Panel 1: A National Survey of Regional Redistricting Approaches: Experiences in Texas, New York, the South and Colorado

Comments by Katharine I. Butler†

Today I will discuss the role that Section 2 of the Voting Rights Act (hereinafter Section 2) has played in the legislative and congressional redistrictings that followed the 1990 census. A constitutionally mandated redistricting to conform to one person, one vote or to reapportion congressional seats among the states should be distinguished from the situation in which Section 2 typically arises. Section 2 is more commonly employed by a racial or ethnic minority group to challenge an existing multi-member district or an at-large election system on the grounds that the system dilutes the group’s voting strength. My focus, however, is on the role of Section 2 when a new apportionment plan is necessary not because minority plaintiffs have successfully established a racial vote dilution claim, but rather because the existing plan is malapportioned.

I will address the following five questions. (1) How are the states taking Section 2 into account when they adopt new districting plans in response to the 1990 census? (2) When legislatures fail to adopt districting plans, and the federal courts are called upon to act in the legislatures’ stead, how are the courts taking account of Section 2? (3) Have the legislatures and the courts incorrectly interpreted Section 2 to require race-based apportionment? (4) May either the legislatures or the courts voluntarily employ affirmative race-based apportionment if such measures are not required by the Voting Rights Act? (5) Finally, in my opinion, what consideration should the legislatures and the courts give to Section 2 when devising electoral districts to replace existing malapportioned

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1. I have edited my comments for clarity. In some instances I added material that was not presented at the conference because of time constraints. Much has happened on the redistricting front since the conference, but a complete update of my comments would not be in keeping with LA RAZA LAW JOURNAL’s format for presenting the symposium. Nevertheless, I have in a few instances provide information about matters that occurred after the conference.
A brief overview of Section 2 of the Voting Rights Act is necessary to understand my presentation. Section 2 is Congress' effort to protect minority voters from electoral schemes that dilute their voting strength. Simplified, "racial vote dilution" occurs when, through the interaction of the majority group's voting patterns and the electoral structure, a politically cohesive racial or ethnic minority group is deprived of the advantage of its numbers in the political process. Originating in the civil rights era of the 1960's, racial vote dilution cases were initially based on the Fourteenth Amendment, and most involved challenges to multi-member legislative districts or at-large electoral schemes for local governmental bodies.

The courts never clearly articulated a definition for when racial vote dilution existed or why it was unconstitutional, but the closest analogy was to "numerical dilution" claims brought by voters living in overpopulated districts. Voters in overpopulated districts cast votes that were worth less than those of voters in underpopulated districts — i.e., a voter in a 1000 person district had less chance to affect the outcome of the election in his district or to influence his representative once elected than a voter in a neighboring district containing only 500 people. In an at-large system, blacks or Hispanics who were a minority of the voters and whose favored candidates received few white votes were unable to elect candidates of their choice. Moreover, minority voters did not pose a political threat to white candidates who could be elected without the group's vote. Thus, minority voters had less influence than whites in electing the jurisdiction's representatives and correspondingly less access to the representatives once elected. The "cure" for numerical dilution (malapportionment) was to create districts containing equal numbers of

2. At the time of the symposium very few courts had faced this issue. Section 2 was enacted in 1982 after most of the 1980 redistrictings had been accomplished, and the first Supreme Court interpretation of the new provision, Thornburg v. Gingles, 478 U.S. 30 (1986), was not until 1986. My views on the appropriate consideration to give Section 2 are based on seventeen years of thinking and writing about the role of the courts in redistricting. See, for example, Butler, Reapportionment, the Court and the Voting Rights Act: A Resegregation of the Political Process?, 56 U. Colo. L. Rev. 1 (1984). In addition, I have advised many states and local governments on compliance with Section 2 and other provisions of the Voting Rights Act. My views are not necessarily shared by the courts. I hope that our differences will be clear to the reader.

3. See, e.g., White v. Regester, 412 U.S. 755 (1973). A multimember district is one in which all the voters of the district elect all of the district's representatives. Such districts were once typical in state legislative apportionment schemes, as for example when electoral districts were composed on entire counties with the number of representatives to be elected per county determined by each county's population. An at-large electoral system is one in which all of the jurisdictions voters elect all representatives, as for example when all five members of a city council are elected by all of the city's voters.

4. Racial and ethnic minority groups were distinguishable from others in the electorate whose candidates routinely lost in part because many of their common political interests stemmed from a shared history of discrimination, including discrimination in their exercise of the franchise.
people. The "cure" for racial, or minority, vote dilution was to divide the multi-member district into single member districts, some number of which would be majority-minority in population.

The constitutionally based racial vote dilution claim was seriously undercut by the Supreme Court in *City of Mobile v. Bolden.* There the Court concluded that unless plaintiffs could demonstrate discriminatory intent in the adoption of these electoral systems, there was no constitutional violation. Congress responded to *Bolden* by amending Section 2 of the Voting Rights Act specifically to restore the old purpose or effect standard from the earlier constitutional cases.

As amended, Section 2 prohibits voting practices that result in a denial or abridgement of the right of any citizen to vote on account of race or language minority status. Section 2 incorporates the language from the pre-*Bolden* constitutionally based cases to say that:

a violation of subsection (a) is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election are not equally open to participation by members of a [protected] class in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

In its first interpretation of Section 2, *Thornburg v. Gingles,* the Supreme Court set out certain pre-conditions that are essential to a minority vote dilution claim. These were (1) that the minority group be sufficiently numerous and sufficiently geographically concentrated to form a majority of a single member district; (2) that the minority group be politically cohesive (i.e., the groups members generally supported the same candidates) so that it could take advantage of a single member district; and (3) that the majority (whites, Anglos) vote sufficiently as a bloc to usually defeat the minority group's preferred candidates. Once these pre-conditions are satisfied, the plaintiffs must then demonstrate by a preponderance of the evidence, based on a totality of the circumstances, that they are being deprived of the opportunity to elect candidates of their choice.

Minority groups have been very successful in challenging at-large elections under amended Section 2. Although less commonly challenged, single member district electoral systems also have the potential to

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9. Id. at 50.
dilute minority voting strength. A politically cohesive, geographically concentrated minority group may be able to elect candidates of its choice if the group is placed in a single district but less likely to do so if its members are fragmented among several districts. When the 1990 census triggered nationwide redistricting of all population-based districts, most of which are single member districts, the issue arose as to how to avoid "diluting" minority voting strength in the process. The remainder of my presentation will be devoted to that issue.

WHAT HAVE THE STATES DONE IN AN EFFORT TO AVOID VIOLATING SECTION 2 IN THEIR POST-1990 REDISTRICTING PLANS?

