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New State Voting Laws: A Barrier to the Latino Vote?

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Abstract

The large and rapidly growing Latino¹ population gains heightened attention as the 2012 Elections approach. Similarly, after 17 states passed legislation to restrict virtually all stages of the voting process, voting rights and these new potential barriers have become hotly debated topics — in and outside of the courtroom. While this sudden surge indicated a collaborative effort nationwide, more aggressive measures were seen in the Southern United States region. More notably, in states where Latino populations have surged in the past decade or where Latinos have a strong presence.

Because of the unique demographic and array of recent voter legislation, this commentary specifically focuses on the impact that the laws in Alabama, Florida, Texas, and South Carolina would have on eligible Latino voters in upcoming elections if these laws are allowed to be implemented. This analysis takes into account the social and demographic factors that drive Latinos to be severely underrepresented among the electorate, and looks further to the national impact that these laws could have on the existing low participation rates among Latinos. Lastly, it concludes with policy recommendations to help address these issues at both the state and federal level.

Currently, less than half of the Latino population is eligible to vote. Much of that is due to the rapid influx of U.S. born

Latino youth that are ineligible to vote, but that ultimately will enter by the thousands to the pool of eligible voters each year. The impact of this underrepresentation is exasperated by the fact that Latino participation rates fall far below any other voting population. Moreover, Latinos live in poverty at a higher rate than any other racial or ethnic group. This finding makes Latinos especially vulnerable to voting laws aimed at restricting practices and/or procedures more often utilized by low-income voters. As a result, potential barriers that decrease or even maintain current participation rates — as Latino youth become eligible voters — will increase the current representation gap seen among the electorate and will compromise Latino representation in all levels of government.

Introduction

President Obama's election demonstrated the impact of minority participation in the voting process. This election was not only historic in that the first black president was elected, but it also turned out the largest Latino, youth, and African American vote in U.S. history. For many, it sparked a light of optimism in the path of racial equality. However, several states across the nation have responded with an array of anti-voter legislation that could disproportionately impact the very groups that accounted for our President Obama's victory, one year before his re-election.

In 2011, the United States saw more changes to voting rights in a single decade than any other point in U.S. history. Since then, 17 states have passed over 25 different laws that, in one way or another, affect the voting process and over 40 states proposed similar legislation. Some of these laws include new or enhanced government issued voter identification (ID) requirements and/or proof of citizenship in order to register; reduction or elimination of absentee, early, and Election Day voting; restrictions on third parties that register voters; and the reversal of earlier reforms to permanently disenfranchise those who have past criminal convictions. The overall impression indicates that these laws were introduced in states where communities of color, and political participation thereof, have grown over the past several years. Although it is too early to quantify, a recent study by the Brennan Center for Justice reported that as many as five million eligible voters could face barriers in casting their ballot for 2012.² The breadth of what seems to be a concerted effort raises serious concerns as to what could ultimately result in voter suppression on a larger scale.

The Latino Electorate: Present, Past, and Future

The rapid growth of Latinos in the U.S., and their political potential, is no secret. Latinos are the fastest growing minority

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population and have almost quadrupled in numbers since the 1980's. According to the U.S. Census Bureau, Latinos make up 16 percent of the total U.S. population and accounted for over half the increase in the total population from 2000 to 2010.³ The growth rate among Latinos was highest amongst youth under the age of 18.⁴ And while the non-Latino population decreased by 5 percent, the Latino youth population increased by 39 percent.⁵ Given growth trends in the past several decades, the U.S. Census Bureau estimates that Latinos will make up 30 percent of the total population by 2050.⁶

Latino youth and newly naturalized citizens add almost half a million new people to the pool of eligible voters each year.⁷ Since 2000, nearly six million Latinos have become eligible to vote.⁸ Dr. Barrento, an associate professor at the University of Washington and co-founder of Latino Decisions, estimates that there will be over 21.5 million eligible Latino voters by November 2012—up from 19.5 million in 2008.⁹ The bulk of these numbers are attributed to U.S. born Latinos turning 18 each year. In fact, more than 600,000 Latinos turned 18 between 2006 and 2010.¹⁰ The steady flow of U.S. born Latinos and predicted growth trends will continue to sharply widen the pool of eligible voters each year.

While Latinos represent 16 percent of the total population, only 10 percent are actually eligible to vote.¹¹ This gap is largely driven by voter ineligibility due to non-citizenship and age.¹² While Latino youth represent 34 percent of ineligible voters among Latinos, another 22 percent are ineligible because of non-citizenship.¹³ As a result, only 42 percent of Latinos in the U.S. are actually eligible to vote, making their share of eligible voters the smallest amongst any other racial group, and thus leaving 58 percent of Latinos completely unrepresented in all elections.¹⁴

In addition, civic participation rates among the 42 percent of eligible Latino voters present an even bigger concern for the Latino electorate. Although participation rates have improved in the past decade, Latinos still fall behind in numbers at the polls. In 2010, only 31 percent of Latino eligible voters reported to have voted, while 48.5 percent of whites and 44 percent of blacks said the same.¹⁵ According to a recent study by the William C. Velazquez Institute, Latino registration and voting in 2010 grew at a record rate compared to 2006.¹⁶ For example, in 2010 Latino turnout rate of 60.5 percent of registered voters was slightly higher than the 2006 rate of 60.1 percent and Latino registration grew from 9.3 million voters in 2006 to 10.98 million in 2010. However, during 2009-2010 Latino voter registration declined significantly from 11.60 million voters to 10.98 million voters. The report also suggests that this national decline in Latino voter registration may be a spike in residential mobility and intensive downward economic mobility due to the combined effect of significant and disproportionate unemployment, as well as mortgage foreclosures in nine Latino-concentrated states during the past two years.

Even more troubling are participation rates among the youth, which Latinos will rely on for strength as they enter the pool of eligible voters. Only 12 percent of Latinos between ages 18 and 24 reported to have voted in 2010.¹⁷ These eligible, but non-voting individuals increase the 58 percent gap already seen between the total Latino population and those who can actually go out to the polls and vote. As such, if civic participation rates remain stagnant or decrease, while the population continues to grow, Latino representation among the electorate will be severely impacted.

