National Hispanic Leadership Agenda

June 24, 2014

The Honorable Patrick J. Leahy
Chairman
United States Senate Committee on the Judiciary
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
United States Senate Committee on the Judiciary
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the National Hispanic Leadership Agenda (NHLA), a coalition of 37 national Latino organizations in the country, we write to express our support for the Voting Rights Amendment Act of 2014 (S. 1945). This critical piece of bipartisan legislation protects minority voter populations, and particularly the Latino community, from the egregious and far-reaching discrimination that has plagued past elections and continue to suppress the Latino electoral voice today.

NHLA firmly believes that voter suppression threatens the very core of our democratic society and has therefore vigorously advocated against efforts that disenfranchise Latino voters in elections. Both the 2008 and the 2012 NHLA Hispanic Policy Agenda highlighted the urgent need to combat discriminatory efforts, ranging from intimidation at the polls to new and unnecessary voter restrictions that disproportionately burden minority voters. The NHLA has long supported policies such as same-day registration and absentee voting options that expand the opportunity to participate in elections.

Racial discrimination in voting is ongoing, and our nation must have the appropriate tools to respond to and fight against its negative effects. The enclosed report, "Latino Voters at Risk, Support for Modernizing the VRA", issued by NHLA together with MALDEF and NALEO, outlines the blatant attempts to deter and limit the minority vote, attempts that have only been emboldened by the Supreme Court's recent decision in *Shelby County v. Holder*. These tactics vary from conversion of single-member election systems to at-large voting, which purposefully dilutes the minority vote; to redistricting measures that split up a minority population. Since *Shelby County*, jurisdictions in at least seven states attempted to or succeeded in passing discriminatory voting policies. The goal behind these policies seems obvious: disadvantage minority voters, and particularly the Latino community, in the political process.

Such attacks on our democracy cannot go unaddressed. Congress must respond expeditiously to communicate that, as a nation, we value every citizen's right to participate in the electoral process, no matter his or her race, socio-economic status, or language spoken at home. The Voting Rights Amendment Act is a modern, flexible, and nationwide approach that respects both the spirit and letter of the Court's decision, while simultaneously providing the necessary tools to prevent voter discrimination from occurring and ensure transparency in proposed election changes.

Americans who lose their right to vote cannot be remedied retroactively. Every day that passes without action from Congress is additional tacit approval of the discriminatory policies in place. This urgent issue must be addressed immediately to protect voters who are in danger of losing their ability to vote as early as this November. NHLA cannot, and Congress ought not, tolerate this grave violation of civil rights.

We look forward to collaborating with you on this critical legislation. We look forward to a vigorous debate in both houses, with a goal of arriving at the best legislation to protect voting rights, including Latino voting rights, in our dynamic twenty-first century. If you have any questions, please feel free to contact Melody Gonzales at melody@nationalhispanicleadership.org or 202-508-6917.

Sincerely,

Hector E. Sanchez,
Chair, National Hispanic Leadership Agenda
Executive Director, Labor Council for Latin American Advancement
Encl. (1)

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MALDEF
The Latino Legal Voice for Civil Rights in America.

NATIONAL ASSOCIATION OF LATINO ELECTED & APPOINTED OFFICIALS
NALEO

NHLA
National Hispanic Leadership Agenda

Latinos and the VRA: A Modern Fix for Modern-Day Discrimination

Executive Summary

Congressional action to update the Voting Rights Act has stalled, partly because of the illusion that discrimination has vanished. This report removes all doubt: Voting discrimination against Latinos is egregious and far-reaching.

The Voting Rights Act of 1965 (the Voting Rights Act) is, by common consent, the most effective civil rights law in U.S. history. It both prevents voter discrimination and remedies it when it occurs.

Recently it has come under direct assault.

Until 2013, it required jurisdictions with a history of voter discrimination to gain pre-approval, or "preclearance," from the U.S. Department of Justice (DOJ) or a federal court before implementing changes in election law or practices. This step prevented harm before it began. A "coverage formula" determined which jurisdictions needed preclearance.

In June 2013, the U.S. Supreme Court struck down the coverage formula by a narrow five-to-four margin, in *Shelby County, Alabama v. Holder*.

The Court left the preclearance process intact, but said Congress must enact a coverage formula that meets "current needs."

Shelby County delivered a tremendous blow to Latino voters and the country as a whole.

Almost seven million Latinos eligible to vote live in jurisdictions previously subject to the preclearance requirement and are now without these protections.

Latinos are about 10 percent of the nation's voting population and have provided the margin of victory in many key elections. They are a vital part of the electorate in large states like California and Texas, and are emerging as a force in others like Georgia and Virginia.

The action—or inaction—of Congress today will affect the Latino vote of tomorrow.

Voting discrimination against Latinos is obvious, egregious, and far-reaching.

The bipartisan Voting Rights Amendment Act was introduced in both chambers of Congress in January 2014, but Congress has still not held a committee hearing on it.

One reason is the misperception that discrimination has vanished.

However, Latinos experience discrimination in voting at every stage in the voting process, from registration to changes in election systems and districts, and even at the polls. In fact, Chief Justice Roberts, writing for the majority, said that "voting discrimination still exists; no one doubts that."

These anti-democratic practices include at-large elections, voter purges, redistricting, proof of citizenship for voter registration, and restrictive voter identification requirements.