My observation is that in the redistricting following the 1990 census, legislators assumed that the Voting Rights Act required them to create as many optimal majority-minority (i.e., black, Hispanic, Asian) districts as could be created. Except for equal population, all other criteria for good districting schemes — such as drawing compact districts, respecting political boundaries, and recognizing communities of interests — were ignored in an effort to create the maximum number of minority districts. In order to accomplish this goal, legislatures first drew the minority districts, and then drew districts to protect the incumbents. Then the real controversy began. The conflict among legislative factions almost always purported to center on whose plan created the "best" representation for minorities. In truth, the real motive behind these proffered plans was not even thinly disguised. The alleged "need" to create minority districts often was merely an excuse to accomplish the political objectives of the plans' proponents.

Following are some graphic examples of districts that proponents claimed the Voting Rights Act required. The first example appeared in the Wall Street Journal and is a congressional district proposed for Texas (See Figure I). The dark area is a single district; the remaining white areas are in other districts. The Wall Street Journal described the district


11. I observed this phenomenon first hand in the case of Florida's congressional districts. The Florida legislature was unable to adopt a reapportionment plan for the state's congressional districts. With elections on the horizon, numerous political forces joined together to bring suit in federal court, asking the court to declare the existing districts unconstitutional — the districts were malapportioned, and moreover Florida had gained additional congressional seats as a result of the 1990 census — and to provide an apportionment plan for the state. Florida is the fourth most populous state in the nation. Its population is more diverse than most. The representational needs of South Florida are considerably different from those of the panhandle. Yet, during the five day hearing at which the various factions presented plans for the court's consideration, virtually the only issue the factions discussed was why their plan was the "best" one for minorities.

Figure I: Texas Congressional District 30
Source: Texas Legislative Council

as made up of "tortuous nooks, crannies, squibs and DNA fragments". A member of the Texas legislature was quoted as saying that the district looked like "'four spiders having an orgy.'" The proponents of this district argued that it was required by the Voting Rights Act in order to guarantee minorities an equal opportunity to participate in the electoral process.

The second example is a congressional district adopted by the South Carolina Senate. South Carolina is approximately thirty percent black in population. The legislature was under pressure to create a majority black congressional district. The problem, however, was that, unlike more urban states, South Carolina has no large concentrations of black popula-

13. Id.
14. Id.
15. Id.
tion. In order to create a 65 percent black district — action the Senate believed the Voting Rights Act required them to take at all costs — the Senate produced the dragon shaped district below (See Figure II). The district just coincidently included the residences of all members of the South Carolina Senate who were interested in running for Congress.

South Carolina’s post 1990 redistricting experience is probably typical of what happened in other states. The Democratically controlled legislature adopted redistricting plans for the two houses (House and Senate) of the General Assembly. Both plans were then vetoed by the Republican Governor, who, while not particularly known for his concern with black political interests, justified the veto because the plans were not fair to the state’s black citizens. The “more fair” plan preferred by the Republicans created as many majority black districts as possible, which, to no one’s surprise, also resulted in the maximum number of overwhelmingly white (translate: Republican) districts.\footnote{16. As a result of the Governor’s veto and the legislature’s failure to agree upon a congressional plan, the legislative session closed with no districting plans in place for upcoming elections. All concerned brought suit in federal court. For their congressional plan, the Republicans proposed a plan that would have ousted three of the state’s four incumbent Democratic members of congress. The Democrats plan paired the state’s two Republican members in the same district. The NAACP}
The next examples, two congressional districts for North Carolina, also caught the attention of the *Wall Street Journal* (See Figure III). "District 12 . . . is a long snake that winds its way through central North Carolina for 190 miles . . . scooping up isolated precincts with nothing in common save a large number of minority voters. For much of its length, the district is no wider than the Interstate 85 corridor . . . " 17 The district was created in response to the Justice Department’s demand that a second majority black district be drawn in the state. The first black district (District 1) is no more sensible. "It wanders from the Virginia border almost to South Carolina. Two of its parts appear to be connected only by a river, with the banks on each side in other districts." 18

The final examples are from Florida’s court-ordered congressional plan. The district in North Florida which resembles a floral lei is a slight modification of a district proposed by a Florida Senator as a majority black district (See Figure IV). The district in South Florida, parts of which are connected solely by a road, was proposed by the NAACP and the Republicans (See Figure V). The long narrow lower part of the district is completely surrounded by another district, which litigants informally labelled the "condom district." A third black district (map ignored everything except creating a optimal majority black congressional district. All factions defended their plans on the grounds that theirs was the most beneficial for blacks and therefore required by the Voting Rights Act.

18. *Id.*
not available), proposed by the Republicans and a group of black citizens, resembled bug splats on a windshield connected by strings. It was not adopted by the court.

Figure IV: North Florida Congressional District
Source: Florida Senate

Figure V: South Florida Congressional District
Source: Florida Senate
Because redistricting is by nature one of the most partisan activities a legislature undertakes, one cannot be sure whether districts like those above arise from a genuine belief that the Voting Rights Act requires them, or rather because they offer new "excuses" to pursue political goals. One thing is clear, however, few involved in the process have suggested that engaging in affirmative racial gerrymandering is unconstitutional or an unsound basis upon which to define political influence.19

HOW HAVE THE COURTS RESPONDED?

When courts have been asked to take over because the legislature has failed to produce redistricting plans in time for elections, they appear to have employed two approaches in resolving Section 2 disputes. One approach is simply to accept the view that all the minority districts that can be created must be created, in other words, that the Voting Rights Act requires race-based apportionment. The second approach is to consider very minimal evidence of the elements of a Section 2 claim and then to conclude that a Section 2 remedy is in order. Practically, this second approach differs from the first only in its theoretical basis. Under the first view, the minority group is assumed to be "entitled" to some number of districts, regardless of the degree of gerrymandering necessary to create them. Under the second view, some minimal evidence of a Section 2 violation is considered before reaching the conclusion that racially gerrymandering is necessary to cure the violation. Under either view, the result is the same. The courts impose race-based districts without sufficient evidence of a Section 2 violation.20

Two recent cases demonstrate these approaches. In Hastert v. State Board of Elections,21 the three judge court was expected to produce a congressional reapportionment plan for Illinois after the legislature failed to act in a timely fashion. The court and all the parties agreed that "racial fairness" required the creation of as many 65 percent black districts as feasible. There is no discussion in the opinion of the basis for this conclusion. Nor is there any indication of the court's notion of "feasible" districts. The parties also agreed that the court "needed" to create an Hispanic district. The court noted, "all parties agree that Section 2

19. But see Turner v. Arkansas, 784 F. Supp. 553 (E.D. Ark. 1991), in which Judge Eisele questioned the wisdom of basing representation on race. He noted that effort to concentrate black voters into fewer and fewer districts appears destined to lead to "a system of pure proportionate representation predicated upon factors that should be completely irrelevant to the political life of a democratic society." Id. at 559.

