WILSON v. EU
1 Cal.4th 707, 823 P.2d 545, 4 Cal.Rptr.2d 379 (Jan. 27, 1992)

LUCAS, Chief Justice.

In these mandate proceedings, we are called on to resolve the impasse created by the failure of the Legislature and Governor to adopt congressional, legislative and State Board of Equalization reapportionment plans in time for the forthcoming 1992 Primary and General Elections. (See Cal. Const., art. XXI, § 1.)

On September 23, 1991, Governor Wilson vetoed the plans submitted to him by the Legislature. On that same day, an attempted override of the *712 vetoes failed, and the Legislature recessed for the remainder of the year. On September 25, 1991, because we lacked assurance that reapportionment plans would be validly enacted in time for the 1992 elections, this court exercised its original jurisdiction by ordering issuance of an alternative writ of mandate contemplating the drafting and adoption by this court of suitable reapportionment plans. (*Wilson v. Eu* (1991) 54 Cal.3d 471, 286 Cal.Rptr. 280, 816 P.2d 1306 [hereafter *Wilson I*].)

In *Wilson I*, we indicated it was "appropriate that we appoint three Special Masters to hold public hearings to permit the presentation of evidence and argument with respect to proposed plans of reapportionment. [Citation.]" (54 Cal.3d at p. 473, 286 Cal.Rptr. 280, 816 P.2d 1306.) We made clear, however, that the Legislature and Governor were not foreclosed from enacting valid reapportionment statutes if they could succeed in doing so. As we stated, "we urge the Legislature and the Governor, in the exercise of their 'shared legislative power' [citation] to enact reapportionment plans in time for the 1992 elections, and thus to render unnecessary the use of any plans this court may adopt. [Citations.] But because the impasse may continue indefinitely, because ' "it is our duty to insure the electorate equal protection of the laws" [citation]' ..., and because California is entitled to seven additional congressional seats based on the 1990 census, we must proceed forthwith to draft such plans. [Citation.]" (*Ibid.*; see also ***382**548*id.* at p. 474, 286 Cal.Rptr. 280, 816 P.2d 1306 ["If at any time during these proceedings congressional and legislative reapportionment plans are validly enacted, this court will entertain an application to dismiss these proceedings."].)

On September 26, 1991, pursuant to the foregoing order in *Wilson I* (*supra*, 54 Cal.3d 471, 286 Cal.Rptr. 280, 816 P.2d 1306), we appointed the Honorable George A. Brown, retired Presiding Justice of the Court of Appeal, Fifth Appellate District, the Honorable Rafael H. Galceran, retired Judge of the Los Angeles County Superior Court, and the Honorable Thomas Kongsgaard, retired Judge of the Napa County Superior Court, as Special Masters on Reapportionment (hereafter Masters), and we designated Justice Brown as Presiding Master.

Wilson I directed the Masters to commence public hearings within 30 days of their appointment, and to present their recommendations to this court no later than November 29, 1991. (54 Cal.3d at p. 474, 286 Cal.Rptr. 280, 816 P.2d 1306.) We also called for a 30-day period of briefing and public comment following the filing of the Masters' recommendations (*ibid.*).

On October 23, 1991, we filed a further memorandum order approving a procedure proposed by respondent Secretary of State for the timely implementation of reapportionment plans consistent with the timetable we outlined in *Wilson I*, in a manner that would avoid postponing or possibly *713 bifurcating the June 2, 1992, Primary Election. (*Wilson v. Eu* (1991) 54 Cal.3d 546, 548-550, 286 Cal.Rptr. 625, 817 P.2d 890 [hereafter *Wilson II*].) This procedure involved an initial, "preliminary" reliance by the counties and the United States Department of Justice on the Masters' recommended but unapproved plans, and a postponement or readjustment of various election deadlines. Thus, *Wilson II* approved postponing commencement of the period for gathering signatures in lieu of filing fees from December 27, 1991, to the filing date of our opinion herein (*id.* at p. 549, 286 Cal.Rptr. 625, 817 P.2d 890), and likewise approved directing county officials that the first day for circulating "in lieu" petitions, for filing declarations of intent for legislative office, and for filing declarations of candidacy and nomination papers for legislative and congressional seats, will be February 10, 1992 (*id.* at p. 550, 286 Cal.Rptr. 625, 817 P.2d 890; see also *Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 658, 678-679, 180 Cal.Rptr. 297, 639 P.2d 939 [approving similar readjustments of election deadlines and procedures]; *Legislature v. Reinecke* (1973) 10 Cal.3d 396, 406-407, 110 Cal.Rptr. 718, 516 P.2d 6 [same]).

In addition, *Wilson II* approved the Secretary of State's proposal to "direct that nomination papers be filed by each candidate 'provisionally,' subject to the submission of sufficient signatures by March 6 [, 1992], the close of the nomination period. In addition, candidates submitting in lieu signatures will have until March 16 to make up any deficiencies arising from invalid signatures. The number of needed signatures 'would be reduced proportionately to the number of days by which the circulation period was abbreviated due to the adjustment of these dates.' " (54 Cal.3d at p. 550, 286 Cal.Rptr. 625, 817 P.2d 890.)

The Masters immediately undertook their assigned task and, on November 29, 1991, following six days of public hearings in

Sacramento, San Francisco, San Diego and Los Angeles, they filed their comprehensive Report and Recommendations (hereafter the Report) with this court, which Report (except for appendices containing maps and census tracts) is set forth as Appendix I to this opinion. The Report includes plans for reapportioning legislative districts for both houses of the Legislature, congressional districts, and State Board of Equalization districts. (See Cal. Const., art. XXI, § 1.) These plans are set forth in Appendices One and Three to the Report which, as corrected by the Masters for clerical errors, are on file with the clerk of this court.

