groups include: Alameda (Chinese, Latina/o), Colusa (Latina/o), Contra Costa (Latina/o), Fresno (Latina/o), Imperial (Latina/o, American Indian), Kern (Latina/o), Kings (Latina/o), Los Angeles (Chinese, Filipino, Japanese, Korean, Vietnamese, and Latina/o), Madera (Latina/o), Merced (Latina/o), Monterey (Latina/o), Orange (Chinese, Korean, Vietnamese, Latina/o), Riverside (Latina/o, American Indian), Sacramento (Latina/o), San Benito (Latina/o), San Bernardino (Latina/o), San Diego (Latina/o, Filipino), San Francisco (Chinese, Latina/o), San Joaquin (Latina/o), San Mateo (Chinese, Latina/o), Santa Barbara (Latina/o), Santa Clara (Latina/o, Chinese, Filipino, Vietnamese), Stanislaus (Latina/o), Tulare (Latina/o), and Ventura (Latina/o). Federal Register, Vol. 67, No. 144, Friday, July 26, 2002, at 48871.
[109] These counties and the languages other than English include: Kings (Spanish), Merced (Spanish), and Yuba (Spanish). 28 C.F.R. Part 55, Appendix.

The adoption of these bilingual election provisions are derived from a very basic principle: an eligible voter should not be penalized for his or her lack of English proficiency, especially when this inability to understand the English language reflects the failure of educational institutions to insure that its young students, as well as, adult students, meet a certain minimal level of English proficiency. The congressional testimony in support of the bilingual election provisions has documented the need for the implementation and the continued need for these provisions.[110] Yet, there is a segment in our community that is strongly opposed to the extension of these bilingual election provisions.[111] Such opposition often ignores the importance of having a vibrant body politic that is inclusive and seeks to promote the political integration of heretofore language minority communities. Most significantly, such opposition often ignores the historical exclusion of limited English-proficient Latinas/os from the political process and the fact that these bilingual elections provisions have not been fully enforced.

Recently, the Department of Justice has been enforcing these provisions in California. The Attorney General has filed Section 203 actions against the Cities of Azusa, Paramount, Rosemead, and the Counties of Ventura, San Diego, San Benito, and San Francisco.[112] Generally, all of these actions are directed to the failure of the cities and counties to effectively implement the bilingual election provisions in Spanish.[113] The complaints cover topics such as the failure to provide ballots and other election materials in the required language, failure to provide an adequate number of bilingual election personnel on election day, and the woefully inadequate outreach conducted by the these Section 203 covered jurisdictions to reach relevant non-English speaking communities. The Consent decrees have provided provisions for the translation of election materials and public notices, for the distribution of translated election materials to language minority communities, for the establishment of a language minority advisory committee that oversees the terms of the consent decree, for the creation of a coordinator position responsible for assuring that the terms of the consent decree are followed, and for periodic oversight and reporting on the efforts of these covered jurisdictions to meet their statutory obligations.[114]

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[110] *See, e.g.*, S.Rept. 94-295, 94th Cong. 1st Sess. 24-30, 37-39 (1975); S.Rept. 97-417, *supra*, note 16, 64-66. *See also* H.Rept. 102-655, 102nd Cong., 2nd Sess. (report accompanying passage of the Voting Rights Language Assistance Act of 1992, P.L. 102-344). The 2006 reauthorization of the Voting Rights Act extended the bilingual election provisions until the year 2032. *See supra* note 2, 109 Pub. L. 246, § 7.

[111] *See, e.g.*, Letter from 56 Congress Members to Chairman J. Sensenbrenner (Chair. House Judiciary Comm.) Opposing the Renewal of Multilingual Ballot Provisions, February 3, 2006.

[112] A complete listing of these cases, along with their complaints and consent decrees are found on the U.S. Department of Justice, Civil Rights Division, Voting Section website. http://www.usdoj.gov/crt/voting/litigation/recent203.htm#azusa.