20. The court in Wesch v. Hunt, 785 F. Supp. 1491 (S.D. Ala 1992), avoided the issue entirely. All the parties agreed that a significant "majority-minority" district should be created. This stipulation allowed the court to avoid considering whether Section 2 mandated its creation. Apparently no one raised the possibility that creating a race-based district might violate the constitution.

requires the creation of an Hispanic district at this time." Only the "extraordinary configuration of the proposed Hispanic district agreed to by all parties" caused the court "not to accept this conclusion without scrutiny."

The inability to create a compact Hispanic district should have been a signal to the court that the group did not satisfy the first Gingles' precondition for a Section 2 claim—that the group be sufficiently geographically compact to be a majority of a single member district. Rather the court convinced itself that Hispanics were sufficiently concentrated to satisfy Gingles' geographic compactness requirement, even though the only Hispanic district that could be drawn was created by connecting two Hispanic enclaves by a narrow C-shaped corridor, with additional population captured by shooting rays. Said the court, "[i]n sum, the district looks not unlike a Rorschach blot turned on its side. Few districts have quite so extraordinary an appearance." As to the other preconditions, group political cohesiveness and bloc voting by Anglos sufficient to defeat the group's choice, the court relied on judicial notice to conclude that they had been established.

Hastert actually demonstrates both approaches. As to blacks, the court merely assumed that they were "entitled" to as many 65 percent black districts as could be created. As to Hispanics, the Court "considered" "evidence" of whether the failure to create an Hispanic district would violate Section 2. With no party to the litigation objecting to the creation of a gerrymandered Hispanic district, evidence of the "need" for the district was totally one sided. Nothing in the opinion suggests that the court's Section 2 "analysis" was based on evidence remotely similar in quality to evidence that would have been presented in a true adversarial challenge to an existing election plan. That the court was convinced that the Voting Rights Act required it to create a district that resembled an ink blot suggests that all concerned were highly motivated to reach a "politically correct" result, the law, the constitution and the interest of the electorate notwithstanding.

Consideration of a new congressional apportionment plan for Florida proceeded in much the same vein, except that, while most of the parties to the litigation agreed that blacks and Hispanics were "entitled" to districts, each party urged its own version of the best plan for the state's two minority groups. The three judge court in DeGrandy v. Wetherell appointed a special master to hear evidence in this case. The special

22. Id. at 648.
23. Id.
24. Id. at 649 n.24.
25. Id.
26. Id. at 650.
master in turn appointed an expert witness, Tulane law professor David Gelfand, to assist.\textsuperscript{28}

In this situation, not only were Florida’s existing congressional districts malapportioned, but moreover, Florida was entitled to four additional congressional seats based on its 1990 population. Gelfand identified two primary federal requirements for congressional districting plans: near equal population among district and racial fairness.\textsuperscript{29} Gelfand purported to take a middle of the road approach to Section 2 — neither ignoring it completely nor engaging in a full scale Section 2 analysis, but rather “taking Section 2 into account.”\textsuperscript{30} In the final analysis, however, Professor Gelfand did not engage in the kind of Section 2 analysis that would have been undertaken in an adversarial proceeding, but nevertheless recommended a plan that would have been an extreme remedy if a Section 2 violation had been proven! In support of the creation of the horribly gerrymandered minority districts,\textsuperscript{31} Gelfand cited Congress’s intent to “completely” remedy minority vote dilution.\textsuperscript{32}

Gelfand further justified these gerrymandered districts by noting that Florida law did not really require contiguous districts nor did it require that traditional boundaries be followed.\textsuperscript{33} Moreover, he dismissed concerns about compactness (even though a geographically compact minority group is a precondition for a “true” Section 2 challenge), by noting that “when districts are drawn with the express purpose of protecting minority voting strength (a primary criterion), criticisms of district configurations based upon this (secondary) aesthetic criterion are misplaced.”\textsuperscript{34} As support for this conclusion, Professor Gelfand quotes \textit{Dillard v. Baldwin County Board of Education}.\textsuperscript{35} \textit{Dillard}, however, was not a malapportionment case, but rather, it was a standard Section 2 case in which the plaintiffs had established a violation; thus, the court’s comments only concerned remedial districts.\textsuperscript{36}

\textsuperscript{28} \textit{Id.} at 1081.
\textsuperscript{30} \textit{Id.} at 10-11.
\textsuperscript{31} Two of Professor Gelfand’s districts appear on page 57. One can be aptly described as consisting of minor concentrations of black population islands in a sea of white population strung together by narrow strings. The other district picks up the population necessary to make it majority black by running down a highway, picking up pockets of black population. Ironically, this district is not majority black. Thus, the end result of the gerrymander was to create an “influenced” district.
\textsuperscript{33} \textit{Id.} at 14-16.
\textsuperscript{34} \textit{Id.} at 16.
\textsuperscript{35} 686 F. Supp. 1459 (M.D. Ala. 1988).
\textsuperscript{36} In defense of Professor Gelfand I note that there was little opposition expressed by the parties to the view that these gerrymandered districts were required at all costs. In the interest of full disclosure, I must also note that I participated for a time in the litigation as counsel for the AFL-CIO which took the position that the court was required to follow standard districting criteria in
MUST THE STATE AND THE COURTS ENGAGE IN RACIAL GERRYMANDERING TO COMPLY WITH SECTION 2?

The notion that Section 2 requires the states or the courts in the process of correcting malapportionment to engage in race-based apportionment is, in my view, incorrect. Section 2 is standard legislation in that those alleging its violation have the burden of proof. It provides affected minorities with a race-based remedy only after the plaintiffs have proven that the challenged election practices and procedures deprive them of an equal opportunity to participate in the political process and to elect candidates of their choice. The statute itself, the legislative history, and the Supreme Court's interpretation of Section 2 all recognize that Section 2 does not provide minorities with a right to any number of majority-minority districts in the absence of the proof of a violation.

Clearly, there is to be no presumption of unequal political participation merely because an apportionment plan does not contain some particular number of majority black or Hispanic districts. Indeed, the typical Section 2 suit involves a challenge to an at-large election system in which there are by definition no districts, minority or otherwise.

