

## Has California Gone Colorblind?

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### **I. Introduction: Voting Rights and Political Reality**

Despite the 1870 passage of the Fifteenth Amendment prohibiting denial or abridgement of the right to vote on account of race, the vast majority of African Americans in the southern United States were legally disfranchised by 1910, and most remained voteless in the Deep South in 1960. (Kousser, 1974; Lawson, 1976: 284) Because the timid 1957 and 1960 Civil Rights Acts proved ineffectual in the face of the refusal of adamantly discriminatory state and local officials to allow even the most obviously qualified blacks to register to vote, the Civil Rights Movement pressed for a more radical and comprehensive statute. In 1965, after the Selma-to-Montgomery March, Congress responded by passing the Voting Rights Act (VRA) (Landsberg, 2007). Although white southern obstruction of black voting registration swiftly collapsed in the late 1960s, leaders of the old racial order adopted another tactic to hang onto power: They instituted new electoral structures, redrawing lines of local and state election districts to give them safe white majorities or shifting from district to at-large elections to ensure that small geographic areas where African Americans were in a majority were submerged in larger, overwhelmingly white election territories (Parker, 1990). In the 1969 case of *Allen v. Board of Elections*, the U.S. Supreme Court

ruled that the VRA could be employed to attack such discriminatory structures, and Congress effectively endorsed the Court's interpretation when leading members and key committee reports explicitly approved the *Allen* decision during the debate over the extension of key provisions of the VRA in 1970 (Kousser, 1999: 56, 61).

As the focus of voting rights litigation moved from outright *denial* of the individual right to vote to its effective *abridgement* through minority vote "dilution" by electoral structures, lawyers, Congress, and the courts faced a series of new questions: Did minority plaintiffs have to show that the challenged laws were specifically adopted with a racially discriminatory *intent*, or merely that they had a discriminatory *effect*? Since such laws would not prevent minorities from electing their preferred candidates unless a sufficient percentage of whites voted against those candidates through "racial bloc voting," how could one determine whether there was a high degree of racial bloc voting, and how high was illegally high? How large did a minority group legally challenging an at-large election or particular voting district lines have to be? Must minority voters be able to win an election in a district or a proposed district by themselves, or would it be enough if they could carry the seat with the help of sympathetic white voters? How should one measure whether the group was large enough, and how did partisanship in the electorate affect judgments on whether voting patterns were racial or were caused by other factors? Were redistricting authorities required to draw districts so as to make it possible for minority preferences to prevail with complete certainty, a lesser probability (if so, how much less?) or not at all (Kousser, 1999: 338-43, 373-77, 397-98)? Since all of these legal questions involved problems of measurement and empirical political science, political scientists and sociologists began to swap classrooms for courts.

This chapter investigates many of these questions for California in the 1990s. The most striking trend in California politics during that decade was the rise of Latinos to political power, especially in Congress and the state legislature. Did that trend occur because of an increased white willingness to vote for Latino candidates, stronger coalitions among Asian Americans, African Americans, and Latinos, or simply because of the growth of the Latino voting population? How should one gauge the ability of Latinos to be able to elect "candidates of their choice," in the words of the 1982 amendments to the VRA? Under what demographic and political conditions could Latinos in California elect candidates of choice, and did those conditions change over the course of the decade? Do Californians now vote for the person, not the ethnic group? Can national and state safeguards against racial discrimination in politics be relaxed without fear of ethnic strife and with confidence that all voters will have equal opportunities to elect the candidates that they most prefer?

## II. Measures of Latino Political Success and Power

### A. Who Represents Latino Voters?

The first step in answering these questions is to choose the most appropriate index of the success of minority voters. Since the beginning of minority ethnic politics in the United States, most famously with the massive Irish immigration to America in the 1840s and '50s, emerging minority ethnic groups have most preferred candidates from their own ethnic group (Kantowicz, 1980). This continued to be true in California in the 1990s, as the tables and figures in this paper imply. In California districts with the highest percentages of Latinos, where the choice of Latino voters is clearest, voters nearly always elect Latino candidates. So although not every Latino voter prefers to vote for a Latino candidate in every instance, not every Latino candidate considers himself or herself a representative of the Latino community, and many non-Latino officeholders are quite responsive to Latino interests, the election of Latino candidates is still the least complicated, least ambiguous measure of Latino political influence across districts and across time.

But should Republican, as well as Democratic Latino elected officials count in this index at this time in California? Let the data decide. Consider Table 11.1, which divides Assembly districts in the November 2000 election into six groups, depending on the party and ethnicity of the winning candidate, and spells out some ethnic and partisan traits of the groups of districts.<sup>1</sup> Three contrasts and one similarity are especially notable. First, note that African Americans comprised the majority of registered voters in the districts that elected black legislators, and Latinos comprised the plurality (the majority of the voting age population or VAP) in districts that elected Latino Democrats. In all other types of districts, Anglos accounted for at least 63.6% of the voters, rising to 79% in Anglo Republican districts. On average, Latinos and African Americans must control at least pluralities of the relevant electorates in districts that they seek to represent. Where whites controlled such pluralities, they elected Latinos in only one special case.

<sup>1</sup> The 2000 Assembly race was chosen because Latinos composed a higher proportion of winners in that contest than in any others for the Assembly, state Senate, or Congress from California from 1994 to 2000. There were no African-American or Asian American Republicans elected to the California Assembly in the 2000 election. Black and white registered voter percentages were estimated by subtracting from the total number of registered voters in each district, by party, the estimates of Asian and Latino voters provided by the Statewide Database at the University of California, Berkeley. Assuming, on the basis of U.S. Census surveys, that the proportions of non-Hispanic black and white voting age citizens who registered to vote were approximately equal to each other, the voting age, non-Latino registered voter totals were then split into the same proportions as the black and white voting age populations in each district. Various sensitivity tests demonstrated that the black and white estimates do not vary much if one uses different assumptions about the black/white registration percentages.

**Table 11.1. Not Colorblind or Nonpartisan—Partisanship and Ethnicity in the California Assembly Election of 2000**

Traits of Average District	Party and Ethnicity of Winning Candidates, Nov. 2000			
	Latino Rep.	Latino Dem.	Black Dem.	
Number of Districts	4	16	4	
% of Registered Voters				
Latino	16.1	41.8	20.8	
Black	5.1	9.9	55.3	
Asian	5.9	8.8	4.0	
Anglo	72.9	39.4	19.9	
% Latino of Voting Age Population	25.2	55.7	45.9	
% Latino of Citizen Voting Age Population	20.3	44.7	27.4	
Democratic Registration Margin (D-R)	-7.4	29.1	60.5	
Traits of Average District				
Number of Districts	26	27	3	
% of Registered Voters				
Latino	12.3	13.3	10.1	
Black	4.4	7.6	17.7	
Asian	4.3	7.4	8.7	
Anglo	79	71.7	63.6	
% Latino of Voting Age Population	20.7	20.7	17.4	
% Latino of Citizen Voting Age Population	15.3	15.0	12.0	
Democratic Registration Margin (D-R)	-10.2	22.6	20.4	