As we indicated in *Wilson I, supra,* 54 Cal.3d at page 473, 286 Cal.Rptr. 280, 816 P.2d 1306, the Masters were directed to be "guided by" various standards and criteria, including the applicable provisions of the ***383 **549** federal Voting Rights Act of 1965, as amended (42 U.S.C. § 1973 et seq.), the provisions of article XXI, section 1, of the state Constitution, and the criteria developed by an earlier panel of *714** special masters for the reapportionment plans adopted by the court in 1973 (see *Legislature v. Reinecke, supra,* 10 Cal.3d at pp. 402, 410-414, 110 Cal.Rptr. 718, 516 P.2d 6).

The state constitutional standards for forming the new districts include (1) consecutively numbered single-member districts, (2) "reasonably equal" populations among districts of the same type, (3) contiguous districts, and (4) "respect" for the "geographical integrity of any city, county, or city and county, or of any geographical region" to the extent possible without violating the other standards. (Cal. Const., art. XXI, § 1, adopted in 1980.)

The criteria followed by the special masters in 1973 overlap the 1980 state constitutional standards to a large extent. We observe that none of the parties or amici curiae has suggested that any of these 1973 criteria were abrogated by the state constitutional standards. These 1973 criteria include (1) equality of population, (2) contiguity and compactness of districts, (3) respect for county and city boundaries, (4) preservation of the integrity of the state's geographical regions, (5) consideration of the "community of interests" of each area, (6) formation of state senatorial districts from adjacent assembly districts ("nesting"), and use of assembly district boundaries in drawing congressional district boundaries, and (7) reliance on the current census, and on undivided census tracts. (See *Legislature v. Reinecke, supra,* 10 Cal.3d at p. 402, 110 Cal.Rptr. 718, 516 P.2d 6.)

As the Report explains, the Masters reviewed the evidence and arguments of the parties and other interested persons presented to them. They devoted intense efforts to comply with the federal Voting Rights Act. They considered and applied the other designated criteria governing reapportionment, and excluded such political factors as the potential effects on incumbents or the major political parties. We next review some of the highlights of their Report.

[1] A. *Voting Rights Act*--The Report discusses at length the Masters' close attention to the provisions of the Voting Rights Act, observing that in view of present uncertainties concerning the scope and intent of the act, the Masters "endeavored to draw boundaries that will withstand section 2 [Voting Rights Act, 42 U.S.C. § 1973] challenges under any foreseeable combination of factual circumstances and legal rulings." (Report, p. 397 of 4 Cal.Rptr.2d, p. 563 of 823 P.2d, *infra.*) Their efforts, in this regard, were in part stimulated by the need to provide new districts for the forthcoming June Primary Election. In that connection, the Secretary of State in a brief filed herein urged the Masters to give the Voting Rights Act "the highest possible consideration in order to minimize the risk of challenge and resulting delay."

Initially, the Masters attempted to reasonably accommodate the interests of every "functionally, geographically compact" minority group of sufficient *715** voting strength to constitute a majority in a single-member district. (Report, pp. 399-400 of 4 Cal.Rptr.2d, pp. 565-566 of 823 P.2d, *infra;* see *Thornburg v. Gingles* (1986) 478 U.S. 30, 50, 106 S.Ct. 2752, 2766, 92 L.Ed.2d 25; *Dillard v. Baldwin County Bd. of Educ.* (M.D.Ala.1988) 686 F.Supp. 1459, 1465-1466 [stressing functional aspect of geographical compactness criterion].) In this opinion, in describing California's three major minority groups, we will employ an abbreviated version of the designations used by the 1990 United States Census, namely, Black, Hispanic Origin (hereafter Hispanic) and Asian or Pacific Islander (hereafter Asian).

As explained by the Masters, the functional aspect of geographical compactness takes into account the presence or absence of a sense of community made possible by open lines of access and communication. (Report, pp. 400, 409 of 4 Cal.Rptr.2d, pp. 566, 575 of 823 P.2d, *infra.*) We approve the Masters' use of such an approach in determining the compactness of a particular **550 ***384** minority group for purposes of assuring its protection under the Voting Rights Act. As we shall see (pt. B.2., *post*), the Masters employed a similar functional approach in applying the "compactness," "geographical integrity," and related criteria for designing voting districts.

Additionally, and in a commendable abundance of caution, the Masters (1) endeavored to protect the *combined* voting strength of two or more minority groups in areas containing substantial numbers of such groups (Report, p. 401 of 4 Cal.Rptr.2d, p. 567 of 823 P.2d, *infra;* see *Campos v. City of Baytown, Tex.* (5th Cir.1988) 840 F.2d 1240, 1244 [Blacks and Hispanics treated as one minority group]), and (2) recognized the propriety of forming minority *influence* districts to maximize the voting potential

of geographically compact minority groups of appreciable size (Report, pp. 401-402 of 4 Cal.Rptr.2d, pp. 567-568 of 823 P.2d, *infra;* see *Chisom v. Roemer* (1991) 501 U.S. 380, ----, fn. 24, 111 S.Ct. 2354, 2365, fn. 24, 115 L.Ed.2d 348; *Armour v. State of Ohio* (N.D.Ohio 1991) 775 F.Supp. 1044, 1051-1052), even though the individual minority groups involved in categories (1) or (2) were of insufficient size to constitute a majority in their voting districts.