The Supreme Court has recognized that a Section 2 inquiry is intensely factual and that whether minorities have an equal opportunity to participate in the electoral process must be based on a totality of the circumstances of each case. Thus, a Section 2 lawsuit often takes more than a year to prepare. A trial can last several weeks. I, for example, was involved in a fairly simple Section 2 case involving a thinly populated county in Florida. Discovery lasted three years, and there was a devising a plan, including following notions of compactness, respect for communities of interest, and respect for political boundaries. The AFL-CIO argued that the court should recognize "geographic concentrations of minority voters sufficiently large to constitute a majority of a single member district," but should not ignore all other legitimate districting concerns and engage in outrageous gerrymandering to create majority black or Hispanic districts. The AFL-CIO ceased to take an active role in the litigation when its position met with bitter opposition from the state and national NAACP. Ultimately the Special Master's plan reached a satisfactory "political" result. Even those who had initially objected to the gerrymandering involved accepted the plan when it appeared that their particular political objectives were nevertheless protected. No one appealed the court's adoption of the plan.

37. The statute includes the language, "[P]rovided, that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." 42 U.S.C. § 1973.

38. "The results test makes no assumptions one way or the other about the role of racial political considerations in a particular community. If plaintiffs assert that they are denied fair access to the political process, in part because of the racial bloc voting context within which the challenged election system works, they would have to prove it." S. REP. No. 417, 97th Cong., 2d Sess. 34 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 212.

39. By recognizing certain preconditions, the Court simply requires that Sec. 2 plaintiffs prove their claim before they may be awarded relief. Gingles, 478 U.S. at 48 n.15.

six day trial at which nine experts testified. Throughout the case, no one suggested that the only issue was how many minority districts could be created. Whether an apportionment plan violates Section 2 of the Voting Rights Act is not easily determined. Were the determination easy, plaintiffs would not need three years to prepare. A court would not need to hear from nine experts to decide whether a violation had occurred.

As a practical matter, a state undertaking a state-wide reapportionment simply cannot do a Section 2 inquiry prior to the adoption of the plan. Moreover, because the inquiry is "plan specific", i.e., it depends upon the interaction of an actual plan with voting patterns which must be evaluated in the context of the jurisdiction's historical and political circumstances, a Section 2 inquiry cannot realistically be done until after elections have been held under the redistricting plan. Otherwise the impact of the plan on minority voters is merely speculative.

Thus, when the states and the courts engage in racial gerrymandering to create minority districts, they almost inevitably are doing so without sufficient evidence to believe a Section 2 violation would otherwise occur — in other words, without sufficient evidence that a non-gerrymandered plan would dilute minority voting strength. They are in effect providing a remedy — and indeed in many cases remedies beyond those seemingly envisioned for proven violations — without proof of a violation. Responding to Section 2 in this fashion is somewhat equivalent to a manufacturer paying both actual and punitive damages to potential users of its product prior to anyone suffering an injury or establishing a defect in the product. It is ironic that plaintiffs who challenge an existing election system must prove their case before being entitled to a race-based remedy, but a state enacting a new re-apportionment plan must provide a Section 2 remedy even though no one has proved that one is needed.

**MAY THE STATES OR THE COURTS VOLUNTARILY ENGAGE IN AFFIRMATIVE RACIAL GERRYMANDERING?**

Even though the Voting Rights Act does not require race-based districting, may the states or the courts nevertheless engage in affirmative racial gerrymandering? Such a position is in direct conflict with Supreme Court cases that prohibit the use of race except to remedy a racial violation. In *City of Richmond v. J.A. Croson Co.*,41 for example, the Court held that the City of Richmond, Virginia could not "set aside" some amount of city construction business solely for minority business enterprises. In the principal opinion Justice O'Connor wrote that classification based on race should be strictly reserved for remedial settings.42

42. Id. at 493.
Civil rights groups point to *United Jewish Organizations v. Carey* as granting permission for states to engage in race-based apportionment. In that case, the plaintiffs challenged New York's apportionment plan that divided a Jewish community in order to create a majority black district. New York had created the black district after being informed by the United State Justice Department that without this district the state's plan would not be precleared under Section 5 of the Voting Rights Act. The Supreme Court held that New York's creation of a district based on race was constitutional if the action was required by federal law. That the state's use of race be based on the need to comply with federal law was crucial to the Court's decision. Because all parties to the litigation apparently accepted the proposition that Section 5 did require the use of race-based apportionment, the Supreme Court did not actual consider the issue.

Thus, *United Jewish Organization* is authority for the state's affirmative use of race only if Section 2 requires race-based apportionment. As indicated earlier, the statute, its legislative history, and the Supreme Court's decision in *Thornburg v. Gingles* all mandate that a race-based remedy be premised on a proven violation.

Moreover, there is every reason to assume that a federal court has even less latitude than the legislature to engage in non remedial race-based gerrymandering. The Supreme Court has often noted that when a federal court is called upon to devise a reapportionment plan, it lacks the political mandate to identify and reconcile competing policies and interests. Thus, the courts have less latitude to deviate from established districting criteria. Consequently, plans drawn by federal courts are subject to more stringent standards than those drawn by legislatures and the courts are limited to making only such changes in the state's plans as are required to remedy the federal violation.

In *Connor v. Finch*, the Supreme Court cautioned the lower courts to avoid the appearance of racial gerrymandering. In that case the Court voided the lower court's plan because it fragmented a black population

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44. Section 5 of the Voting Rights Act, 42 U.S.C. § 1973(c) requires certain "covered jurisdictions" to obtain federal preclearance of changes in their election laws, including apportionment plans. Under Section 5, the jurisdiction has the burden of demonstrating that electoral law changes do not have the purpose and will not have the effect of depriving minority voters of the right to vote. The portion of New York's apportionment plan at issue in *United Jewish Organization* was in a county subject to Section 5.
45. The Supreme Court may resolve this issue in *Voinovich v. Quilter* (No. 91-1618), argued Dec. 8, 1992. The lower court held that Ohio engaged in unconstitutional racial gerrymandering when it gerrymandered to create black majority districts without conducting a Section 2 analysis to determine if a "remedy" was needed.
concentration when adherence to standard districting criteria would have left it intact. Arguably, a similar rule should apply to affirmative racial gerrymandering. It is not the prerogative of the federal courts to impose on the states districts that look like strains of DNA!