In the past several years, Latino organizations have done a considerable

amount of work to help bridge this gap by engaging and mobilizing eligible Latino voters and have played a significant role in increasing participation rates among Latinos. Although these efforts and civic participation rates have given rise to more Latinos in elected offices, these positions are not safe from opposition and should not be taken for granted. The more Latinos engage in the political process, the more likely they are able to elect Latino officials who can represent and understand the core issues important to the Latino community. Latinos still fight to overcome the effects of earlier forms of discrimination, and this new wave of potential discriminatory measures could be a dangerous step backward.

The Voting Rights Act: Protecting The Latino Vote

Although each state has the sole power to regulate the manner and procedure of their state and local elections, Congress has the extensive authority to enact federal legislation necessary to prevent states from enforcing discriminatory practices in relation to voting. For many years, states persisted in circumventing the law and found new tactics to block or dilute the minority vote such as poll taxes, literacy tests, gerrymandering, and voter roll purges. Early efforts by Congress to prevent states from enforcing discriminatory measures proved to be a failure. Ultimately, in order to “combat the widespread and persistent discrimination in voting,” Congress responded with the Voting Rights Act of 1965 (VRA).¹⁸

The VRA not only guarantees the right of all citizens to participate in the electoral process, but it also provides a legal framework to remedy and/or prohibit potential barriers that states may use to threaten that right. Among one protection afforded by the VRA is the nationwide prohibition

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against voting practices and procedures that discriminate on the basis of race, color, or membership in a language minority group, also known as Section 2.¹⁹ However, the heart of the VRA — Section 5 — prevents certain covered jurisdictions that have discriminated against minority voters in the past from implementing changes to voting laws or practices that may harm minority voters. These *covered* jurisdictions must go through a “preclearance” process before any changes can be enacted. This includes submitting the changes to the Department of Justice (DOJ) or the U.S. District Court in the District of Columbia and proving that the changes do not have a “retrogressive effect” or “make members of [a minority group] worse off than they had been before the change.”²⁰ The DOJ can either reject the proposal, request more information about the changes, or it can approve the request.²¹

Latinos, much like African Americans, have had their equal battle in the fight for franchise. Common barriers, such as literacy tests and poll taxes, denied Mexican Americans the right to vote due to the aftermath of the Mexican-American War and the Treaty of Guadalupe-Hidalgo. In addition to prohibiting these discriminatory practices, the VRA also established that fluency in English cannot be made a requirement to voting. The VRA continues to be the main statutory tool under which people can protect their right to vote. Although some critics argue that the VRA is no longer needed, it has assisted growing Latino communities around the country to gain equal access to the political process in order to elect officials of their choice. The VRA has also provided a great deal of protection from states that have felt threatened by the Latino presence in the political process. Moreover, the massive nationwide movement by states to restrict the voting process could very well be proof that history can and does repeat itself.

State Laws and The Latino Vote

When considering the impact that potential state voting laws could have on Latinos, the states or regions of particular importance are those that have large or surging Latino populations. In the past decade, for example, the South experienced the fastest growth of Latinos.²² Notably, four out of the nine Southern states to aggressively introduce legislation had a large or rapidly growing Latino population. Among these four states were South Carolina and Alabama; respectively, the two states with the fastest growing Latino population according to the 2010 Census.²³ Texas, followed by Florida, had the second largest Latino population and accounted for 19 percent of total Latinos in the U.S. These four states — either in whole or in part — are under the VRA’s Section 5 jurisdiction due to their history of egregious discrimination in voting practices.

Among some of the laws introduced in these states are: 1) limitations on third-party voter registration; 2) photo ID requirements; 3) proof of citizenship in order to register; and 4) the elimination or cutback on early or same day voting. Some voter laws are couched with the argument that they are necessary in order to maintain the integrity of election systems and to prevent voter fraud. However, evidence of fraud is rare²⁴ and not nearly substantial enough to justify the broadness of the legislation’s reach. Other voting restrictions have no clear or plausible connection to vote fraud prevention.

As the 2012 elections approach and the battle for political control ensues, state tactics such as these make it clear that Latinos will be some of the most affected. Equal access to the polls should never be a pawn in the battle for political control. After all, the right for a person to choose the representation of their choice, regardless of political association, is the heart of the

democracy that United States prides itself on. Therefore, utilizing legal tools, like the VRA, is imperative in not only protecting individual Latinos who live in these states, but also in preventing the national impact targeted discrimination can have on all Latinos in the democratic process. Creative state efforts to enforce discriminatory practices should be given the highest scrutiny because denying even one person the right to vote is one too many. The “Jim Crow South is and will remain the quintessential example in American history; [however], this practice is not a relic of a bygone era.”²⁵

The Current State of The South

There are a variety of new laws, and combinations thereof, that states will be implementing in the upcoming 2012 elections. This commentary analyses the impact that new voting laws in Florida, Texas, Alabama, and South Carolina will have on Latino voters. This focus is primarily due to the unique Latino demographic makeup in these states and also because cumulatively they cover the most areas of voter restrictive laws passed in 2011:

- **Alabama:** Photo ID required to vote (H.B. 19)²⁶ and proof of citizenship required in order to register to vote (H.B. 56),²⁷
- **Florida:** Restrictions on third party and individual voter registration and restrictions on early voting (H.B. 1355),²⁸
- **South Carolina:** Photo ID required to vote (H. 3003)²⁹ and pending bills that require proof of citizenship in order to vote and that restrict third party voter registration; and
- **Texas:** Photo ID required to vote (S.B. 14)³⁰ and restrictions on third party voter registration (H.B. 1570).³¹

The laws passed in Alabama will take effect upon preclearance approval by the DOJ or federal district court. South Carolina and Texas, also under statewide Sec-

