

**THE VOTING RIGHTS  
OF ASIAN PACIFIC AMERICANS**

By

William Tamayo  
Robin Toma  
Stewart Kwoh

Public Policy Project  
Asian American Studies Center  
University of California, Los Angeles  
July, 1991

The Asian American Studies Center's Public Policy Project is directed by Professor Paul Ong. The project's goal is to conduct research on major issues facing the Asian Pacific community. This Project is partially funded by grants from the UCLA Institute of American Cultures, the Japanese American Community Services, the Asian Foundation for Community Development, Anheuser-Busch Companies, Inc., and the Japanese American Citizens League-Pacific Southwest District Trust Fund. For information on the Project, please call (213) 825-2974, or write Public Policy Project, Asian American Studies Center, 3232 Campbell Hall, University of California, Los Angeles, California, 90024-1546.

Copyright @ 1991 by Asian American Studies Center,  
University of California, Los Angeles.

## THE VOTING RIGHTS OF ASIAN PACIFIC AMERICANS

William Tamayo, Robin Toma, and Stewart Kwoh\*<sup>1</sup>

As electoral politics becomes an increasingly significant issue for Asian Pacific Americans, it will require greater internal organization, responsiveness, and assertiveness from the Asian Pacific community to gain fair representation. We must encourage qualified candidates to run for office, increase voter registration rates, and support Asian Pacifics in politics. We can move closer to these goals by making greater use of protections afforded by the Voting Rights Act, including working for fair reapportionment, dismantling unfair at-large election schemes, obtaining bilingual ballots and challenging unnecessarily large election districts.

By active and focused involvement the Asian Pacific American leadership can reduce barriers that hinder participation in the political process. To achieve this goal, this paper explores the ways Asian Pacific Americans can invoke provisions of the Voting Rights Act to challenge redistricting or other election schemes that disempower the community.

---

\*William Tamayo is the Managing Attorney of the Asian Law Caucus in San Francisco; Robin Toma is Staff Counsel for the American Civil Liberties Union Foundation of Southern California; Stewart Kwoh is the Executive Director of the Asian Pacific American Legal Center of Southern California. We thank Mindy Hui, Tania Azores, Phil Okamoto and Paul Ong for their input.

## ASIAN PACIFIC AMERICAN POLITICAL REPRESENTATION

The base for political action is our growing population. 1990 Census data show that the Asian Pacific American (APA) community in California grew by 127% over the last decade, making us the second largest minority group in the state,

surpassing African-Americans. We now constitute over 10% of California's population. In Southern California, in particular, the growth in the Asian Pacific American population has been notable. In many local jurisdictions, Asian Pacific Americans (APAs) constitute 20% to 50% of the population.<sup>1</sup> The same can also be said of several

**We must encourage qualified candidates to run for office, increase voter registration rates, and support Asian Pacifics in politics.**

cities in the nine-county San Francisco Bay Area where APAs represent the largest minority population share and make up over 57% of the area's population growth since 1980. We project that the Asian Pacific population in both regions will continue to grow over the next decade, thus further increasing our political potential.

Unfortunately, the population increase has not translated into political strength. For the last ten years there has not been a single legislator of Asian Pacific ancestry in the California Legislature. There are only 46 Asian elected representatives out of 2,861 statewide (1.6%).<sup>2</sup> This lack of representation has resulted in the state legislature's lack of response to the specific needs of

---

<sup>1</sup>According to the unadjusted 1990 census, Asian Pacific Americans comprise 56% of the population in the City of Monterey Park, a 91% increase over the last decade.

<sup>2</sup>San Jose Mercury, April 1, 1991.

Asian Pacific communities. While there are legislators sympathetic to Asian Pacific concerns, many in the community believe that qualified APAs in high level elected offices and possessing greater vigor, understanding, and sensitivity, will contribute more to meeting the serious needs of our communities and the dynamic resolution of the challenges confronting all the people of the state.

Specific local statistics are even more disturbing. In the San Francisco area, for example, Asians hold only one percent of local elected offices. Although Asian Pacific Americans constitute 30% of the population in San Francisco, there is only one Asian Pacific American on the 11-member Board of Supervisors.<sup>3</sup> In Daly City, just south of San Francisco in San Mateo County, Asian/Pacific Americans constitute over 42% of the city's population. Yet, there has never been an Asian Pacific American elected to the City Council through its at-large elections although candidates have run.<sup>4</sup> Of the five seats on the Jefferson School District Board of Education (Daly City) only one minority and no Asians serve in a district in which Asian Pacific Americans are the majority.