**HOW SHOULD STATES AND COURTS TAKE ACCOUNT OF SECTION 2 IN THE APPORTIONMENT PROCESS?**

In light of my views, should the states and the courts ignore Section 2? If not, short of a full blown adversarial proceeding directed toward any and every plan that may be offered by the parties, how can Section 2 be considered? It would be as imprudent to ignore Section 2 as it would be impractical to conduct a standard Section 2 analysis in the context of either legislative or emergency court proceedings. However, as would the prudent designer of a product, the states and the courts should avoid plans that raise obvious questions of racial fairness. Those drawing plans should recognize that minority voters frequently do constitute a community of interests and that many of these interests can be traced directly or indirectly to past discrimination. They should recognize that minority voters often attempt to further their common interests by cohesively supporting candidates for public office. They should take note that a geographically based representation scheme, such as single member districts, inevitably either recognizes or thwarts the voting strength of concentrations of minority voters.

The states, and when necessary the courts, should take Section 2 into account in their districting scheme by following standard districting criteria to create plans that recognize naturally occurring black and Hispanic population concentrations. Those concentrations sufficient to constitute a majority of a district should be kept together. Keeping contiguous minority populations together should prevail over respect for political subdivisions. For example, the desire to follow county lines should be secondary to creating an otherwise compact black majority district by combining black population in adjoining counties.

The number of majority black and Hispanic districts should be dictated by the geographic distribution of the population. Section 2's standard "only protect[s] minority votes from diminution proximately caused by the districting plan; it [does not] assure racial minorities pro-


50. By using the term "should", I mean only to imply a wise course of action — not that minority voters are "entitled" to be kept together. If a state consistently follows a policy of respecting county boundaries, and chooses to follow this policy even though it divides a minority population concentration, no presumption of discrimination should arise. The minority group is of course free to challenge the plan once in place as dilutive of its voting strength. If the group demonstrates that, under the totality of the circumstances, the plan dilutes its voting strength, the policy of following state boundaries will probably not be sufficient to save the plan.
portional representation." While what constitutes a "naturally occurring" majority-minority districts is subjective, it should not be solely in the eyes of the beholder. Essentially, absent compelling counter considerations, states and courts should draw compact, sensible districts that rely on natural boundaries, including political subdivision lines, but that do not divide concentrations of minority voters. Only rarely should recognition of minority voting strength justify the creation of irregularly shaped districts that bear no relationship to political subdivisions, communities of interest or other neutral factors.

Similarly, the minority percent of a district should be determined not by some magic number, but by the geographic distribution of the population. There is a popular belief that minority voters are "entitled" to a district in which they will constitute 65 percent of the total population — a figure arrived at by discounting for the relatively smaller percentage of the minority population that is of voting age and for lower voter registration and turn out rates. Just as the number of minority districts is determined by the distribution of the minority population, so should the percent minority for each district. Those drawing districts should follow standard districting criteria and also keep concentrations of minority voters together if their numbers are sufficient to equal a majority of the population of a district. Line drawers should not, however, gerrymander to create districts containing some magic minority percentage.

CONCLUSION

In the final analysis, you might ask, "have you not reached the same result — some number of minority controlled districts — by a different route?" The answer is no. My views differ from those who rely on Section 2 as an excuse for gerrymandering in both underlying theory and practical effect. I see Section 2 as an "anti-discrimination" legislation. If protected minorities can establish that an election systems discrimi-

52. The minority districts adopted by the courts in Hastert and DeGrandy do not comply with the standard of compactness. To define "compactness" as something other than "geographic compactness" ignores the Gingles' precondition to a Section 2 claim — that the minority group be sufficiently geographically compact to constitute a majority of a single member district. Similarly, it is circular reasoning to say that compactness can be ignored when creating a minority district when one of the preconditions for a minority group having a potential Section 2 claim is that the group be "geographically compact".
54. If the minority group is too small or too geographically dispersed to constitute a majority of a single member district, there is no potential for a Section 2 claim. Line drawers should not, however, disregard standard districting criteria if to do so would unnecessarily fragment the group. See Connor v. Finch, 431 U.S. 407 (1977).
nates against them, they are entitled to a remedy that takes race into account. Minority group advocates see Section 2 as “entitlement” legislation. They say minorities are “entitled” to a “fair” election system, which translates into every optimal minority district that can be created, without obscene gerrymandering.

From a practical perspective, my view says to legislators, “try to avoid suit on this plan. Don’t invite litigation.” Under my view the legislature can go a step further. It can recognize that minority voters constitute a “community of interest” and, to the extent possible, treat that community as it would any other community that is geographically definable, and thus, capable of recognition in the districting plan.

But I part company with advocates who argue that compactness is not a geographic term, but an “interest” term, and that the only relevant concern is whether the district “performs” for the minority group. When states and courts draw lines down interstates, rivers and pipelines to join together pockets of minorities in order to create majority minority districts, they far exceed anything that could be required as a remedy for a Section 2 violation. At that point, line drawers are making an impermissible and unconstitutional use of race.
Comments by Andy Hernández†

The district we drew in Houston looked something like the district in the case that Professor Butler mentioned earlier. I would like to draw your attention to the fact that an Hispanic Congressman has never been elected out of Houston, a city that is home to 700,000 Hispanics, the largest concentration of Hispanics in Texas. Primary elections have recently taken place and there is an Hispanic in the run-off who has a high probability of winning.

Although I am not a lawyer, and am therefore not familiar with the legal implications, I am one of those folks who is trying to make democracy work in this country. And, it seems to me, that the whole point of this exercise of voting is representation, and that the whole point of building a democratic institution is to bring people into the process, not to keep them out. Because I am more familiar with the practical aspects of the redistricting process, I will leave the legal issues to Professor Butler. I know about the before and after: before the plan, Hispanics did not have a voice; after the plan, Hispanics will elect someone who will give them a voice. That is good enough for me.

This question about whether a community of interest exists and how it is defined is an interesting one. When a population has been disenfranchised, it does not have representation. If you drew a district which would give this disenfranchised population a representative voice, Professor Butler, then you would fulfill an extremely important interest in terms of democratic life and norms, and in terms of the quality of our republican representative government. Any question of compactness would not be as significant as the fulfillment of this interest.

However, I think Professor Butler makes a good argument regarding those states that are resistant to changes in the political order. The question in those states is one of power—who has it, and who is kept out of it. We have gone to court hundreds of times, and win maybe ninety percent of the time. We must be doing something right and the states must be doing something wrong. In almost every case when we have gone to court, such as the 1980 reapportionment fight, it was the claims of the minority plaintiffs that were upheld, not those of the state. It is not that we controlled the judgeships; we do not control the resources that amass on the other side. Whatever the explanation, the fact remains that minority plaintiffs have won roughly nine out of every ten times they went to court in the Southwest.