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tion 5 coverage, were blocked by the DOJ from implementing their photo ID law because having a voter ID requirement would unfairly disenfranchise Hispanic voters. On the other hand, Florida's H.B. 1355 was implemented in 62 of Florida's 60 counties upon the Governor's signature in May 2011. The remaining five counties in Florida, however, are covered by Section 5 of the VRA and could not take state-wide effect until preclearance approval by the federal district court. Ultimately, the DOJ objected to Florida's changes involving early voting and third-party voter registration organizations because of their retrogressive effect.³² DOJ also stated that Florida did not meet its burden under Section 5 regarding discriminatory purpose involving the following changes to early voting, change-of-address, and third-party voter registration organizations.³³

Other states have also seen aggressive activity in our courts. In February 2012, South Carolina's Attorney General filed a lawsuit in federal court to overturn DOJ's decision and implement its photo ID law. The Texas Attorney General filed a lawsuit in January 2012 asking the D.C. District Court to allow its voter ID law to be precleared and implemented, which at the time, was still under DOJ review.³⁴ The following month a voting rights group also filed a federal lawsuit alleging Texas voter rolls have been actively suppressed by excessive restrictions on volunteers who conduct registration drives, aggressive purges of county voter rolls and poll workers who improperly requested identification from voters.

Congressional leaders and the Administration have taken steps to scrutinize and/or halt state efforts aimed at disenfranchising minority voters. However, it is apparent that states insist on implementing their state laws, regardless of DOJ blocking their efforts.

Photo Identification and Proof of Citizenship Laws

Photo ID and proof of citizenship laws are barriers to voting that will disproportionately impact eligible Latino voters. In effect, photo ID laws block already registered and eligible voters from casting a vote at the polls. In contrast, documentary proof of citizenship laws create barriers for eligible voters to register, which is a prerequisite to voting. Although both laws create barriers at different stages in the voting process, both require documentation that Latinos are less likely to have than other members of the electorate, due to similar and existing issues driving this fact.

Photo ID Laws

Photo ID laws do not present themselves as a novel tactic in vote suppression. However, what is new are the restrictive measures that exclude common forms of identification such as student IDs, social security cards, and utility bills. In 2011 alone, at least 34 states introduced a variation of photo ID legislation that either requires or enhances their current requirement in order to vote. In total, seven states³⁵ have passed photo ID laws that will take effect in 2012, and most were highly coordinated efforts that followed a model voter ID bill developed by the American Legislative Exchange Council (ALEC). ALEC is a conservative advocacy group that brings together state legislators and private interests, and enables "a consistent pipeline of special interest legislation [to be] funneled into state capitols."³⁶ All but one was introduced in states where conservatives have significant control or have recently gained control.

Each law varies by state, but in general they either limit acceptable forms of identification, provide fewer exemptions, and/or reduce alternatives for eligible voters who do not have a specified voter

ID. All seven states require individuals to show a government-issued photo ID when appearing to vote in person. Acceptable forms include a driver's license or ID issued by a motor vehicle department, a passport, or a U.S. military photo ID. In addition, Alabama is one of the only two states in the U.S. that now requires all absentee voters to submit a copy of their photo ID with their mail-in ballot. College IDs have also been a recent form of identification being limited by states. Texas and South Carolina no longer accept student IDs as acceptable forms of identification to vote, even if it is issued by the state itself. In fact, South Carolina's law only accepts photo IDs issued by either South Carolina or the U.S.³⁷

Proof of Citizenship Laws

In general, proof of citizenship laws require that an individual present a birth certificate, a passport, or naturalization papers (with a photo) in order to become a registered voter. It was not until Arizona's Proposition 200 in 2004, that a state had ever required a person to prove citizenship to become a registered voter. Arizona's law was ultimately challenged in federal court, and a panel of the U.S. Court of Appeals for the Ninth Circuit held that the proof of citizenship requirement conflicted with federal law — specifically, the National Voter Registration Act of 1993.³⁸ Thereafter, the Ninth Circuit agreed to rehear this case in *en banc* in June 2011, however, the court is yet to reach a decision.³⁹

A total of 12 states, including South Carolina and Alabama, introduced proof of citizenship laws in 2011. In three of those states the bill passed, one being Alabama. Although Alabama's law will not be in effect until 2013, and South Carolina's law has not been completely advanced, these measures give rise to a presumption that the drastically growing Latino popu-

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lation in these two states is under attack. Alabama's other recent "papers please" law,⁴⁰ which allows local law enforcement to pull over and detain people whom they suspect are undocumented, has already caused an exodus of immigrants from the state and again indicates what population may not be welcomed in the state.

Less Fraud or Less Voting

Proponents of photo ID laws couch their argument solely on preventing voter fraud; however, according to recent studies, actual voter fraud in voting is relatively rare.⁴¹ Much like photo ID laws, proponents argue that proof of citizenship laws are necessary in order to prevent noncitizens from voting. However, there have been no documented cases in which noncitizens have either intentionally registered to vote or voted while, knowing that he or she was ineligible to vote.

Past efforts during the George W. Bush Administration to probe the "voter fraud conspiracy" resulted in no evidence of meaningful levels of fraud. More specifically, in this 2002 to 2007 investigation, the Department of Justice brought only 70 successful convictions out of the total 300 million votes cast during those five years.⁴² After a review of court records and interviews with prosecutors and defense lawyers, *The New York Times* reported that "Many of those charged by the Justice Department appear to have mistakenly filled out registration forms or misunderstood eligibility rules."⁴³ In addition, not only is conspiring to commit voter fraud an inefficient way to influence an election outcome, but federal law already provides a hefty deterrent. For each act of in-person impersonation fraud in a federal election, the perpetrator risks five years in prison and a \$10,000 fine, plus any penalties that may be imposed under state law.⁴⁴ Not to mention, noncitizens risk being deported and stripped away of their legal status.