Thus, within the limits of reasonable geographical compactness, the Masters consistently attempted to draw voting district lines in such a manner as to maximize the opportunities for meaningful minority participation in California elections. As the Report explains, the Masters' proposed districts avoided both unnecessary fragmentation of relevant minority groups into two or more districts and undue overconcentration of such groups in a single district ("packing"). (See Report, p. 399 of 4 Cal.Rptr.2d, p. 565 of 823 P.2d, *infra.*) To minimize Voting Rights Act challenges based on failure to acknowledge a particular geographically compact minority group, the Masters declined to narrow the size of any minority group through application of voter registration statistics (see ***716** *Dickinson v. Indiana State Election Bd.* (7th Cir.1991) 933 F.2d 497, 503) or citizenship statistics (but see *Romero v. City of Pomona* (9th Cir.1989) 883 F.2d 1418, 1425), although persons who had not yet attained voting age were excluded from their calculations in this regard (see *id.* at pp. 1425-1426). (Report, pp. 400-401 of 4 Cal.Rptr.2d, pp. 566-567 of 823 P.2d, *infra.*)

The Report further details the "special steps" taken to assure such compliance with respect to the four California counties (Kings, Merced, Monterey and Yuba) subject to the "preclearance" provisions of section 5 of the Voting Rights Act (42 U.S.C. § 1973c), which require advance approval by federal authorities of redistricting plans for counties in which fewer than half the residents of voting age were registered to vote, or voted, in certain specified presidential elections. (Report, pp. 413-414 of 4 Cal.Rptr.2d, pp. 579-580 of 823 P.2d, involving fn. 35, *infra.*) Although the Masters' plans have not yet received official preclearance from the federal government, we are confident their plans meet all applicable Voting Rights Act requirements.

[2] The dissent herein believes the Masters' attempts to maximize the interests of geographically compact minority groups to insure compliance with the Voting Rights Act, may represent an unlawful use of "racial quotas." (Dis. opn., *post,* p. 449 of 4 Cal.Rptr.2d, p. 615 of 823 P.2d.) In that regard, the dissent complains the Masters' congressional plan "destroyed four existing districts in [western] Los Angeles County and cast four experienced incumbent members of Congress into one district, the new 29th Congressional District." (*Post,* p. 451 of 4 Cal.Rptr.2d, p. 617 of 823 P.2d.)

We first observe that no party nor amicus curiae, including the Democratic Congressional Delegation, has objected to the Masters' plan on this basis. The issue was neither briefed nor argued by *anyone,* including the four supposedly affected incumbents mentioned by the dissent. Indeed, without exception, each of the 22 plans submitted by the parties and amici curiae includes elements aimed at deliberately ****551 ***385** increasing minority representation in this state.

It is true the new congressional districts in Los Angeles are not identical to the current districts, nor could they be in view of differing rates of population growth in many areas of the state. Under the Masters' plan, the western part of Los Angeles County (even though it had little population growth, unlike the eastern portion which had substantial growth in Asian and Hispanic population) still has four congressional districts that substantially overlap the current districts, and that have no incumbent other than the four members referred to by the dissent. The new districts may or may not be drawn in a manner preferred by these incumbents, but contrary to the dissent, the Masters' plan has not deprived them of districts in which to run.

***717** In any event, the Masters' efforts to comply with the Voting Rights Act appear to fall well within the guidelines announced by the United States Supreme Court. (See, e.g., *United Jewish Organizations v. Carey* (1977) 430 U.S. 144, 97 S.Ct. 996, 51 L.Ed.2d 229 [rejecting challenge by Hasidic Jews objecting to redistricting efforts favoring Blacks].) The *United Jewish Organizations* case has been cited with approval in several subsequent decisions by the high court. (E.g., *Metro Broadcasting v. FCC* (1990) 497 U.S. 547, ----, 110 S.Ct. 2997, 3019, 111 L.Ed.2d 445, 475 [opn. by Brennan, J.]; *Richmond v. J.A. Croson Co.* (1989) 488 U.S. 469, 559, 109 S.Ct. 706, 756, 102 L.Ed.2d 854 [dis. opn. by Marshall, J.]; *Wygant v. Jackson Board of Education* (1986) 476 U.S. 267, 291, 106 S.Ct. 1842, 1855, 90 L.Ed.2d 260 [conc. opn. of O'Connor, J.]; *Fullilove v. Klutznick* (1980) 448 U.S. 448, 483 [opn. by Burger, C.J.], 497-498 [conc. opn. by Powell, J.], 100 S.Ct. 2758, 2777 [opn. by Burger, C.J.], 2784-2785 [conc. opn. by Powell, J.]; *University of California Regents v. Bakke* (1978) 438 U.S. 265, 287 [opn. of Powell, J.], 355, and fn. 29 [conc. & dis. opn. of Brennan, White, Marshall and Blackmun, JJ.], 399 [conc. opn. of Marshall, J.], 98 S.Ct. 2733, 2746 [opn. of Powell, J.], 2781, and fn. 29 [conc. & dis. opn. of Brennan, White, Marshall and Blackmun, JJ.], 2803 [conc. opn. of Marshall, J.]; see also *Garza v. County of Los Angeles* (9th Cir.1990) 918 F.2d 763, 776 [rejecting claim that deliberate creation of Hispanic majority voting district in California constituted improper "reverse discrimination"].)

