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Mr. Arturo Vargas

¹ deceased

Written Testimony

Of

Arturo Vargas, Chief Executive Officer
National Association of Latino Elected and Appointed
Officials (NALEO) Educational Fund

Before the Elections Subcommittee
of the U.S. House of Representatives
Committee on House Administration

Voting Rights and Election Administration in America

Washington, DC
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Chair Fudge, Ranking Member Davis, and Members of the Subcommittee on Elections: thank you for the opportunity to present testimony to you today regarding Latino voters' access to and participation in elections.

I am Arturo Vargas, Chief Executive Officer of NALEO Educational Fund, the leading non-profit, non-partisan organization that facilitates full Latino participation in the American political process, from citizenship to public service. Our constituency encompasses the more than 6,700 Latino elected and appointed officials nationwide, and includes Republicans, Democrats, and Independents.

For several decades, NALEO Educational Fund has been at the forefront of efforts to advance policies that protect Latino voting rights, and ensure that Latinos are fully engaged as voters and enjoy fair opportunities to choose their elected leaders. We have advocated passage of state and federal voting rights legislation including the reauthorization of key provisions of the Voting Rights Act (VRA). We have also provided direct assistance to voters encountering barriers to casting ballots through our year-round, bilingual hotline, 888-VE-Y-VOTA, and through nationwide dissemination of bilingual voting rights public service announcements, palm cards, and other materials. In 2018 alone, the 888-VE-Y-VOTA hotline received over 9,100 voting calls.

Portions of the following testimony are drawn from our 2018 series of reports published in partnership with the Fair Elections Center and Asian Americans Advancing Justice-AAJC, entitled *Community Leaders', Election Officials', and Policymakers' Guide to Providing Language Access in Elections*.¹

To Ensure Inclusion of All Americans, Elections Must Be Linguistically Accessible

Although all Americans have enjoyed the equal right to vote by law at least since ratification of the 19th Amendment in 1920 and enactment of the Indian Citizenship Act in 1924, our nation has not yet attained the goal of full and equal participation in democracy. Before enactment of the VRA, there were many explicitly and operationally discriminatory policies intended to surgically disenfranchise Latino and other historically underrepresented voters. For example, Article II, Section 1 of the California Constitution, adopted in 1894, conditioned the right to vote on ability to read English; the lead proponent of this provision stated in its defense, "We look with alarm upon the increased immigration of the illiterate and unassimilated elements...and believe that every agency should be invoked...to protect the purity of

¹ Asian Americans Advancing Justice - AAJC, Fair Elections Center, and NALEO Educational Fund, *Community Leaders' Guide to Providing Language Access in Elections*, 2018, <https://d3n8a8pro7vhm.cloudfront.net/naleo/pages/1433/attachments/original/1533687334/community-full-6.pdf>; *Election Officials' Guide to Providing Language Access in Elections*, 2018, <https://d3n8a8pro7vhm.cloudfront.net/naleo/pages/1433/attachments/original/1533764841/electionofficial-full-6.pdf>; *Policymakers' Guide to Providing Language Access in Elections*, 2018, <https://d3n8a8pro7vhm.cloudfront.net/naleo/pages/1433/attachments/original/1533687336/policymaker-full5.pdf>. NALEO Educational Fund extends grateful thanks to our partners in producing these guides for permitting us to republish portions of that work in the present testimony, and in particular to the staff of the Fair Elections Center for coordinating compilation of the Guides.

the ballot-box from the corrupting influences of the disturbing elements."² In 1927, the Texas state legislature enacted an apparently facially neutral law that gave political parties the authority to determine qualifications for voting in primaries, in order to circumvent a court decision invalidating a state law excluding voters of color from primaries. Reasoning that political parties were private entities unlike the public legislature, courts initially approved of and gave force to the Texas Democratic Party's explicit prohibition on black and Latino participation in primary elections. *Grovey v. Townsend*, 295 U.S. 45 (1935).

At its inception, the VRA's only provision written to protect citizens who were not fully fluent in English from discrimination was § 4(e), 52 U.S.C. § 10303(e), which prohibits practices that deny registration or the vote because of inability to speak English to U.S. citizens educated in another language within the United States and its territories. This provision was inspired by Congress' awareness that Puerto Ricans, in particular the then-sizable Puerto Rican population in New York, experienced significant and intentional barriers to the vote that exploited some individuals' lack of fluency in English.³