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Let me discuss what happened in Texas (because it was a strategy for the entire Southwest), in terms of how we ensured that Hispanics were at the table to promote and protect the interests of our voters. The story really begins with the 1990 Census, since a census is the starting point for both the reapportionment and the redistricting processes. (Reapportionment is the method of deciding where the districts will be located, at least at a congressional level, based on population, while redistricting is the actual act of drawing the district boundaries.) However, the Latino community began at a very great disadvantage because everyone, including the Census Bureau, admitted that the census significantly undercounted Hispanics. Since districts should have equal populations, in accordance with the inviolable rule of "one person, one vote," which nothing supersedes, the undercount placed Hispanics at a major disadvantage. The undercount effectively meant that districts were not apportioned equal populations, thereby superseding the inviolable rule, and, thus discounting Hispanics before the redistricting process had even begun.

Apart from the problems with the census, it must be remembered that when the states began this entire process, they had a mass of resources available to them: literally millions and millions of dollars, lawyers, experts, as well as the political status quo. There were, and are, political alliances, assets, and strengths already in place to keep the system the way it is. Whether this is a malicious attempt to keep Hispanics out of power, or just a stratagem to protect those in power, it is clear that there is a permanent self-interest in place that is highly resourceful.

Now, this meant that we had to be equally resourceful. And what resources or capabilities did we need? We needed the ability to draw the lines, take on the legal fight, and create public advocacy for our plan. Two years in advance, Southwest Voter Research Institute, the Mexican American Legal Defense and Educational Fund, California Rural Legal Assistance, and Texas Rural Legal Assistance joined together in a coalition to begin organizing for this fight. You must remember that this entire process of reapportionment and redistricting is highly political; it is not a case about creating a "right" district. It is a political process about who wins and loses in terms of representation, and what interests are going to be served. No one, ultimately, can claim the moral high ground. The states certainly cannot claim it, because the states are involved in the legislative process of protecting the incumbents who compose the legislatures. There is no argument that the first interest of an incumbent is to protect his or her seat. A state claiming a moral high ground on the basis that it is promoting the state's interests is a little hypocritical. Such a state promotes the interests of those legislators who form the legislative body. Thus, a state's interests are different from
those of minority voters, inasmuch as the state does not promote the interests of minority voters who are going to lose out in the redistricting process, even though these voters are as much a part of the state as the politicians who are elected by their votes.

We began the entire process in Texas, first of all, by holding a large state-wide conference where we gathered over eight hundred Hispanic leaders for the purpose of constructing an agenda. We trained our folks how to redistrict, that is, how to draw the actual district lines. We also included local leadership in every step. Local community groups were able to have input into the process, which made it a much more open, democratic process than anything the legislature had ever done. We accomplished this, in part, by having an open office, where citizens were involved in the drawing process. Whenever our redistricting scheme differed from that proposed by the local leadership, we went right back to the community and asked for its input. We believed this was the best way to optimize opportunities for Hispanic voters to elect a representative of their own choosing. You may notice I did not say opportunities for Hispanic-elected officials; I said opportunities for Hispanic voters to optimize their effective voting. This point turns on the question of equal or effective opportunities, namely, when is equal opportunity just something rhetorical, and when is it effective, real, and meaningful opportunity?

Here, the state was susceptible since it had lost so many times on this very point. For example, in 1980, a hundred cases were lost throughout the State. Nevertheless, like the other southwestern states, Texas was not looking for ways to comply with the Voting Rights Act. It fought us all the way down the line, as did other states. New Mexico, for example, fought us even though it did not come under the Act. The state eventually lost the lawsuit, because of the kind of plan it threw together, and had to file another lawsuit once it did put itself under the Act. The amazing fact about the whole episode is that the state actually worked to be covered by the Voting Rights Act.

Returning to the Texas case, we then began the actual technical process of drawing districts that met the “fair” and “equitable” criteria. This was the process of creating the political context out of which our voices would be heard with the same degree of seriousness as any incumbent, political party, or other interest involved in the redistricting process. We used the Voting Rights Act as a reference point, a reminder to the state and the other interests that they had lost many times on this question.

What happened next would take pages to relate. You could proba-

bly develop a course curriculum on redistricting and voting rights based solely on the lawsuits involved in Texas, but since we do not have the time to discuss in detail what occurred, I will merely give you the highlights.

Basically, what occurred was that Hispanic and black plaintiffs challenged the redistricting process on the basis of the census undercount. We were able to enter into a settlement with a state court which ruled that the interview times that had been imposed by the Census Bureau did not meet the requirements of the Voting Rights Act and the Texas Constitution. There followed a number of political gyrations back and forth. We then entered into a settlement on the Senate and House side of the congressional plan that came forward, which, in our minds, had been fashioned in a way that provided blacks and Hispanics the opportunity to win other seats. Of the new congressional districts which Texas received, Hispanics were the majority in two and blacks were the majority in one. We, of course, viewed three minority-majority districts out of three districts created as optimal.

At this point, the Texas Supreme Court entered the fray, and said that a permanent plan that is not open to other interests, parties, or negotiating processes is not permitted under the law. This ruling opened the door for the federal court to step in and pose its own Senate plan without consulting any of the interests involved. It is interesting to note that the court presumed to know what was in the best interest of minorities, while those who had been constructing redistricting plans for the last twenty years, and who had articulated and created the debate about minority voting rights were not consulted. Logically, it seems that the court would recognize that these people would be the ones to consult, especially since they created the debate, helped get the Voting Rights Act enacted and extended to Hispanics, and have under their belt the experience of hundreds of cases. It therefore makes sense that, if you wanted to draw a plan that would be good for minorities, then you would ask us for our input. Not only were we not asked by the federal court, but we were kept out of all the line drawing that occurred.

So, this Republican federal court, along with the attorney for the Republican party and its 1980 redistricting, called upon the state legislature, which was also Republican, to help craft a redistricting plan to benefit minorities. The plan the federal court formulated denied Latinos two effective, winnable Senate seats that our settlement plan had created. This should not surprise anyone since manipulating the numbers can result in a minority district that is not an effective district. Such a result can be achieved by bringing in other populations that are guaranteed to vote against Hispanic candidates. There are ways to create districts with numerical majorities and, at the same time, not create an effective oppor-
tunity for Hispanic voters to be the decisive vote in that district. This is precisely what the federal plan does.

However, let me tell you the actual results of the plan. On the Senate side, I think we are going to be stuck with the federal plan. This would only give Hispanics an increase of two seats, which would bring the total to seven. In the Congress, there are now five Hispanic-majority districts, four of which are represented by Hispanics. There are also two more majority districts that we drew, which would bring the total to seven. Of these last two districts, one is uncontested—San Antonio, which is south Texas—with an Hispanic candidate running, so it will be Hispanic. The other is a run-off in Houston. Based on the run-off election, where seventy percent of the vote went to three Hispanic candidates collectively, I think Hispanics are going to win that district in a month. So there will probably be two new Hispanic congressmen in Texas. Overall, there are twenty-one districts presently represented by Hispanics. We believe that total will soon approach thirty since it seems clear that Hispanics will be elected in five or six districts in the next election, and will be the decisive vote in other districts.