That special case—Latino Republicans—highlights the second contrast, that between those districts that elected Latino Democrats and those that elected Latino Republicans. The Latino proportion of the registered voters was two and a half times as high in the sixteen Democratic as in the four Republican districts, and more conventional measures of voting strength, the proportions of the VAP and citizen voting age population (CVAP) that is Latino, were both 2.2 times as high.<sup>2</sup> Latino registered voters comprised 42% of the district of the average La-

<sup>2</sup> Note that the difference between the Latino VAP and the Latino CVAP was considerably greater in the districts represented by black Democrats than in each of the other groupings. The same was true of the difference between the Latino VAP and the percentage of Latinos who are registered. African Americans could control these districts not only because of their own strength, but also so many Latinos in the districts were not citizens and not registered to vote. This contrast also points out that the proportion of citizens among Latinos over 18 years old varied from place to place.

tino Democratic member of the Assembly, but less than half as high a percentage of the constituency of the legislators of any other ethnicity. They formed the core of the electorate for Latino Democrats, but not for Latino Republicans.

The third contrast is between the partisan groups. As I have shown elsewhere, statistical models based only on partisan registration percentages predicted nearly 90% of the outcomes of California Assembly and congressional races from 1970 through 1996 (Kousser, 1998). And the partisan registration percentages in the Democratic and Republican districts in Table 11.1 differed dramatically, regardless of the ethnicity of the successful candidates. In all of the Democratic groups of districts, Democrats outnumbered Republicans by an average of at least 20 percentage points, while in districts that elected Latino, as well as Anglo Republicans, Republicans outnumbered Democrats by seven or more percentage points.

This third contrast accents, as well, the key similarity in Table 11.1: The districts that sent Latino Republicans to Sacramento were much more similar to those that sent Anglo Republicans than to those of any other group. Since Latinos comprise a much smaller proportion of Republicans than of Democrats in California today, they necessarily have much less power in the Republican than in the Democratic party, and the conditions of that power are much less predictable. Consider one more statistic. The average Latino percentage of the Republican registration in the four districts that elected Latino Republicans to the Assembly in 2000 was only 10.2%, which was *below* the Latino percentage of the Republican registration of 12.7% in the 76 other districts in the state. That is, the Latino Republicans were elected from districts in which Latino Republican voters had *less* voting power in the Republican Party than in the average district in the state.

While knowledgeable political consultants might be able to draw districts that would be likely to elect particular Latino Republican politicians, it is much more difficult for political scientists to discover correlates of districts that would have a good chance of doing so. In the 1990s, there was just no easy way to differentiate such districts from other districts that were friendly to Anglo Republican candidates. The districts that elected Latino Republicans will therefore be excluded from the analyses in the rest of this paper. Even if they were included, it would make little difference, of course, because the party of Pete Wilson and Proposition 187 contained so few Latino elected officials.

## B. Legal Standards for Political Opportunity

In order to determine whether minorities would have been able to elect their candidates of choice in a district, rather than an at-large electoral system or in one with different boundary lines between districts, federal courts and the U.S. Department of Justice began in the 1970s to try to determine what percentage it took to give minority voters that choice. In a Mississippi case, *Kirksey v. Board of Supervisors*, sociologist James Loewen, an expert witness for the African-

American plaintiff, suggested an *ad hoc* answer, which was adopted by the federal court and almost immediately applied by others to districts throughout the country—the “65% rule.” In order to control the outcome in a district without relying on white votes for the black candidate, often called “crossover voters,” Loewen guessed that Mississippi blacks needed to comprise 50% of the population, plus 5% for the fact that a smaller percentage of blacks than whites were over 18 years old, plus 5% more for the likelihood that the black registration rate lagged the white, plus a final 5% for the suspicion that African Americans were less likely to turn out to vote than whites (Brace et al., 1988: 44–46). In that year, 1977, the Justice Department employed the same rule of thumb in Brooklyn, New York, and the Supreme Court approved (*United Jewish Organizations*, 1977).

If actual data on registration rates, separated by race, had been available, the 65% rule would never have been proposed. Many lawyers, judges, and social scientists criticized the rule almost immediately, and a few went as far as to question whether minorities needed to be concentrated at all to elect candidates of their choice (Thernstrom, 1987; Swain, 1993; Butler, 1995) But social scientific research proved conclusively that in the South from the 1960s through the 1980s, extreme optimism about white “crossover” voting was without factual foundation (Davidson and Groffman, 1994).

A second, much less sanguine line of criticism agreed that there were *some* circumstances in which *some* whites would vote for certain African-American or Latino candidates. Social scientists tried to specify the conditions that made it possible to elect minority candidates of choice. Was there a particular percentage—if not 65%, then what?—that was generally necessary, and if so, how had this “effective majority” changed since 1965? Was it the same everywhere? Could different minorities properly be assumed to be more likely than whites to vote for other minority candidates, even if they were from different groups, such as blacks and Latinos? Could the failure of minority candidates be attributed not to racism, but to the more standard political factors of incumbency and partisanship (Brace et al., 1988; Bullock and Dunn, 1999)?

Judges used such discussions or their own instincts to answer related questions. Was there a “bright line” test, a single minority percentage that could be used to determine both whether there was a wrong and whether there was a remedy? In the leading case interpreting the 1982 amendments to the Voting Rights Act, *Thornburg v. Gingles* (1986), the U.S. Supreme Court adopted a test originally proposed in congressional testimony by lawyer James U. Blacksher, that, in Justice Brennan’s words, “the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district” (*Thornburg v. Gingles*, 1985: 49). If no district that met that standard could be drawn, then the jurisdiction’s failure to establish one had no discriminatory effect, and a lawsuit by minority plaintiffs challenging the redistricting would be dismissed. On the other hand, if there was evidence of discriminatory intent or effect, then the majority-of-a-minority or “majority-minority” rule would guide the judge in framing a remedy.