After Texas' voter ID legislation was blocked by the Justice Department, Governor Rick Perry reported in an interview that this legislation was necessary because Texas had suffered from "multiple cases of voter fraud." However, *The San Antonio Express-News*, reported that: "The Texas attorney general's office did not give the outcome of the four illegal voting complaints that were filed [between 2008 and 2010]. Only one remains pending, according to agency records."⁴⁵ And among the 20 allegations, most involved mail-in ballot or campaign finance violations, electioneering too close to a polling place, or a voter blocked by an election worker.

Others also argue that the burden of producing or obtaining such an ID is minimal since it is required in many common transactions in modern life—such as boarding a plane, purchasing alcohol or certain over-the-counter medicines. However, voting is a right unlike the privilege of being able to buy alcohol or board a plane.

Underlying Documentation

By virtually every measure, Latinos have suffered from, and continue to suffer from, the effects of discrimination in areas such as employment, housing, and education that affect their ability to participate in the political process. As a result, Latinos disproportionately lack the identification and/or the ability to obtain the documentation required for them to register or present in order to cast a ballot that will be counted.

One consequence of the historical discrimination against Latinos is that they tend to have lower incomes and disproportionately reside in urban areas that make this population reliant on the use of public transportation. As a result, Latinos possess driver's licenses — the principal form of government-issued photo identification — less often than their white coun-

ter parts in the electorate. A shocking 16 percent of Latinos (2.6 million) do not possess a valid photo ID, compared to 6 percent of whites.⁴⁶ In South Carolina alone, the Election Commission reported that nearly 239,000 or 10 percent of the state's registered voters do not have any form of state-issued photo ID.⁴⁷ This fact is troubling in states like Texas, Alabama, and South Carolina because the most rigorous study on voter ID and turnout to date, found that stricter voter ID requirements depress participation among all registered voters and especially among voters of color.⁴⁸ Also, discriminatory enforcement of these laws place disproportionate burdens on all minority voters, not just those who lack a photo ID. Nationally, 70 percent of all African American voters and 65 percent of all Latino voters were asked to show photo identification at the polls during the 2008 election, as opposed to only 51 percent of white voters.⁴⁹

Moreover, in order to get a government-issued ID, most states require individuals to show underlying documentation. Often this documentation includes some combination of a birth certificate, a passport, and/or a social security card — which millions do not have readily available and can be costly to obtain. The Brennan Justice Center reported that as many as 7 percent (13 million) of U.S. citizens do not have access to citizenship documents.⁵⁰ In addition, the study also found that citizens with an annual income of less than \$25,000 are twice as likely to not possess these documents. In 2009, over 32 percent of Latinos lived in households with an income of less than \$25,000, while only 9.5 percent of white households fell in the same category.⁵¹

Poverty rate disparities demonstrate that Latino voters are among those who are the least able to bear the costs of obtaining citizenship documentation or other associated documentation related

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to obtaining a photo ID. Moreover, many low-income Latino people do not have flexible work schedules and cannot afford to take unpaid time from work to stand in long lines. Although some states with new ID laws purport to provide for some form of “free” identification available before Election Day, there are still costs associated with obtaining a valid government-issued photo ID — even a “free” ID — which can be quite significant. For example, obtaining a birth certificate in Texas costs \$22 and in some states it can cost up to \$45.⁵² The current fee for a passport is \$110, and in instances where citizenship documents cannot be obtained individuals face a \$345 replacement fee.⁵³ In addition, there are other hidden costs, such as transportation to various agencies in order to get supporting documents— most of which have limited hours and locations. In blocking Texas’ voter ID law, the Justice Department reported that as many as 795,955 registered voters in Texas do not have a Texas driver’s license, and insisting that Texans obtain a Department of Public Safety (DPS) ID card to vote could be problematic in some 70 Texas counties and inner cities that lack a DPS driver’s license office. The Justice Department also found that Hispanics are nearly twice as likely as non-Hispanics to live in the areas more likely to be affected.⁵⁴

It should raise red flags when new voting practices or procedures are implemented that are likely to affect vulnerable populations that have historically been discriminated against in the past. Ultimately, a person’s right to vote should never be conditioned on their wealth. In addition, with no real justification or ability to accurately gauge exactly how many Americans will be denied the right to vote, legislators should err on the side of caution before implementing voting that numbers alone illustrate their detrimental potential. Moreover, although Latinos

have made big strides in the past several decades, they are still suffering the effects of past discrimination in many areas of life. As Latinos begin to rely more and more on participation of Latino youth that enter into voting age, masked discriminatory practices can have a detrimental impact on Latino representation in future elections. The founder of the American Legislative Exchange Council (ALEC) made the point of voter suppression tactics clear when he stated that “our leverage in the elections quite candidly goes up as the voting populace goes down.”⁵⁵ With statements like these, and states relying on laws drafted by ALEC, the attack is obvious. This attack is not about protecting the integrity of the U.S. democratic process, but rather it is about control and manipulation of the electorate by any means, no matter how discriminatory or based on myths and fears.

Restrictions on Voter Registration

In previous years, voter registration procedures have been geared towards encouraging participation by making it easier to get on the voter rolls. For example, the National Voter Registration Act of 1993 (NVRA) makes opportunities to register to vote widely available across the country by requiring states to follow uniform rules for registration forms and having blank forms readily “available for organized voter registration programs.”⁵⁶ Some states have even taken the lead in modernizing their registration systems.⁵⁷ When more than one quarter of voting-age Americans are not registered to vote and, therefore, not able to cast a ballot, it makes sense for these efforts to be encouraged.