Before _Shelby County_, the Voting Rights Act rectified many recent discriminatory tactics, such as:

Arizona

- *Redistricting*. DOJ halted a 2002 redistricting plan that would have caused Latinos to lose three seats in the legislature, and that seemed intended to achieve that result.

- *Voter registration*. A 2004 ballot proposition required newly-registering voters to provide documentary proof of U.S. citizenship. It caused Latino registration to plunge, and the federal courts invalidated it.

Florida

- *At-large elections*. By 2005, Latinos were more than one-third of Osceola County's population, but under its at-large election system no Latino had ever been elected county commissioner. A federal court ordered it to adopt a single-member district plan.

Texas

- *Redistricting*. The Supreme Court voided a 2004 redistricting map that violated the Voting Rights Act, noting that the legacy of past discrimination against Latinos might well "hinder their ability to participate effectively in the political process."

- *Candidate qualifications*. In 2007, Texas tried to bar candidates who did not own land from running for supervisor of fresh water supply districts. DOJ found that every incumbent supervisor who did not own land was Latino. Preclearance stopped this law from taking effect.

- *Reduction of bilingual assistance*. In 2008, and again in 2009, Gonzales County tried to significantly weaken Spanish-language election procedures in place since 1976. Preclearance kept this language assistance intact.

- *At-large elections*. Since 1992, the City of Galveston has several times sought to reduce Latino political opportunities with at-large elections. In each case, preclearance proved essential to protect the growing Latino voter population.

After *Shelby County,* opportunities to restrict Latino voters' access have increased. Among them:

Florida

- *Voter purge*. In 2012, the Florida Secretary of State began a process to remove alleged noncitizens from the voter rolls statewide. The state's use of inaccurate data negatively affected naturalized citizens, a large majority of whom are of Latino, Asian, or Afro-Caribbean descent. Preclearance challenges initially blocked the purge, but after *Shelby County* these cases were dismissed and Florida resumed the effort.

Colorado

- *Voter purge*. In 2012, the Colorado Secretary of State tried to conduct a voter purge with flaws similar to Florida's, and state legislators introduced HB 1050, which would have helped achieve this effort. The legislature defeated HB 1050, but after *Shelby County* the threat of renewed efforts to purge qualified voters remains.

Texas

- *Redistricting*. When Texas began redistricting in 2011, it had gained four additional seats in Congress. About 65 percent of its population growth had come from Latinos -- yet the redrawn maps failed to create even one new district in which Latino voters would have had an opportunity to elect the candidate of their choice. A federal court found discriminatory intent and threw out the maps.

- *Voter ID*. Immediately after *Shelby County*, Texas announced that it would implement a voter ID law that a reviewing court and DOJ had concluded would discriminate against Latinos and African Americans.

The Voting Rights Amendment Act (VRAA) must move forward, unhindered by the myth that discrimination has disappeared.

The VRAA must target practices most closely linked to discrimination and jurisdictions with particularly egregious recent records of seeking discriminatory rules.

In particular, it must protect Latino voters moving to new corners of our country. It must also cover future generations of Latino voters, whether they naturalize or enter the electorate at 18.

And it must move with all due speed to the floors of Congress for passage.

The Latino community, now the nation's second largest population group, whose demographic growth has sparked increased attempts to restrict the Latino vote, has a particular and significant interest in seeing the Voting Rights Act reinvigorated.

Latinos and the VRA:

A Modern Fix for Modern-Day Discrimination

A Joint Report of
Mexican American Legal Defense and Educational Fund
National Association of Latino Elected and Appointed Officials
National Hispanic Leadership Agenda

Latinos and the VRA:

A Modern Fix for Modern-Day Discrimination

Voting is one of our most fundamental rights, and "preservative of all rights."[1] It is one of the most basic forms of participation in our democracy. Yet a recent decision of the Supreme Court of the United States (Supreme Court) -- and protracted congressional inaction -- have left millions of voters of color, including Latino voters, without the ability to stop voting discrimination *before* it occurs. The country has been left without an efficient mechanism to resolve voting rights disputes, just as such disputes are rising with respect to the nation's second largest population group, Latinos.

The Voting Rights Act of 1965 (the Voting Rights Act) has long offered a dual approach to addressing voter discrimination, involving both preventive protections and remedial measures. From its inception in 1965 until 2013, Section 5 of the Voting Rights Act required states and local jurisdictions with a history of racial discrimination in voting to submit proposed voting changes to either the U.S. Department of Justice (DOJ) or a federal court in the District of Columbia for "preclearance," a form of pre-approval. Section 4(b) of the Voting Rights Act determined which places around the country were subject to the preclearance process.[2]

The Voting Rights Act has proven -- over forty-nine of the last fifty years -- to be the single most effective civil rights law enacted by Congress. Its considerable impact is due to its operation as a cost-effective dispute resolution mechanism and as an alternative to protracted litigation between disenfranchised minority voters and state and local officials contemplating troubling election practices.[3] But in June 2013, the Supreme Court struck down the Section 4(b) coverage formula by a narrow five-to-four margin, in *Shelby County, Alabama v. Holder.*[4]

While the Section 5 preclearance process under the Voting Rights Act remains in place post-*Shelby County*, it is effectively on hold until a new Section 4(b) coverage formula is enacted. The Court in *Shelby County* handed to Congress the task of crafting an updated coverage formula (or formulas) justified by "current needs."[5]