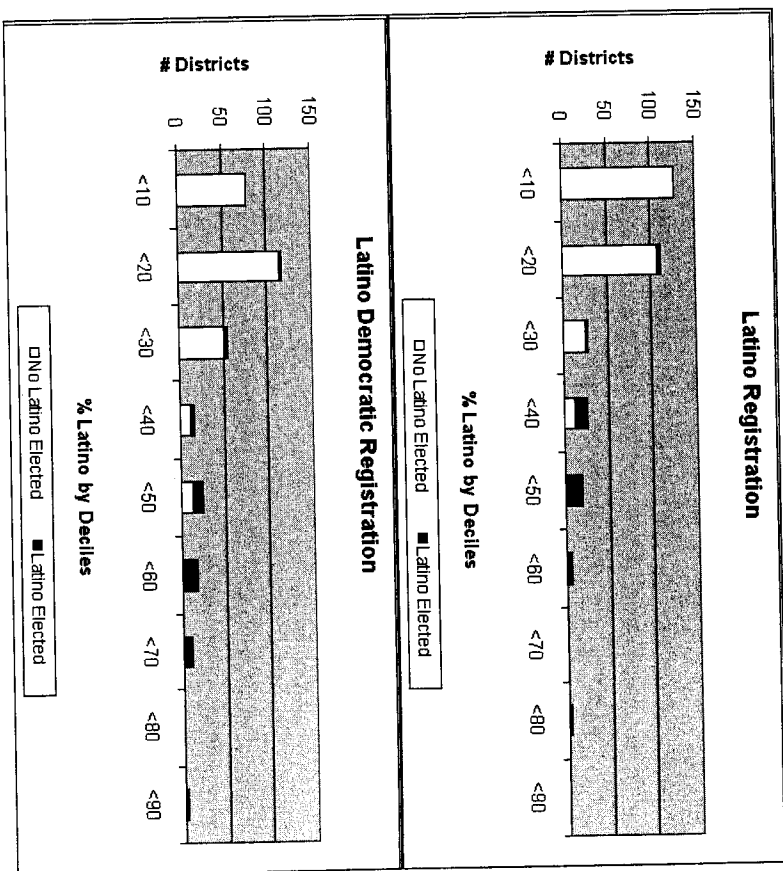
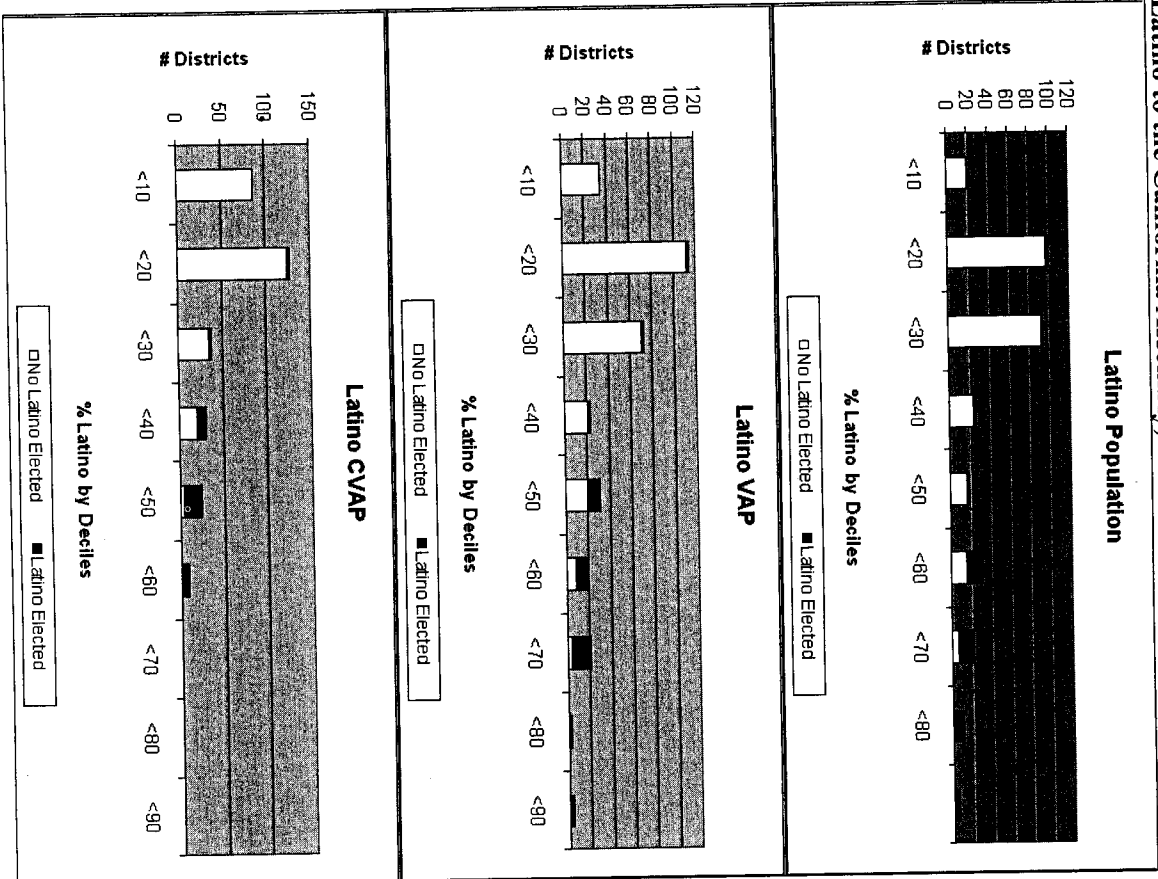
Although *Gingles* perhaps scrapped the 65% rule, it did not say how a “majority” was defined in practice, and lower court judges, lawyers, and social scientists continued over the next two decades to examine various definitions and to probe their consequences. Two questions became particularly important—whether voter registration, and not merely population data should be used as a measure of political power, and whether *Gingles*’s bright-line “majority” test should be relaxed when minority-favored candidates could reasonably expect to receive enough white crossover votes to win elections, even in districts where they did not comprise registration or population majorities. The Ninth Circuit Court of Appeals, the federal court that covers California and other western states, ruled in *Romero v. City of Pomona* (1988) that at least 50% of a potential district’s citizens of voting age had to be members of a single minority group, and other circuit courts agreed. In 2003, however, a majority of the Supreme Court endorsed a relaxation of the majority-minority requirement in *Georgia v. Ashcroft*, and in 2006, in *LULAC v. Perry*, another majority of that Court treated registration data as superior to population figures as a guide to political opportunity.

### C. What Was the Best Measure of Political Opportunity for Latinos in the 1990s?

As the federal court noted in the legal challenge to the 2001 California statewide redistricting, a 50% CVAP standard can be legally frustrating, because the U.S. Census Bureau does not release CVAP figures until long after decadal reapportionments and at least the initial lawsuits concerning them must take place (*Cano v. Davis*, 2002: 1234). For technical reasons, the CVAP data is also not easy to aggregate into voting districts, so that the Statewide Database in California had it available at the time this paper was written for both the 1992 and 2001 plans only for Assembly districts, not for state Senate or congressional districts.<sup>3</sup> Accordingly, only Assembly districts appear in Figures 11.1 and 11.2, which compare the number of districts, by deciles of the percentage Latino, for five different measures of Latino strength: population of all ages (hereafter POP), VAP, CVAP, total registration (hereafter REG), and Democratic registra-

<sup>3</sup> The lack of 1992 Latino registration data available on the Statewide Data Base at the time this paper was written precludes an analysis of that election at this time. Although the 1994 election was the high point of the decade for California Republicans, it does not seem to have had a major impact on Latino politicians’ fortunes. No Latino incumbent lost, and the number of Latino Democratic nominees who were beaten in the general election was not out of line with the numbers from other elections during the decade.