[113] In the City of Rosemead case, the targeted language minority groups were Spanish-speaking, Chinese-speaking, and Vietnamese-speaking voters. In the San Diego case, the targeted language minority groups were Spanish-speaking, and the Filipino community. *Id.*

[114] *See, e.g.*, San Benito County and City of Azusa Consent Decrees. *Id.*

Recent testimony before Congress[115] and in the California State Legislature highlighted the continued necessity for the bilingual election provisions. Testimony presented before the California State Legislature indicated that about 26% of the Latina/o citizen population is characterized by limited English proficiency.[116] Latinas/os who are of limited English-proficiency are not able to effectively participate in the political process because of non-compliance with Section 203. For example, election-day hotlines were insufficiently staffed with bilingual election personnel. In some instances the personnel simply hung up on the person requesting bilingual assistance. In other instances, the callers were placed on hold for a long period of time until bilingual personnel could be located.[117] Most significantly, there were reports of an insufficient number or complete absence of bilingual poll workers. Also, in some polling places important election materials were not translated.[118]

The gravity of this non-compliance with Section 203 can be measured by the litigation that has been filed by the Department of Justice. Cases have been filed in Northern California (Counties of Alameda, San Francisco, and San Benito), the central coast area (Ventura County), and Southern California (San Diego County, and the Cities of Rosemead, Paramount, and Azusa (located within Los Angeles County)). An examination of the complaints and consent decree indicates that there are common issues of non-compliance and the geographic breadth indicates that the issue of Section 203 non-compliance is widespread.

In conclusion, this 203 non-compliance must be viewed as part of the historical pattern of discrimination in California that has resulted in the exclusion of Latinas/os from effectively participating in the electoral process. Coupled with the use of electoral devices such as at-large elections at the local governmental level that have the potential to dilute Latina/o voting strength and the continuing non-compliance with the Section 5 preclearance requirements, Latinas/os continue to experience the effects of this historical legacy. This legacy is clearly evident when elections characterized by racially polarized voting result in low levels of Latina/o political

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[115] *See, e.g.*, United States Senate, Committee on the Judiciary, *Continuing Need for Section's 203 Provisions For Limited English Proficient Voters*, June 13, 2006 (Testimony of John Trasviña, Interim President and General Counsel, Mexican American Legal Defense and Educational Fund). http://judiciary.senate.gov/testimony.cfm?id=1930&wit_id=5408

[116] Rosalind Gold, Senior Director of Policy, Research and Advocacy, National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund, Testimony on the Importance of the Federal Voting Rights Act to California Voters, submitted to the California State Senate Committee on Elections, Reapportionment and Constitutional Amendments, Los Angeles, California, December 5, 2005, at 5.

[117] *Id.*, at 6.

[118] With respect to language accessibility of educational and informational signage at the polling place, in the Los Angeles Mayoral Run-Off Election of 2005, a third of the polling places did not have a Voter Bill of Rights translated into Spanish or other Asian language. NALEO Educational Fund, Low-Turnout Precincts in the City of Los Angeles Mayoral Run-Off Election: A Report on the Accessibility of Polling Places, July 26, 2005, at 10, Table 2. More importantly, half of the sampled polling places did not have any signage relating to information regarding provisional ballots translated into to Spanish or Asian. The same level of non-compliance was found in providing hotline numbers. And only about a third of the sampled polling places provided information on voter fraud in Spanish. *Id.*

representation on the governing boards of counties, municipalities, and school districts throughout California. Accordingly, the factor of a history of statewide discrimination touching upon the right to vote has been met. To complete the analysis for this factor the next section of this letter will focus on this history of voting discrimination affecting Latinas/os within the County of Los Angeles. A review of this localized history will reveal that Latinas/os in Los Angeles County have been the brunt of repeated instances of voting discrimination that successfully divided their voting strength in order to limit their opportunity to participate in the political process and elect candidates of their choice.

ii. Los Angeles County Voting Discrimination.