Congress took an important first step toward reinvigorating the Voting Rights Act to full force with the January 2014 introduction of the bipartisan Voting Rights Amendment Act of 2014 (VRAA), H.R. 3899 and S.1945.[6] As of June 2014, however, Congress had not yet moved the VRAA legislation forward, nor even held a committee hearing. The congressional process has come to a virtual halt; this is, in part, due to a misperception that discrimination against Latinos, and other minorities, is a thing of the past. However, even Chief Justice Roberts, writing for the five-justice *Shelby County* majority, acknowledged that "voting discrimination still exists; no one doubts that."[7]

This report removes any lingering "doubt" by describing the egregious and far-reaching discrimination faced by Latino voters during the recent past, including the short period since the Supreme Court decided *Shelby County*. Latinos are a growing portion of the electorate, and, as such, have been the targets of intentional efforts to suppress the community's growing political power by restricting the right to vote. However, these efforts will ultimately be unable to stem the increased impact of the Latino vote. Efforts to restrict or suppress the Latino vote are in no one's future political or policy interests. Latino voters care deeply about voting rights, and will register their disapproval of those who abet such restrictions. Congress's action (or inaction) today will affect the Latino vote of tomorrow, and by extension, the future strength of our democracy.

I: The Growing and Mobile Latino Electorate

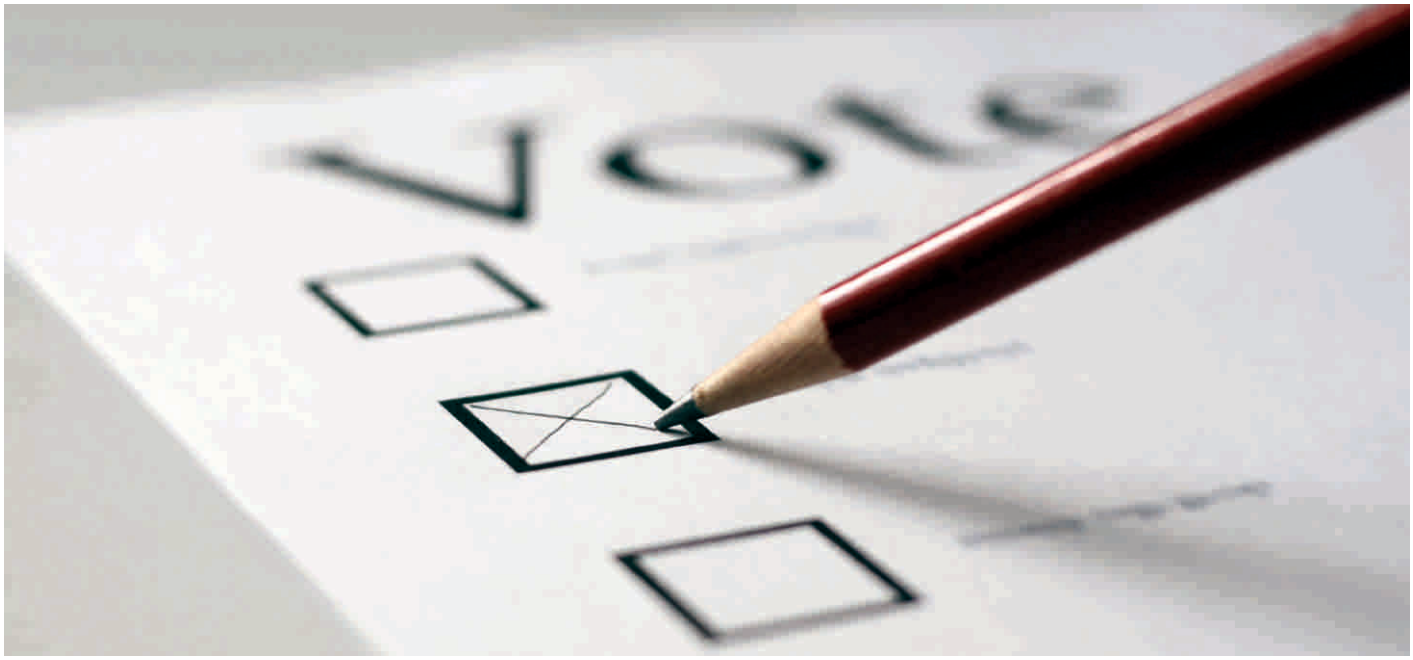
The Latino population, citizen and noncitizen alike, has grown exponentially, becoming the second largest population group in the country.[8] The Latino citizen voting-age population (CVAP), moreover, plays an increasingly influential role in elections at the local, state, and national level.[9] For example, Latino voters cast just over 7.4 percent of all votes in 2008, and just four years later in 2012, accounted for about 10 percent of all U.S. voters.[10]

The National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund published a report analyzing the Latino electorate prior to the *Shelby County* decision, and the potential impact the VRAA could have on protecting Latino voters.[11] Before *Shelby County*, nearly seven million Latinos eligible to vote lived in jurisdictions subject to preclearance,[12] with 5.7 million eligible Latino voters residing in the covered states of Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia, and 1.2 million Latino voters in covered localities within California, Florida, Michigan, New York, North Carolina, and South Dakota. As a result of *Shelby County*, these nearly seven million Latino votes are now more vulnerable to discriminatory barriers to the ballot box. More important, the entire nation, including its large and growing Latino electorate, relied upon Section 5 preclearance determinations as an important deterrent of copycat vote dilution efforts even in non-covered jurisdictions.

