



Testimony of Nina Perales, MALDEF Vice President of Litigation

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Good morning Chairman Raskin, Ranking Member Sessions and members of the Subcommittee. My name is Nina Perales, and I am the Vice President of Litigation for MALDEF, the Mexican American Legal Defense and Educational Fund, Inc. Founded in 1968, MALDEF leads the nation in litigating civil rights cases on behalf of Latinos, including in the area of voting rights.

My testimony today will focus on several bills pending in the Texas Legislature that suppress voting and discriminate against Latino voters.

Latinos are the most significant component of Texas's expanding electorate. Among those turning age 18 in Texas last year, just under half were Latino. Over the past decade in Texas, the Anglo population increased by an estimated 640,000. In contrast, the Latino population increased by over 2.5 million. This demographic trend has been the same for the past three decades. According to Census estimates, the Anglo voter eligible population in Texas will soon drop below 50%.

With respect to voter participation, Latinos again comprise a significant portion of new voters in Texas. In 2018, Texas Latinos increased their vote share by about five percentage points -- from 14.4% to 19.1% of all votes cast (compared to 2014 midterm election).

In this context, laws that make voter registration and voting more difficult have a disparate, negative impact on Latinos and other minority voters entering the electorate.

Two bills currently pending in the Texas Legislature, SB1 and HB3, seek to thwart the emergence of a majority-minority Texas electorate. Some provisions in these bills are aimed directly and specifically at Latino and other minority voters. Other provisions make it more difficult for all voters to vote and thus particularly harm first-time and younger voters, many of whom are Latino.

The Texas bills deprive Latino voters lawful assistance

Article 5 of SB1 and Article 6 of HB3 interfere with voter assistance and will have a strong negative impact on Latino and Asian American voters. Limited English proficient voters rely on assistors to vote. For example, one in ten U.S.-born Latino adults does

not speak English well.¹ Slightly more than half of naturalized U.S. citizens who are Latino do not speak English well.² Texas is home to close to two million naturalized U.S. citizens.³ All of these limited English proficient individuals, who are also U.S. citizens, have the right to receive language assistance when they vote.

SB1 and HB3 both impose requirements that a voter assistor swear an oath under penalty of perjury to restrict their assistance in violation of federal law. These new oath requirements will deter assistors and deny limited English proficient voters the assistance to which they are legally entitled.

Section 6.03 of HB3 requires the assistor to swear an oath stating that the assistor will confine the assistance to reading and marking the ballot. This provision subtracts even from current Texas law which allows an assistor to answer questions posed by the voter while casting the ballot.

Both Section 6.03 of HB3 and Section 5.04 of SB1 require the assistor to swear an oath stating that the assistor secured a statement of eligibility from the voter. This requirement invades the privacy rights of voters and will deter assistors who are uncomfortable interrogating a voter who asks for assistance about the exact reason the voter needs help. The new oath in both bills includes language that “if assistance is provided to a voter who is not eligible for assistance, the voter’s ballot may not be counted.” This language further reinforces the requirement to invade the voter’s privacy and will deter assistors who worry that their assistance will result in rejection of the voter’s ballot.

The voter assistance restrictions in SB1 and HB3 not only have a disparate, negative impact on Latino and Asian American voters, the provisions violate Section 208 of the federal Voting Rights Act.⁴ Under Section 208 of the federal Voting Rights Act, a voter has the right to assistance without having to explain his or her eligibility to an assistor. A voter’s right to assistance extends beyond just reading and marking the ballot and includes assistance in navigating the polling place, interacting with poll workers and understanding how to use the voting equipment – all things an assistor must swear not to do in the oath required by HB3. The Texas bills’ restrictions on assistance not only harm limited English proficient voters. A voter who is physically disabled has the right to an assistor even if the voter can see and mark the ballot. For example, a voter in a wheelchair or a voter who uses sign language to communicate is also entitled to assistance navigating the polling place, interacting with poll workers and using the voting equipment.

¹ Pew Research Center, “English Proficiency on the Rise Among Latinos,” May 12, 2015, available at <https://www.pewresearch.org/hispanic/2015/05/12/english-proficiency-on-the-rise-among-latinos>.