In 2011, 13 states introduced laws that place restrictions on individuals and/or organizations that conduct voter registration drives. Ultimately, legislation was

passed in Texas and Florida. Both states used the same voter fraud rhetoric as justifications for these changes, however, neither has reported cases of registration fraud linked to registration drives in the past election. Florida now imposes the most restrictive obligations on voter registration groups in the country, despite them being responsible for 8 percent of all registrations in the state in 2008.⁵⁸ Some of Florida’s strictest restrictions include: pre-registering with the state before engaging in voter registration; requiring every volunteer or employee to sign a sworn affidavit under penalty of perjury listing all criminal penalties for false registration; and punishable fines of \$50 for every form not returned to county officials within 48 hours.⁵⁹ As a result, voter registration groups, such as the Florida League of Women Voters, have cancelled or are considering canceling their voter registration efforts.⁶⁰ Florida’s law also prohibits registered voters from making cross-county address changes at the polls and permits them only to cast a provisional ballot—one that will also have a disproportionate impact on Latinos. In fact, according to a 2008 study by the Pew Research Center, 48 percent of Latinos moved during the previous five years, compared to only 27 percent of whites. Latinos also reported they were 43 percent more likely to move in the next five years, as compared to 35 percent of whites.⁶¹ In 2009-2010 alone, African Americans and Latinos had the highest moving rate in the country.⁶² This consequence is troubling considering that fewer than half of provisional ballots cast in Florida were actually counted in 2008.⁶³

In Texas, third party registrations accounted for 26,000 new registrants in 2008; however, with two new restrictions in its books, that impressive number may not be matched in the future. Current Texas law requires that an individual be appointed as a “deputy registrar” before

In 2010, only 5 percent of white voters registered through a voter registration drive compared to 14 percent of Latino voters, and 12 percent of African American voters.⁶⁷ In 2008, 15 percent of Latino Floridians re-registered through a drive versus 6 percent of white voters.⁶⁸

registering others to vote. Its new law now forbids any deputy registrar from assisting in the registration of voters or receiving another's registration application until he or she has completed a training program required under the law. The law also permits the Secretary of the State to issue an "exam" at the end of this training.⁶⁴ It is also important to note that Texas may also be in non-compliance with the NVRA, which requires states to provide voter registration services to low-income constituents at state public agencies. As with third-party registration drives, minority voters register at public assistance agencies at a significantly higher rate than their white counterparts. In particular, Latinos are three times more likely to register at a public agency than their white voter counterparts, and this non-compliance with the NVRA closes registration channels that Latinos are more likely to utilize.⁶⁵ Texas is effectively disenfranchising a large number of voters and increasing pressure on third-party registration organizations to fill the void. However, Texas is also making it difficult for those organizations to engage in registration efforts.

Since state governments do not assume responsibility for registering voters, registration drives play a crucial role in mobilizing eligible voters. In addition, third party registrars educate voters and promote civic participation in the democratic process. Latinos are more likely to register through these types of registration drives than traditional channels, such as the internet or the Department of Motor Vehicles. Much of this is due to organizations focusing their resources on communities that have less access to other methods of registration.⁶⁶ For example, Democracia USA, a project by the National Council of La Raza, is a national, non-partisan civic engagement organization that seeks to increase the prominence and participation of Latinos in the American

democratic process. Since 2004, Democracia USA has registered over 200,000 individuals in Florida alone. It conducts voter registration drives door-to-door in Latino neighborhoods, at specific selected locations, and at special events. However, after conducting extensive review of the new third-party voter registration restrictions, Democracia USA has temporarily suspended its voter registration efforts statewide.

In 2010, only 5 percent of white voters registered through a voter registration drive compared to 14 percent of Latino voters, and 12 percent of African American voters.⁶⁷ In 2008, 15 percent of Latino Floridians re-registered through a drive versus 6 percent of white voters.⁶⁸ In the months since Florida's new law took effect in July 2008, 81,471 fewer Floridians have registered to vote than during the same period four years ago, in the last run-up to a presidential election, according to an analysis of registration data by *The New York Times*.⁶⁹ Some local elections officials reported that the lack of registration drives by outside groups has been a factor in the decline.

In a report by the Brennan Center for Justice, evidence revealed that fewer voters turn out to vote when restrictions or obstacles to voter registration exist.⁷⁰ When taking into account Texas and Florida's Latino populations and the registration methods being restricted are the avenues more likely to be utilized by communities of color, it takes no expert to recognize that Latinos will be amongst those who will be disproportionately impacted the most.

Reduction of Early and Absentee Voting

In the 2011 legislative cycle, 10 states introduced a bill to reduce early or absentee voting. Florida was one of the five states to ultimately pass such a bill. Florida's new efforts include reducing the number of early voting days from fourteen to eight days and eliminating the previous mandated hours of operation from eight hours per day to a discretionary six to twelve hours per day.⁷¹ Therefore, not only did Florida eliminate an entire week of early voting but also made it possible to reduce the total hours of early voting from 96 to 48 hours. In addition, it eliminated early voting on the Sunday proceeding Election Day- all of which can be expected to extremely curtail opportunities to vote. Recently, Texas introduced a bill that will allow for early voting locations to be omitted from official notices of general or special elections.⁷²

Floridian voters as a whole will be impacted by these new changes. For example in 2008, over 2.6 million votes were cast during the weeks of early voting, accounting for more than 33 percent of the total votes cast in Florida.⁷³ Moreover, black voters accounted for 13 percent of total turnout, but they made up 22 percent of all early voters and 31 percent of Sunday voters. Also in this same year, Latinos represented less than 12 percent of all Florida voters, but on the final Sunday before the election, they accounted for 23 percent of voters that day.⁷⁴ These statistics make it clear that communities of color will be the ones who are suppressed and ultimately impacted by these new changes.

One reason driving this fact is that low-income communities are more likely to take advantage of the flexibility provided by additional voting days and location hours. Not having easy access to transportation and/or inflexible work schedules

makes it difficult for these individuals to rely solely on Election Day voting or limited early voting times. Moreover, minorities are more likely to live in urban areas and rely on public transportation that ultimately ends up costing an individual more money because of added travel times, and the loss of income for time off that a person on an hourly wage more likely cannot afford. The impact on Latino voters in Florida will be detrimental. According to the Pew Hispanic Center, 46 percent of Latino households made less than \$20,000 a year — the highest percentage of poverty among any other racial or ethnic group.⁷⁵ In addition, only 14 percent of Latino households made \$50,000 or more, the lowest of any racial group. Among poverty rates, Latinos ranked second at 23 percent, while only 10 percent of whites live in poverty.⁷⁶

Proponents of these restrictions argue that these measures provide needed cost-savings, but evidence indicates that they will actually increase costs. For example, in North Carolina the State Election Board found that cuts to early voting will increase expenses because the reduction would require the state to create new election precincts and add voting machines in order to handle the surge of voters now forced to vote on Election Day.⁷⁷ Further, these cuts reduce the flexibility that early voting allows for counties to allocate their equipment and staff.⁷⁸ Whatever the “real” reason is behind these laws are moot when evidence and history make it clear that Latinos will be severely limited in their ability to participate in the democratic process if laws like Florida’s are allowed to continue as barriers to the polls.

