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Closing Remarks

Arturo Vargas†

The Census Undercount

The Mexican American Legal Defense and Educational Fund’s (MALDEF) redistricting efforts began in the late 1980s with the 1990 census, understanding that efforts to create districts where Latinos could elect candidates of their choice would require accurate census data. However, Latinos historically have been severely undercounted in the census. While every census had improved in accuracy over its predecessor and reduced the overall undercount, there has always been a differential undercount of minorities.

In an effort to minimize the undercount in the 1990 census, MALDEF implemented a massive outreach and policy campaign called “Hágase Contar! Make Yourself Count!” The campaign made extensive use of Spanish language print and electronic media, as well as community organizing strategies. In 1990 the census became a community-wide priority, with our efforts bringing together in an unprecedented fashion virtually every component of the Latino community.

These efforts by Latinos to promote census participation resulted in Latino participation overwhelming the census system. The Census Bureau’s distribution fiasco of the Spanish language census form is one example. Despite decades of advocacy by Latino organizations to have the Bureau make the Spanish language census questionnaire easily available, the Bureau insisted on distributing the form only upon request. The Bureau required the public to call a 1-800 number imprinted on the English language form to request the Spanish form.

To ensure community awareness of this obstacle, we widely publicized the 1-800 number. This and the aggressive outreach encouraging participation in the census resulted in hundreds of thousands of Latinos calling the 14 operators staffing the 1-800 number. Only 9% of the calls

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1. As reported to the House Subcommittee on Census and Population by the General Accounting Office that surveyed MCI.
were answered during the most critical phase of the census. As a result, months of community anticipation and interest in the census evaporated or turned into frustration. The 1990 census has gone down in history as the time Latinos were ready for the census, but the census was not ready for Latinos.

Technical issues aside, severe political problems also plagued Latino participation in the census. In 1988 the Federation for American Immigration Reform (FAIR) sued the Department of Commerce to prevent undocumented residents from being included in the census for purposes of reapportionment. This lawsuit lost on a technicality, but the Constitution is unambiguous: every person — regardless of race, national origin, gender, citizenship or immigration status — must be counted in the census.

However, what the proponents of exclusion could not achieve through litigation, they attempted — and almost succeeded — to accomplish through legislation. In 1989 the U.S. Senate on three occasions passed legislation requiring the Census Bureau to exclude undocumented residents from the census count. In October 1989 the U.S. House of Representatives nearly passed similar legislation which was popularly known as the “Shelby Amendment,” named after its sponsor, Senator Richard Shelby, a Democrat from Alabama. Through hard work and community mobilization this unconstitutional proposal was defeated. Latinos, Asians, labor, churches, civil liberties and civil rights groups and others coalesced in opposition to this proposal.

Preventing a full count of the Latino population is one way to prevent a shift of political power to Latinos. While the Bureau, as a matter of policy, did not exclude any particular group, there was a severe undercount of Latinos. In fact, the 1990 census was the first in recent memory to actually be less accurate than the preceding census. This had serious implications for minorities.

Nationally, Latinos were more likely to be undercounted than any other population group, with a 5.2% undercount rate compared to the national undercount rate of 2.1%. Of the 5.1 million people missed in the census, 24% or 1.2 million persons were Latino. The impact of the Latino undercount on California clearly demonstrates the discriminatory effects of the undercount.

California has the largest share of the national undercount with 1.1 million Californians missed in the Census. Adjusted Census data released to Congress by the Department of Commerce show the devastating impact the undercount has had on Latinos in this state. While only

2. March 23 through mid-April.
3. The Senate efforts failed as the House failed to pass similar provisions.
26% of the state population, Latinos accounted for 43% of the state undercount — representing 532,394 persons. The number of Latinos missed in the census alone could have comprised almost an entire Congressional district. Indeed, had the Secretary of Commerce decided to correct the census data, California would have received an eighth new Congressional district.

The census undercount is simply the systemic exclusion of Latinos, African-Americans, Asians, and the urban and rural poor from equitable political representation and distribution of public funds. A legacy of exclusion, that is America's undercount.