The scope and strength of the Voting Rights Act's protections have a disproportionate impact on the growing Latino electorate. Whereas, according to recent figures from the Census Bureau, 24.4 percent of eligible non-Latino voters live in a jurisdiction subject to pre-*Shelby County* preclearance, 32.2 percent of eligible Latino voters live in these same states and localities. Adult Latino U.S. citizens are a significant share of the population in some states previously subject to preclearance, and an extremely rapidly growing share of the population in others. As of 2012, Latinos made up 26.4 percent of CVAP in Texas; 25.6 percent in California; 19.3 percent in Arizona; and 16 percent in Florida, for example. The states experiencing the fastest Latino population expansion today include South Carolina (147.9 percent growth between 2000 and 2010) and Alabama (144.8 percent growth between 2000 to 2010). In other pre-*Shelby County* preclearance states, such as Georgia and Virginia, Latinos already constitute a noticeable electoral force that will continue to gain influence. For example, in 2012 there were already more than 230,000 Latinos in Georgia eligible to vote (representing 3.4 percent of CVAP), and more than 226,000 Latinos in Virginia (constituting 3.9 percent of CVAP). With about 800,000 Latino U.S. citizens turning 18 each year, and naturalization rates on the rise, Latinos will account for an increasingly important voice in American democracy into the foreseeable future.[13]

Against this backdrop, *Shelby County* delivered a tremendous blow to Latino voters and the country as a whole. Discrimination in voting still exists today, and Latinos experience it at every stage in the voting process, from registration to the reordering of election systems and districts, and even at the polls. Absent federal legislation that creates a new preclearance coverage formula (or formulas), discrimination will prevent the large and growing Latino electorate from participating fully in elections, a serious setback for and danger to democracy.

II: Persisting and Present-Day Discrimination Against Latinos Voters



Some have questioned whether voting discrimination occurs today, and whether it has been a problem in the recent past. Unfortunately, the answer, with respect to the growing Latino electorate and other communities, to both questions is clearly yes.

In recent years, both before and after *Shelby County*, states and local officials repeatedly took steps to restrict access to the polls for Latino voters and to dilute their voting power. Attempts to curb the political power of Latinos occur across the country and renewed efforts to limit their electoral impact are likely to appear as the number of eligible Latino voters continues to grow. The following examples of voter discrimination demonstrate some of the most recent and egregious ways in which Latino voters are targeted because of their growing political power. While not exhaustive,[14] these examples demonstrate not only the way some election practices are used repeatedly to limit the exercise of one of our most basic rights, but also the wide variety of counter-productive measures deployed to pervert elections and electoral outcomes.

To demonstrate the extent to which Latino voters are affected by voting discrimination across states and jurisdictions, select examples of both statewide and local election initiatives determined to have violated the Voting Rights Act are captured below. This report also reviews discriminatory laws that, but for *Shelby County*, would likely have been prevented from taking effect by the preclearance process. This report highlights cases that represent some of the most harmful and commonplace examples of voting discrimination, and that demonstrate why Latino voters need new preclearance review protections urgently.

A: Pre-*Shelby County* Discrimination Against Latino Voters

ARIZONA

Statewide Legislative Redistricting (2002): Arizona's post-2000 Census redistricting plan for state legislative seats was prevented from taking effect not only because it diminished the influence of Latino voters in multiple districts, but also because it appeared designed for that exact discriminatory purpose.[15] DOJ, upon review, concluded that if the proposed plan were implemented, Latino voters would suffer a net loss of three districts even though the state's Latino population had grown steadily in raw numbers and as a share of the electorate since redistricting had last occurred.[16]

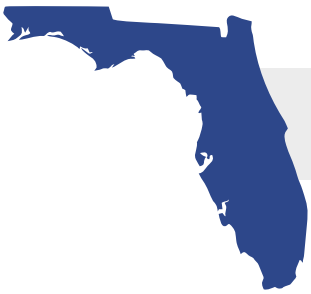
Requiring Specific Documentary Proof of Citizenship to Register (2004): In Arizona, a requirement that newly-registering voters provide documentary proof of U.S. citizenship -- as a small part of the anti-immigrant Proposition 200 -- was adopted in 2004 and went into effect in 2005, exercising a chilling effect on Latino voters. The anti-immigrant Proposition 200 plainly portrayed Latino voters as suspect, and Latinos had and continue to have a higher proportion of unregistered eligible potential voters. Recent available Census data show that only 52.2 percent of eligible Arizona Latino voters were registered compared to 65.2 percent of all eligible voters statewide.[17]

One expert study submitted in the course of litigation concluded that the Arizona Latino voter registration rate dropped by 43 percent, over two-plus years, when compared to their registration rates prior to Proposition 200. The drop in the Arizonan Latino voter registration rate was 13 percent higher than the corresponding reduction in the Arizona non-Latino registration rate during the same period.[18] Statistical evidence also showed that Latinos made up a disproportionate 20 percent of those who did not manage to register after initial rejection, while only 11 percent of Latinos who were rejected were successful.[19] Under Proposition 200, Latinos were disproportionately rebuffed when they tried to register relative to their representation among all voter registration applicants, according to analysts.[20] In spite of a Supreme Court ruling against Proposition 200[21] and strong evidence of its discriminatory effects, Arizona continues to try to implement this flawed law.[22]