Summary

Our nation has historically struggled with the basic concept of electoral equality, using insidious schemes such as poll taxes, literacy tests, and even violence to maintain power by majority groups. However, over the last 100 years, our country has gradually opened up legal barriers to the ballot box. Indeed, Latinos have made great strides in the past few decades, however Latinos still continue to suffer from the effects of discrimination in almost every system in our American society. In particular, Latinos still have one of the highest percentages of poverty rates than any other racial or ethnic group in the U.S. And based on the discussion above, one common theme is clear—recent state voting laws will disproportionately impact low-income communities—and Latinos will experience the brunt of this force. Even changes in the law, that seem to be minor, can have the potential to disenfranchise millions. This movement, if successful, could reverse the century-long legislative and Civil Rights movement to broaden voter franchise.

Indeed these attacks on voting rights are being noticed across the nation and some which have been blocked by the Justice Department. However, with states insisting on challenging the Department’s preclearance determinations at a time when participation is crucial, it is evident that the fight to continue franchise has just begun. Now more than ever it is vital that those in power enforce relevant laws that are meant to fight widespread discrimination and protect the right to vote because every American — despite party lines — should have an equal opportunity to participate in the political process.

Recommendations

The following recommendations provide a broad framework to guide federal and state policy makers in efforts to continue following the intent of the Voting Rights Act of 1965 and broadening franchise of those who have historically been denied the right to vote.

- **Careful reexamination by State Legislators of all laws that have the potential of burdening or denying eligible voters from their right to vote and discourage pending or future laws with the same effect from being progressed.**
- **Aggressive enforcement and scrutiny of federal voter protection laws.** The U.S. Department of Justice must: 1) continue exercising extreme scrutiny to all future voting laws and those still pending pre-clearance under Section 5 of the Voting Rights Act, particularly in states with vulnerable populations; 2) closely monitor voting legislation in all other states, apply a vigorous review under Section 2 of the Voting Rights Act, and aggressively bring lawsuits when evidence proves necessary; 3) aggressively enforce Section 7 of the National Voter Registration Act, which requires public assistance agencies to provide voter registration services; and 4) provide improved oversight and guidance on the Voting Rights Act and its enforcement in order to carry out the true intent behind the Act.
- **Increased exercise of Congressional power over state and local elections to pass an agenda aimed at protecting and expanding every eligible citizen’s right to vote.** Efforts could include alternative documentation procedures to prove citizenship and identification, improving the voter registration process, developing a uniform standard for practices that are discriminatory in order to avoid disenfranchisement, and require states to provide a comprehensive study on the impact that these laws will have on Latinos.