No Congressional, state senate, or state assembly seat located in San Francisco has ever been held by an Asian Pacific American. While Asians are nearly 50% of the city's community college student population, no more than two of the seven seats on the Community College Board have been held by Asians at any

---

<sup>3</sup>San Francisco currently operates with an at-large system, although there were district elections at one time. One Asian supervisor was appointed to fill a seat, and was subsequently elected. However, none of the other two appointed Asian supervisors who ran to retain their seats were elected. In fact, the at-large system of electing members to the Board of Supervisors has never produced the election of a non-incumbent racial or ethnic minority candidate.

<sup>4</sup>Daly City has a population which is over 72% minority. Yet the first minority was elected to the city council just last year.

time. Thus, while the Bay Area prides itself in being a relatively liberal and open-minded section of the country, the statistics of political participation paint a sad picture somewhat analogous to the voting rights cases arising from the Deep South. This under-representation is no accident. Part of the problem is the fragmentation of Asian Pacific communities. In San Francisco, for example, having senate district boundaries drawn from east to west effectively splits the Asian Pacific American population of the city.

Though Southern California is home for over one million APAs, the largest APA concentration in the United States, precious few APAs have been elected to governing councils and boards. In Los Angeles, there is only one APA on the City Council and one on the Board of Education, and both are the first APAs ever elected to these bodies.

Not only do "at-large" election schemes stack the deck against APAs who seek representation on city councils throughout San Gabriel Valley and the South Bay, but three current state assembly districts fragment the concentrated APA population in the San Gabriel Valley area. Likewise, Koreatown, Chinatown, and Filipino Town in Los Angeles are each divided up among two or three L.A. city council districts.

Such fragmentation of the Asian Pacific American community has led to vote dilution and lack of representation on the state legislature for over a decade. Furthermore, no Asian Pacific American from Southern California has ever served in the U.S. Congress. A different configuration of political boundaries in both northern and southern California would greatly enhance the voting strength of their Asian Pacific American population, and improve their chances of electing candidates of their choice.

#### HISTORICAL DISCRIMINATION

The current political under-representation is a continuation of a long history of discrimination against Asian Pacific Americans. Racially exclusionary laws prohibited Chinese and other Asians

from testifying against or for whites.<sup>5</sup> San Francisco was the birthplace of the Chinese Exclusion Act of 1882, a law passed by Congress to curb Chinese labor at a time when frustrated white laborers saw Chinese workers as their competition. The Act was extended in 1892 and 1904, and was not repealed until 1943. The same 1943 law finally allowed Chinese to be naturalized. Filipinos were allowed to naturalize in 1946, while Japanese and Asian Indians were not permitted to do so until 1953.

In San Francisco, Asians attended segregated schools and were barred by racist covenants and laws from buying homes in certain areas of the city. A test case from San Francisco,<sup>6</sup> forced a then recalcitrant school board to enact a bilingual education program only after the parents took their civil rights case to the U.S. Supreme Court. Those denied bilingual education could not learn English sufficiently to pass a naturalization examination nor understand their stake in political involvement in U.S. society.<sup>7</sup> Investigating the immigration status of voters requesting bilingual ballots has also had a chilling effect on limited-English speaking voters asserting their rights.<sup>8</sup> It is clear that the stark under-representation of Asian Pacific Americans in California is largely the product of years of deliberate disenfranchisement by government officials at all levels.

---

<sup>5</sup>People v. Hall, 4 Cal. 339 (1854).

<sup>6</sup>Lau v. Nichols, 414 U.S. 563 (1974).

<sup>7</sup>The debilitating impact of English-speaking requirements on foreign-born voters has been recognized in California. Castro v. State 2 Cal. 3d 223, 231, 85 Cal. Rptr. 20, 25 (1970). "Fear and hatred" played a significant role in the passage of a California constitutional provision requiring ability to read English as a prerequisite for voting.

<sup>8</sup>Asian and Latino voters and organizations sued to stop the U.S. Attorney's probe of voters seeking bilingual ballots. See Olagues v. Russoniello, 797 F.2d 1511 (9th Cir. 1986), vacated as moot, 484 U.S. 806 (1987), 98 L.Ed.2d 17, 108 S.Ct.52.