CALIFORNIA

Method of Election for School Board in Monterey County (2002): In 2002, the Chualar Union Elementary School District planned to adopt an at-large election scheme, following a voter referendum.[23] The school district had a significant Latino population, but Latinos were historically underrepresented on the school board.[24] In its petition for preclearance review to DOJ, the school

district raised “concerns” about the suitability of those candidates elected from a Latino-majority single-member district, criticizing the alleged “language skills” of one elected official and the “language preference” of another official. DOJ, in response, observed that this submission “raise[d] the implication that the petition drive and resulting change was motivated, at least in part, by a discriminatory animus,” and that those signing the petition to eliminate Latino-majority districts did not reside within the Latino-majority districts.[25] The change was blocked because the school district could not establish that the change had neither a discriminatory purpose nor a discriminatory effect.[26]



FLORIDA

Method of Election for Board of Commissioners in Osceola County (2005): By 2005, Latinos comprised more than one-third of Osceola County's population, but despite the steady growth and political cohesiveness of the Latino population,[27] no Latino candidate has ever been elected under the county's at-large method of election for county commissioners.[28] In 2005, DOJ challenged the at-large system for electing the board of commissioners as a violation of the Voting Rights Act.[29] DOJ asserted that Osceola County failed to accommodate citizens with limited-English proficiency,[30] redrew districts to limit the growing Latino population's political power,[31] and pursued other policies that discriminated against Latino voters.[32] A federal court ruled that Osceola County's at-large election system had a discriminatory effect, specifically citing historically racially polarized elections and Latino candidates' lack of success.[33] The court was additionally troubled by the county's history of discrimination against Latino voters and candidates.[34] Osceola County attempted to remedy the Voting Rights Act violations by adopting a mixed system of five single-member districts along with two at-large seats,[35] which the court held inadequate. The court said the county's plan “perpetuat[ed] the vote dilution that this case seeks to solve”[36] and instead ordered that the five single-member district plan submitted by DOJ be adopted.[37]

GEORGIA

“Latino-Only” Citizenship Requirement to Vote in Long County (2004): From 1990 to 2004, the Latino population in Long County, Georgia increased exponentially, from 189 to 870 of the county residents to become 8.4 percent of the local population.[38] In 2004, three candidates for local office challenged, without supporting evidence, the registration of Latino voters, claiming they were noncitizens. In response, Long County officials required these voters -- and only these voters -- to prove their citizenship, despite the fact that there was no credible evidence to call their citizenship status into question.[39] In addition, the targeted voters were subjected to procedures to which non-Latino voters were not.[40] DOJ filed a suit against Long County in 2006 under the Voting Rights Act.[41] The county eventually agreed to a consent decree, which obligated it to train election officials and poll workers to apply voting practices and standards in a non-discriminatory manner, and to ensure that poll workers with bilingual skills assist non-English speaking voters.[42]

NEW YORK

Method of Election for Board of Trustees in Port Chester (2006): In 2006, DOJ challenged the Village of Port Chester, New York – whose population was already more than 45 percent Hispanic by 2000 – under the Voting Rights Act for maintaining at-large elections for its board of trustees.[43] The federal court found that Latinos could constitute an effective majority that was politically cohesive in at least one cognizable single-member district, and that Port Chester had engaged in a history of official discrimination,[44] making it difficult for Latinos to participate effectively in the political process.[45] In 2009, the court ordered that Port Chester undertake major changes, which included implementing cumulative voting, a voter education program, bilingual assistance, and other reforms.[46] The village appealed the federal court ruling,[47] but a federal appellate court dismissed the appeal.[48]

TEXAS

Statewide Mid-Decennial Redistricting (2004): The 2000 Census led to an increase in the Texas congressional delegation of two seats. The Texas legislature was unable to reach agreement on a new redistricting plan. The courts eventually stepped in to create a district plan that ensured the districts complied with the "one-person, one-vote" requirement under the U.S. Constitution.[49] In 2004, the Texas legislature adopted a new redistricting map to replace the court plan, which threatened to diminish Latino voting power. The Supreme Court eventually ruled that this mid-decade plan violated the Voting Rights Act by intentionally depriving Latinos, who were drawn out of one of the impacted districts, of meaningful political participation.[50] The Court wrote that, "In essence the State took away the Latinos' opportunity because Latinos were about to exercise it. This bears the mark of intentional discrimination that could give rise to an equal protection violation."[51] The Court noted the significance of the history of discrimination against Latinos in Texas, stating the "'political, social, and economic legacy of past discrimination' against Latinos in Texas may well 'hinder their ability to participate effectively in the political process.'"[52]

Poll Locations and Method of Election for Community College District in The Woodlands (2006): The North Harris Montgomery Community College District, located in The Woodlands, Texas, proposed to change its election procedures in 2006 to alter the number of polling locations and separate community college district elections from school district elections.[53] Under the proposed changes, voters would have had to travel to two separate polling places to participate in both elections, and many would have had to travel farther, as the number of polling places would have been cut from 84 to 12.[54] These cuts would have negatively affected Latinos and other minorities, as "the site with the smallest proportion of minority voters will serve 6,500 voters, while the most heavily minority site (79.2 percent black [sic] and Hispanic) will serve over 67,000 voters."[55] DOJ, through the Section 5 preclearance process, objected to and halted these changes that would have harmed Latino and other minority voters.[56]