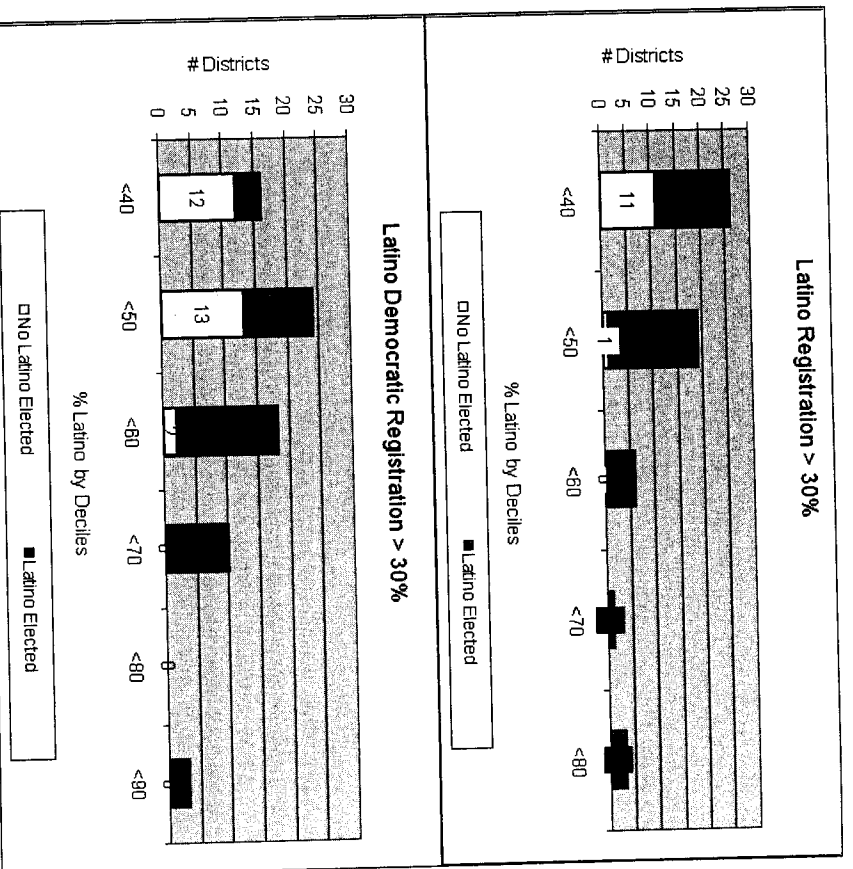
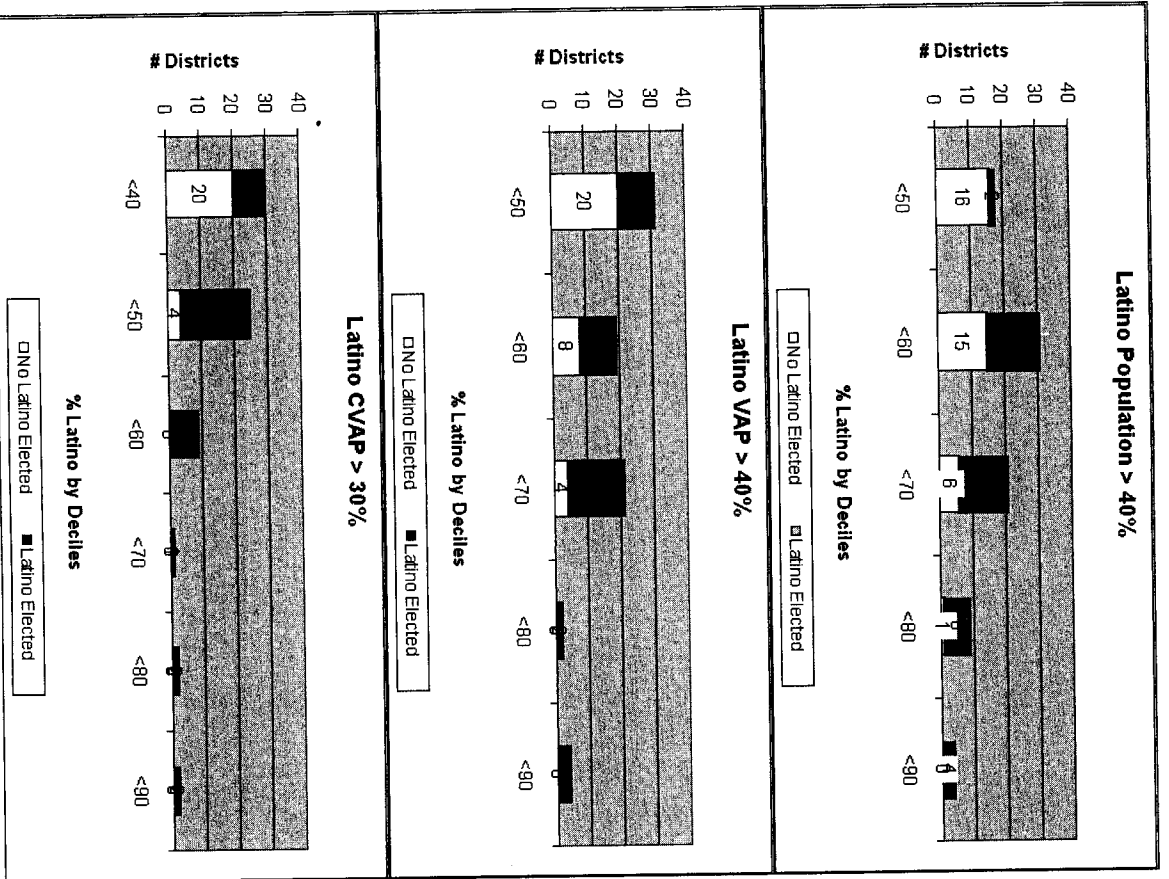
Figure 11.1. What Percentage of a District Did It Take to Elect a Latino to the California Assembly, 1994–2000?



tion (hereafter DREG).<sup>4</sup> Each bar of Figure 11.1 shows the number of districts in the state in which, for example, the Latino population was below 10%, between 10 and 20%, between 20 and 30%, and so on. The white portion of each bar shows the number of districts that did not elect a Latino Democrat, the black portion, the number that did. In general, as one moves from left to right in each graph, the bars become shorter and darker.

<sup>4</sup> E.g., POP is the number of Latinos in a district/total population in the district, while DREG is the number of Latino Democrats in the district/total number of Democrats in the district. The registration figures are estimates available on the website of the Statewide Data Base, and they are widely used. They were compiled by comparing the names of every registrant with a Spanish-surname dictionary. The website contains district-level estimates of ethnicity by party (e.g., of Latino Democrats) for the Assembly, Senate, and Congress for 1994 and 2000, and of ethnic registration for 1994, 1996, 1998, and 2000. I calculated the proportion of Latino registrants who were Democrats for each district for 1994 and 2000, interpolated those percentages for 1996 and 1998, and multiplied the overall proportion of registrants who were Latino in 1996 and 1998 by the interpolated figures.

