

Testimony

**The Latino Community and the Reauthorization of the
Voting Rights Act**

Submitted by:

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I. INTRODUCTION

Chairman Chabot, Ranking Member Nadler, and Members of the Constitution Subcommittee, on behalf of the National Council of La Raza (NCLR), thank you for holding hearings on the reauthorization of the Voting Rights Act, an issue that is very important to the Latino community. NCLR is the largest national Latino civil rights and advocacy organization in the U.S., with more than 300 local affiliated community-based organizations (CBOs) in its network. In addition to providing capacity-building assistance to our affiliates and essential information to our associates, NCLR serves as a voice in public policy debates for all Hispanic subgroups in all regions of the country.

NCLR appreciates the opportunity to submit testimony before the subcommittee to support the reauthorization of the sections of the Voting Rights Act of 1965 due to expire in 2007. The right to vote is a fundamental civil right for all Americans, and NCLR supports efforts to remove barriers that inhibit Americans, especially the most vulnerable in our society, from exercising their right to vote.

The Voting Rights Act of 1965 was designed to strengthen the Fifteenth Amendment of the Constitution. It eliminated voting barriers, such as literacy tests and poll taxes which kept African Americans, Latinos, and other minority voters away from voting booths and without a political voice. The Voting Rights Act of 1965 prohibits discrimination based on race and national origin, and requires certain jurisdictions to provide bilingual assistance to language minority voters.

In this testimony, I will provide background demographic information about the Latino community, which will support not only the importance but also the relevance of Section 203 – the language minority provisions – and Section 5 of the Voting Rights Act. At the conclusion of the testimony, I will provide a set of recommendations that, if adopted, will protect the right to vote by making the ballot accessible to all Americans regardless of race, ethnicity, socioeconomic status, literacy, or disability.

II. BACKGROUND: HISPANIC DEMOGRAPHICS

According to the U.S. Census Bureau, Hispanic Americans are now the largest minority in the United States; as of 2004 there are 41.3 million Latinos living in the U.S. Although Hispanic Americans have traditionally been concentrated in five states – California, Illinois, New York, Arizona, and Texas – the 2000 Census revealed that Latinos are moving to “nontraditional” states such as Arkansas, Georgia, North Carolina, and Tennessee. In fact, North Carolina experienced nearly 400% growth in the Latino population between 1990 and 2000. Although the Latino community experienced strong rates of growth throughout the nation, the Southeast U.S. has experienced the most dramatic population growth, with 23 states experiencing at least 100% growth or more in a ten-year period. Further, the nation’s Latino population is projected to reach 73 million by 2030.¹ Additionally, the Latino community is young. Of the 41.3 million Hispanics living in the U.S., more than one-third (34%) are under the age of 18. Several years

¹ U.S. Census Bureau, International Data Base, Table 094. <http://www.census.gov/ipc/www.idbprint.html>

ago, Latino children became the largest minority group among children under 18 years old in the U.S. This translates into substantial new growth in the voting-age population in the near future. In addition, approximately 40% of Latinos in the U.S. are foreign-born, which means that the majority of Latinos are native-born U.S. citizens. Even among the 14 million foreign-born Latinos, 38.5% are naturalized citizens who vote at a higher voting rate than native-born Americans. Currently, 16.1 million Latinos are citizens of voting age.² Among Latino voting-age citizens, 4.3 million are limited-English-proficient (LEP); that is, they are still in the process of learning English and may need assistance in order to fully understand the ballot and the process of voting itself.³ It is important to point out that today's immigrants learn English as fast as or faster than earlier generation of immigrants. Nevertheless, while Hispanic Americans are working on English language acquisition, it is critical that they have meaningful access to the ballot.⁴

III. LANGUAGE MINORITY PROVISIONS

Every voter has the right to cast an informed and effective vote. This right is extended to all people including those for whom English is not their first language. In 1975 Congress added the language minority provisions to the Voting Rights Act, recognizing that large numbers of American citizens who primarily spoke a language other than English had been effectively excluded from participation in the electoral process. The denial of the right to vote among language minority citizens was "directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation."⁵ Section 203 applies to four language minority groups: people of Spanish heritage,⁶ Asian Americans, Native Americans, and Alaskan Natives.

