The CHAIRMAN. I am looking forward to that day, also.

Let me suggest, as I understand there is a scheduling problem for two members of the panel. I am advised this is important enough that they would stay and miss their planes, and they have indicated they are willing to do that. But I would like, if the rest of the panel would agree, to go Ms. Hernandez next, because I understand both of you have a 6 o'clock airplane—is that correct? And I see no reason, if you all don't mind, why we shouldn't go to you next. Then what I might do is ask you questions first, also, to give you an opportunity because I would not count on the traffic here, your making the plane, if we wait till the end of the panel.

But, please. And I thank the rest of the panel for their indulgence.

Ms. HERNANDEZ. Thank you, Mr. Chairman. My name is Antonia Hernandez, and I am the president and general counsel of the Mexican-American Legal Defense Fund. I thank you and the members of the committee for giving me the opportunity to testify on behalf of MALDEF on the nomination of Judge Anthony Kennedy to be an Associate Justice of the Supreme Court of the United States.

I am here to express concerns, and our concerns are real and they are indeed serious. They stem from such facts as Judge Kennedy's membership in private clubs that had not admitted into membership Hispanics, other minorities and women; and they are based on the fact that although he has employed 35 law clerks, Judge Kennedy has never found himself able to employ an Hispanic or a black.

My grave concerns, however, are primarily based on several of Judge Kennedy's judicial decisions on civil and constitutional rights in which he denied access to the courts to minorities, in which he denied the right to a trial to minorities, and in which he ruled against minorities by disregarding settled rules governing the scope of appellate review.

I have submitted an extensive written record. Today, in my oral statement I will address, primarily, two matters: first, the historical importance of the Supreme Court to vindicating the rights of Hispanics; and, secondly, Judge Kennedy's involvement in several judicial opinions, particularly in the *Aranda* v. *Van Sickle* decision that MALDEF litigated.

The history of discrimination against Hispanics in this country, particularly in the Southwest and particularly from the mid-19th century to date, has been not unlike that suffered by blacks. We Hispanics have been subjected to segregation in schools, in restaurants, and in hotels. We have been denied employment and often treated badly when employed. We have been denied the opportunity to serve on juries, and we have been denied the most fundamental of rights, the right to vote.

Our fight to restore our basic civil rights has not been an easy one; and, in fact, it has required MALDEF and other attorneys to file and litigate hundreds of lawsuits, and a number of our lawsuits have ended up in the U.S. Supreme Court. A prime example is the voting rights case of *White* v. *Regester*, where a unanimous Supreme Court struck down Texas' imposition of a multi-member leg-

islative district in Bexar County, a heavily Hispanic county where San Antonio is located.

Based on such facts and the reality that only five Hispanics in nearly 100 years had ever been elected to the Texas legislative body from Bexar County, the Supreme Court upheld our claim that the multi-member district diluted the vote of Hispanics in violation of the 14th amendment, and the Court thus affirmed the redrawing of the single-member districts. And, as you all know, as a consequence of that, we have a dynamic young Hispanic mayor, Henry Cisneros, and the majority of the city council is minority—five Hispanics, one black. And I have other examples of the consequences of our litigation in that area.

The CHAIRMAN. He may be your first Hispanic President.

Ms. HERNANDEZ. Probably so, and I look forward to that day.

In *Doe* v. *Plyler* we challenged Texas' denial of a public school education to undocumented Hispanic children. These children were Texas residents, most of whom would eventually become legal residents, but who, without an education would become a permanent underclass. The Supreme Court in this case agreed that Texas' policy was unconstitutionally discriminatory in violation of the 14th amendment. But the Court reached this decision through a bare 5-4 majority, with Justice Powell joining the majority. With Justice Powell no longer on the Supreme Court and with the future of the Supreme Court hanging in the balance, we are indeed concerned about his possible replacement. I am particularly concerned about the fairness of the person nominated to succeed Justice Powell, and it is for that reason that we consider this particular vacancy of serious importance.

In several cases Judge Kennedy's opinions reflect not only a deviation from precedent, but also unfairness, and even a serious insensitivity to the rights of minorities. The point of my grave concern about these adverse opinions is not just that he ruled against civil rights plaintiffs in cases that I firmly believe could have been and should have been ruled upon differently, but rather my serious concern arises primarily from the manner in which he reached his results adverse to civil rights.

Aranda v. *Van Sickle* is a case in point. *Aranda* is a vote dilution case similar to the Supreme Court case of *White* v. *Regester*, and I might say almost identical. But Judge Kennedy reached a result different from that reached by the unanimous Supreme Court.

The Hispanic plaintiffs in *Aranda* challenged the at-large election used by the city of San Fernando, California. As of the early 1970's, the population of San Fernando had grown to become almost 50 percent Hispanics. Twenty-nine percent were registered voters, and yet only three Hispanics had ever been elected at large since the city had incorporated in 1911 to the five-member city council.

The plaintiffs also alleged that there was a history of discrimination against Hispanics, and that the political process was not equally open to Hispanics. For example, more than half of the polling places had been ordinarily located in homes of Anglos outside of the barrio community and, as you know, it is extremely difficult for minority members to go to a different hostile neighborhood to cast a vote.

Despite these allegations the district court summarily dismissed the case, thereby denying the plaintiffs their day in court to prove their case at trial. The ninth circuit affirmed the summary dismissal in a majority opinion which set forth few of the facts, which contained little legal analysis, and which primarily adopted the district court findings. And I must emphasize that what was of particular interest in this case is that Judge Kennedy filed a concurring opinion in which he filled in the facts and provided the precedential analysis missing from the majority opinion.

This concurring opinion is remarkable in at least two respects. First, Judge Kennedy never discussed the Supreme Court's stringent legal principle disfavoring summary dismissals. Judge Kennedy accordingly circumvented established Supreme Court precedent possibly so as to reach the results he desired. Secondly, Judge Kennedy itemized the plaintiffs' many factual allegations and then concluded that such plaintiffs could never win, and I quote:

"Assuming that plaintiffs' factual allegations are true, when taken together, they would not permit a reasonable person to infer that the at-large system for electing the mayor and city council members is maintained because of an invidious intent."

Since the fact patterns underlying most at-large elections in California and in other States within the ninth circuit were no more egregious than the facts alleged by the Hispanic plaintiffs in this case, Judge Kennedy's basic conclusion effectively ended constitutional challenges to at large elections within the ninth circuit. And so, to us, it was not so much the reversal but the logic and the processes used. And as a consequence of that, you have seen from many of his decisions the preclusion of challenges to at-large election systems in the State of California and in the ninth circuit.

[The statement of Antonia Hernandez follows:]