Candidate Qualifications for Fresh Water Supply Districts Across Texas (2007): In 2007, Texas enacted a state law to change the candidate qualifications for the position of supervisor of fresh water supply districts in the vast majority of these districts across the state.[57] The new statute would preclude non-landowning registered voters from qualifying for this office.[58] Attempting to dodge preclearance review, the state failed to provide a complete racial breakdown of the population and incumbent supervisors.[59] DOJ weighed this avoidance in concluding that the state failed to show that there was no discriminatory purpose or effect.[60] Evaluating the materials that were submitted, DOJ observed that every single incumbent supervisor who did not own land and who would be unable to run for reelection under the 2007 statute was Latino.[61] DOJ also noted the significant disparity in land ownership between Whites and minorities in the region. [62]

Bilingual Election Assistance in Gonzales County (2008): In 2008, and again in 2009, Gonzales County, Texas attempted to gut long-standing Spanish-language election procedures in place since 1976. In the process, county officials "openly expressed hostility toward complying with language minority provisions of the Voting Rights Act."[63] Local press even quoted the county official exercising direct control over elections as saying that "language minority voters are not citizens if they do not speak English."[64] Though it had previously assigned bilingual poll workers to polling places with greatest need and provided full translation of all election notices into Spanish,[65] the county proposed to reduce its provision of bilingual poll workers, and to "use an internet machine translator, such as Google Translator, for the initial translation of county-produced election materials … [which] will then be sent to the Office of the Texas Secretary of State and to the League of United Latin American Citizens (LULAC) local chapter to confirm its accuracy."[66] The county, however, had no such arrangement with the Secretary of State.[67] Furthermore, the county offered no evidence that the local LULAC chapter would produce the translations.[68] The preclearance process ultimately prevented these reductions in language assistance from being implemented.

Method of Elections for County Commission in Nueces County (2011): Nueces County, Texas enacted a redistricting plan in 2011 for election of county commissioners, justices of the peace, and constables.[69] Census data for Nueces County showed that 56.8 percent of its voting age population was Hispanic.[70] The Hispanic population had grown by 17.9 percent since 2000.[71] Historically, Latinos held a slim majority of seats on the Nueces County Commission, including the seat for Precinct 1. A narrow loss in Precinct 1 by the Latino-preferred candidate changed the overall composition of the commission to one that was no longer majority Latino-preferred. In the 2011 redistricting process, the county sought to maintain the new balance in favor of a non-Latino majority on the commission by adding significant White populations to Precinct 1. In addition, unlike in previous redistricting cycles, Latino community members were largely shut out of the process, and their objections to the plan were ignored. DOJ ultimately objected to the plan because of the county's inability to demonstrate a non-discriminatory purpose for the proposed changes. It noted that, "[m]any of the County's actions taken with regard to Precinct 1 during the redistricting process appear to have been undertaken to have an adverse impact on Hispanic voters."[72]

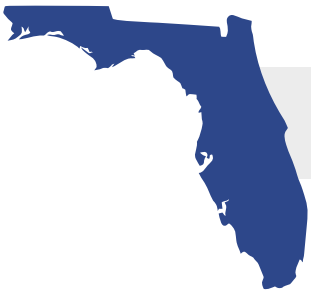
Method of Election to City Offices in City of Galveston (2011): The City of Galveston, Texas has attempted to change the method by which it elects candidates for city offices multiple times since 1992, including most recently in 2011. In the early-1990s, the city contemplated major changes to its method of election for mayor and city council from at-large elections to a hybrid single-member/at-large system.[73] DOJ stopped this change from taking effect given that the city had not proven the absence both of a discriminatory purpose and of a disproportionate negative effect on Latino voters.[74] The city agreed, in 1993, to a plan under which all six council seats were to be elected from single-member districts and the mayor was to be elected at large.

In 1998, however, the city attempted to switch back to the hybrid electoral system that had been rejected in 1992.[75] Again in 2011, the city requested that DOJ withdraw the 1998 objection and allow implementation of the plan under which some council seats would be elected by the city's voters at-large.[76] Once again, DOJ objected because the city's submitted data and arguments showed -- and the city eventually conceded -- that minority voters would lose the ability to elect their candidate of choice in at least one council district under the hybrid plan.[77] The city, moreover, failed to show the proposed change was not motivated by discriminatory purpose.[78] A fully functioning preclearance process proved on repeated occasions to be an essential tool for protecting the growing Latino voter population in the City of Galveston.

B: Post-*Shelby County* Discrimination Against Latino Voters

ARIZONA

Move Toward Hybrid At-Large Elections in Maricopa County, Arizona (2013): In 2010, the Arizona state legislature adopted a bill that specifically targeted Maricopa County, and required the addition of two at-large seats to the governing board of the Maricopa Community College District.[79] In a county in which there have been recent racial tensions, and in which the electorate consists of a White majority and a notable Latino minority, it is foreseeable and likely that Latino voters would find it impossible to elect the candidates of their choice to these at-large seats.[80] The state began, but abandoned, the preclearance process after DOJ expressed initial concerns and asked for additional information.[81] Having failed to obtain preclearance, the state declined to enforce the law until after the *Shelby County* decision.