## THE VOTING RIGHTS ACT

Since the mid-sixties, the legal system has been instrumental in protecting the voting rights of minorities. For example, the "one person, one vote" standard required by the constitution has prohibited racial gerrymandering that would often dilute minority votes. For Asian Pacific Americans, two other key legal standards apply with respect to the redistricting process:

first, the Voting Rights Act of 1965 and the "effects" test of Thornburgh v. Gingles<sup>9</sup>; and second, intentional discrimination under the Act and the Fourteenth Amendment to the Constitution of the United States.

It is often assumed that a minority group has to prove that it constitutes at least 50% of the population in an election district in order to have voting rights protection. Despite the phenomenal growth of the APA community, and the situation where APAs could comprise 30%-35% of the population in state legislative districts, approaching the 50% mark will come at the end of the decade in most Asian population concentrations, if projected growth trends are realized. *However, we argue that regardless of whether Asian Pacific Americans constitute more than 50% of the voting age population in any conceivable district, Asian Pacific Americans are still protected from dilution of their voting strength under the U.S. Constitution.*

As amended, Section 2 prohibits any voting law or procedure "imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color" or language minority status.

<sup>9</sup>478 U.S. 30 (1986).

In 1965, Congress enacted the Voting Rights Act.<sup>10</sup> After the decision in City of Mobile v. Bolden,<sup>11</sup> Congress amended Section 2 of the Voting Rights Act in 1982 with the specific purpose of eliminating the requirement of proving discriminatory intent, and to substitute a "results" test. A "results" test means that a plan is discriminatory if it effectively dilutes the voting strength of protected minorities, whether or not that was the intent of the plan.

As amended, Section 2 prohibits any voting law or procedure "imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizens of the United States to vote on account of race or color" or language minority status. The 1982 amendment means that the Act forbids not only intentional discrimination, but also practices shown to have a disparate impact on minority voting strength.

While proportional representation is not required, and the Act does not guarantee minority group representation, a violation of the Voting Rights Act occurs when, based on the "totality of the circumstances", minority voters are shown to "have less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice." No intent to discriminate need be shown.

In the case Thornburgh v. Gingles, the U.S. Supreme Court made clear that to prove a Section 2 violation in the absence of discriminatory intent, three threshold criteria must be met. The minority group must show that:

- 1) It is sufficiently large and geographically compact to constitute a majority in a single member district;
- 2) it is politically cohesive; and

<sup>10</sup>42 U.S.C. Sec. 1973.

<sup>11</sup>446 U.S. 55 (1980).

- 3) the majority votes sufficiently as a bloc to defeat minority candidates.

The Senate Report which accompanied the 1982 amendments (including Section 2) to the Voting Rights Act outlined several factors which are relevant to a Section 2 violation claim which the court must examine:

- 1) the history of voting-related discrimination in the State or political subdivision;
- 2) the extent to which voting in the elections of the State or political subdivision is racially polarized;
- 3) the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting;
- 4) the exclusion of members of the minority group from candidate slating processes;
- 5) the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;
- 6) the use of overt or subtle racial appeals in political campaigns;
- 7) the extent to which members of the minority groups have been elected to public office in the jurisdiction;

- 8) the significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; and
- 9) whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard practice or procedure is tenuous.<sup>12</sup>

It should be noted that in Gingles, the Justice Department under the Reagan Administration argued that the Senate Report's factors should be given little weight. The U.S. Supreme Court, however, rejected this view.<sup>13</sup>

In the recent case, Garza v. County of Los Angeles,<sup>14</sup> the Court made clear that the Gingles requirements do not strictly apply where it is shown that the governmental body engaged in *intentional* discrimination at the time the districts were drawn. The Garza decision also held that intentional discrimination may be shown if a legislative body chooses fragmentation of a minority population as an avenue to preserve incumbencies, and that there is some injury to the protected group. Specifically, the Garza decision cites to the district court's finding that "the Board of Supervisor, in adopting the 1982 redistricting plan, acted primarily with the objective of protecting and preserving the incumbencies of the five Supervisors or their political allies."<sup>15</sup>

It is important to note that in Garza, the Court found intentional discrimination in violation of the Voting Rights Act even though Hispanics *could not* have constituted a citizen voting

---

<sup>12</sup>Gingles, 478 U.S. at 38, 44045 (citing Senate Report, S Rep 28-29).