Apart from being the recipients of a statewide history of discrimination touching upon the right to vote, Latinas/os directly experienced the effects of minority vote dilution even before the Supreme Court in the 1973 *White v. Regester* decision[119] held for the first time that a legislative redistricting plan diluted minority voting strength. With respect to congressional and legislative districts, this vote dilution began with the 1960 legislative redistrictings. These redistricting had a discriminatory impact on Latina/o voting strength in Los Angeles County. There was a consistent pattern of fragmenting the Latina/o communities in the Los Angeles area.[120] A slight improvement occurred in the 1970s with the creation of Latina/o legislative districts.[121] As a

[119] *See supra* note 118.

[120] For the 1961 redistricting the Los Angeles area divided into six assembly districts. Richard Santillan, ed., The Hispanic Community and Redistricting, Volume I, The Rose Institute of State and local Government, Claremont McKenna College at 43 (1981) (necessity to create Latina/o districts). *See also* T. Anthony Quinn, Redrawing the Lines: 1961, A Study of the Redistricting Process in California, The Rose Institute of State and Local Government, Claremont McKenna College at 10 (not dated) (describes fragmentation of Latina/o community by Democratic Party). Subsequently the 1961 State Senate plan was successfully challenged in both state and federal courts on the grounds that the plans violated the one person one vote principle. *Yorty v. Anderson*, 60 Cal.2d 312, 33 Cal.Rptr. 97, 384 P.2d 417 (1963); *Silver v. Jordan*, 241 F.Supp. 576 (S.D. Cal. 1964), *affirmed*, 381 U.S. 415 (1965). However, since the State Legislature did not adopt a new Senate redistricting plan, another action was filed. *Silver v. Brown*, 46 Cal.Rptr. 308, 405 P.2d 132 (1965) (Cal. Supreme Court, in bank). A temporary plan for both State Assembly and Senate Districts was to be implemented in time for the 1966 elections if the State Legislature did not act. The State Legislature did act in 1965. The 1965 redistricting plan continued the fragmentation of the Latina/o community in the Los Angeles area. *Supra* Santillan, Redistricting, Volume I, at 46. This plan in turn was also challenged for technical deficiencies and ultimately a plan was declared constitutional. *Silver v. Brown*, 48 Cal. Rptr. 609, 409 P.2d 689 (1966) (Cal. Supreme Ct., in bank). With respect to congressional redistricting, the 1961 plan was successfully challenged in 1965. *Silver v. Brown*, 46 Cal.Rptr. 531, 405 P.2d 571 (1965). However due to an impending election schedule, the State Supreme Court permitted the use of the plan in the 1966 elections. A request by the State Legislature to delay the development of a new plan was denied. *Silver v. Reagan*, 62 Cal.Rptr. 424, 432 P.2d 26 (1967) (Cal. Supreme Ct., in bank). Subsequently the legislatively crafted 1967 congressional redistricting was approved by the State Supreme Court. *Silver v. Reagan*, 64 Cal.Rptr. 325, 434 P.2d 621 (1967) (State Supreme Ct., in bank). As with the state legislative redistricting plans, the 1967 congressional redistricting plan continued the fragmentation of the Los Angeles Latina/o community. Santillan, Redistricting I, at p. 46.

[121] In 1971, the California legislature enacted redistricting plans for congressional, state senate, and assembly districts. These plans were vetoed by the Governor. In the subsequent litigation, the State Supreme Court imposed a temporary plan for the 1972 elections. *See supra* note 219, Santillan, Redistricting, Volume I, at 62-63. The State Legislature and the Governor were not able to reach an agreement regarding the formulation of redistricting plans.

result of increases in the Latina/o population in the 1980s, Latinas/os increased the number of congressional seats from one to three where Latinas/os had significant population concentrations and maintained their predominantly Latina/o assembly seats. However, fragmentation of the Latina/o community in the Los Angeles area continued with respect to the State Senate districts.[122] A dramatic improvement occurred with the 1990 redistrictings. As with the 1970s redistrictings a Special Masters Panel was appointed to draw congressional and state legislative districts due to a legislative impasse. The Special Masters plan resulted in 10 or 12.5% out of 80 assembly districts, 4 or 10% out of 40 senate districts, and 7 or 13.5% out of 52 congressional districts which contained over a 50% Latina/o population concentration.[123] Although these were notable improvements, when compared to the 25.8% Latina/o population for California in the 1990 Census,[124] there was still dilution of Latina/o voting strength.[125] These improvements were realized in the 2000 redistrictings where Latinas/os comprised 32.4% of the State's population.[126] The 2001 redistrictings resulted in 17 or 21.3% out of 80 assembly districts,[127] 8 or 20% out of 40 senate districts,[128] and 10 or 19.2% out of 52 congressional districts[129] which contained over a