By the time of the VRA's 10th anniversary and reauthorization in 1975, significant additional evidence had come to light of systemic discrimination against Latino and other language-minority voters, and both policymakers and academics were increasingly taking note of the problem. The U.S. Commission on Civil Rights' 1965 report on initial implementation of the VRA focused nearly exclusively on African American voters and the effect of literacy tests and other barriers on their exercise of the franchise. In contrast, its 1975 report on the state of voting rights contained extended discussion of the selection of polling locations and personnel inhospitable to Latino voters; purges of registration records done without provision of notice to voters in a language they could understand; and insistence on English-only signage and other election materials in the face of widespread need for translations.⁴

In 1975, Congress received testimony from numerous voters, such as Modesto Rodriguez of Pearsall, TX, who told Members that officials in his home town used tactics including issuance of subpoenas and filing of election fraud charges against illiterate Latino voters to successfully intimidate local residents into avoiding polling places. Election materials and assistance available only in English served as a de facto language test for voters in Pearsall, where many could not read or speak English: Mr. Rodriguez estimated that 60% of Spanish-speaking residents did not read English, and that 30% could not speak any English. As a result, fewer than half

² *Castro v. State of California*, 466 P.2d 244, 248 (Cal. 1970), Retrieved from: <https://www.courtlistener.com/opinion/1173738/castro-v-state-of-california/>

³ See generally Juan Cartagena, "Latinos and Section 5 of the Voting Rights Act: Beyond Black and White," 18 *National Black Law Journal* 201 (2004).

⁴ U.S. Commission on Civil Rights, "The Voting Rights Act...the first months," 26, 75, <http://www.law.umaryland.edu/marshall/usccr/documents/cr12V942.pdf> (last visited Sept. 26, 2015); U.S. Commission on Civil Rights, "The Voting Rights Act: Ten Years After," 74-75, 78, 86-87, 109, 114-16, <http://www.law.umaryland.edu/marshall/usccr/documents/cr12v943a.pdf> (last visited Sept. 26, 2015).

of eligible Latino voters in the town were registered in 1975, compared to two-thirds of eligible white voters.⁵

In recognition that language-minority voters were targets of discriminatory measures meant to prevent them from participating in elections, Congress adopted Section 203 of the VRA, 52 U.S.C. § 10503, in 1975; and Section 208, 52 U.S.C. § 10508, in 1982. Section 208 ensures that any U.S. citizen of voting age less than fully fluent in English can access linguistic accommodations. It also ensures that voters exercise some control over the provision of assistance and can choose to receive help from a person whose language skills and respect for the confidentiality of the ballot they trust. These provisions complement Section 2 of the VRA, 52 U.S.C. § 10301, which prohibits practices or procedures that discriminate on the basis of race, color, or membership in a language-minority group. Together these provisions have helped to break down some of the barriers faced by citizens with limited English proficiency. The VRA has also inspired states and localities to take statutory and voluntary action to further expand language assistance beyond the minimum requirements of the Act.

Linguistic accessibility remains a fundamentally important guarantor of Latino voters' equal access to the ballot today. A substantial number of eligible Latino voters are not yet fully fluent in English, and their ability to vote knowledgeably and successfully depends upon their access to materials they can understand and persons providing assistance with whom they can communicate. According to 2018 American Community Survey 1-year data, nearly 22 million adult U.S. citizens speak Spanish, and approximately 6,320,000 of them are not fluent in English. An additional 5,089,000 adult citizens speak another language and are not fluent in English. These Americans have registered and voted at lower rates than their counterparts who are fluent in English, a legacy of many decades of intentional efforts to exclude potential members of the electorate on the basis of their linguistic preference or perceived national origin.

Disparities persist to the present. For example, the New York City Campaign Finance Board's report on the 2018 election noted that in the city, "neighborhoods with high percentages of LEP individuals were negatively correlated with voter turnout."⁶ A 2017 report from the Tacoma-Pierce County, Washington Health Department on voter turnout found that larger populations of adults with limited English proficiency correlated negatively with voter participation, and that each one percent increase in the population of Spanish-speaking adults not fluent in English in a Census block group would likely result in a one percent decline in the voting rate.⁷

Americans who depend upon language assistance are becoming more diverse and more geographically dispersed, and these factors heighten the importance of

⁵ Ari Berman, *The Lost Promise of the Voting Rights Act*, The Atlantic, August 5, 2015, <http://www.theatlantic.com/politics/archive/2015/08/give-us-the-ballot-expanding-the-voting-rights-act/399128/> (last visited September 22, 2015).