² U.S. Department of Commerce, “Language Use in the United States: 2011,” August 2013, available at <https://www2.census.gov/library/publications/2013/acs/acs-22/acs-22.pdf>.

³ Migration Policy Institute, “2019 State Immigration Data Profiles (Texas),” available at <https://www.migrationpolicy.org/data/state-profiles/state/demographics/TX>.

⁴ See 52 U.S.C. § 10508.

SB1 also requires the assistor to swear that the assistor did not “encourage” the voter to choose them. This is not a requirement of federal voter assistance law and it undermines the right to assistance. This provision violates the First Amendment to the U.S. Constitution and Section 208 of the federal Voting Rights Act because individuals have the right to encourage a voter to rely on them for assistance and voters have the right to choose an assistor who encourages the voter to use them.

SB1 and HB3 also increase the burdens of language assistance on the voter and the assistor by adding new paperwork requirements that will deter assistors, slow down voting and increase wait times at the polling place.

Section 5.03 of SB1 and Section 6.02 of HB3 create a new requirement that individuals who assist voters fill out forms that require the assistor’s name and address, and the relationship of the assistor to the voter. Section 5.05 of SB1 requires non-family members who assist voters with mail ballots to state on the carrier envelope the assistor’s name and address, and the relationship of the assistor to the voter. Failure to fill out or sign this section of the carrier envelope is a state jail felony. Section 5.01 of SB1 also requires persons who assist voters by simultaneously transporting three or more voters to a polling place to submit a form that contains the assistor’s name and address and whether the person is solely providing transportation or additional assistance.

The new paperwork requirements in SB1 and HB3 will slow down the voting process and increase wait times at polling places in predominantly Latino neighborhoods. Requiring assistors to fill out new forms, and take longer oaths, will take time even when the assistors are willing to comply with these new laws. At polling places where there are more voters who need language assistance, the lines will slow down, voters will be forced to wait more time to vote, and some will leave before voting because they have to meet work and family commitments.

None of assistance restrictions are based on any evidence that voters who need assistance because of limited English proficiency or disability are involved in fraud. Instead, the legislative leadership supporting these restrictions invokes old racial stereotypes of minorities as either cunning criminals or easily duped voters. In the hearings on HB3 and SB1, no witness testified that he or she saw voters being coerced by their chosen assistor. Instead, legislators were treated to a racially demeaning story by a Texas Assistant Attorney General about trading plates of chicken for Latino votes on the U.S. Mexico Border. In addition to being untrue, this story is based on statements by a discredited official of a county that MALDEF successfully sued for unconstitutionally suppressing voter outreach at the polls.⁵

The Texas bills invite voter intimidation by poll watchers

Sections 3.02, 3.03, and 3.05 of SB1, and Sections 4.01, 4.02, 4.03, 4.04, and 4.06 of HB3 strip voters of the protections of privacy and security in the polling place and invite

⁵ *Garza v. Starr County*, 309 F. Supp. 3d 454 (S.D. Tex. 2018).

vigilantism by poll watchers. Section 3.02 of SB1 creates a Class A misdemeanor for an election officer who intentionally or knowingly refuses to accept a watcher, even if the poll worker is concerned the poll watcher is disruptive or intimidating voters. Section 3.03 of SB1 and Section 4.04 of HB3 empower poll watchers to “sit or stand near enough to see and hear the activity or procedure” they are observing, which effectively removes the requirement that watchers maintain their distance from voters who are marking their ballots. Section 3.03 of SB1 and Section 4.04 of HB3 also prohibit a watcher from being denied “free movement where election activity is occurring.” Allowing poll watchers to roam around inside a polling place and stand close to voters and election workers is entirely unnecessary. The only effect of allowing poll watchers to roam around, stand near voters, and even disrupt the activities inside a polling place is to make voters uncomfortable and less likely to remain in the polling place and vote.

Sections 4.01 and 4.06 of HB3 prohibit election officers from removing poll watchers or requiring watchers to leave the polling place for any reason other than activity that would constitute an election offense, unless the poll watcher was previously warned the conduct violated law. This means poll watchers can scream, yell, physically impede, frighten or drive off voters and must still be allowed to remain in the polling place unless they were previously warned and commit the violation again.