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Id., at 64-68. The State Supreme Court subsequently appointed a panel of Special Masters which in turn drafted redistricting plans that were approved by the State Supreme Court. *Legislature of State of California v. Reinecke*, 110 Cal.Rptr. 718, 516 P.2d 6 (1973) (Cal. Supreme Ct., in bank). The Special Master's plan created Latina/o districts for the assembly and the state senate, which was an improvement over the redistrictings of the 1960s.

[122] During the 1980s, an extensive grass roots effort was launched by Californios for Fair Representation. Their lobbying efforts resulted in positive gains for the Latina/o community. The 1981 legislatively enacted redistricting plans incorporated some of their recommendations. The redistricting statutes were ultimately the subject of a referendum. *Assembly of State of Cal., v. Deukmejian*, 180 Cal.Rptr. 297, 639 P.2d 939 (1982) (Cal. Supreme Ct., in bank). The State Supreme Court rejected a challenge to the validity of the referendum. The State Supreme Court declared that the referendum could proceed; however the upcoming 1982 party primary and general elections would be based upon the State Legislature's 1981 plans. *Id.* The statutes were rejected by the voters and the State Legislature subsequently enacted new redistricting plans in 1982. *Legislature of the State of Cal., v. Deukmejian*, 194 Cal.Rptr. 781 (Cal. Supreme Ct. 1983). The state senate and assembly redistricting plans were enacted as urgency statutes and thus were not subject to the referendum procedures. The congressional redistricting plan was not challenged by way of a referendum. Instead an initiative sought to replace all three redistricting statutes. The State Supreme Court ruled that such an Initiative was not permitted by the State Constitution. *Id.* Subsequently the congressional redistricting plan was unsuccessfully challenged as a partisan gerrymander. *Badham v. March Fong Eu*, 694 F.Supp. 664 (N.D. Cal. 1988), *judgment affirmed*, 488 U.S. 1024 (1989). *See also* Morgan Kousser, Reapportionment Wars: Party, Race, and Redistricting in California, 1971-1992, in Bernard Grofman, ed., Race and Redistricting in the 1990s (New York: Agathon Press 1998).

[123] *Wilson v. Eu*, 4 Cal.Rptr.2d 379, 823 P.2d 545 (Cal. 1992) (Appendix Two).

[124] *See supra* note 152, 1990 Census, Tables P001 & P008.

[125] Minority organizations filed objections to the plan because of the dilution of minority voting strength in certain areas of the state. *See supra Wilson*, note 222, at 554-556.

[126] *See supra* note 110, 2000 Census.

[127] California Assembly Website: http://www.assembly.ca.gov/committee/c7/asmfinal/newtextdocument.html (last visited July 31, 2006).

[128] California State Senate Website: http://www.sen.ca.gov/ftp/SEN/senplan/senate.htp (last visited July 31, 2006).

[129] California State Senate Website: http://www.sen.ca.gov/ftp/SEN/cngplan/newtextdocument.htp.

50% Latina/o population concentration. As with previous redistricting plans, there was a court challenge.[130] However the challenge was not successful.

