



**Testimony of Thomas A. Saenz
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**Hearing on
Voting Rights and Election Administration in America**

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Good afternoon. My name is Thomas A. Saenz, and I am president and general counsel of MALDEF (Mexican American Legal Defense and Educational Fund), which has, for over 51 years now, worked to promote the civil rights of all Latinos living in the United States. MALDEF is headquartered in Los Angeles, with regional offices in Chicago; San Antonio, where we were founded; and Washington, D.C.

Since its founding, MALDEF has focused on securing equal voting rights for Latinos, and promoting increased civic engagement and participation within the Latino community, as among its top priorities. MALDEF played a significant role in securing the full protection of the federal Voting Rights Act (VRA) for the Latino community through the 1975 congressional reauthorization of the 1965 VRA. MALDEF has over the years litigated numerous cases under section 2, section 5, and section 203 of the VRA, challenging at-large systems, discriminatory redistricting, ballot access barriers, undue voter registration restrictions, and failure to provide bilingual ballot materials. We have litigated significant cases challenging statewide redistricting in Arizona, California, Illinois, and Texas, and we have engaged in pre-litigation advocacy efforts, as well as litigation related to ballot access and local violations, in those states, as well as in Colorado, Georgia, Nevada, and New Mexico. As the growth of the Latino population expands, our work in voting rights increases as well.

Before the divided Supreme Court decision in *Shelby County v. Holder*, MALDEF relied heavily upon the application of the section 5 pre-clearance requirements – particularly in Arizona, Texas, and portions of California – to deter violations of Latino voting rights and to block any discriminatory proposals that were submitted for pre-clearance. These beneficial effects of pre-clearance – and others, including even the basic tracking of electoral changes with potential impacts on the right to vote – have been missing following *Shelby County* because of the Congress' failure to enact an effective new coverage formula after the 2013 Court decision.

As a rapidly growing population, Latinos are regularly and increasingly seen as a threat to those in political power. As a result of this perceived threat to incumbents, the Latino community regularly faces violations of the VRA in several election-related areas. Those in power, whether at state or local level, think about the perceived threat from the growing Latino voter pool in racial terms, even if that perspective is not explicitly acknowledged, and the violations of the VRA take conspicuously racialized forms even if justified in other terms – of seniority protection for incumbent legislators, of competitiveness, or of continuity of representation, for example.

One area where MALDEF continues to see and to challenge this phenomenon is in the failure – or better described, refusal – of map drawers to create new Latino-majority districts where the growth of the community and the extent of racially polarized voting warrant such districts. For example, this decade, as in previous decades, MALDEF has had to challenge the refusal of the Texas state legislature to recognize the growth of the state’s Latino voter population by creating additional Latino-majority districts. Even with four additional congressional districts earned after the 2010 Census, following a decade when the Latino community accounted for the vast majority of the state’s population growth, Texas initially drew none of the new congressional districts as a Latino-majority district. Our litigation, together with many others, to challenge Texas statewide redistricting in the case of *Perez v. Abbott*, only recently concluded, with two separate trips to the Supreme Court in the course of a case that lasted most of the decade. While an interim remedy has been in place, the length of this case’s lifespan provides a prime example of the cost and inefficiency of litigation under Section 2 of the VRA, as compared to the streamlined pre-clearance process.

Even in California, viewed with some accuracy as a progressive bastion in policy areas including voting rights, the impulse to protect empowered incumbents has proved a formidable obstacle. After the 2011-12 redistricting cycle following the 2010 Census, MALDEF identified at least nine counties in California where the governing board of supervisors should have created an additional Latino-majority seat, and failed to do so. In a five-person body, the tendency to protect incumbents, even across party lines on a technically non-partisan board, appears to be overwhelming, if these California statewide results are any indication. After three failed attempts to secure California state legislation that would streamline litigation challenging such discrimination against minority voters, MALDEF commenced a VRA Section 2 challenge to one of those nine counties in *Luna v. Kern County Board of Supervisors*. That litigation, which proved hard-fought and expensive, did result in a post-trial victory and subsequent settlement creating a second, new Latino-majority supervisorial district.

At-large electoral systems have also continued to be an area where Latino voting rights are regularly threatened. The perpetuation or introduction of at-large electoral systems, in a context of racially-polarized voting, can ensure that those in power retain a near-complete stranglehold on local government until a minority group becomes a substantial majority of the eligible voter population. For this reason, many jurisdictions seem to cling to at-large systems

even when it results in heavy concentration of elected officials from a single neighborhood, or results in large electoral pools, with concomitantly expensive electoral campaigns that strongly favor incumbents over any and all challengers.

MALDEF's post-*Shelby County* case against Pasadena, Texas, involved the conversion of a city council comprised of eight members elected from districts, to a council with six district representatives and two seats elected at large. This change was plainly undertaken to prevent the growing Latino voting population from electing a majority of the city council; participation differentials virtually ensured that the white population would elect its choices for the at-large seats in elections characterized by a racially-polarized vote. The case went to trial, following which the district court judge held that not only would the change have the effect of unlawfully diluting the Latino vote, but it was made intentionally to accomplish that aim. This resulted in the first contested "bail in" order, requiring Pasadena to pre-clear future electoral changes. However, again, that favorable outcome followed lengthy and costly trial preparation and trial, all of which would likely have been avoided had the challenged change itself been subject to pre-clearance review, as it would have been before the *Shelby County* decision.