Section 3.05 of SB1 creates an offense for election officers who knowingly prevent a watcher from observing an action or procedure the person knows the watcher is entitled to observe. This includes any action to obstruct the view of a watcher or action to position a watcher at a distance from the activity or procedure the watcher wishes to observe but is not reasonably able to do so from that position. The crime is punishable by up to 1 year in jail, a fine of as much as \$4,000, or both. This provision ensures that not only will voters be intimidated by unrestrained poll watchers, but election officials will also be intimidated by the threat of severe penalties for trying to protect voters from poll watcher interference.

Latino voters in Texas have borne the brunt of more than a century of voter intimidation by vigilantes as well as official law enforcement. In just one example, in 1928, the Weslaco barrio election box was assailed by the local “Good Government League.” According to a federal report, a crowd of 3,000 to 4,000 Anglos at the polling place shouted “Don’t let those Mexicans in to vote. Throw them out” while men with shotguns protected the crowd. An estimated 200 to 300 regular Mexican American voters “did not show up at all.”⁶ In another example, a South Texas lawyer, Marshall Hicks, testified in a Texas Senate investigation that his client’s opponent, D.W. Glasscock had the Texas Rangers selectively “investigate” Mexican American voters, and spread “a spirit of terrorism among those Mexican people.” Historian Evan Anders noted in his book that “the mere presence of armed Rangers at the polling stations had an intimidating effect on the Hispanic population” in Cameron, Duval, Nueces, Hidalgo, and Starr Counties.⁷

⁶ Anders, Evan. *Boss Rule in South Texas: The Progressive Era*. Austin: University of Texas, 1982, p. 224-6, 239, 269; Montejano, David. *Anglos and Mexicans in the Making of Texas, 1836-1886*. Austin: University of Texas Press, 1987, p. 147.

⁷ *Id.*, p. 145-7.

Before you dismiss these examples of racially-motivated voter intimidation as relics of the past, note that as recently as January 2021, the U.S. Capitol invaders displayed racist messages and flaunted nooses in their effort to stop certification of an election they claimed was infected by voter fraud.⁸ There is every reason to believe that removing security measures inside polling places will result in more intimidation of Latino voters. SB1 and HB3 purposefully strip polling place officials of the authority to remove disruptive poll watchers and SB1 and HB3 undermine the guarantee of a safe and secure environment for voters inside Texas polling places.

SB1 improperly targets voters for investigation

Sections 1.03, 1.05 and 1.08 of Senate Bill 1 create a pipeline for criminal prosecution of voters who make a mistake in registration or who have committed no crime.

Section 1.03 of SB1 creates a requirement to refer voters to law enforcement who temporarily live away from their registration address. Currently the county voter registrar verifies that a voter is not eligible and removes the voter from the rolls.

In Texas, it is a routine occurrence for individuals to live temporarily away from the address where they are registered to vote. The fact that someone is living away from his or her voter registration address is not evidence of voter fraud. It is not an offense to move away from the address at which you are registered to vote and it is a common circumstance. Young adults move away from their parents' homes to attend college or serve in the military. Other adults move away from their voter registration address for a new job, or to get married or for a host of other reasons. When any of these individuals respond to a jury summons questionnaire and truthfully state that they are not residing at their voter registration address, there is no evidence of a crime because there is no requirement in Texas law to cancel your voter registration when you reside elsewhere. The decision whether to register to vote at a new address depends on whether the individual considers herself to have changed domicile, not residence.

Section 1.08 of SB1's requirement that the Secretary of State and Office of the Attorney General compare lists of people excused from jury duty for non-residence in the county to lists of registered voters, and the requirement that the appropriate county or district attorney or Attorney General investigate whether a person committed an offense under the Texas Election Code, waste resources and do not advance any interest in combatting fraud. The relevant offense under the Election Code -- making a false statement when registering to vote -- is simply not implicated months or years later when a registered voter is excused from jury duty because that voter is temporarily living out of the county at the time he or she is summoned.

⁸ Associated Press, *Years of white supremacy threats culminated in Capitol riots*, available at <https://apnews.com/article/white-supremacy-threats-capitol-riots-2d4ba4d1a3d55197489d773b3e0b0f32>.