As stated by the Ninth Circuit Court of Appeals in *Garza v. County of Los Angeles, supra,* 918 F.2d at page 776, "The deliberate construction of minority controlled voting districts is exactly what the Voting Rights Act authorizes. Such districting, whether worked by a court or by a political entity in the first instance, does not violate the constitution. *United Jewish Organizations v. Carey* [, *supra*] 430 U.S. 144 [97 S.Ct. 996]...."

B. *Additional Criteria*--The Report carefully explains in what manner the Masters' recommended plans meet the additional reapportionment standards and criteria previously described. We briefly discuss these criteria, as follows:

[3] 1. *Equality of Population*--As indicated in Appendix Two to the Report, the Masters' plans disclose a reasonable equality of population for the various voting districts created, including nearly absolute equality for the new congressional districts. (See *Karcher v. Daggett* (1983) 462 U.S. 725, 740-741, 103 S.Ct. 2653, 2663-2664, 77 L.Ed.2d 133 [population deviations for congressional districts must be justified by some "legitimate state objective" such as compactness or respect for municipal boundaries]; *Kirkpatrick v. Preisler* (1969) 394 U.S. 526, 530-531, 89 S.Ct. 1225, 1228-1229, 22 L.Ed.2d 519 [rejecting "de minimis" approach]; ***718***Wesberry v. Sanders* (1964) 376 U.S. 1, 7-8, 84 S.Ct. 526, 529-530, 11 L.Ed.2d 481 [requiring absolute equality "as nearly as is practicable"].)

As the Report observes, population equality must be deemed the primary reapportionment criterion, being mandated by the provisions of the federal Constitution. (Report, p. 408 of 4 Cal.Rptr.2d, p. 574 of 823 P.2d, *infra.*) Under the Masters' plans, each legislative district will vary by less than 1 percent from "ideal" equality (*id.*, p. 414 of 4 Cal.Rptr.2d, p. 580 of 823 ***386 **552** P.2d, *infra*), while each congressional district will vary by less than 0.25 percent (*id.*, p. 426 of 4 Cal.Rptr.2d, p. 592 of 823 P.2d). We find these minor deviations are amply justified by "legitimate state objectives," namely, the need to form reasonably compact districts, to use census tracts rather than blocks in forming districts (one of the 1973 reapportionment criteria outlined in *Legislature v. Reinecke, supra,* 10 Cal.3d at p. 402, 110 Cal.Rptr. 718, 516 P.2d 6), and to comply with the Voting Rights Act. (Report, pp. 402-405 of 4 Cal.Rptr.2d, pp. 568-571 of 823 P.2d.) Indeed, the Masters' 1 percent variation limit for the Legislature is identical to the standard approved in *Ater v. Keisling* (1991) 312 Or. 207, 819 P.2d 296, relied on by the dissent herein.

The dissent assumes that the high court's decision in *Karcher v. Daggett, supra,* 462 U.S. 725, 103 S.Ct. 2653, requires absolute equality of districts, subject only to "the limitations inherent in available computer technology...." (Dis. opn., *post,* p. 446 of 4 Cal.Rptr.2d, p. 612 of 823 P.2d.) The dissent also adopts the argument of some members of the California Democratic Congressional Delegation that the Masters should have achieved closer population equality by dividing or "splitting" census tracts into individual census blocks, and allocating such blocks in an appropriate manner.

As the dissent concedes, *Karcher v. Daggett, supra,* 462 U.S. 725, at pages 740-741, 103 S.Ct. 2653, at pages 2663-2664, expressly recognizes that deviations from absolute equality may be justified by "legitimate state objectives," and the Masters' consistent use of undivided census tracts constitutes such a legitimate objective. As the Report explains, census tracts ordinarily range from 2,000 to 6,000 persons deemed "homogeneous as to social characteristics," and are bounded by "prominent natural or manmade geographical features." (Report, pp. 404-405 of 4 Cal.Rptr.2d, pp. 570-571 of 823 P.2d, *infra.*) Census blocks, on the other hand, are actual city or suburban blocks; "[t]he approximately 6,000 census tracts in California are made up of about 400,000 blocks." (*Id.*, p. 405 of 4 Cal.Rptr.2d, p. 571 of 823 P.2d, *infra.*)

The Report relates in detail the Masters' reasons for refusing to split census tracts, including the need to maintain geographical integrity, preserve communities of interest, and assure "[w]idespread participation in the redistricting process" by minority groups and others lacking the funds or equipment needed to perform more exact calculations. (Report, pp. 404 405 of 4 Cal.Rptr.2d, pp. 570-571 of 823 P.2d, *719 infra.) Although the dissent herein argues that the Report "does not demonstrate how the advocacy ability of organizations representing such groups would be weakened by a division based on census blocks rather than tracts" (dis. opn., *post,* p. 448 of 4 Cal.Rptr.2d, p. 614 of 823 P.2d), at oral argument various representatives of minority groups confirmed that they had insufficient resources to submit plans based on census blocks or to monitor the accuracy or validity of plans based on census blocks that were submitted by others. Thus, both the Mexican-American Legal Defense and Educational Fund and the Asian Pacific American Coalition indicated that the use of census blocks would adversely affect their ability to participate on a relatively equal basis in the reapportionment process.

For all the foregoing reasons, we believe the validity of the Masters' position is amply demonstrated. We find the Masters' rationale for using undivided census tracts to be both legitimate and compelling. Accordingly, we concur in the Masters' analysis of the issue.