<sup>13</sup>Gingles, 478 U.S. at 43 fn. 7.

<sup>14</sup>918 F. 2d 763 (9th Cir. 1990), cert denied, \_\_\_ U.S. \_\_\_, 112 L.Ed.2d 673 (1991).

<sup>15</sup> 918 F.2d 786, n.1, (finding No. 177).

age majority in any conceivable district at the time the redistricting occurred in 1981.

A key fact of the case was that the Board of Supervisors approved the 1981 redistricting plan knowing that the plan would continue to divide the Hispanic community and "further impair the ability of Hispanics to gain representation on the Board."<sup>16</sup> Such Voting Rights decisions are significant because, as discussed above, many concentrations of Asian American and Pacific Islander communities are divided and fragmented by election district boundaries. The voting rights of Asian Pacifics have been ignored or denied in many such plans.

### CONCLUSION

The policies and patterns of de jure and de facto discrimination have effectively served to historically disenfranchise the Asian Pacific American community. Currently, redistricting plans which fragment Asian Pacific communities and certain at-large elections play substantial roles in not only denying seats to Asian Pacific Americans on local boards, city councils or boards of supervisors, but also serve to discourage Asian Pacific American candidates from running. While this has largely had a local impact, the net result of such practices has been to discourage voter participation in other elections especially where Asian Pacific Americans have had difficulties competing. The stark fact that there have been no Asian Pacific Americans in

... redistricting plans which fragment Asian Pacific communities and certain at-large elections play substantial roles in not only denying seats to Asians on local boards, city councils or boards of supervisors, but also serve to discourage Asian candidates from running.

the state legislature for over 10 years and few on city councils in places where Asian Pacific Americans constitute 30% or more of the city population should be cause for alarm and grave concern.

Clearly, over the last ten years and more, Asian Pacific communities – communities of interest – have emerged and constitute significant populations in certain geographic locations. We need to organize to alert the legislature that the redistricting process must be more inclusive and should serve to protect and not dilute the Asian community's vote. The Asian Pacific community must be vigilant of devices that are barriers to registering and voting in any Federal, State or local elections.

It is significant that the Coalition of Asian Pacific Americans for Fair Reapportionment (CAPFR) has emerged as a statewide coalition in California with over 150 affiliated organizations and elected individuals. Its purpose is to ensure that the voice of Asian Pacific Americans on the redistricting process is heard in order to facilitate fairly drawn districts that do not fragment the Asian Pacific vote.

<sup>16</sup> 918 F.2d 786, n. 1, (finding No 178); see also, Garza, supra, at 778, n.1 (dissenting opinion by Kozinski, J.).

\*\*\*\*\*

The authors are members of the Coalition of Asian Pacific Americans for Fair Reapportionment. They encourage anyone interested in helping the coalition or in becoming involved in its activities to contact any of the following:

in Northern California -

Yvonne Lee  
Chinese American Citizens Alliance  
1044 Stockton St.  
San Francisco, CA 94108  
(415) 982-4618

Tessie Guillermo  
Asian Health Forum  
116 Montgomery St., Suite 531  
San Francisco, CA 94105  
(415) 541-0866

in Southern California -

Allison Tom or Mindy Hui  
Asian Pacific American Legal Center  
1010 S. Flower St., Suite. 302  
Los Angeles, CA 90015  
(213) 748-2022

\*\*\*\*\*

Other reports from the Asian American Studies Public Policy Project

1. Azores, Tania and Philip Okamoto. *Asian Pacific American Awareness and Involvement in Redistricting*. May, 1991.
2. Ong, Paul, Yen Espiritu and Tania Azores. *Redistricting and Political Empowerment of Asian Pacific Americans in Los Angeles: A Position Paper*. May, 1991.
3. Azores, Tania and Paul Ong. *Reapportionment and Redistricting in a Nutshell*. May, 1991.
4. Ong, Paul M., *Asian Pacific Islanders in California, 1990*. May, 1991.
5. Ong, Paul M. and Tania Azores. *Asian Pacific Americans in Los Angeles: A Demographic Profile*. June, 1991.
6. Asian Pacific Americans for Fair Representation. *Breaking New Ground: Asian Pacific Americans and Redistricting in the Greater Downtown Area*. July, 1991.
7. Asian Pacific Americans for Fair Representation. *Breaking New Ground: Asian Pacific Americans and Redistricting in the South Bay*. July, 1991.