In California, 16 years ago, the legislature enacted the California Voting Rights Act (CVRA) to streamline challenges to at-large local elections in any jurisdiction experiencing racially-polarized voting – where the voting preferences of those from a minority group ordinarily diverge from the choices of voters who are not members of the minority group. In the years since the CVRA legislation, which was co-sponsored by MALDEF, took effect, dozens and dozens of local jurisdictions – cities, school districts, community college districts, and special districts – have converted to district elections. Almost without exception, these conversions have been accomplished in pre-litigation or early litigation settlements, prior to expensive discovery and trial preparation, once a challenger demonstrates racially-polarized voting, which is not only a central concern under the CVRA but under Section 2 of the federal VRA as well. However, by focusing on racially-polarized voting as the main determinative factor, the CVRA accomplishes the same aims with respect to at-large voting systems as the VRA, but at much lower cost and in much less time.

In the last two decades, the nation has witnessed an accelerating pattern of ballot-access restrictions enacted to address baseless myths of widespread voter fraud. Like Donald Trump's post-election false accusations of millions of improper “non-citizen” votes – all extraordinarily for his opponent, who won the popular vote by a significant number – many of these propagated fallacies have implicitly or explicitly targeted the growing Latino vote. Increasingly restrictive voter identification requirements, proof-of-citizenship requirements for new voter registrants, and restrictions on how and when voter registration drives may occur are all state electoral changes seemingly implemented to stem the growing Latino vote in Texas, Arizona, and other states.

As some of these attempts to restrict ballot access and to deter voter participation have been less effective than their architects would like -- both because of successful legal challenges and concentrated counter-organizing -- some states have turned to unwarranted voter purges. For example, MALDEF and others recently had to pursue litigation challenging a Texas attempt to remove voters from the rolls, and not incidentally to deter voter participation more broadly, by targeting naturalized-citizen voters through a completely faulty method of identifying potential ineligible voters. This focus on qualified, immigrant voters is an increasing danger in light of rhetoric from the White House that regularly, and without any factual basis, depicts immigrants as fraudulent voters.

In fact, the Trump administration has gone further in targeting naturalized-citizen voters through its ongoing campaign to put “Americans First.” The despicable rhetoric that accompanies this campaign denies “American” status to folks who went through an arduous naturalization process after choosing to become citizens. The rhetoric has a known and intended effect of deterring participation by naturalized voters, while discouraging others to even undertake the increasingly difficult naturalization process.

Trump administration actions affecting Census 2020, including particularly the late addition of a citizenship question, fortunately now removed through court action, were designed to reduce the political power of the Latino community by triggering a massive undercount of that community in the Census. These efforts continue through a ludicrous effort to collect administrative records to derive broad-based citizenship data that would in turn be misused in the redistricting process. MALDEF has recently filed litigation to challenge this latest effort by the Trump administration to invade privacy, to create demonstrably false data, and to intimidate voting by naturalized citizens and those close to them.

Recent media reports indicate that the Commerce Department is actively seeking state department of motor vehicles (DMV) data on citizenship. Yet, as the Texas voter-purge litigation, described previously, amply demonstrates, such DMV data is rife with inaccuracies, particularly for naturalized citizens, who are not required to report their newly-obtained citizenship to their state DMV. These administration efforts will simply add to the subtle and direct discouragement of naturalized citizens’ civic engagement that pervades the actions and rhetoric of Donald Trump and his appointees.

Of course, it is a short step from these negative efforts to disapproval and discouragement of the provision of bilingual elections materials, even though the provision of such materials is required by the Voting Rights Act. Our nation’s increasing diversity means that over time more and more jurisdictions will meet the threshold for providing elections materials in a language other than English. This expanded coverage is not a reason to oppose the provision of bilingual materials, but further proof of the need to welcome and encourage immigrants to naturalize and naturalized citizens to vote. Failure to encourage such participation violates our values and principles as a democratic nation.

Yet, the Trump administration – joined by others who have other motives to reduce Latino and Asian American participation in elections – will undoubtedly target the provision of elections materials in other languages. This will in turn implicitly – and perhaps even explicitly – encourage unwarranted vigilante challenges to the participation of naturalized citizens and other Latinos and Asian Americans. This is not the time to shrink from efforts to encourage broad participation of all eligible citizens in voting, including those who may need bilingual assistance to cast a considered and meaningful vote.

Because the growth of the Latino community is too often today – and this will surely only increase in the future – assumed to be a threat to those currently holding political power in many jurisdictions, we will see increased challenges to voting accessibility for naturalized-citizen voters, as well as for all Latino voters. The Congress should act in anticipation of these efforts targeting growing minority voting communities by ensuring that incumbent officeholders do not limit or deter accessibility as a means of preserving themselves in power.