Section 1.03 of SB1 is not tied to a time period so it sweeps in voters who are eligible at the time they register but who become ineligible at a later point in time. All of these referrals under SB1 would be inappropriate harassment of voters and possibly unconstitutional. Furthermore, Section 1.03 provides no standards and will lead to improper targeting of voters on the rolls who share a name or other information with an ineligible individual. For example, a father and son with the same name can reside at the same address. The father could be excused from jury duty for non-U.S. citizenship and the son could be a U.S. citizen properly registered to vote. If registrars refer voters to law enforcement based on "weak" matching criteria, such as in this example, the referral and subsequent criminal investigation would unconstitutionally infringe on the right to vote.

SB1 makes voting more difficult without justification

Other provisions in Articles 2 and 4 of SB1 make voting more difficult for no reason at all. Limiting the types of buildings that can be polling places, limiting the hours of operation of polling places, prohibiting the affirmative distribution of mail ballot applications by county officials (but not political party officials) all restrict voting without any justification.

The Texas bills follow historic as well as recent racial discrimination in voting

Section 1.04 of Senate Bill 1, which was amended out of the bill after MALDEF's public testimony, created a voter purge surgically aimed at naturalized U.S. citizens who register to vote. The provision required registrars to send citizenship challenge letters to registered voters who "have indicated a lack of citizenship status in connection with a motor vehicle record or Department of Public Safety Record[.]" Because permanent residents immigrants almost always are licensed drivers before they naturalize, when they naturalize and register to vote there is an old record of their green card at the Texas driver's license agency. SB1's purging of voters based on old records that pre-date the voters' naturalization codified the unconstitutional purge of naturalized citizen voters in Texas in 2019. MALDEF sued Texas on behalf of naturalized U.S. citizens who received citizenship challenge letters and secured a temporary restraining order from a federal judge blocking the purge. Texas entered into a legally binding settlement agreement that prohibits the Secretary of State from challenging the U.S. citizenship of currently registered voters based on older data in drivers license records but SB1 brought the practice back. In testimony on SB1, MALDEF promised to sue Texas for reinstating the purge and the SB1 bill sponsor agreed to (and did) amend the bill.

The 2019 Texas voter purge was only the latest in a long history of discrimination against Latino voters in Texas. As explained by the U.S. Supreme Court in 2006:

Texas has a long, well-documented history of discrimination that has touched upon the rights of African-Americans and Hispanics to register, to

vote, or to participate otherwise in the electoral process. Devices such as the poll tax, an all-white primary system, and restrictive voter registration time periods are an unfortunate part of this State's minority voting rights history. The history of official discrimination in the Texas election process—stretching back to Reconstruction—led to the inclusion of the State as a covered jurisdiction under Section 5 in the 1975 amendments to the Voting Rights Act. Since Texas became a covered jurisdiction, the Department of Justice has frequently interposed objections against the State and its subdivisions.⁹

In that case, the U.S. Supreme Court concluded that in 2003 Texas enacted a congressional redistricting plan that discriminated against Latinos and “undermined the progress of a racial group that has been subject to significant voting-related discrimination and that was becoming increasingly politically active and cohesive.”¹⁰ More recently, in 2018, the U.S. Supreme Court ruled that Texas violated the U.S. Constitution when it racially gerrymandered Latino voters in its state House of Representatives redistricting plan.¹¹ In both *LULAC* and *Perez*, the U.S. Supreme Court ruled in favor of claims brought by MALDEF on behalf of Latino voters.

SB1 and HB3 follow this recent and past history of racial discrimination and reflect a continued effort by Texas officials to thwart the emergence of a more diverse electorate.

Conclusion

In sum, SB1 and HB3 ignore the election security measures already contained in the Texas Election Code, lack justification for their further restrictions on voting, and violate federal law with several provisions that limit voting rights guaranteed by federal statutes. The bills suppress voting, and are the product of historic, as well as recent, discrimination in voting by Texas.

Thank you for your time. I’m happy to answer any questions of the Committee members.

⁹ *League of United Latin Am. Citizens v. Perry*, 126 S. Ct. 2594, 2622 (2006).

¹⁰ *Id.* at 2621.

¹¹ *Abbott v. Perez*, 138 S. Ct. 2305, 2335 (2018).