⁶ Katherine Garrity, *2018 - 2019 Voter Analysis Report 44*, 2019. Retrieved from: https://www.nyccfb.info/pdf/Voter_Analysis_Report_2019.pdf

⁷ Alex Klementiev and Melissa Trapp Petty, Tacoma-Pierce County Health Department, *Voter Turnout in Pierce County, WA: Analysis of Electoral and Population Data 12-13*, 2017. Retrieved from: <https://www.tpchd.org/home/showdocument?id=4337>

effective language assistance. Generally, families with immigrant origins, and naturalized citizens in particular, come from throughout the world to establish roots in the United States. During the most recent decade, the share of newly naturalized citizens from the top ten countries of origin fell from 57 to 52 percent, according to the Migration Policy Institute⁸, an indication that naturalized citizens come from an increasingly diverse cross-section of nations.

Americans with immigrant origins and other characteristics associated with higher rates of limited proficiency in English have increasingly moved to regions of the country that do not have a long history of linguistic diversity. Puerto Rican migration from the island to the mainland in the aftermath of Hurricane Maria is one of the most recent contributors to this trend: indicators including cell phone geolocation data and records of Facebook users' locations show concentrations of Puerto Rican residents settling both in longstanding population centers in central and south Florida and the New York City region, as well as in states and metropolitan areas like Atlanta, Georgia; southeastern Pennsylvania; northern Ohio; and along parts of New York's northern border with Canada.⁹

Elsewhere around the country, Americans with varied linguistic abilities have moved in search of work opportunities and to join expanding communities of people with similarly diverse national origins, as evidenced by the growing reach of coverage under Section 203. Between 2011 and 2016, the number of counties and cities required to provide voting materials and assistance in multiple languages increased by 15, and coverage extended to four new states: Idaho, Oklahoma, Iowa, and Georgia.¹⁰

High Quality Language Assistance Increases Latino Voters' Participation

Isolating the positive or negative impact of a particular practice on voters' attitudes about and engagement in elections is persistently difficult.¹¹ Nonetheless, many influential political scientists and voting rights experts agree that, insofar as they are properly implemented, language assistance requirements have had a tangible positive impact on language-minority communities' rates of participation in elections and governance. For example, researchers see this positive effect in increased presence of language minority community members in local office the longer a

⁸ Brittany Blizzard and Jeanne Batalova, Migration Policy Institute, *Naturalization Trends in the United States*, 2019. Retrieved from: <https://www.migrationpolicy.org/article/naturalization-trends-united-states#Birth>

⁹ Center for Puerto Rico Studies, *Puerto Rico One Year after Hurricane Maria*, 2018. Retrieved from: https://centropr.hunter.cuny.edu/sites/default/files/data_briefs/Hurricane_maria_1YR.pdf; Sujata Gupta, "Facebook data show how many people left Puerto Rico after Hurricane Maria," *Science News*, May 3, 2019, <https://www.sciencenews.org/article/facebook-data-show-how-many-people-left-puerto-rico-after-hurricane-maria>

¹⁰ Asian Americans Advancing Justice-AAJC, NALEO Educational Fund, and Native American Rights Fund, *Voting Rights Act Coverage Update 1-2* (December 2016), <https://advancingjustice-aajc.org/sites/default/files/2016-12/Section%20203%20Coverage%20Update.pdf>

¹¹ Cf. Robert S. Erikson & Lorraine C. Minnite, "Modeling Problems in the Voter Identification - Voter Turnout Debate," 8 *Election L. J.* 85 (2009); Daniel Tokaji, "Applying Section 2 to the New Vote Denial," 50 *Harvard Civil Rights-Civil Liberties Law Review* 475-76 (2015).

jurisdiction has been subject to Section 203 and has hosted federal observers¹², higher likelihood of being registered among Latinos residing in jurisdictions covered by Section 203¹³, increased Latino registration and voting rates in jurisdictions covered by Section 203 as compared to non-covered jurisdictions¹⁴, and increased language-minority community registration, voter turnout, and presence in office overall over the span of Section 203's existence.¹⁵

The progressively wider application of language assistance requirements is positively associated with increased voter participation by Latino, Asian American, American Indian and Alaska Native citizens.¹⁶ For example, the Latino voter registration rate grew from 34.9 percent for the Congressional elections of 1974 to 53.7 percent in the fall of 2018.¹⁷ Asian American voter registrations increased dramatically between 1996 and 2004, by approximately 58.7 percent, after a 1992 legislative amendment expanded availability of Asian language assistance.¹⁸ Between 1972 and 1980, as language assistance requirements under Section 203 entered into effect, voter turnout on seven reservations in Arizona increased by more than 35 percent, while voter registration jumped 165 percent in Coconino County and 87 percent in Navajo County. According to Native American voting rights expert James T. Tucker, Native communities in New Mexico and Utah saw similar dramatic increases in participation during this same time frame.¹⁹

Increases in availability of language assistance in elections have also helped increase the presence of representatives of language-minority communities in elected office. During the 2006 reauthorization of the VRA, Congress found that more than 5,200 Latinos and almost 350 Asian Americans had been elected to office.²⁰ Native American candidates, whose communities had not traditionally been represented by their own members, were winning election to local school boards, county commissions and State legislatures in ever-increasing numbers.²¹

¹² Melissa J. Marschall and Amanda Rutherford, "Voting Rights for Whom? Examining the Effects of the Voting Rights Act on Latino Political Incorporation," 60 *American Journal of Political Science* 590 (July 2016).