FLORIDA

Voter Purge Across Florida (2012): In 2012, the Florida Secretary of State began implementation of a voter purge scheme across the entire state to remove alleged noncitizens from the voter rolls.[82] This initiative negatively affected naturalized citizens in Florida, a large majority of whom are Latino, Asian American, and of African descent.[83] Florida planned to use out-of-date information from a Florida Department of Motor Vehicle (DMV) database to "verify" the citizenship of voters on the rolls.[84] The outdated DMV records failed to account for citizens who naturalized after visiting a DMV office. From the pool of people Florida moved to purge from the voter rolls, *The Miami Herald* reported that almost 60 percent were Latino,[85] though fewer than 20 percent of Florida voters are Latino. Florida eventually began the purge anew in September 2012 using information from a U.S. Department of Homeland Security (DHS) database.[86] The purge initiative was initially blocked by preclearance challenges, but after the *Shelby County* decision, these cases were dismissed.[87]

Had the preclearance process remained in operation, it would have ensured close scrutiny and possible invalidation of Florida's knowing use of bad data to attack the qualifications of mostly Latino, Asian American, and African American voters. Post-*Shelby County,* and despite new litigation, Florida has tried to resume citizenship checks and associated purges.[88]

COLORADO

Proposed Voter Purge Across Colorado (2012): While Colorado was not subject to preclearance pre-*Shelby County*, the Supreme Court's decision appears to be have emboldened some to champion troubling electoral practices in places with large or growing Latino voting populations. The number of eligible Latino voters in Colorado, for example, was twice the margin of victory in the 2008 presidential election.[89] In 2012, however, the Colorado Secretary of State initiated an attempt to conduct a voter purge similar to Florida's proposed purging practices.[90] Legislation introduced to further accomplish this, Colorado House Bill 1050, would have codified the use of a DHS database to check the citizenship of registered voters, and those who appeared to be noncitizens would have been deleted from the rolls.[91]

Initial state projections were that there were approximately 11,000 noncitizens registered to vote in Colorado, and that 4,000 had voted, but further investigation reduced those numbers dramatically to only 141 suspected noncitizens on the rolls, a mere 35 of whom allegedly voted.[92] A *Denver Post* analysis found that at least some, and perhaps many or most, of those on even this vastly reduced list of suspected noncitizens were, in fact, U.S. citizens qualified to vote.[93] Ultimately, the state settled on an estimate of 436 suspected noncitizens that were included on the voter rolls.[94] Prior to undertaking additional analysis, Colorado sent letters to 3,800 voters calling into question their citizenship.[95] One Latino voter who received the letter said that the letter confirmed for her that, "No matter what I do, I'll always be a second-class citizen."[96] Following the culling of its list of suspected noncitizens, Colorado declined to implement the notification process it promised in its agreement with the federal government,[97] which would have allowed these individuals the opportunity to prove their citizenship and correct any errors in records. Instead, Colorado forwarded its list of suspected noncitizen registrants to local elections officials so that they, or third parties, could be armed to challenge these voters' eligibility if they appeared to vote in November 2012.[98]

Although HB 1050 was defeated in the state legislature, the threat of future efforts to purge registered voters without sufficient due process remains.[99] Just as in Florida, many or most of those erroneously identified as suspected noncitizens in Colorado have been naturalized citizens, and the state's naturalized citizens are overwhelmingly people of color, with 59.5 percent being of Latino descent. Many observers have lamented the disproportionate impact of Colorado's attempted voter purge on the Latino population.[100]

TEXAS

Texas Congressional and State Legislative Redistricting and Voter ID (2011): In 2011, as the state of Texas took on redistricting for congressional and state legislative seats, the state's population had grown by 4.2 million in the preceding ten years. About 65 percent of that growth was due to a substantial increase in the Latino population. As a result of its population growth, Texas gained four additional seats in Congress. Yet the district map ultimately approved by the Texas legislature failed to create even one new district in which Latino or African American voters would have a real opportunity to elect a candidate of their choice. A federal district court reviewing the plan found clear evidence -- in, for example, messages between legislative staff plotting to move important landmarks and actively voting minority communities from districts in which minority voters could exert significant influence -- that the maps had been enacted with intent to discriminate against Latinos and African Americans. The court, and the preclearance process, stopped the state from conducting elections using those maps. After *Shelby County*, Texas officials demonstrated eagerness to move forward with other discriminatory voting policies. The state announced, as soon as the Supreme Court's *Shelby County* decision was public, that it would immediately implement a voter ID law that the reviewing court and DOJ had concluded would disproportionately prevent Latinos and African Americans from casting ballots.

On the day of the *Shelby County* decision, the Texas Attorney General tweeted, "Eric Holder can no longer deny #VoterID in #Texas after today's #SCOTUS decision. #txlege #tcot #txgop;" "Texas #VoterID law should go into effect immediately b/c #SCOTUS struck down section 4 of VRA today. #txlege #tcot #txgop;" and "WIth [sic] today's #SCOTUS decision #Texas should be freed from Voting Rights Act Preclearance. #txlege #tcot #txgop."[101] In a written statement, the Texas Attorney General confirmed that, "With today's decision, the state's voter ID law will take effect immediately."[102] Voting Rights Act challenges to redistricting plans and the voter ID mandate remain pending. In the wake of *Shelby County*, protracted, expensive, after-the-fact litigation of the sort occurring in Texas is the only option aggrieved voters retain.