Language minorities are ensured protection and full participation in the electoral process by two separate provisions of the Voting Rights Act of 1965 – Section 203 and Section 4(f)(4), and a number of state and local statutes. Sections 203 and 4 of the Act apply only to jurisdictions which meet a numerical threshold. In order to receive protection under the Voting Rights Act, a single language minority group, which has limited or no English proficiency and has low literacy skills, must either number 10,000 within a jurisdiction or constitute 5% of the voting-age population within that jurisdiction. Once a jurisdiction is determined to meet one of the thresholds, then it has an affirmative duty to provide meaningful access to voting to the language minority group in their native language. According to the latest U.S. Census Bureau

² U.S. Census Bureau, Current Population Survey, November 2004, Table 2: Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age, for the United States: November 2004. <http://www.census.gov/population/socdemo/voting/cps2004/tab02-6.xls>.

³ According to the U.S. Census, among all those who speak Spanish at home, more than 50% speak English "very well" (http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=ACS&_lang=en&ts=134303235020).

⁴ *Solving the Immigration Crisis: The Road to Comprehensive Reform*. The American Prospect, November 2005

⁵ 42 U.S.C. Sec. 1973aa-1(a).

⁶ At the time of the passage of Section 203, "people of Spanish heritage" was the common term used by the government for Hispanic Americans/ Latinos.

determinations, there are 220 jurisdictions⁷ that must comply with Spanish language assistance. Such jurisdictions must provide voting materials and language assistance in Spanish to ensure full access and participation to Spanish language citizens who are limited-English-proficient (LEP).

Despite the fact that the language assistance provision of the Voting Rights Act has been in place for the past 30 years, there is evidence that some jurisdictions are still not in full compliance with the federal language assistance requirements, and that Latino voters still face voting discrimination based on language capability. For example:

- During the 2004 election in Pima County, Arizona, Latino LEP voters were denied equal access to voting due to the lack of sufficient bilingual ballots.⁸ Consequently, Latino voters were relegated to crowd around one translated, poster-sized board of more than a dozen initiatives that were on the ballot. At dusk, even this inadequate attempt to comply with Section 203 completely failed, given that the poster board was illegible due to the lack of lighting around it.

IV. SECTION 5 OF THE VOTING RIGHTS ACT

Section 5 of the Voting Rights Act was designed to eliminate and prevent discriminatory voting practices affecting minority voters imposed by states with a documented history of discrimination. Prior to passage of Section 5, states or counties that were told by federal courts to end one discriminatory practice would simply implement a new one to take its place. Congress decided in 1965 that states that had a history of discriminating against minority voters would have to affirmatively demonstrate that new changes in voting procedures would not further discriminate against minority voters. There are nine states, in whole, and an additional seven states, in part, that must receive administrative approval from the United States Attorney General or judicial approval from a three-judge panel of the D.C. District Court for all proposed voting changes. This approval requires proof sufficient to convince the Attorney General or the court that the proposed changes do “not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color or [membership in a language minority group].”⁹ For example:

- The Mexican American Legal Defense and Educational Fund (MALDEF) filed suit in 2002 against the City of Seguin, Texas when it attempted to prevent Latinos from gaining a majority of seats on its city council. The 2000 Census showed that the growing Latino population in Seguin comprised the majority of five of the eight city council districts.

⁷ Despite the rapid growth of the Latino community, there were only 49 additional jurisdictions added in the entire country to those jurisdictions that need to comply with Section 203. Furthermore, five jurisdictions were removed from the list.

⁸ In 2004, NCLR worked with its Tucson, AZ affiliate (Pima County), Chicanos Por La Causa (CPLC), on a voter mobilization and election protection initiative, the Latino Empowerment and Advocacy Project (LEAP). CPLC volunteers noted at least ten polling locations that had only one bilingual copy of the ballot initiatives posted outside, before entering the building, and no bilingual copies inside those polling locations.