Ultimately, I think the bottom line is whether, after the redistricting process, we have made our democratic institutions more structurally inclusive. Are more people participating in their own self-governance? Secondly, are we closer to our principles of representative government? Namely, do the people we elect really reflect who we are? And thirdly, do the votes of Hispanic voters have the same amount of power as anybody else in the election process? Are their votes effectively equal in terms of their potential to elect on election day? If the answers to these questions are yes, then I cannot see how the redistricting process is detrimental.

Throughout history there has always been great resistance to the political emergence of previously voiceless groups, particularly when their emergence makes claims upon power and change. A hundred years ago, no one suggested that radical change of the political system and processes was harmful when single-member districts went to at-large elections because minorities started winning some elections. That change was appropriate at the time. It seems to me that, now, we are similarly in need of change. Every study shows that when the change was made back to single-member districts, the number of Hispanic-elected officials increased three-fold. That is the reason minority plaintiffs have made redistricting such a matter of contention. Because, in the end, the issue is really whether or not we are in control of our own government.
Comments by Peggy E. Montañó†

First, let me thank you for inviting me to share with you my experiences in redistricting and reapportionment from a reapportionment commissioner's perspective.¹ The "old politics" of Colorado-style reapportionment and redistricting were simple: districts were drawn by Democrats and Republicans in a series of horse trades where the only variables were which incumbent state legislators or congresspersons would be sacrificed and where new seats would be created in the political tug-of-war.

The Voting Rights Act, and particularly the amendments to Section 5, created "new politics" in reapportionment and redistricting. Opportunities were created for new parties, especially minorities, to enter the fray. African-Americans and Hispanics in Colorado sought voting districts with a sufficient base of minority voters to elect minority choice representatives. As the lines were drawn, these minority groups worked to create minority voting blocs and political cohesion within the new districts. Though esoteric, these methods quickly became tools of the trade and were successfully used in many geographic areas.

SYNOPSIS OF THE REAPPORTIONMENT PROCESS IN COLORADO:

Colorado is one of the few states with a constitutionally created independent reapportionment commission whose duty is to establish, revise, or alter state legislative districts after each federal census of the United States.² Conversely, federal congressional districts are still drawn by Colorado's General Assembly.³

After each federal census, the Colorado Reapportionment Commission is mandated to review and establish, revise, or alter the state legislative districts. As such, the Commission is mandated to publish a preliminary reapportionment plan within ninety days after the commission convenes or the necessary census data is available.⁴ As part of the plan development process, the Commission is also required to hold public hearings throughout the state to allow Colorado citizens to comment on the proposed plan.⁵ After the completion of the hearings, the Com-

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¹ My comments will be mainly based on my experiences with Colorado's reapportionment and redistricting undertakings as a result of the 1990 United States Census.

² COLO. CONST. art. V, § 48.
³ COLO. CONST. art. V, § 44.
⁴ COLO. CONST. art. V, § 48(e).
⁵ Id.
mission is required to submit a finalized plan to the Colorado Supreme Court for review. If the plan is approved, it will be filed with the Secretary of State for implementation. However, if it is not approved, the plan will be returned to the Commission so that it may revise and modify the plan to comply with the court’s requirements.

In contrast, federal congressional districts are still drawn by the Colorado General Assembly. Thus, one of the critical differences between the processes undertaken in reappointing the state and federal legislative districts is that the governor maintains the power to veto the proposed reapportionment plan for the United States Congress, a power which the Governor cannot wield against a proposed plan for the state legislature.

MINORITIES’ EXPERIENCE WITH COLORADO’S REAPPORTIONMENT AND REDISTRICTING PROCESS: THE CONGRESSIONAL ARENA

The protracted conflict which arose in the congressional arena was predictable. Currently, the congressional delegation is balanced with three Democrat and three Republican representatives. In dividing the state into new congressional districts to take into account the results of the 1990 census, Colorado’s General Assembly did not want to interfere with the status quo; it wanted to maintain the existing politically balanced congressional delegation.

The notion of maintaining a politically balanced congressional delegation, however, did not sit well with the various minority groups in the state, especially the Hispanic population. During the 1980’s, the demographics of the state had changed dramatically. The state’s population had increased by fourteen percent from 2.9 million to 3.3 million. During this same time period, Colorado’s Hispanic population increased by an outstanding twenty-five percent, from 339,000 to 424,000, with the greatest concentration of Hispanics in the Denver metropolitan area, followed by the Pueblo and the South Central area of Colorado known as the San Luis Valley. As a result of these demographic changes, the Hispanic community felt it was entitled to congressional representation that was more reflective of Colorado’s population.

6. Id.
7. Id.
8. COLO. CONST. art. V, § 44.
In its determination not to interfere with its existing politically balanced congressional delegation, the General Assembly was not willing to listen to the Hispanic community's demands for a more representative congressional delegation. However, the Hispanic community continued its efforts to affect the General Assembly's reapportionment plan by attempting to influence the Governor, a strong Democrat. As a result of these maneuverings, Colorado's General Assembly was deadlocked on setting the new congressional boundaries. In an effort to aid the General Assembly in overcoming its "roadblock", several parties filed suit in federal court requesting that the court intervene in the ongoing conflict concerning the redistricting and reapportionment of Colorado's congressional districts. The Hispanic League initiated one lawsuit, and a coalition of independent voters who were widely regarded as espousing the Republican point of view filed a separate case.

A three judge panel was appointed to resolve the conflict. However, the specially appointed judicial panel did everything in its power to avoid hearing the case. Initially, the panel ordered that the parties once again attempt to resolve their differences, and ultimately, it appointed a special master to mediate the conflict. The congressional redistricting and reapportionment battle was finally settled by the mediator.

In the final settlement agreement, the Democrats and Republicans split their differences evenly, and both accepted a plan not completely to their liking. In the process, however, the Hispanic population was split in a manner unacceptable to the Hispanic community since they did not obtain a sufficient voting bloc in any district to successfully elect an Hispanic to Congress. To date, however, the Hispanic community has not filed a suit challenging the settlement.12

Minorities' Experience with Colorado's Reapportionment and Redistricting Process: The State Legislative Arena

The federal and state laws and the numerous cases discussed at this symposium are unrelated in many ways to the initial discussions and maneuverings by the Colorado reapportionment commissioners and legislators. During the first few Commission meetings, fundamental questions concerning applicable state and federal law, particularly the Voting Rights Act, were raised. Fortunately, one Commissioner, the Dean of the University of Colorado Law School, was fairly knowledgeable in re-

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12. Deciding whether to challenge the settlement agreement in court is a tough decision. Voting rights cases are very difficult to win, both on a political and financial front. A major impediment facing the Hispanic community in bringing forth a challenge to the settlement agreement is the financing necessary to successfully litigate such a case.
gards to the Voting Rights Act, and he often reminded the Commission of its obligations under the Act.