Method of Election to City Council in Pasadena, Texas (2013): The mayor and city council of Pasadena, Texas had long advocated, and argued unsuccessfully, to move toward use of an at-large system for electing local officials. It was not until after *Shelby County* was decided, though, that Pasadena officials placed a measure on the November 2013 ballot that sought to eliminate two of the city's eight single-member districts in favor of two at-large seats.[103] Under the pure single-member district scheme, the city's voters -- about one-third of whom are now Latino -- elected two Latino representatives on the city council. The shift to a hybrid system with two at-large seats would indefinitely defer the Latino community's ability to exercise majority power even as its population, already well exceeding a majority of the total population, increases its voting potential.[104] The timing of adoption of the redistricting proposal, moreover, concerned many, as the city's Latino population has been increasing dramatically.[105]

Though MALDEF expressed opposition to city officials, citing many concerns with the scheme,[106] voters approved the measure. At a recent city council meeting in Pasadena, moreover, concerns continued to be raised about the validity of data used to draw new districts and the conduct of a closed redistricting process during which not all points of view were given full consideration.[107]

The foregoing examples show that discriminatory election practices targeting Latino voters persist, and with regularity. Even today, jurisdictions previously subject to the Voting Rights Act's preclearance obligations, and others with significant and growing Latino populations, are revisiting election changes that were halted prior to *Shelby County* because of their discriminatory purpose or effect.

Shelby County unfortunately expanded available schemes to restrict Latino and other minority voters' access. Nevertheless, Latinos voters are well-informed, and recognize that changes to voting laws like those discussed above are often meant to limit their political influence. Latino voters want Congress to act now to address the national problem of discrimination in voting.

The NALEO Educational Fund polled voters in states formerly subject to preclearance and in several additional swing states in November 2013, and discovered solid support among Latino voters for the Voting Rights Act and congressional action to ensure strong, targeted defense of equal voting rights into the future.[108] In this poll, a majority of voters, including Latino voters, disagreed with the *Shelby County* decision, and favored Congress taking steps to modernize Voting Rights Act protections.

For these and other reasons, including the pattern of intentional anti-Latino discrimination delineated here, the current VRA legislation -- more than any previous amendment or reauthorization since Latinos gained coverage under the Act in 1975 -- is, in many ways, voting rights legislation for and by the nation's Latino community. Taking up the powerful civil rights legacy of the 1965 Act and its several amendments over the decades, the Latino community looks forward to swift progress in ensuring that this important legislation receives the same attention and support as its predecessors. Congress and the President must ensure that the Voting Rights Act provides effective protections to Latino voters, whether they enter the electorate upon turning 18 or by naturalizing, and that those protections are in place before another election cycle goes by.

III: Call for Congressional Action

There is no question that Latinos today are experiencing discrimination in voting, and that the situation demands a strong response from those with responsibility for protecting equality and fairness for all American voters. After *Shelby County*, Congress can and must modernize the Voting Rights Act by enacting an appropriate Voting Rights Amendment Act. A reinvigorated Voting Rights Act would have many salutary effects for the entire nation, including the more efficient and timely resolution of voting rights disputes -- which benefits both plaintiffs and defendants -- and the assurance of protection of voting rights before balloting actually goes forward.

The slow progress of this latest attempt to ensure a vigorous Voting Rights Act is of particular concern to the Latino community. Since the last reauthorization of the Voting Rights Act in 2006 -- when the measure, including Section 5 and its coverage formula, received overwhelming bipartisan support in both House and Senate -- the 2010 Census has demonstrated that Latinos have clearly become the second largest population group in the nation, confirming what American Community Survey estimates showed for several years.[109] In addition, the Latino vote has had a significant -- even decisive -- and much-remarked impact on two presidential elections, with predictions of growing decisive impact in future national elections. The two most populous states now have Latino populations well in excess of one-third the total.[110] The growth in Latino demographics has become a matter of near universal comment in political circles.

For these and other reasons, including the pattern of intentional anti-Latino discrimination delineated here, the current Voting Rights Act legislation -- more than any previous amendment or reauthorization since Latinos gained coverage under the Act in 1975 -- is, in many ways, voting rights legislation for and by the nation's Latino community. Taking up the powerful civil rights legacy of the 1965 Act and its several amendments over the decades, the Latino community looks forward to swift progress in ensuring that this important legislation receives the same attention and support as its predecessors. Congress and the President must ensure that the Voting Rights Act provides effective protections to Latino voters, whether they enter the electorate upon turning 18 or by naturalizing, and that those protections are in place before another election cycle goes by.

Credits

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Endnotes

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108. The Tarrance Group, *A Survey of Voter Attitudes in Target States* (2013) (unpublished survey data and analysis) (on file with authors).
109. According to the 2010 Census, the Latino population was 16.3 percent of the total population and non-Latino African American population was 12.2 percent. This is a change from the 2000 Census where the Latino and Non-Latino African American population were very close in size; the 2000 Latino population was 12.5 percent of the total population and the Non-Latino African American population was 12.1 percent. *Profile of General Population and Housing Characteristics: 2010*, U.S. CENSUS BUREAU, *available at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1; *Overview of Race and Hispanic Origin: Census 2000 Brief*, U.S. CENSUS BUREAU, 3, March 2001, *available at* http://www.census.gov/prod/2001pubs/c2kbr01-1.pdf.
110. According to the 2010 Census, California's Latino population is 37.6 percent of its total population and Texas's Latino population is 37.6 percent. *Community Facts, Profile of General Population and Housing Characteristics: 2010*, U.S. CENSUS BUREAU, *available at* http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml.

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