**MALDEF's Redistricting Plans**

Understandably, the census undercount is the subject of extensive litigation. A massive lawsuit filed in New York by numerous states, cities, and organizations is challenging the decision not to correct the Census data. Because of the discriminatory impact of the undercount in California, MALDEF, the Asian Law Caucus, the San Francisco Lawyer's Committee, and others filed a lawsuit prohibiting the state legislature and every jurisdiction in the state with district elections from redistricting without conducting their own independent adjustment of the census data. Proceedings in this case have been stayed pending the outcome of the New York litigation.

Despite the severe undercount, the Latino population increase in California since the 1980 census was dramatic. The Latino population in California grew by more than three million persons, representing more than half of California's total population increase. Latinos were responsible for four of the seven new Congressional seats which California gained after this reapportionment. MALDEF strived to translate this population growth into districts where Latinos could elect candidates of their choice. Yet demographics were only one element which set the stage for Latinos to have an historical impact on the redistricting process in California.

Changes in the federal Voting Rights Act plus several court decisions, including *Garza v. County of Los Angeles*, sent a powerful message to the nation's state legislatures that they no longer could fragment minority communities or dilute minority voting strength to promote their own self-interests and avoid the creation of districts where minorities could elect candidates of their choice. MALDEF's lead role in *Garza*, coupled with the Latino population growth and our public position that California would be our priority state in redistricting, gave Latinos an

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unprecedented opportunity to profoundly impact the redistricting process, an opportunity of which MALDEF took full advantage.

MALDEF, however, could never have accomplished anything without the active support and involvement of the Latino community and other Latino organizations. A core Latino redistricting coalition was formed comprised of various organizations, including California Rural Legal Assistance (CRLA), Southwest Voter Registration and Education Project (SVREP), Mexican-American Political Association (MAPA), and others. SVREP assumed the task of conducting the community outreach.

The active involvement of the Latino grassroots was pivotal to the entire process. Over the Spring and Summer of 1991 community meetings and training sessions were held throughout the state. Community members were briefed on the law and were provided with basic redistricting skills so that they would be able to propose districts in their local communities for inclusion into a statewide plan as well as for their local jurisdictions. County and regional coalitions were formed to provide community members a vehicle for participating in the redistricting process. This organizing was crucial in securing the Latino community's universal support of the statewide plans which MALDEF presented in Sacramento.

MALDEF was determined from the beginning to produce plans for the entire state for the Assembly, Senate and Congressional delegations. A number of individuals involved in the Latino redistricting effort of 1981 coordinated by Californios for Fair Representation indicated that only advocating for specific districts rather than an entire statewide plan hindered their effectiveness. The ultimate goal of creating statewide plans was to propose the greatest number of districts possible where Latinos could elect candidates of their choice or influence the outcome of the elections. Such plans, however, required sensitivity to other minority community concerns.

In the spring of 1991, MALDEF began meeting regularly with the Coalition of Asian Pacific Americans for Fair Reapportionment, and in late summer with representatives of the National Association for the Advancement of Colored People (NAACP) and the Congress for Racial Equality (CORE). MALDEF made it very clear from the beginning that the principles we would adhere to were independence from partisan concerns, full compliance with the Voting Rights Act, compact districts, and the creation of the best possible plan for Latinos while maintaining the same number of districts where African Americans could elect candidates of their choice and, where possible, consolidate Asian communities of interest. MALDEF's work with the Asian and African
American leadership produced a coalition of understanding and mutual respect.

As a consequence of our coalition work, both the Asian and African American leadership did not oppose the statewide Latino Coalition plans. While these communities did not wholly endorse the entire plans, certain portions of the plans did garner their support. For example, the Asian and Latino communities of the San Gabriel Valley in Los Angeles County jointly agreed to a district configuration for Assembly, Senate and Congressional districts in the area. Similarly, NAACP and CORE did not endorse the MALDEF plans because they did not precisely mirror the lines they proposed for the African American districts, but they did acknowledge that the Latino Coalition plans provided better districts than those proposed by the Assembly. In addition, the Latino Coalition congressional plan garnered the public support of Representative Maxine Waters.