Endnotes

- 1 “Hispanic or Latino” is used interchangeably and refers to a person of Mexican, Cuban, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race
- 2 Wendy R. Weiser and Lawrence Norden; *Voting Law Changes in 2012*; Brennan Center for Justice (available at http://www.brennancenter.org/content/resource/voting_law_changes_in_2012/)
- 3 Latinos make up 50.5 million of the total U.S. population. See Growth was measured between 2000 and 2010. *Overview of Race and Hispanic Origin: 2010*; 2010 Census Briefs, U.S. Census Bureau, at 3. (issued March 2011); available at <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>)
- 4 The term “youth” in this paper is defined as individuals under the age of 18.
- 5 National Council of La Raza, *Nationwide Growth in the Latino Population is a Boon for the Country*; (available at http://www.nclr.org/images/uploads/publications/nationwide_growth_latino_population_boon_1.pdf)
- 6 The total U.S. population is projected to be 439,010 in 2050 and the Latino population is projected to make up 132,792 of the total population. See *National Population Projections, released 2008 (based on the Census 2000)*, Table 4. (available at <http://www.census.gov/population/www/projections/summarytables.html>)
- 7 In 2010, there were a total of 619,913 naturalizations. 165,733 of those naturalizations were from Hispanic origin. See *2010 Yearbook of Immigration Statistics*, Department of Homeland Security, Office of Immigration Statistics, See Table 21: Persons Naturalized by Region and Country of Birth: 2000-2010. (available at http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2010/ois_yb_2010.pdf) http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2010/ois_yb_2010.pdf (accessed February 2, 2012)
- 8 Mark Hugo Lopez and Paul Taylor, *The 2010 Congressional Reapportionment and Latinos* (Washington, DC: Pew Hispanic Center, 2011), available at <http://pewhispanic.org/files/reports/132.pdf>
- 9 Barrento, Matt, *Where Latino Votes Will Matter in 2010*; (available at <http://latinodecisions.wordpress.com/2011/03/31/where-latino-votes-will-matter-in-2012/>)
- 10 *Supra* at 5, Hugo, *The Latino Electorate in 2010: More Voters, More Non-Voters*.
- 11 *Id* at 4.
- 12 *Id*
- 13 *Id*. Lopez.
- 14 “Just 42.7percent of the nation’s Latino population is eligible to vote, while more than three-in-four (77.7percent) of whites, two-thirds of blacks (67.25percent) and more than half of Asians (52.8percent) are eligible to vote.” *Supra* Hugo, *The Latino Electorate in 2010: More Voters, More Non-Voters*, at 5.
- 15 Voting and Registration in the Election of November 2010 - Detailed Tables (October 2011); See Table 4b. Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2010. (available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2010/tables.html>)
- 16 Gonzalez, Antonio; *Recent Trends and Challenges for the Latino Vote*; William C. Velazquez Institute; March, 7, 2012 (available at http://www.wcvi.org/press_room/press_releases/2012/120308_release.pdf).
- 17 *Id*. See table Table 2. Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age, for the United States: November 2010.
- 18 *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966).
- 19 See 42 U.S.C. § 1973
- 20 See 42 U.S.C. § 1973c(a) and *Beer v. United States*, 425 U.S. 130, 141 (1976).
- 21 See, e.g., *Notice of Preclearance Activity, Notice Date: 09/26/2011*, Dep’t of Justice Civil Rights Division, (available at <http://www.justice.gov/crt/about/vot/notices/vnote092611.php>); (last visited Oct. 31, 2011); (Attorney General’s Request for more information on proposed voting qualifications/eligibility, Submission Number: 2011-2775 (TX), Sept. 23, 2011).
- 22 U.S. Census Bureau, “The Hispanic Population: 2010,” *Census Briefs* (issued May 2011); (The South Census region includes Alabama, Arkansas, Delaware, the District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Tennessee, Texas, Virginia, and West Virginia). See p. 7 Southern region’s Latino population grew by 57 percent, four times the growth of the total population in the South.
- 23 *Id*. At 7-8.
- 24 See, e.g., Jeannine Koranda, “Dead folks voting? At least one’s still alive”, *The Wichita Eagle*, October 29, 2010 (<http://www.kansas.com/2010/10/29/1562791/dead-folks-voting-at-least-ones.html>)(describing how Kris Kobach, then a candidate for his current position as Secretary of State, announced that one man on the voter rolls was dead. “Reached Thursday at his home where he was raking leaves, Brewer, 78, was surprised some people thought he was dead. ‘I don’t think this is heaven, not when I’m raking leaves,’ he said.”) More generally, see, Justin Levitt “The Truth About Voter Fraud”, Brennan Center for Justice at NYU School Of Law, 2007 (http://brennan.3cdn.net/c176576c0065a7eb84_gxm6ib0hl.pdf)
- 25 Testimony of Charles A. Gonzalez, Member of Congress, “Voter ID Laws Lead to Less Voting, Not Less Fraud;” Testimony hearing for “Excluded from Democracy: The Impact of Recent State Voting Changes” November 14, 2011. See page 4-5.
- 26 H.B. 19, 2011 Gen. Assemb., Reg. Sess. (Ala. 2011); (available at <http://alisondb.legislature.state.al.us/acas/searchableinstruments/2011RS/Printfiles/HB19-enr.pdf>)
- 27 H.B. 56, 2011 Gen. Assemb., Reg. Sess. (Ala. 2011); (available at <http://alisondb.legislature.state.al.us/acas/searchableinstruments/2011RS/Printfiles/HB56-enr.pdf>)
- 28 *CS/CS/HB 1355: Elections*, Fla. House of Rep; (available at <http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=46543&SessionIndex=1&SessionId=66&BillText=&BillNumber=1355&BillSponsorIndex=0&BillListIndex=0&BillStatuteText=&BillTypeIndex=0&BillReferredIndex=0&HouseChamber=H&BillSearchIndex=0> (last visited February 13, 2012).
- 29 *H 3003 Status Information*, S.C. Gen. Assemb.,(available at http://www.scstatehouse.gov/sess119_2011-2012/bills/3003.htm) (last visited February 12, 2012)
- 30 *History: SB 14*, Tex. Leg. Online, (available at <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=82R&Bill=SB14> (last visited February 12, 2011)).
- 31 *History: HB 1570*, Tex. Leg. Online, (available at <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=82R&Bill=HB1570> (last visited February 12, 2011)).
- 32 <http://electionlawblog.org/wp-content/uploads/doc-76-joint-status-report.pdf>
- 33 <http://electionlawblog.org/wp-content/uploads/83.pdf>
- 34 Scharrer, Gary; *The Chron, Attorney general asks court to clear voter ID*; (available at <http://www.chron.com/communityblogs/atmosphere/article/Attorney-general-asks-court-to-clear-voter-ID-2676326.php>)
- 35 See Alabama, Kansas, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin.
- 36 See, e.g., American Ass’n for Justice, ALEC: *Ghostwriting the Law for Corporate America 3* (2010), (available at http://www.justice.org/cps/rde/xbcr/justice/ALEC_Report.pdf)
- 37 Act of May 18, 2011, 2011 S.C. Acts 27, sec. 5 (to be codified at S.C. Code ANN. § 7-13-710).
- 38 See *Gonzalez v. Arizona*, 435 F. Supp. 2d 997 (2006), *rev’d in part*, 624 F.3d 1162 (9th Cir. 2010), *reh’g en banc granted*, 2011 U.S. App. LEXIS 8573 (9th Cir. Apr. 27, 2011).
- 39 *Gonzalez v. Arizona*, 624 F.3d 1162 (9th Cir. 2010), *reh’g en banc granted*, 2011 U.S. App. LEXIS 8573 (9th Cir. Apr. 27, 2011).
- 40 H.B. 56; went into effect on September 29, 2011.
- 41 Minnute, Lorraie; *An analysis of Voter Fraud in the United States*, E6 (2007), (available at www.demos.org/pubs/Analysis.pdf)