Figure 11.2. Five Indexes Compared: The Proportions of Latinos Elected in Districts Where They Had a Reasonable Chance



Three conclusions jump out of Figure 11.1. First, and most obviously, Latinos comprised less than 30% in from 66 to 83% of the districts, depending on which of the five measures is used, and almost no Latino Democrats (or Latino Republicans, for that matter) won general elections in those districts. Voters in the tall white columns, who were overwhelmingly white and who dominated the vast majority of districts in the state, only very rarely elected Latino Democrats. Second, the “bright line” point at which Latinos won every seat varied from measure to measure. It was 70% for POP and VAP, 50% for CVAP and DREG, and only 40% for REG. Such points cannot be defined mechanically, according to some rule of thumb. Bright lines sometimes shift and, on this evidence, they often wiggle. Third, drawing a bright line at 50% CVAP, as the Ninth Circuit did, would leave out a great many districts in which Latino Democrats, with the help of

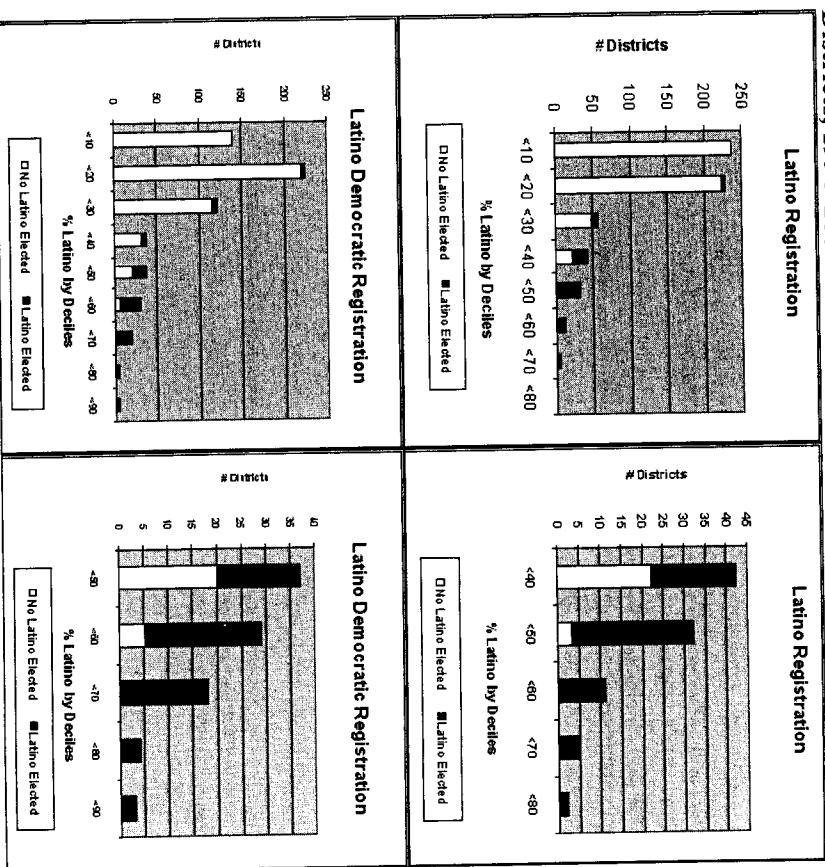
white or other crossover voters, won Assembly seats from 1994 to 2000. In districts that were 30–39% Latino CVAP, Latino Democrats won a third of the seats; in districts between 40 and 49% Latino CVAP, more than 80%. To set an absolute bright line, below which those who drew districts could slice and dice the Latino population any way they pleased, would be to rob Latinos of many opportunities to coalesce with non-Latino voters and elect candidates who represented the choice of the Latino community.

But can one of the five indexes be judged better than the others? Figure 11.2 compares the districts on the right-hand side of Figure 11.1, eliminating from Figure 11.1 those districts that contained few Latinos and rescaling the graphs so that comparisons are easier to see. What we are looking for is an index that separates out the most districts in which Latinos had approximately at least an equal chance with candidates from other groups to be elected. By that criterion, the POP and VAP measures seem inferior.<sup>5</sup> In the nearly 80% of the districts in which the Latino POP was below 50%, Latinos had almost no chance to be elected. In the 20% above 50% Latino POP, nearly two-thirds of the Latino Democratic candidates won. For VAP, there was a fairly strong break in the pattern of electing Latinos at a 40% concentration. Twenty-four percent of Latinos of voting age lived in districts that were at least 40% Latino VAP, but only 58% of those districts elected a Latino Democrat. Concentrating on Latino CVAP drives the break point down to 30%. Districts in which the Latino CVAP was at least 30% comprised 22% of the districts and were in 65% of the cases represented by Latino Democrats. But REG and DREG predict somewhat better than any of the population measures. In the 17% of the districts that were above 30% Latino REG, Latino Democrats won 78% of the elections, while in the 17% of the districts that were above 40% Latino DREG, Latino Democrats won 73% of the districts.

If we only compare REG and DREG, we can add in state Senate and congressional districts, for which data on registration is also available. Figure 11.3 shows the number of Assembly, Senate, and congressional districts represented by Latinos and others for each decile of the two Latino registration indexes. The

<sup>5</sup> Using the POP, VAP, and CVAP measures also neglect the fact that the numbers of Latinos registered to vote, as a percentage any population measure, varies widely from district to district. For the 2000 Assembly districts, for example, an average of 25% of the total Latino population, young and old, citizen and noncitizen, was registered to vote, but this ranged from 11% in one district to 46% in another, with a standard deviation (a measure of the average dispersion about the mean of a variable) of 6.5%. An average of 39% of the Latinos of voting age registered to vote in the 2000 Assembly districts, with a range of 19% to 61% from district to district and a standard deviation of 8.8%. An average of 66% of the Latino citizens of voting age registered to vote in the 2000 Assembly districts, but this ranged from 39 to 89% from district to district, with a standard deviation of 7.7%. Even within the Democratic Party, the proportion of the Latino CVAP that was registered varied widely from district to district. In 2000 Assembly seats, the maximum proportion of Latino citizens of voting age registered as Democrats varied from 24 to 57%, with an average of 40% and a standard deviation of 7.7%.

**Figure 11.3. Two Registration Indexes Compared: Latino Democrats Elected in all Assembly, Senate, and Congressional Districts, 1994–2000**



two graphs on the right-hand side of the figure are subsets of the graphs on the left, concentrating on the districts in which Latinos comprised at least 30% of the total and Democratic registration, respectively.<sup>6</sup>

The patterns of districts for the two indexes differed in two respects: There were more districts (128), in which Latino Democratic registration exceeded 30% than there were districts in which the overall Latino registration exceeded 30% (92). But while more Latino Democrats (73) won in the 128 DREG districts, a higher percentage (73%, compared to 57%)<sup>6</sup> won in districts over 30% REG. If the cut-off point for DREG is raised to 40%, the total numbers of districts and the numbers represented by Latino Democrats are almost identical to

<sup>6</sup> To keep the number of columns the same in each graph, I have combined the small number of districts in which Latino Democratic registration exceeded 70%.

those where the Latino REG was more than 30%. By these measures, there is little reason to prefer one of the two registration indexes over the other.