On September 5, 1991, MALDEF unveiled its statewide plans at press conferences in Los Angeles and Sacramento. Local Latino redistricting coalitions also unveiled the plans for districts in the San Jose area and the San Joaquin Valley. These plans represented the first time a minority community had prepared redistricting plans for the entire state of California.

The following two weeks consisted of intense legislative advocacy work in Sacramento. MALDEF and CRLA headed the Sacramento Committee and participated in committee hearings and meetings with the leaderships of both parties and with the Governor. MALDEF strenuously opposed the legislature's initial plans because of their failure to provide Latinos a fair opportunity to participate in the political process.

One of the key elements that bolstered the Latino community's impact on the legislative process was the support and active participation of the Latino Caucus. Several capitol observers remarked that the Latino Caucus demonstrated rare unity on and support of the redistricting issue. MALDEF worked closely with members of the Caucus and through their leadership was able to achieve some changes in the final plans. However, despite several changes to the Assembly and Senate plans, MALDEF formally opposed all plans of the Assembly, Senate and Congress. One of the major areas of disagreement was the San Joaquin Valley — in every single plan proposed, the legislature failed to create majority Latino districts in the area of the state where Latinos have been historically disenfranchised and exploited.

7. The Latino Caucus is comprised of the three Latino Senators and the four Assemblymen of the California Legislature: (Art Torres, Charles Calderón, (Ruben Ayala does not participate); Peter Chacón, Richard Polanco, Lucille Roybal-Allard, Xavier Becerra).
The Governor eventually vetoed the legislation — a veto which MALDEF believed he had every intention of exercising even before a single line had been drawn — and with the legislature's failure to override the veto, the Supreme Court Special Masters process commenced.

One frequent criticism of MALDEF's approach to the redistricting process centered on its commitment to remain fiercely independent of partisan politics. Most of the criticism came from the Democrats who felt MALDEF was undermining a Democratic legislative majority. MALDEF was also criticized for what some thought was seeking Republican support.

MALDEF and the Latino community entered the redistricting process well aware that the only ones who would ever give first priority to the interests of Latinos would be Latinos themselves. We expected opposition to MALDEF's proposals to come from the Democrats, who had historically divided Latino populations to create majority Democratic districts. We expected support from Republicans who had openly courted minority organizations in a publicly promoted effort to create minority districts at the expense of Anglo Democrats.

Both parties, however, were willing to assist Latinos at the drop of a hat when it was politically expedient, and both parties were willing to thwart our efforts without a second thought when it was convenient for them as well. Two examples of this fickle partisan strategy are the Governor's and the Congressional Democrats' approach to redistricting.

From the beginning of the legislative process, Wilson announced his commitment to comply with the Voting Rights Act and create the maximum number of districts possible where minorities could elect candidates of their choice. This was consistent with the national Republican strategy to siphon off minority Democratic voters from Anglo Democratic incumbents.

His performance on this issue, however, clearly demonstrated that the Governor was intent on using Latino districts only as an added excuse to veto the plans passed by the Legislature. The Governor actually provided the primary opposition to the changes in the Special Masters plans that MALDEF proposed in order to genuinely provide Latinos a fair opportunity to participate in the political process.

Despite his previous rhetoric to the contrary, the Governor opposed the MALDEF proposals to create districts where Latinos would have been the largest of any population group and therefore able to influence election outcomes. For example, the Governor opposed the creation of a Latino influence seat in the Assembly along the Santa Barbara and Ventura coast — thereby supporting the fragmentation of the Santa Barbara and Carpinteria Latino barrios with the Latino barrios in Oxnard and Santa Paula. The Governor also opposed consolidating into a Congres-
sional district the Latinos and African Americans in Pomona with the Latinos and African Americans in San Bernardino because they are in the same state Senate district in this area.