[4] 2. *Contiguity, Compactness, Geographical Integrity and Community of Interest*--The Report and appended maps disclose that the Masters carefully factored into their plans the additional criteria of contiguity and compactness of districts, and respect for geographical integrity and community of interests. (Report, pp. 406-409 of 4 Cal.Rptr.2d, pp. 572-575 of 823 P.2d, *infra.*) For example, the Masters properly assumed that the state Constitution's reference to "geographical regions" (Cal. Const., art. XXI, § 1) referred to "the ***387 **553** major geographic regions of the state" (i.e., significant mountain ranges, valleys, coastal and desert areas), and constructed the new districts accordingly. (Report, p. 408 of 4 Cal.Rptr.2d, p. 574 of 823 P.2d, *infra.*) The Report explains in what manner these additional criteria interrelate to promote effective, functional voting districts. We endorse the Masters' thesis that in designing districts, "Compactness does not refer to geometric shapes but to the ability

of citizens to relate to each other and their representatives and to the ability of representatives to relate effectively to their constituency. Further, it speaks to relationships that are facilitated by shared interests and by membership in a political community, including a county or city." (*Id.*, pp. 408-409 of 4 Cal.Rptr.2d, p. 574-579 of 823 P.2d, *infra,* fns. omitted.)

3. *Political Parties and Incumbent Status*--In drawing voting district lines, the Masters expressly declined to consider the effects of reapportionment on political parties or incumbents. (Report, pp. 430-432 of 4 Cal.Rptr.2d, pp. 596-598 of 823 P.2d, *infra.*) As the Report explains, such considerations were not among the criteria specified by this court in *Wilson I (supra,* 54 Cal.3d 471, 286 Cal.Rptr. 280, 816 P.2d 1306), and are not included in the state Constitution as appropriate reapportionment criteria. (See also *Legislature v. Reinecke, supra,* 10 Cal.3d at pp. 402-403, 110 Cal.Rptr. 718, 516 P.2d 6.) The Masters' plans quite properly were intended to be politically nonpartisan and "incumbent neutral." (Report, p. 432 of 4 Cal.Rptr.2d, p. 598 of 823 P.2d, *infra.*) Indeed, the parties and amici curiae uniformly ***720** confirmed at oral argument that the process employed by the Masters was entirely free of political bias or intent. Only the dissent herein has called in question the "objectivity" of the Masters and their distinguished staff. (See dis. opn., *post,* p. 451 of 4 Cal.Rptr.2d, p. 617 of 823 P.2d.) We discuss the matter of political neutrality further in part E.6. hereof, in connection with our analysis of the objections filed by the California Assembly.

[5] C. *Other Plans Rejected*--Additionally, the Masters have explained in detail in their Report why they could not recommend to the court any of the 22 statewide reapportionment plans presented to them during the course of these proceedings, including plans separately submitted by some members of the Democratic Congressional Delegation, the Assembly, the Assembly Republican Caucus, the Senate, the Governor, a special commission appointed by the Governor, and various minority or political organizations. As the Report observes, some of these plans were drafted with "calculated partisan political consequences" that rendered them of doubtful value to the Masters' nonpartisan efforts. (Report, p. 410 of 4 Cal.Rptr.2d, p. 576 of 823 P.2d, *infra.*) Others were deemed unacceptable because of possible noncompliance with the Voting Rights Act or apparent inattention to the criteria of contiguity, compactness and geographical integrity. (*Id.*, pp. 410-413 of 4 Cal.Rptr.2d, pp. 576-579 of 823 P.2d.) No point would be served by commenting further on the various rejected plans. It is sufficient to say that in our view none of these plans presents an acceptable substitute for those drafted by the Masters.

D. *Drafting Choices and Techniques*--The Masters described at length the methods by which they drafted their own plans, setting forth to the extent feasible the specific reasons underlying their choices of district lines, and translating their conclusions into legal descriptions of congressional, legislative and State Board of Equalization districts. (Report, pp. 412-431 of 4 Cal.Rptr.2d, pp. 578-597 of 823 P.2d, *infra.*) The attached Report and its appendices speak for themselves, and we will not attempt to describe their specific contents here, except as indicated in our discussion of various objections to the Masters' plans.

E. *Subsequent Objections*--After the Report was presented to the court, the parties, amici curiae and other interested persons were given the opportunity to file with us briefs, letters or other communications, either objecting to or supporting the Masters' plans, in part or in whole. Many of the objections concerned the way in ***388 **554** which the Masters resolved supposed conflicts among the various criteria in drawing district lines. Although we are not bound by the Masters' resolution of these conflicts, we have concluded that, with a minor exception discussed below, we should overrule these objections and approve the districts drawn by them. The recommended districts appear to reflect reasonable applications of the various applicable criteria.

***721** It would be impracticable to review and discuss each specific objection lodged with us; some of these objections narrowly focus on one or two census tracts within a proposed district. Nonetheless, we offer a few observations regarding the broader objections raised by the parties, and by minority groups asserting alleged Voting Rights Act violations.

1. *Objections by The Mexican-American Legal Defense and Educational Fund (MALDEF)*

a. Hispanic Districts in Los Angeles

[6] MALDEF complains that the Masters' plans failed to provide adequate numbers of Hispanic districts in Los Angeles. Yet for central and eastern Los Angeles County, the Masters' plans create six "majority" Hispanic assembly districts, three such senate districts, and four such congressional districts. (These figures are consistent with those that would result from the plans proposed by MALDEF.) Other new districts likewise include substantial numbers of Hispanics.