⁹ 42 U.S.C. 1973c.

The city responded by dismantling the fifth Latino majority district in its new redistricting plan, but the Department of Justice indicated that it would not likely preclear a plan with such an obvious retrogressive effect.¹⁰

The fact that the states of Texas and Arizona as well as certain counties in New York and California are covered by Section 5 has made a significant difference in the ability of Latino voters to exercise their right to vote. As more Latinos move into other historically-covered jurisdictions such as Georgia and Louisiana, Section 5 will provide protections needed there as well.

Section 5 has been an effective tool for a number of reasons. It stops many jurisdictions from implementing discriminatory barriers they might otherwise be tempted to try because they know they must prove to the federal government or a federal court that the voting change they want – whether it be to change a polling place, the time of the polling hours, or the way voting districts are drawn – will not leave the Latino community worse off than before the change. If a jurisdiction attempts to implement the change anyway, the Department of Justice often responds to the jurisdiction with an objection. Many times, the jurisdiction will modify the change at that point so that it will not have a discriminatory effect on minority voters. If the jurisdiction decides to implement the change over the Department of Justice's objection, the jurisdiction can be prevented from implementing the change by a federal court. This mechanism is critical to preserving the voting rights of Latinos primarily because the discriminatory change is stopped *before* the harm is done. In other words, Latino voters do not have to wait till after a discriminatory election to go to court when it is often too late to change the outcome of an election. Instead, Latino voters can prevent the change from ever going into effect, and the election can proceed without a new barrier.

V. RECOMMENDATIONS

NCLR is encouraged by the progress achieved since the inception of the Voting Rights Act; however, every election since the subsequent reauthorization of the act in 1975, 1982, and 1992 reminds us that the work, such as in Sections 203 and 5, is far from being completed. There are numerous examples of Latino voters unable to understand a ballot because it was in English; this denies them the right to cast an informed and effective ballot. There are also examples of jurisdictions attempting to limit the full voting potential of Latino voters as that segment of the voting population increases.

Letting the expiring provisions of the Voting Rights Act sunset in 2007 sends the wrong message. It says that we have given up on the great work that started more than 40 years ago, which strived to provide full voting rights to all American citizens. Therefore, NCLR respectfully urges Congress to study, reauthorize, and update the expiring provisions of the Voting Rights Act, to ensure that the vision, promise, and spirit of the Act are realized.

¹⁰ Testimony by Nina Perales, MALDEF Southwestern Regional Counsel, before the U.S. House Judiciary Subcommittee on the Constitution, regarding the reauthorizations of Sections 5 of the Voting Rights Act, October 25, 2005.

Specifically, NCLR calls on Congress to:

Reauthorize Section 203 of the Act and adjust it to comport to the nation's population needs and reality.

- Extend this section for an additional 25 years, to expire in August 2032.
- Lower the numerical trigger from 10,000 to 7,500 to more effectively capture language minority communities.
- Change the basis for Section 203 determinations from the decennial long-form survey to the American Community Survey (ACS) which is replacing the decennial long form.
- Require that Section 203 determinations be made every five years instead of every ten years, beginning in 2010, because it will be keyed to the ACS.

Failure to reauthorize the language minority provisions of the Act would result in the disenfranchisement of more than four million Latino citizens.

Reauthorize Section 5 of the Act.

- Extend this section for an additional 25 years, to expire in August 2032.
- Clarify the retrogression standard as articulated in *Georgia v. Ashcroft*¹¹ which has implications for Section 5 enforcement.

¹¹ In *Georgia v. Ashcroft*, the Supreme Court interpreted Section 5 to allow preclearance in certain circumstances if the overall political "influence" of minority voters is not diminished, even if their ability to elect candidates of choice is. This decision was a radical departure from past practice by the Department of Justice and the D.C. District Court.