Had these districts been created, Latinos would have had a genuine opportunity to influence the outcome of the elections in these areas and therefore be able to hold the elected officials accountable to Latino concerns. Instead, Latinos are now a virtually insignificant electoral minority and will continue to be ignored and effectively disenfranchised.

The reasons for the Governor's opposition are very simple. In each instance our proposed changes would have taken two Republican-leaning districts and created one Republican and one Democrat-leaning district. Wilson simply placed his partisan priorities above allowing California's Latinos and African Americans an opportunity to have fair representation. Wilson's voting rights rhetoric dried up when it came to his real agenda.

The Democrats were not much better. Initially the Congressional Democrats opposed the MALDEF Congressional plan not because it would have created a Republican majority — it would not have done so — but because it would have placed too many of the Democratic incumbents in jeopardy. At no time did the Congressional delegation consider even modifying their proposals to match the districts proposed by MALDEF. They too, however, changed their tune.

After the Governor's veto of the Legislature's plans, the Congressional Democrats filed a federal lawsuit asking a federal court to take jurisdiction of drawing the congressional lines away from the State Supreme Court and Special Masters and place it in federal court, because the state court, in their opinion, did not have the expertise to perform this function: The Democrats lost this argument but agreed to stay the proceedings pending the release of the Special Masters lines in December.

When those lines came out, however, the Democrats suddenly gave the MALDEF congressional plan a second look. Once the federal case resumed, the Congressional Democrats argued before the three-judge panel that it should adopt the MALDEF plan because it had no voting rights violations and was free of partisan concerns.

MALDEF expected this sort of approach to redistricting by the politicians; the process would not have been the same without it. This simply reinforced our belief that we truly had to remain nonpartisan and independent of the Republicans and Democrats. What we did not expect, however, was this same partisan maneuvering from the U.S. Department of Justice.

Like Wilson, the U.S. Department of Justice praised and praised the virtues of the Voting Rights Act. On numerous occasions Assistant At-
torney General John Dunne assured the Latino community (in public speeches before community meetings organized by SVERP) that the U.S. Department of Justice would not preclear any plan that denied Latinos a majority district. The Justice Department further assured Latinos that the Department would help ensure that the voting rights of Latinos would not be infringed. However, the Department’s actions in both Texas and California shamefully demonstrated that the Department also placed partisan interests first.

In Texas, for example, a district court dominated by Reagan appointees overturned a settlement plan for the state agreed to by the Senate and MALDEF as well as other counsel for minority plaintiffs — this plan had initially been granted preclearance by the Department of Justice. In a court order with no findings of fact, the District Court alleged that the Senate plan somehow violated Section 2 of the Voting Rights Act; the District Court instead ordered into effect a plan that virtually eliminated two majority minority districts. The Department of Justice did not only not object to this plan, arguing that court-ordered plans do not require preclearance, but also opposed efforts to seek a stay against it.

In California, in a less dramatic but no less disappointing fashion, the Department of Justice granted preclearance to the California Assembly plan despite the denial of a San Joaquin Valley district where Latinos could elect candidates of their choice. Arguments encouraging preclearance came from the Governor as well as the Republican National Committee.

Analysis of the Supreme Court’s Plan

The Special Masters plans now in place in California constitute a very mixed bag for Latinos. With the glaring exception of the San Joaquin Valley, majority districts were created where possible — but not without significant problems in Los Angeles County. Where Latinos could have been consolidated to influence the outcome of an election, where they could have been the single largest population group in a district, Latinos were left out in the cold.

In the Assembly plan there are serious problems in the San Joaquin Valley, Santa Barbara and Ventura Counties, and Los Angeles County. Districts in the San Jose area, Orange County, the San Bernardino area, the San Diego area, and Imperial County resemble the districts proposed by the Latino Coalition.

In the San Joaquin Valley there are two districts where Latinos are a significant proportion of the population — 49% in one and 52% in the other, but in neither district are Latinos a majority of the voting age population. A majority district where Latinos would have been able to
elect a candidate of their choice could have been configured, but instead the court implemented two influence districts.