The focus of MALDEF's criticism is on Assembly Districts 45 and 46, Senate District 22, and Congressional District 30, all located in downtown Los Angeles and the Westlake area immediately to the west. Each of these districts contains more than 60 percent Hispanic population (and more than 84 percent total minority population). Unlike MALDEF's proposed plans, the Masters' plans also attempt to accommodate and maximize *Asian* interests in the area. At oral argument, Asian representatives praised the Masters' configuration of Senate District 22 and Congressional District 30, and objected to Assembly Districts 45

and 46 only because the Masters split the Asian population in the Westlake area. As the Masters explain in their Report (p. 419 of 4 Cal.Rptr.2d, p. 585 of 823 P.2d, *infra*), this split, and indeed the formation of each of these challenged districts, represent a compromise of the various minority interests in the area.

b. Hispanic Assembly Districts in San Joaquin Valley

[7] MALDEF also contends the Masters should have adopted proposed plans for forming an assembly district in southern San Joaquin Valley that would have been 60 percent Hispanic by population. According to MALDEF, the Masters' two proposed districts (Assem.Dists. 30 and 31) contain an insufficient number of Hispanics.

As the Masters' Report explains (Report, pp. 417-418 of 4 Cal.Rptr.2d, pp. 583-584 of 823 P.2d, *infra*), the challenged districts were in fact constructed to "maximize the [Hispanic] presence" in the San Joaquin Valley, and thereby assure preclearance under ***722** section 5 of the Voting Rights Act. (Report, p. 417 of 4 Cal.Rptr.2d, p. 583 of 823 P.2d, *infra.*) Thus, Assembly District 30 (which contains Kings County, a section 5 preclearance county) is comprised of 49.5 percent Hispanic population (and a 60 percent combined minority population), while Assembly District 31 is comprised of 52.2 percent Hispanic population (and a combined minority population of nearly 69 percent). (*Id.*, pp. 417-418 of 4 Cal.Rptr.2d, pp. 583-584 of 823 P.2d.) By "nesting" the two districts, the Masters were able to produce a senate district (Sen. Dist. 16) of nearly 51 percent Hispanic population. (*Id.*, p. 417 of 4 Cal.Rptr.2d, p. 583 of 823 P.2d.)

The changes proposed by MALDEF would unnecessarily divide Kern County, would risk possible challenge under section 5 of the Voting Rights Act (42 U.S.C. § 1973c) by reducing the minority percentage of the new district that includes Kings County, and would conflict with the position of the Kern County Latino Coalition, *****389 **555** which endorses the Masters' plans in this area.

c. Failure to Combine Separated Hispanic Populations

[8] MALDEF complains that the Masters' plans failed in several instances to combine into a single voting district certain separated Hispanic populations. As we previously explained, the Masters properly assumed that the Voting Rights Act would not require combining minority populations that are not "functionally, geographically compact." (*Thornburg v. Gingles, supra,* 478 U.S. 30, 50, 106 S.Ct. 2752, 2765.) For example, the Masters were unwilling to form a district requested by MALDEF linking Hispanic populations in Santa Barbara and Oxnard by means of a narrow connecting corridor around Ventura along a mountain range separating Ventura and Ojai. (See Report, p. 420 of 4 Cal.Rptr.2d, p. 586 of 823 P.2d, *infra.*) The Masters have proposed several combinations of separated Hispanic populations where to do so would not conflict with the other reapportionment criteria, such as compactness, contiguity, and community of interests.

2. Objections of Asian Pacific American Coalition

[9] Representatives of Asian voters (hereafter the Coalition) complain that new Assembly Districts 12 and 13, by failing to join "Chinatown" with the Richmond and the Sunset districts of San Francisco, divide the city's Asian population, thereby depriving Asians (who comprise approximately 29 percent of the city's population) of an opportunity to elect a legislative representative.

The Masters' Report noted the problem (pp. 414-415 of 4 Cal.Rptr.2d, pp. 580-581 of 823 P.2d, *infra*), but observed that San Francisco's Asian population is not concentrated in a single area, being ***723** dispersed throughout the city. Among other considerations outlined in the Report, the Masters were understandably "unwilling to extend a long arm a block or so wide for the several miles between the Richmond district and 'Chinatown' ... in order to bring these two areas into the same district...." (*Id.*, p. 415 of 4 Cal.Rptr.2d, p. 581 of 823 P.2d, *infra,* fn. 44.) Such a misshapen district seemingly would violate the "compactness" criterion, and is not required by the Voting Rights Act. As previously noted, the act applies only to "functionally, geographically compact" minority groups.

Significantly, the Masters' proposed district, combining the Richmond and Sunset districts of the city, and some southern fringe areas thereof, with the northern part of neighboring Daly City, contains approximately the same Asian population as the one considered by the Masters that included the Richmond-Sunset-Chinatown areas, with the added advantage of being "nested," for purposes of forming a senate district, with an adjacent assembly district having a substantial Asian population. (Report, pp. 414-415 of 4 Cal.Rptr.2d, pp. 580-581 of 823 P.2d.)

[10] Additionally, the Coalition complains that the Masters' plans failed to link Asian populations within Oakland, within San Jose, and within two areas of Los Angeles County. The Masters found, however, that Voting Rights Act considerations affecting Blacks and Hispanics in those areas necessitated the lines which were drawn. With respect to the area around Torrance, however, a minor change has been suggested by the Coalition (and supported in principle by the National Association

for the Advancement of Colored People). This change, which we adopt, involves a modification of Assembly Districts 51 and 53 (and thus Senate Districts 25 and 28), that will substantially increase Asian population percentages in Assembly District 53, as requested by the Coalition and also will eliminate a split of Torrance city boundaries, without significantly affecting Black or Hispanic opportunities in those two districts, and without exceeding the 1 percent district population deviation adhered to by the Masters.