This fragmentation of Latina/o voting strength and the resulting dilution of their vote was also evident in the County's supervisor redistrictings. The 1959 redistricting, unusual for its timing, was precipitated by the candidacy of Edward Roybal, a Latina/o candidate and future member of the Los Angeles City Council and Congress.[131] The Anglo candidate, Ernest Debs, won by about 5% percent of the votes cast, after four recounts. Upon assuming office, Supervisor Debs and District 4 Supervisor Burton Chace agreed to an exchange that resulted in the transfer of between 50,000 and 100,000 voters. Such a transfer resulted in a decrease of Latina/o voters in Supervisor District 3 by avoiding Latina/o areas of East Los Angeles that were supportive of candidate Roybal.[132]

A similar dilution of Latina/o voting strength occurred with the 1963 county supervisor redistricting. The 1960 Census revealed a population imbalance and revealed with District 3 was under-populated. Instead of adding areas from the immediately adjacent San Gabriel Valley that were growing in Latina/o population concentrations, predominantly Anglo areas of the San Fernando Valley and the western part of Los Angeles were added. This decision to avoid the heavily concentrated Latina/o areas of East Los Angeles resulted in a continued dilution of Latina/o voting strength.[133] This pattern of fragmenting Latina/o voting strength continued with the 1965 redistricting that was conducted pursuant to a decision by the California State Supreme Court limiting population deviations between supervisor districts.[134] The 1965 redistricting again minimized the impact of adding Latina/o voters to Supervisor District 3, even though Supervisor Warren Dorn's representative on a redistricting committee recommended subtracting heavily concentrated Latina/o communities of the San Gabriel Valley from Supervisor District 1 into Supervisor District 3. Acceptance of such a transfer would have increased the voting strength of Latinas/os in Supervisor District 3. To avoid such an increase, a complicated two-step exchange was undertaken in order to minimize the impact of adding more Latinas/os into Supervisor District 3.[135] Also, the 1971 redistricting pursued the same objective of fragmenting Latina/o voting strength in East Los Angeles and the San Gabriel Valley.[136] As to these series of county supervisor redistrictings, the Court concluded:

> "The Court finds that the Board has redrawn the supervisorial boundaries over the period 1959-1971, at least in part, to avoid enhancing Hispanic voting strength in District 3, the district that has historically had

[130] *See Cano v. Davis*, 211 F.Supp.2d 1208 (Three Judge Court) (C.D.Cal. 2002), *judgment affirmed*, 537 U.S. 1100 (2003).
[131] *See supra* note 7, *Garza*, 756 F.Supp. at 1309.
[132] *Id.*, at 1309-1310.
[133] *Id.*, at 1310.
[134] *Id.*
[135] *Id.*, at 1310-1311.
[136] *Id.*, at 1311-1312.

> the highest proportion of Hispanics and to make it less likely that a viable, well financed Hispanic opponent would seek office in that district. This finding is based on both direct and circumstantial evidence, including the finding that, since the defeat of Edward Roybal in 1959, no well-financed Hispanic or Spanish-surname candidate has run for election in District 3."[137]

Finally, as to the 1981 county supervisor redistricting, the Court in *Garza* held that the intent of this redistricting was to continue splitting the Latina/o core "almost in half," in order to preserve the incumbencies of the five Anglo supervisors by minimizing Latina/o voting strength and "further impair the ability of Hispanics to gain representation on the Board."[138] Only after the successful outcome of the *Garza* litigation did this decades-long division of East Los Angeles and the San Gabriel Valley and resulting dilution of Latina/o voting strength come to an end.[139]

Apart from this history of discrimination that touches upon the right to vote involving the redistricting of election districts at the congressional, state senate, legislative, and county supervisor levels in Los Angeles County, there is a similar history involving another device that has diluted Latina/o voting strength: at-large methods of election. Although prior litigation in federal and state courts has been unsuccessful in dismantling at-large election systems in the

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[137] *Id.*, at 1312-1313.

[138] *Id.*, at 1317-1318.