But there are two other factors that counsel a concentration on DREG. An estimated 65.8% of Latinos in California in the year 1994 registered as Democrats, compared to 21.6% who registered as Republicans.<sup>7</sup> In a system of closed primaries or one in which few voters crossed party lines in the blanket primaries that were used in California during most of the 1990s, Latino voters could realistically hope to have a major influence only on the nominations of Democratic candidates. Second, there was substantial variation from district to district in the proportion of Latinos who registered as Democrats. In the 2000 Assembly, the mean (average) proportion of Latinos who were Democrats was 60%, but the standard deviation was 7.6%, and the range from district to district was from 41% to 73%. Using the overall Latino registration rate, rather than the Latino Democratic registration rate as an indicator of Latino voting power would underestimate the ability of Latinos to influence nominations in some districts and overestimate it in others. For the rest of this chapter, therefore, I will focus on DREG, the Latino percentage of Democratic registrants, as the best index of Latino voting power.

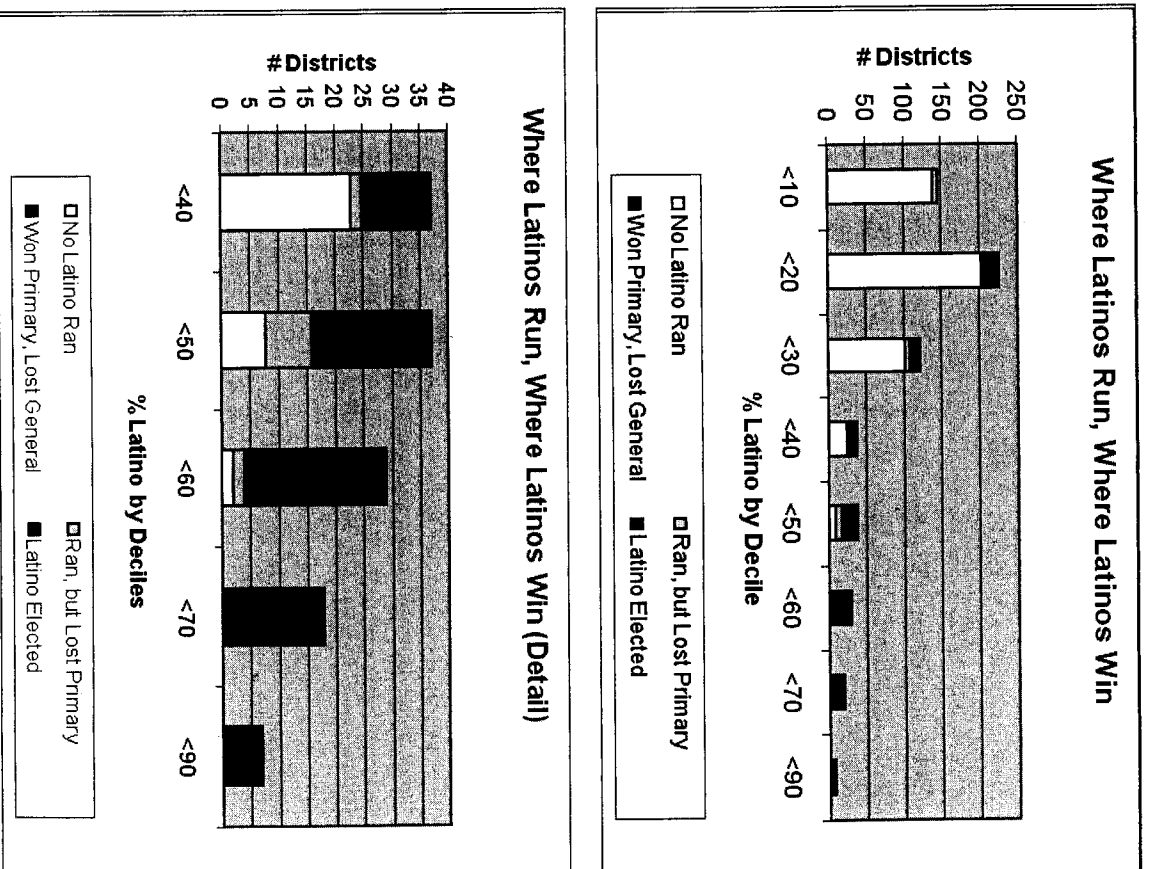
### III. What Did It Take to Elect a Latino Democrat in California in the 1990s?

#### A. Rational Politicians Run Where They Can Win

Running for office is hard, lonely, often dispiriting work—mastering arcane policy issues, knocking on too many doors, asking for more and more money, accepting insults and uninformed questions and comments with unflappable good cheer. It is not something calculating politicians would take on if they knew from the outset that they had little chance to win. As Figure 11.4 demonstrates, Latino Democratic politicians were quite rational. In the 138 districts in which the Latino proportion of registered Democrats was below 10%, there were only seven districts in which there was any Latino candidate at all, and in none

<sup>7</sup> The general California trend away from registering with the two major parties continued in the 1990s. In 1994, 49% of all California voters registered as Democrats, while 37.2% registered as Republicans. By the 2000 election, the Democratic registration percentage had slipped to 45.4% and the Republican, to 34.9%. Latinos followed the same pattern as other Californians, only 61.8% of them registering as Democrats and 19.8% as Republicans in 2000.

Figure 11.4. Where Latinos Run, Where Latinos Win (Assembly, Congress, and Senate, 1994–2000)





did these candidates win even the Democratic primary.<sup>8</sup> On the other hand, in the 37 districts where Latino DREG was between 40 and 50%, Latino candidates ran in 29, won the Democratic nomination in 21, and won the general election in 17. And in the 54 districts in which Latino DREG was more than half, Latino candidates ran in 52, won the Democratic nomination in 50, and won the general election in 49.

### B. Increasingly Colorblind or Increasingly Latino?

The number of Latino Democrats elected to the California Assembly, Senate, and Congress rose from 18 in 1994 to 25 in 1998 (a more comparable year than 2000 because it was in the same four-year cycle of state Senate elections). Was this 39% gain the result of an increasing willingness of California voters, especially Anglo voters, to support Latinos, or just a rise in the percentage of Latinos in the electorate?