Therefore, we adopt the following change to the Masters' plans set forth in their Report: Los Angeles County Census Tracts 2753.11, 2753.12, 2755, 2756, 2764, ***390 **556 2765 and 2770 are hereby included in Assembly District 51, and Census Tracts 6500.01, 6500.02, 6501.01, 6501.02, 6502 and 6503 are hereby included in Assembly District 53.

3. *Objections of National Association for the Advancement of Colored People (NAACP) and Congress of Racial Equality (CORE)*

[11] Representatives of NAACP and CORE indicated no objection to the Masters' proposed congressional districts, but they suggested some changes *724 to Senate Districts 25 and 28, and to the four assembly districts (Assem. Dists. 51, 52, 53 and 55) nested within them, to maximize Black opportunities for representation in the area.

The proposed changes would increase the number of Blacks in Assembly Districts 51 and 52 and decrease the number of Blacks in Assembly District 55. The net effect of this change would be to render it unlikely that a fifth Black member of the Assembly would be elected from south central Los Angeles County, but it would bolster the probability of retaining four Black members of the Assembly in the area throughout the decade. Although NAACP and CORE may have valid tactical reasons for seeking only four Black majority districts in the area, we believe that the Masters' decision to maximize the number of such districts was a reasonable one that was entirely consistent with the Voting Rights Act, particularly in light of the fact there are currently five Black Assembly members from this area. We also appreciate the difficulties inherent in the task of attempting to steer a middle course between unnecessary dilution of minority voters among too many districts, and overconcentration or "packing" minority voters into too few such districts. (See *ante,* p. 384 of 4 Cal.Rptr.2d, p. 550 of 823 P.2d.)

We also note that the relatively minor changes we have made in the Masters' proposed Assembly Districts 51 and 53, as previously discussed (*ante,* p. 389 of 4 Cal.Rptr.2d, p. 555 of 823 P.2d), constitute part of the changes sought by NAACP and CORE.

4. *Objections of California Democratic Congressional Delegation (DCD)*

DCD's brief is a copy of a brief it filed in federal district court asking that court to assume jurisdiction over the reapportionment issue. DCD raises two primary objections to the Masters' congressional plan: (1) its asserted failure to achieve sufficiently close population equality between the various proposed congressional districts, and (2) its asserted noncompliance with the Voting Rights Act.

The population equality issue is discussed at length in the Report (pp. 402-405 of 4 Cal.Rptr.2d, pp. 568-571 of 823 P.2d, *infra*). Although DCD has offered plans that assertedly have only a slight deviation from "perfect" equality, the federal cases allow deviations as great as or greater than those in the Masters' plans, if supported by a "legitimate state objective." (See *Karcher v. Daggett, supra,* 462 U.S. at pp. 740-741, 103 S.Ct. at pp. 2663- 2664.) As previously indicated, the benefits of using undivided census tracts, namely, to maintain reasonable geographical integrity, preserve communities of interest, and assure full participation by minority groups in the reapportionment process, amply constitute such justification.

*725 The dissent herein suggests that one of DCD's proposed plans would be preferable because of the small population variance. We observe, however, that the Masters specifically found DCD's plans to be violative of article XXI of the state Constitution and its requirements of contiguity and respect for "geographical integrity" of county boundaries and geographical regions. (Report, pp. 411-412 of 4 Cal.Rptr.2d, pp. 577-578 of 823 P.2d, *infra.*) Our review of the maps of DCD's submission confirms numerous instances of such violations, supporting the Masters' finding in that regard. Contrary to the assumption of the dissent herein, these violations cannot be fairly characterized as "trivial" in nature (dis. opn., *post,* p. 449 of 4 Cal.Rptr.2d, p. 615 of 823 P.2d), and the DCD's ***391 proposed plans **557 would not constitute an acceptable alternative under any circumstances. Therefore, we endorse the Masters' foregoing finding and also approve in principle the Masters' concept of functional contiguity and compactness (see Report, pp. 406-409 of 4 Cal.Rptr.2d, pp. 572-575 of 823 P.2d, *infra*).

As for asserted Voting Rights Act violations, none of DCD's claims appears meritorious. First, DCD assumes the Masters' plans are "retrogressive" in one respect, by making it more difficult for an incumbent Hispanic congressman (Roybal) to gain reelection in his new district (Cong. Dist. 30).

variables. We think redistricting plans that comply with the federal Voting Rights Act and follow the various state standards and criteria outlined above, rather than seek to maintain the status quo or preserve or enhance the political power of any party, will necessarily produce plans at least as "fair," politically or otherwise, as vetoed ones that "are at best truncated products of the legislative process." (*Legislature v. Reinecke* (1972) 6 Cal.3d 595, 602, 99 Cal.Rptr. 481, 492 P.2d 385.)

[15] The Assembly additionally suggests some "minor changes" in the Masters' plans that assertedly would avoid certain "splits" of city boundaries necessitated by the Masters' use of undivided census tract data. (See Report, pp. 403-405 of 4 Cal.Rptr.2d, pp. 569-571 of 823 P.2d, *infra.*) We decline the Assembly's offer, which would require us to deviate from the Masters' express policy to avoid splitting census tracts. (One of these "minor" changes proposed by the Assembly, and supported by the dissent herein, involves removing a slight division of the boundaries of Vallejo and Fairfield, necessitated by the Masters' use of undivided census tracts. We reject this proposed change because it likewise would involve splitting census tracts.)