[139] Other voting rights cases are part of the legacy of this history of discrimination affecting the right to vote. As previously discussed, the *Castro* case involved a challenge to the application of an English-only literacy test. This challenge arose out of Los Angeles County. *See supra* note 112 and accompanying text. In *Calderon v. City of Los Angeles*, 93 Cal.Rptr 361 (Cal. Supreme Court), there was a challenge initiated based upon a violation of the one-person one-vote principle against the City of Los Angeles City Council Districts. The Districts had been redistricted based upon a voter registration base and not a population base. The State Supreme Court noted that such a redistricting could have discriminated against the Latina/o and African American communities:

> "Our preference for a population, rather than a registered voter, standard is rooted in another important consideration. The instant complaint alleges that the present voter-based system results in severe under-representation of those districts with heavy concentrations of blacks and Mexican-Americans. . . . [opinion then presents population and voter registration comparisons among minority and Anglo council districts demonstrating that Anglo districts with significantly less population elect a single city council member while the minority districts with significantly more population elect just one city council member]
>
> Although such a discriminatory effect would have to be proved at trial, the United States Supreme Court has asserted that an otherwise acceptable apportionment plan may fail to pass constitutional muster if designedly or otherwise, it operates to minimize or cancel out the voting strength of racial or political elements of the voting population. , , , Where, for any reason, a nonpopulation-based scheme tends sharply to reduce the representation of such groups, it must be regarded as constitutionally suspect."

Id., 481 P.2d at 494-495 (internal citations and quotation marks omitted). There was also a successful redistricting challenge filed by the Department of Justice against the Los Angeles City Council for maintaining a redistricting plan that diluted Latina/o voting strength in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. *U.S., Carrillo v. City of Los Angeles*, Civil Act. No. CV-85-7739 JMI (JRX) (C.D.Cal. 1985).

County,[140] the continuing dilutive effects of these methods of election is evident in the absence of Latina/o representation on cities and school districts containing significant Latina/o populations.

The following table[141] for cities located within Los Angeles County is illustrative. Out of the 88 municipalities in Los Angeles County, 22 cities have significant Latina/o populations and no Latina/o representation on the city council. This data is very revealing. First, with the exception of two cities,[142] elections are conducted on an at-large election basis. As previously, discussed when an at-large method of election is coupled with racially polarized voting, the candidates preferred by the minority community are usually defeated. In the discussion regarding the *Gingles* preconditions, the studies presented in support of a finding of racially polarized voting concluded that elections throughout Los Angeles County were racially polarized. Second, with the exceptions of a few cities,[143] these municipal elections are conducted at a time when low voter participation occurs. The months of March and April are not months that coincide with statewide or county-wide elections. This problem of low voter-turnout is further compounded by conducting in elections in odd numbered years when issues and public offices major importance are not present.[144]

Table 3
Cities in Los Angeles County Containing 10% or More Latina/o Population and No Latina/o Representation on City Council

[140] *See supra* note 120, *Aranda* (unsuccessful at-large election challenge filed in federal court against the City of San Fernando). *See Carrillo v. Whittier Union High School Dist.*, 154 Cal. Rptr. 75 (Cal. State Supreme Court "ordered that the opinion be not officially published.") (unsuccessful at-large election challenge filed in state court against the Whittier Union High School District).

[141] This municipality table was prepared from several sources: http://lacounty.info/88%20Cities%20in%20Los%20Angeles%20County.pdf (list of cities in Los Angeles County); all election information is derived from the League of Women Voters Smart Voter website and links to city websites (city websites not listed), unless otherwise noted; election returns were reviewed to determine the date of the election and whether elections are conducted on an at-large or district basis. http://www.smartvoter.org/ca/la/; list of cities conducting district elections http://www.cacities.org/resource_files/23513.DISTELEC.doc (the City of Coachella is erroneously listed as conducting district elections) (League of California Cities website); Bellflower http://www.bellflower.org/home/index.asp?page=49; South Pasadena - http://www.ci.south-pasadena.ca.us/government/citycouncil.html; Cerritos - http://www.ci.cerritos.ca.us/.

[142] Bradbury and Redondo Beach City.

[143] Palmdale, Santa Monica, Torrance, and Arcadia.

[144] The following cities conduct their municipal elections in odd numbered years: Compton, Bellflower, Palmdale, La Mirada, Signal Hill, San Dimas, Temple City, South Pasadena, La Habra Heights, Redondo Beach City, and Cerritos.