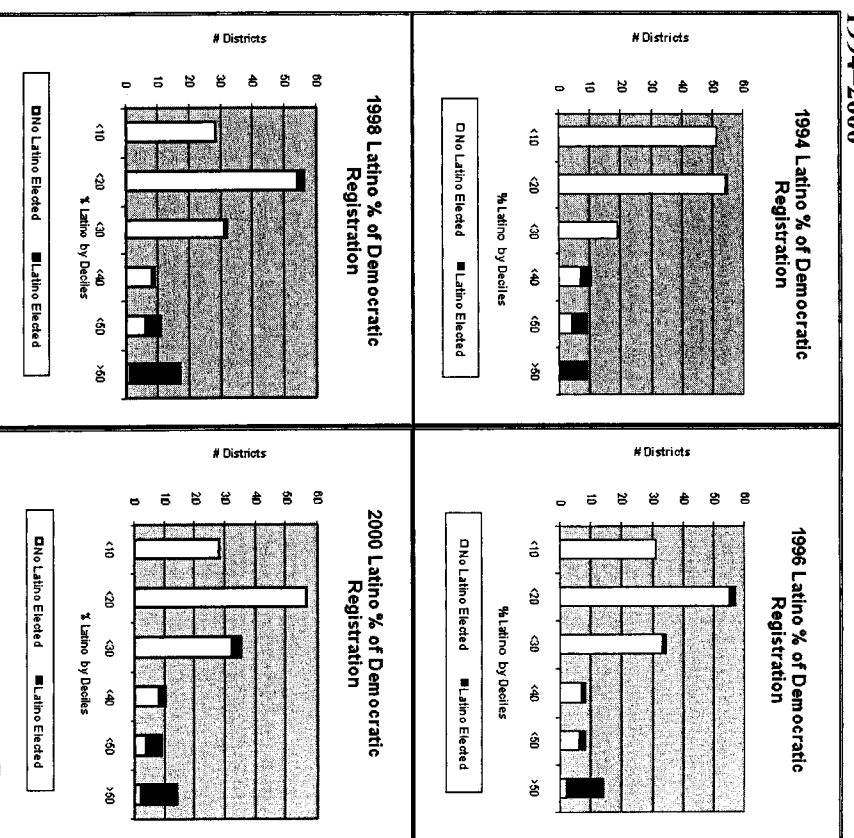
The Latino voter totals certainly rose dramatically. From 1994 to 2000, the Latino proportion of the population in California rose from 28.7% to 32.4%, an increase of 13.2%. But the Latino proportion of Democratic registration jumped from 16.1% to 22.1%, a 37.3% rise. The Latino population did not just grow. It politicized dramatically during the 1990s, especially from 1994 to 1996, in the aftermath of the controversy over Proposition 187, which was viewed by many Latinos as a racial issue.

This increased registration changed the political calculus in many legislative districts. In 1994, there were 29 Assembly districts in which the Latino proportion of the Democratic registration was in single digits; by 2000, only 15 districts. In 1994, there were nine Assembly districts in which Latinos amounted to 40% or more of the Democratic registration; in 2000, there were 15. And registration led to election: the number of Latinos in the Assembly rose from 10 in 1994 to 16 in 2000, with districts in which Latinos comprised 40% or more of the Democrats accounting for five of the six additional seats. Trends were similar in the state Senate and the congressional delegation.

Figure 11.5 summarizes the trends in all three bodies. It strongly implies that the increasing number of Latinos elected was a function of the increased number of Latino voters, not increasing ethnic crossover voting. If California voters were becoming colorblind over this period, we would see a shift in the composition of the columns in this chart. The dark portions at the tops of the columns would grow, indicating that Latino candidates found success in new

<sup>8</sup> Candidates not in serious contention for nominations, or candidates for parties that are in hopeless minority positions within districts are often barely mentioned in the press or remembered for very long by outside observers. Thus, in a good many cases, I was forced to rely on surnames to determine ethnicity. Although I made special efforts to separate Basque and Portuguese surnames from Spanish ones, I undoubtedly made some errors.

Figure 11.5. Trends in the Latino Democratic Registration and the Election of Latino Democrats in the Assembly, Senate, and Congress, 1994–2000



types of districts with fewer Latino registrants. We see no evidence of such a change. Instead, the heights of the columns change, showing that there are fewer and fewer all-white districts today. The jump in Latino registration was especially pronounced from 1994 to 1996, creating many more districts in which 20–30% of the Democrats were Latino and more districts with a Latino majority of Democratic registrants. Latino candidates succeeded in these districts at a constant rate throughout the decade. In other words, voting behavior did not change, but demographic trends created more districts that were hospitable to Latinos.

### C. The Crossover Districts

Figure 11.5 shows that it was sometimes possible to elect Latino Democrats in the 12% of the districts in which Latino DREG was between 30 and 50%. In fact, in 2000, 45% of the Latino Democratic members of the Assembly, Senate, and Congress were elected from districts in which Latinos comprised fewer than half of the Democrats. Latino districts between 30 and 40% Latino DREG were represented by Latino Democrats 19% of the time; in districts between 40 and 50%, 46% of the time. While these might have been considered "influence" districts—districts in which a minority community had the voting power to affect but not dictate electoral outcomes—during the 1991–92 round of redistricting, by the late 1990s, they were clearly "opportunity" or "crossover" districts. As the Latino population continues to diffuse within urban areas, such as the San Gabriel and San Fernando Valleys in Los Angeles County, and in northern Orange County, it is these ethnically mixed areas where Latino percentages are likely to experience the most growth in the immediate future. To focus on them is to study change and contingency, always interesting topics for political scientists. To exclude those voters from the protections of the Voting Rights Act or the Constitution is a mistake for judges, for it is to deny a large and growing population an equal opportunity to elect candidates of their choice.

Why did Latinos win in some districts in which their percentage of the Democratic registration was between 30 and 50%, but lose in others? If one were designing or evaluating the design of such districts, what other characteristics would encourage or discourage the success of Latino candidates? In particular, what difference did the partisan composition of the registrants, which has been shown to be an extremely potent predictor of electoral success in California, make to the prospects of Latino candidates in districts where they had to seek support from non-Latino voters?

Table 11.2 divides all of the Assembly, Senate, and congressional districts in the state from the 1994 through 2000 elections in which Latinos comprised between 30 and 50% of the registered Democrats into four groups—those that elected Latino, Anglo, or Asian Democrats, and those that elected Anglo Republicans. (There were no Asian or Latino Republican candidates elected from such districts.) Since each district counts once for each election, a district that, for example, sent the same Anglo Republican to Congress four times, is counted four times in the Anglo Republican totals.

Two contrasts are most significant. First, consider the Latino and Anglo percentages of registered Democrats in districts that elected Latino versus Anglo Democrats. In those that elected Latinos, the Latino Democratic percentage averaged 11 points higher than the Anglo Democratic percentage, while in those that elected Anglos, the Latino Democratic percentage averaged less than three points higher than the Anglo Democratic percentage. Apparently, in districts where Latinos had strong pluralities, enough African Americans and Asian Americans supported the Latino candidate in the primary to nominate him or her. Or perhaps for some reason there were more white crossover voters in more

**Table 11.2. Ethnic and Partisan Traits of Crossover Districts, 1994–2000 (Assembly, Congress, and Senate Districts where the Latino Percentage of the Democratic Registration is between 30 and 50%)**

Traits of Average District	Party and Ethnicity of Winning Candidates			
	Latino Dem.	Anglo Dem.	Asian Dem.	Anglo Rep.
Number of Districts	24	22	2	25
% of Democrats				
Latino	42.2	39.2	42.1	37.1
Asian	3.9	3.2	25.4	3.1
Black	22.9	21.1	14.8	12.9
Anglo	31.0	36.4	37.8	46.9
% Latino of				
Reg. Voters	33.2	30.5	31.3	24.9
VAP	51.8	46.2	42.7	40.5
Population	56.8	50.9	47	45.3
% Anglo of Voting Age	28	32.5	27	43.9
Population				
Democratic Registration	23.8	23.4	34.9	5.6
Margin (D-R)				

strong Latino plurality districts than in less strongly ones. In either case, the same conclusion follows straightforwardly: To nominate a Latino Democrat, create a district with a solid Latino plurality among Democrats.