7. *Objections of the State Board of Equalization (Board)*

[16] The Board's primary argument is that the Masters' plan does not adequately protect minority interests in the area of proposed Board District 4 ***728** by creating a minority influence district of sufficient strength. The Board suggests that an Asian incumbent Board member (Fong, a Republican) may be unable to prevail in this new district. Yet the Masters' proposed district has a majority of combined minorities, and indeed a higher percentage of minorities than the Board's proposal.

Although the Board criticizes the Masters' plan for failing to construct the district so as to exclude the residence of another incumbent member (who is White), the Masters followed a consistent policy of not considering the residences of incumbents in drawing district lines, and we do not believe that policy violates the Voting Rights Act, particularly in these circumstances.

Finally, the Masters noted that the Board's proposed plan would split three counties, whereas the Masters' plan splits ***393** ****559** only one. (Report, p. 430 of 4 Cal.Rptr.2d, p. 596 of 823 P.2d, *infra.*)

8. *Other Objections*

Most of the other objections filed with us involve requests to modify individual districts to benefit particular groups, incumbents or candidates. Both policy and practical considerations inhibit us from granting these requests.

[17] For example, over the objection of the dissent herein, we have denied several requests to renumber senate districts for the apparent benefit of incumbents whose chances of reelection presumably would be improved or terms of office lengthened as a result of the requested changes. (Even-numbered senate districts are not scheduled for election until 1994, whereas odd-numbered districts are scheduled for 1992.) Contrary to the dissent's assumption, such accommodations involve more than "simply" renumbering a few districts. The effects of granting these requests, to which we have received strong opposition, are far reaching, favoring incumbent legislators at the expense of their challengers, and partially disenfranchising substantial numbers of "odd-numbered district" voters who otherwise would be entitled to vote for senatorial offices in 1992. Granting these requests would be wholly out of place in "incumbent neutral" redistricting plans.

As for individual requests to modify particular district lines, our language in *Legislature v. Reinecke, supra,* 10 Cal.3d at page 403, 110 Cal.Rptr. 718, 516 P.2d 6, seems pertinent here: "Any attempts that we might now make to redraw the specific district lines to achieve possibly more reasonable results would run the serious risk of creating undesirable side effects which we could not foresee and which adversely affected parties could not call to our attention in time for corrections to be made. Moreover, that risk would necessarily be magnified by the *729 fact that we are not in as advantageous a position as the Masters were in to assess the impact of possible alternatives."

F. *Conclusion*--The Masters, their staff and their consultants conducted an intensive study of this matter, attempting to adhere, to the greatest extent possible, to the Voting Rights Act and the other reapportionment standards and criteria specified by this court in *Wilson I, supra,* 54 Cal.3d 471, 286 Cal.Rptr. 280, 816 P.2d 1306. Although the Masters were not previously aware of the specific objections that have been made in this court to their plans, they were fully cognizant of similar objections made to the various plans submitted by the Legislature, the Governor, and the independent commission appointed by the Governor.

In performing their task, the Masters and their staff developed an expertise in the art of reapportionment that is reflected in the plans they have recommended to us. We specifically endorse the Masters' analyses and recommendations regarding the proper weight and application of the various reapportionment criteria. Although we likewise approve the Masters' interpretation and application of the Voting Rights Act, we acknowledge that any questions arising thereunder are essentially ones of federal law, and that any definitive answers to these complex questions ultimately must be provided by the United States Supreme Court. We are satisfied that, by reason of the Masters' successful efforts to maximize the actual and potential voting strength of all

geographically compact minority groups of significant voting age population, a federal Voting Rights Act challenge would lack merit.

In short, we have examined the Masters' plans in light of the applicable criteria and the various objections thereto, and we conclude that in each case, with minor modifications previously discussed, the lines drawn represent reasonable applications of the recommended criteria. Accordingly, except as set forth *ante,* at page 390 of 4 Cal.Rptr.2d, at page 556 of 823 P.2d hereof, we accept and adopt each of those plans.

As indicated in *Wilson II, supra,* 54 Cal.3d at pages 548-550, 286 Cal.Rptr. 625, 817 P.2d 890, respondent Secretary of State has urged us to announce our plans for reapportionment no later than January 28, 1992, in order to avoid the expense and confusion arising from a possible delay in holding the primary election. For that reason,, ****560 ***394** and consistent with prior precedent, we have made our decision adopting the Masters' plans final forthwith. (See *Assembly v. Deukmejian, supra,* 30 Cal.3d at p. 679, 180 Cal.Rptr. 297, 639 P.2d 939; *Legislature v. Reinecke, supra,* 10 Cal.3d at p. 407, 110 Cal.Rptr. 718, 516 P.2d 6.)

We accept the Masters' recommendation to release to the University of California Institute of Governmental Studies in Berkeley, for safe storage, cataloging, and use by the public and scholars, all pertinent materials heretofore lodged with the Masters.

***730** As in *Legislature v. Reinecke, supra,* 10 Cal.3d at page 407, 110 Cal.Rptr. 718, 516 P.2d 6, we have no reason to believe any of the parties to these proceedings will fail to accede to our holding herein, and accordingly no purpose is served by issuing a writ of mandate. The alternative writ of mandate heretofore issued is discharged, and the petition for writ of mandate denied. Each party will bear its own costs.

Our judgment is final forthwith.

PANELLI, KENNARD, ARABIAN, BAXTER and GEORGE, JJ., concur.