- 42 Brennan Center for Justice; *Voting Challenges* 2010; (available at http://brennan.3cdn.net/7a4356fa4b248a76f7_uam6bqvko.pdf)
- 43 Eric Lipton and Ian Urbina, "In 5-Year Effort, Scant Evidence of Voter Fraud," *The New York Times*, April 12, 2007 (available at <http://www.nytimes.com/2007/04/12/washington/12fraud.html>)
- 44 See 18 U.S.C. § 1973i.
- 45 Only twenty cases were handled by the attorney general between 2008 and 2010. See *Cheating Rarely Seen at Polls*; Scharrer, Gary; *The San Antonio Express*, March, 25, 2012 (http://www.mysanantonio.com/news/local_news/article/Cheating-rarely-seen-at-polls-3432801.php)
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- 47 See Associated Press, *SC Submits Voter ID Law Response*, *WIS News* 10, October 26, 2011, (available at <http://www.wistv.com/story/15881001/voter-id-ads-overlook-absentee-option>)
- 48 See R. Michael Alvarez et al., *The Effect of Voter Identification Laws on Turnout 20–22* (Cal. Inst. of Tech. Soc. Science Working Paper No. 1267R, Jan. 1 2008).
- 49 See Alvarez, Ansolabehere, et al., *Caltech/MIT Voting Technology Project, 2008 Survey of the Performance of American Elections*, *supra* note 158, at 42–43.
- 50 See Brennan Center for Justice, *Citizens Without Proof*, *supra* note 46, at 3. (available at http://www.brennancenter.org/page/-/download_file_39242.pdf)
- 51 The U.S. Census Bureau, *Statistical Abstract of the U.S. 2012*; Table 690. (available at <http://www.census.gov/prod/2011pubs/12statab/income.pdf>)
- 52 *Texas Vital Statistics — Birth Certificates*, Texas Dep't of State Health Servs., (available at http://www.dshs.state.tx.us/vs/reqproc/certified_copy.shtm), (last visited December 22, 2011).
- 53 *Passport Fees*, *Travel.State.Gov*, (available at http://travel.state.gov/passport/fees/fees_837.html), (last visited Dec. 19, 2011); *N-564, Application for Replacement Naturalization/Citizenship Document*, U.S. Citizenship and Immigration Services, (available at <http://www.uscis.gov/portal/site/uscis/m.5af9bb95919f35e66f614176543f6d1a/?vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextoid=a910cac09aa5d010VgnVCM10000048f3d6a1RCRD>), (last visited Dec. 19, 2011).
- 54 http://www.mysanantonio.com/news/local_news/article/Cheating-rarely-seen-at-polls-3432801.php#ixzz1qNbvnmnn
- 55 Aaron C. Davis, *Republican 'doctrine' on suppressing black vote is key to Md. Case, and maybe to 2012*, *Wash. Post*, June 17, 2011, (available at http://www.washingtonpost.com/local/dc-politics/republican-doctrine-on-suppressing-black-vote-is-key-to-md-case-and-maybe-to-2012/2011/06/17/AGKPaSZH_story.html)
- 56 42 U.S.C. § 1973gg-4(b).
- 57 See generally Christopher Ponoroff, Brennan Center for Justice, *Voter Registration in a Digital Age*, (Wendy Weiser, Ed., 2010), (available at http://brennan.3cdn.net/806ab5ea23fde7c261_n1m6b1s4z.pdf).
- 58 See Weiser & Norden, Brennan Center for Justice, *Voting Law Changes in 2012*, *supra* note 2, at 1 n.1.
- 59 2011 Fla. Sess. Law Serv. Ch. 2011-40 (West).
- 60 See, e.g., Press Release, League of Women Voters of Florida, *Announcement Regarding Cessation of Voter Registration in the State of Florida* (May 7, 2011), (available at <http://www.lwvcolliercounty.org/pdfs/cessation.pdf>); cf. Press Release, NAACP LDF, *LDF Moves to Intervene on Behalf of Florida NAACP and African-American Voters in Florida Voting Rights Case* (Sept. 7, 2011), (available at <http://naacpldf.org/press-release/ldf-movesintervene->).
- 61 *Id.*
- 62 *Id.*
- 63 See The Pew Center on the States, *Provisional Ballots: An Imperfect Solution* 6 (2009), (available at http://www.pewcenteronthestates.org/uploadedFiles/ELEC_ProvBallot_Brief_0709.pdf). Fifty thousand provisional ballots were rejected in 2008 because voters who voted at the wrong precinct "may have been provided with incorrect precinct information in advance or redirected to the wrong precinct on Election Day due to administrative errors in the registration system," while 27,000 "were disallowed because of various errors . . . some [of which] were the result of administrative problems at the polls."
- 64 H.B. 1570, 2011 Reg. Sess. (Tex. 2011) (amending Tex. Elec. Code Ann. §§ 12.006, 13.031, 13.047), (available at <http://www.legis.state.tx.us/tlodocs/82R/billtext/pdf/HB01570F.pdf#navpanes=0>).
- 65 See U.S. Census Bureau, *Voting and Registration in the Election of November 2008 – Detailed Tables*, Table 14, *supra* note 40.
- 66 See Letter from League of Women Voters of Florida, Brennan Center for Justice, *Democracia USA & Lawyers' Committee for Civil Rights Under Law to Chris Herren, Chief, Voting Section, Civil Rights Division, U.S. Dep't of Justice* (July 15, 2011), (available at <http://www.lwvccfl.com/pdfs/2011-LWV-Letter-Dept-Justice.pdf>).
- 67 U.S. Census Bureau, *Voting and Registration in the Election of November 2004 – Detailed Tables*, Table 14 (Method of Registration by Selected Characteristics: November 2004), (available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2004/tables.html>).
- 68 U.S. Census Bureau, *Overview of Race and Hispanic Origin*, *supra* note 16, at 18-19.
- 69 http://www.nytimes.com/2012/03/28/us/restrictions-on-voter-registration-in-florida-have-groups-opting-out.html?_r=2&ref=us&pagewanted=all
- 70 See Maria da Silva, *Why Aren't Voters Registering*, Brennan Center for Justice Blog (Oct. 26, 2010), (available at http://www.brennancenter.org/blog/archives/why_arent_voters_registering/)
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- 75 Pew Hispanic Center; *Statistical Portrait of Hispanics in the United States* (February 17, 2011); See Table 31. (available at <http://www.pewhispanic.org/files/2011/02/2009-Hispanic-Profile-Final.pdf>).
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- 77 Jim Morrill, *Shorter early voting costlier*, *Charlotte Observer*, May 19, 2011, (available at <http://www.charlotteobserver.com/2011/05/19/2307261/shorter-early-voting-costlier.html>); Lewis, *A Poll Tax by Another Name*, *supra* note 159.
- 78 See Morrill, *Shorter early voting costlier*, *supra* note 185.