As the reapportionment commissioners became familiar with voting rights laws and minorities continued demanding "minority districts" and "minority influence," the balance of power shifted in favor of the minority constituents. In Denver and other areas of heavy minority population, the Commission's primary goal in drawing up the new districts was to create the opportunity to elect minority-choice representation. Secondary were the remaining constitutional and statutory considerations of compactness, contiguity, and county and municipal boundaries.

An initial hurdle faced by minorities at the beginning of the reapportionment process was an ill educated commission in regards to the Voting Rights Act. Few of the commissioners had any substantive knowledge regarding the Voting Rights Act and its implementation. A majority of the commissioners viewed the reapportionment process as a battle between the major political parties as to who was going to have the most representatives in the state legislature. They did not view the process as an opportunity to empower an historically under-represented people so as to create a legislature more representative of Colorado's population.

Luckily, as an aid to the reapportionment commission, the state had commissioned a national consulting firm to conduct a study of the voting patterns in the state. The results of the study helped to change the Commission's views as to what the goals of the reapportionment process should be. Although the study found evidence of much cross-over voting in the Denver metropolitan area, the study also confirmed the existence of extreme racial voter polarization, especially in rural areas. As a remedy, the consulting firm recommended that the Commission create districts with an increased number of Hispanic voters so that Hispanic candidates could participate in a more fairly competitive election.

By the time the Commission received the consultant's report, it had already broken the state into several regions and had begun adopting preliminary reapportionment plans in many of these regions. Nonetheless, the Commission decided to undertake an aggressive reapportion-

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13. The Commission viewed these results as an opportunity to create more districts where Hispanics could have an opportunity to elect Hispanic representatives. With evidence of such cross-over voting, the Commission felt that it was no longer necessary to create districts with over a 50 percent Hispanic population to assure an opportunity to elect an Hispanic representative. The Commission reasoned that with such cross-over voting a district with a 42 to 45 percent Hispanic population could elect an Hispanic representative given the right candidate and a strong, well-managed campaign.

14. The study found instances where voters voting a straight party ticket would uncharacteristically veer from such a voting pattern when their party's candidate was Hispanic. Such bloc voting against Hispanics was found in the San Luis Valley, an area whose population is over 40 percent Hispanic but has never managed to elect an Hispanic representative.
ment program for districts in areas where racially polarized voting patterns were identified. As part of the process, the Commission scheduled approximately twenty hearings around the state to receive comments on its proposal. The hearings, where hours of testimony were given, drew huge crowds. Feelings were very strong, both from legislators supporting the consulting firm's recommendations and other politicians who argued that even if racial bloc voting existed, other less strident remedies could solve the problem. Emotional testimony by minorities of the impact on themselves and their families due to the lack of access to political power greatly impacted the commissioners. This process of public discussion, newspaper coverage, and the Commission's willingness to openly discuss racism at the ballot box brought new focus to the issue of power in the political process.

Yet another great hurdle faced by minorities was the lack of technical expertise. Computerized mapping techniques had a tremendous impact on the ability of the Commission, Legislature, and other well-heeled interest groups to draw proposed districts. The Commission itself had access to a sophisticated computer mapping system and a trained staff ready to prepare plans based upon any given criteria. Thus, the Commission could construct new plans for consideration in only a few hours or overnight. This frequently meant that reapportionment plans would change from morning to afternoon. Those groups with the ability to access the technology were at an advantage since they could present literally dozens of alternatives to plans proposed by the Commission. In order to enable minority interest groups to compete in the technical arena, they were given limited access to the Commission's computer system and staff.15

The Southwest Voter Registration Project also helped the Hispanic community tremendously in the technical arena. Prior to the release of the 1990 census data which triggered the reapportionment and redistricting process, the Southwest Voter Registration Project presented hands-on mapping techniques. Counting census blocks, minority percentages, and splitting precincts to improve the percentages of Hispanics within certain districts were tricks of the trade taught by the Southwest Voter Registration Project. For that effort, I thank them.

CONCLUSION

The short term impact of minorities on the reapportionment process in both the state legislative and congressional arenas was positive. Although the Hispanic community did not gain what it sought in the

15. In order to use the Commissions computer system and staff, minority groups had to be sponsored by one of the Commissioners.
congressional plan, we did have an impact on the process. For example, the Hispanic community was included at the bargaining table when particular plans were considered by legislative committees. In addition, the Governor consulted the Hispanic League on its position regarding particular reapportionment and redistricting plans. The impact of minorities, primarily Hispanics, on the reapportionment of state legislative districts was much more pronounced. Partly as a result of the Hispanic community's efforts to ensure that the Reapportionment Commission follow the spirit of the Voting Rights Act, the Commission, giving great deference to preserving minority communities in a single district, drew all minority districts first, and created districts in which minority voters could influence an election.

The greater gain, in my opinion, will be long term. Throughout the reapportionment and redistricting process, support for minority issues and the empowerment of the public was enhanced beyond expectations. In the course of public hearings and debates on the reapportionment plans, many questions were raised about the impact of local and state actions and policies on education, employment, and the environment. Voters who had never registered or seriously considered politics came to the public hearings and spoke. Grassroots organizations, such as the Hispanic League, raised their membership three and four-fold as a result of the heightened awareness and realization that minorities had an opportunity to impact the institutions which govern them. This experience has ignited a new interest in politics among minorities, and encouraged minority candidates to run for office in many of the newly created minority districts. In 1992, Hispanics and African-Americans will run in districts never before considered winnable by a minority candidate.

In many ways, minority communities in Colorado are at a crossroads. Having been re-energized by the process of reapportionment and redistricting, it is still to be seen whether sufficient change can be achieved to make a difference. Colorado's existing government, from the congressional delegation down to the county commissioners, is much more aware of the involvement and ability of the Hispanic community. Now, for example, when bills are pending before the legislature, the Hispanic League, as a representative of the Hispanic community, is frequently asked for its opinion. Also, Hispanics are now being appointed to office for which Hispanics were never before considered by our governor, city mayors, and state agencies. The 1990 reapportionment in Colorado has been a watershed for change, and I am honored to say that I have been a part of it. Thank you.