In Santa Barbara and Ventura Counties Latinos were not consolidated into an influence district; instead Latinos in Ventura have been placed in a district dominated by Simi Valley, and Latinos in Santa Barbara in a district dominated by Anglo populations in northern Santa Barbara and Ventura Counties. In Los Angeles County, the Masters created an Assembly district where Latino voters are packed and two adjacent districts where Latino voting strength has been drastically diluted. The Los Angeles Assembly configuration, which exists in the Senate and Congressional districts in the area as well, creates a situation where a well-known liberal Anglo candidate could feasibly win a majority of non-Latino votes.

In the Senate three majority districts were created in Los Angeles County, but again with one district significantly diluted of Latino voting strength. In the San Joaquin Valley a Latino Influence District was created. The most severe problem with the Senate plan is the districts in the southernmost area of the state. Latinos in the San Diego area could have been consolidated with those in Imperial County and the Coachella Valley into a 48% Latino district as proposed by MALDEF, the State Senate, and even the Assembly and Senate Republicans. The court plan instead placed the Latinos in San Diego in an Anglo, Republican dominated district, and did the same to Latinos in Imperial County and the Coachella Valley.

These problems persist in the Congressional plan. Majority districts were created in the San Joaquin Valley and Los Angeles County as proposed by MALDEF, but the dilution problem still exists in Los Angeles in the district currently held by Representative Edward Roybal. The Congressional plan includes fragmentation of Latinos in the Santa Barbara/Ventura area, and in the Inland Empire, including San Bernardino County, Riverside County and San Diego County. In the Inland Empire, two districts could have been created where Latinos would have been able to strongly influence the elections; instead Latinos have been placed in districts dominated by Anglo Republicans where Latinos can expect little chance of electoral success.

In summary, we can expect in the short term a total of six Latinos in the Assembly and four in Congress after the 1992 elections, and a fourth Latino in the Senate after the 1994 elections — an increase of two Latinos in the Assembly, one in the Senate, and one in Congress. As Latino electoral strength and population increase over the decade, we may see Latinos able to control and influence a larger number of districts. The wait, however, for Latinos to be able to fully and fairly participate in the political process will last beyond this decade.
Litigation surrounding the state court adopted plans continues. MALDEF challenged the congressional plan in federal court by intervening in the action filed by the Congressional Democrats. On March 3, 1992, in a 2-1 decision, the three-judge panel dismissed the lawsuit on abstention grounds. MALDEF will appeal this outrageous decision to the Ninth Circuit. In a biting dissent, Justice Tang rebuked the majority for failing to uphold the responsibility of the federal courts to protect the voting rights of minorities.

How to Protect and Promote Minority Participation and Enfranchisement in the Political Process

I was requested to also comment on how to protect and promote minority participation and enfranchisement in the political process. I believe we must implement a three-prong approach.

First, we must realize, as the actions by this three-judge panel has demonstrated, the federal courts have become a hostile arena for civil rights. Indeed, just as the federal courts of two decades ago were criticized for being activist and legislating from the bench, the Reagan and Bush courts of today have taken an equally if not more activist posture, to the detriment of civil rights. These changes in the federal judiciary require that our efforts to work in the policy making arena and in community organizing become more focused and frequent.

Second, Latinos must expand their influence in electoral politics. For our community this will require massive naturalization and voter registration campaigns. We must increase the number of eligible Latino voters in this country. Too many elected officials feel unaccountable to their Latino constituencies because they number few among the officials’ electorate. We must ensure that the Latino voice is heard loudly and clearly at the polls.

Finally, we must ensure the extension of language assistance provisions of the Voting Rights Act. These provisions, which expire this year, have been key to ensuring that language is not a barrier to the franchise. MALDEF’s research indicates that the need for language assistance is even more pressing today than when the provisions were first enacted. There are more U.S. citizens of voting age who are limited-English proficient than ever before.

9. Id.
10. Latino legislators need to author legislation that affects federal and state policy more broadly than just the Latino agenda. For example, it would be very useful to focus on budget and appropriations issues, as well as aggressive oversight of civil rights offices in the federal and state government.