	Name of City	Hispanic or Latino (of any race) %	Total Number of Latinas/os on City Council	At-large	District	Date of Election - Month	Date of Election Even or Odd Year -
1	Compton	56.8	0	1		April/June	O
2	Whittier	55.9	0	1		April	E
3	Lawndale	52.1	0	1		April	E
4	Bellflower	43.2	0	1		March	O
5	Palmdale	37.7	0	1		Nov.	O
6	La Mirada	33.5	0	1		March	O
7	Signal Hill	29.0	0	1		March	O
8	Lancaster	24.1	0	1		April	E
9	Culver City	23.7	0	1		April	E
10	San Dimas	23.3	0	1		March	O
11	Glendora	21.7	0	1		March	O
12	Santa Clarita	20.5	0	1		April	E
13	Temple City	20.5	0	1		March	O
14	S. Pasadena	16.1	0	1		March	O
15	Bradbury	13.9	0		1	April	E
16	La Habra Hts	13.6	0	1		March	O
17	Redondo Bch	13.5	0		1	March/May	O
18	Santa Monica	13.4	0	1		Nov.	E
19	Torrance	12.8	0	1		June	E
20	El Segundo	11.0	0	1		April	E
21	Arcadia	10.6	0	1		June	E
22	Cerritos	10.4	0	1		March	O

The same dilutive feature and impact is found in school districts located within Los Angeles County, as demonstrated by the following table.[145]

[145] This school district table was prepared from several sources. The total number of school districts in Los Angeles County was derived from two sources: 1) Los Angeles County Office of Education, http://www.lacoe.edu/orgs/1/index.cfm?ModuleId=14&search_by=yes&search_orgid=*&Category=32&keyword= (last visited July 30, 2006); 2) League of Women Voters Smart Voter website (listed school districts that do not appear on Los Angeles County Office of Education website), http://www.smartvoter.org/ca/la/ (last visited July 30, 2006). The school population information was derived from one source: Institute of Education Sciences, United States Department of Education, National Center for Education Statistics, School District Demographics Systems

Table 4
School Districts in Los Angeles County Containing 10% or More Latina/o Population and No Latina/o Representation on Governing Board

	School District	% Lat. Pop.	No. of Lat. Bd. Mem.	At-Large	Dist.	Date of Elect. - Month	Date of Elect. Even or Odd Year
1	Downey Unif. S. D.	57.7	0		1	Nov.	O
2	Norwalk LaMirada Unif. S. D.	53.7	0	1		Nov.	O
3	West Covina Unif. S. D.	50.2	0	1		Nov.	O
4	Covina Valley Unif. S. D.	44.9	0	1		Nov.	O
5	Fullerton Joint Un. S. D.	36.0	0	1		Nov.	E
6	Monrovia Unif. S. D.	35.0	0	1		Nov.	O
7	Long Beach Unif. S. D.	34.6	0		1	Apr./June	E
8	Keppel Un. Ele. S. D.	34.1	0	1		Nov.	O
9	Castaic Un. S. D.	32.8	0	1		Nov.	O
10	Lowell Jt. S. D.	31.3	0	1		Nov.	E
11	Antelope Val. Un. Jt. H. S. D.	29.8	0	1		Nov.	O
12	Eastside Un. S. D.	26.3	0	1		Nov.	O
13	Gorman Ele. S. D.	26.3	0	1		Nov.	O
14	Burbank Unif. S. D.	24.9	0	1		Feb./Apr.	O
15	Lancaster S. D.	24.3	0	1		Nov.	O
16	Bonita Unif. S. D.	23.8	0	1		Nov.	O
17	Culver City Unif. S. D.	23.7	0	1		Nov.	O

http://nces.ed.gov/surveys/sdds/ (last visited July 30, 2006). The election date and method of election were derived from a review of election returns available from smartvoter.org and telephone calls where noted. Information on the ethnicity of the governing school boards was prepared by visiting the links provided by the Office of Education to each of the individual school districts. When such links were not available, the school district website was visited. If no website was available, the information was secured by telephone calls.