But of course, nomination is not the same thing as election, and the second contrast defines the needle to be threaded. As in all 80 Assembly districts pictured in Table 11.1, above, there is in the subset of districts studied in Table 11.2 a stark contrast in the Democratic registration margin in districts won by Democrats of whatever ethnic group and Anglo Republicans. In districts won by Democratic candidates, the percentage of Democratic registrants exceeded that of Republican registrants by an average of 23% or more. In districts won by Republicans, the average difference was less than 6%. The vast majority of these Republicans were Anglos. In eight of the 25 contests in which Republicans won the general election, the Democrats that they beat were Latinos. But six of these nominations came in effectively overwhelmingly Republican districts, where no Democrat would have had much of a chance to win the general election. The second conclusion is therefore as obvious as the first: To elect any Democrat, make sure that the district has a fairly hefty Democratic registration margin.

Putting the two conclusions together defines the task: To draw Latino crossover districts, one needs enough non-Latino Democrats to elect a Latino Democratic nominee, but not so many as to deny a Latino primary candidate the nomination.

#### IV. Crossover Districts and the “Racial Gerrymandering” Cases

In the U.S. Supreme Court case of *Shaw v. Reno* (1993: 657–58), Justice Sandra Day O'Connor decried racial consciousness in redistricting as tending to “balkanize” or “segregate” voters by ethnicity, and the Supreme Court, usually by 5–4 margins, sought throughout the rest of the decade of the 1990s to outlaw pro-minority “racial gerrymandering” whether the districts were oddly shaped or not. By focusing on crossover districts, those who draw boundary lines in the future might reduce some of the Court’s concerns, strengthening the redistricting plans against legal attacks. Because the Latino population has grown so much in the last generation, because there is still a substantial amount of housing segregation among Latinos, and because Latinos are concentrated in the Democratic party, it would take an almost unprecedented gerrymander to eliminate or even greatly reduce the number of legislative districts in which Latinos comprise a majority of the Democratic registrants. And as Figure 11.4 and other graphs show, those districts are extremely likely to elect Latino Democratic representatives. On the other hand, to increase the proportion of Latinos in such districts—to “pack” more Latinos into districts that Latinos can already easily win—would not only decrease the opportunity of Latino voters to elect more candidates of their choice, thus contravening Section Two of the Voting Rights Act, but it would also exacerbate the “apartheid” that Justice O’Connor decried in *Shaw v. Reno*.

Emphasizing crossover districts, on the other hand, obviates both difficulties. In districts in which Latinos are a plurality within the Democratic Party, they must obviously reach out to voters from other groups in order to be elected. As Justice Souter put it in *Johnson v. De Grandy* (1994: 1020), in such districts, minorities must “pull, haul, and trade to find common political ground.” Voters in crossover districts are by definition not segregated or stereotyped, and the nature of the electorate cannot possibly cue elected officials to pay attention only to the majority ethnic group, for there is, among registered voters, no majority ethnic group, even within one political party. No member of any ethnic group in such a district can be guaranteed a seat; they can only be provided with an opportunity. All of these concerns that the Supreme Court mentioned in *Shaw v. Reno* and subsequent related opinions cannot apply to districts in which there is no ethnic majority of voters. Yet at the same time, as the figures from Table 11.2 demonstrate, crossover districts with certain traits in California in 2001 may avoid either overconcentration or dilution of Latino political strength, satisfying Section 2 of the Voting Rights Act by providing Latinos an opportunity to elect more of their most preferred candidates.

#### V. Real-World Validation and Legal Fiction

Political scientists are usually mere spectators at the game of politics. If their analyses are weak or their predictions, wrong, they may lose status, but not their jobs. Having more at stake, politicians and political operatives have more incentive than political scientists to reach a correct understanding of the brute facts of political reality. Therefore, when politicians’ actions imply agreement with political scientists’ analyses, we should have a bit more confidence in the validity of those analyses. The San Fernando Valley congressional district that was the chief focus of the major legal challenge to the 2001 California redistricting, *Cano v. Davis*, provides a good test for the assumptions and findings in this chapter.

From 1982 on, when he left the state legislature after a nearly-successful effort to become Speaker of the Assembly, Howard Berman had represented an eastern San Fernando Valley congressional district. From his early devotion to Cesar Chavez’s farm worker movement to his political organization’s sponsorship of rising Latino politicians to his cooperation with the Hispanic Caucus in Congress, Berman had repeatedly proven his devotion to Latino causes. Nonetheless, as the proportion of Democrats in his congressional district who were Latino mushroomed from 26% in 1994 to 38% in 1996 to 45% by 2000, Berman began to attract Latino opponents in the Democratic primary. In 1998, Raul Gordiner, who raised only 5% as much money as Berman did, won 33% of the total primary votes and an estimated 76% of Latino votes against Berman. Rumors that more experienced Latino politicians who had greater name recognition and better access to campaign contributions were considering contesting Berman’s seat after the 2001 reapportionment appeared in the authoritative *California Journal* (December 1998: 21).

Fortunately for Rep. Berman, his brother Michael was in charge of the 2001 congressional redistricting in California, and Michael reduced the Latino DREG in Howard Berman’s district from 45 to 31%, while raising the Anglo DREG from 37 to 54%. What had been a Latino advantage of 8% became an Anglo advantage of 22%. The redistricting plan of the Mexican-American Legal Defense and Education Fund (MALDEF), which the legislature rejected when it adopted the Berman design, raised the Latino margin over Anglos among Democratic registrants from eight to 11 percentage points, which was just the statewide average of a crossover district won by a Latino Democratic candidate, as shown in Table 11.2.<sup>9</sup>

Illuminated against the demographic and political background of the 1990s, the 2001 redistricting of Rep. Berman’s district supports the assumptions and conclusions of this paper—that Latinos strongly tended to vote for other Latinos

<sup>9</sup> The figures and analysis of this chapter were presented to the legislature in an earlier form as part of MALDEF’s redistricting package. I had nothing to do with the drawing of any districts for MALDEF and did not know any details about any plan for the Berman district before formulating my paper for the legislative package.

for office, that voting in crucial areas was markedly racially polarized, that the growth of the Latino vote rather than Anglo crossover voting accounted for the rising success of Latino candidates over the course of the 1990s, and that Latino candidates had a real chance of success in predominantly Democratic districts where they enjoyed double-digit pluralities over Anglo Democrats. In a larger sense, the political experience of California Latinos in the 1990s and in the 2001 redistricting argues for a flexible, rather than a bright-line standard to gauge the ability of minorities to elect candidates of their choice. A 65% population rule or a 50% CVAP rule or any other arbitrary principle fails to capture changing political and demographic realities, fails to break down ethnic barriers in politics, and fails to move us closer to equal political opportunity.

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