Apart from Latina/o political under-representation on city councils and school districts, Latinas/os experience a similar under-representation in the State's judiciary. For example, out of about 430 Superior Court Judges in Los Angeles County, it is estimated that about 10% are Latina/o. Alan Clayton, Director of EEO, LACCEA (independent research on file with Alan Clayton). State Senate Constitutional Amendment No. 16 seeks to address this issue of under-representation by mandating the creation of separate election districts for the Los Angeles County Superior Court. These election districts would consist of multi-member districts where judges would seek election to specific seats. http://info.sen.ca.gov/cgi-bin/postquery?bill_number=sca_16&sess=CUR&house=B&site=sen.

Table 4
School Districts in Los Angeles County Containing 10% or More Latina/o Population and No Latina/o Representation on Governing Board

	School District	% Lat. Pop.	No. of Lat. Bd. Mem.	At-Large	Dist.	Date of Elect. - Month	Date of Elect. Even or Odd Year
18	Newhall S. D.	23.1	0	1		Nov.	O
19	Sulphur Springs S. D.	21.0	0	1		Nov.	O
20	Temple City Unif. S. D.	18.9	0	1		Nov.	O
21	Claremont Unif. S. D.	16.8	0	1		Nov.	O
22	South Pasadena Unif. S. D.	16.1	0	1		Nov.	O
23	Hughes Eliza. Lakes Ele. S. D.	14.1	0	1		Nov.	O
24	Redondo Beach Unif. S. D.	13.5	0	1		March	O
25	Torrance Unif. S. D.	12.8	0	1		Nov.	O
26	Acton-Agua Dulce Unif. S. D.	11.1	0	1		Nov.	O
27	El Segundo Unif. S. D.	11.0	0	1		Nov.	O

Abbreviations: Un. – Union; S. – School; D. – District; Unif. – Unified; Ele. – Elementary; Jt. – Joint; Lat. – Latina/o; Pop. – population; No. – Number; Bd. – Board; Mem. – Member; Dist. – District; Elect. - Election

Out of approximately 81 school districts in Los Angeles County, 27 have significant Latina/o populations and yet no Latina/o representation on school governing boards. As with the city data, with the exception of two school districts,[146] elections are conducted on an at-large election basis. Also with the exceptions of three school districts,[147] elections for the remaining school districts are conducted in odd numbered years, when there is usually lower voter turnout.

The city and school district tables demonstrate that Latina/os continue to experience the effects of a history of discrimination that has touched upon the right to vote. When governmental entities contain significant Latina/o populations, the complete absence of Latina/o representation on the jurisdiction's governing board suggests that the election structure coupled with the timing of the election may have a dilutive effect on Latina/o voting strength. Such a potential dilutive effect would be the consequence of this history of voting discrimination that has directly affected Los Angeles County. Starting with the gerrymandering of congressional and legislative districts in the 1960s, the discriminatory county supervisor redistricting of the late

[146] Downey Unified School District and Long Beach Unified School District.
[147] Fullerton Joint Union School District, Long Beach Unified School District, and Lowell Joint School District.

1950s, the use of English literacy tests that prevented limited English-proficiency Latinas/os from participating in the electoral process, to the past and current use of at-large methods of election in municipalities and school districts, this history of voting discrimination provides context for evaluating the continuing discriminatory effects of a supervisor districting plan manages to over-concentrate and fragment Latina/o voting strength at the same time. Moreover, when this documented history of voting discrimination in Los Angeles County is viewed in conjunction with a similar history that occurred statewide, there can be no question that such discrimination was pervasive, long-standing, and pernicious in its effect on diluting Latina/o voting strength. Based upon this extensive discussion, the factor of a history of discrimination that touches upon the right to vote has been met.

Conclusion

Based upon this extensive history of voting discrimination and the issue of minority electability, the failure to create a third Senate District that contains a 38.6% Latino CVAP may result in a violation of the intent evidentiary standard of both Section 5 and Section 2 of the federal Voting Rights Act.

Sincerely,

Joaquin G. Avila

Joaquin G. Avila