¹³ Michael Parkin and Frances Zlotnick, "The Voting Rights Act and Latino Voter Registration: Symbolic Assistance for English-Speaking Latinos," 36 *Hispanic Journal of Behavioral Sciences* 48 (2014).

¹⁴ Michael Jones-Correa, "Language Provisions Under the Voting Rights Act: Effectiveness and Implementation" (testimony presented to a public meeting of the Presidential Commission on Election Administration, Philadelphia, PA, September 4, 2013).

¹⁵ James T. Tucker, "Enfranchising Language Minority Citizens: The Bilingual Election Provisions of the Voting Rights Act," 10 *NYU Journal of Legislation and Public Policy* 206 (2006).

¹⁶ H.R. REP. NO. 109-478, at 18-19.

¹⁷ U.S. Census Bureau, *Table A-1. Reported Voting and Registration by Race, Hispanic Origin, Sex and Age Groups: November 1964 to 2018*. Retrieved from: <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/voting-historical-time-series.html>

¹⁸ James T. Tucker, *THE BATTLE OVER BILINGUAL BALLOTS* 229 (Routledge: 2009).

¹⁹ James T. Tucker, "Statement of Dr. James Thomas Tucker Before the Presidential Commission on Election Administration: Barriers to Language Minority Voters and How to Overcome Them" 2 (2013). Retrieved from: <https://www.eac.gov/assets/1/28/Jim-Tucker-Barriers-to-Language-Minority-Voters-and-How-to-Overcome-Them-Testimony-to-PCEA.pdf>

²⁰ H.R. REP. NO. 109-478, at 19.

²¹ *Id.* at 20.

Some experts have posited that language assistance has a positive effect beyond the practical value of helping to ensure that voters can navigate the voting system and cast an informed ballot. Some analysis suggests that language assistance has increased participation among native-born voters who are likely to be fluent in English. Although their fluency in English may permit them to vote without receiving language assistance, they are likely to derive a psychological benefit from a multilingual presence in the polls. These voters feel more comfortable and welcomed in polling places in which there is increased presence from language-minority communities, and visible provision of multilingual services.²² Even this cultural value of language assistance plays a materially important role in encouraging underrepresented communities' civic participation, and thereby sustaining our democratic system.

In numerous ways, democracy benefits when jurisdictions commit to and invest in holding elections in which all their citizens can participate, regardless of their ability to read or speak English. The provision of language assistance effectively encourages members of historically underrepresented communities to participate in elections, and ensures that all individuals can vote comfortably and knowledgeably. By increasing parity and deepening relationships between public officials, the communities they represent, and the voters who elect them, effective language assistance efforts increase faith and trust in government; in turn, these sentiments help ensure that all citizens feel more secure that their voices will be heard in America's electoral process.

Election Administration Procedures and Methods Can Impair Language Minority Voters' Participation

Wherever there are voters who are not yet fully fluent in English, election administrators should employ time-tested language assistance tools to ensure elections' accessibility, whether or not applicable law mandates it. Election administrators who serve language minority communities must also devote attention to the effects of the choices they make throughout the process of holding elections and even in between election dates. Decisions about matters that do not seem to concern language assistance can themselves have a disproportionate discouraging impact on citizens from language minority communities.

Inadequate Language Assistance

Although millions of potential Latino voters enjoy access to multilingual election information and materials and to Spanish-speaking pollworkers and election administration employees, many communities of voters are still indisputably

²² Rodolfo de la Garza and Louis de Sipio, "Save the Baby, Change the Bathwater, and Scrub the Tub: Latino Electoral Participation after Twenty Years of Voting Rights Act Coverage," in *Pursuing Power: Latinos and the Political System*, ed. F. Chris Garcia (Notre Dame: University of Notre Dame Press, 1997), 72-126; S. Karthick Ramakrishnan, "Voters From Different Shores: Electoral Participation in Immigrant America" (Ph.D. diss., Princeton University, 2002); Rodolfo de la Garza, "Latino Politics," 7 *Annual Review of Political Science* 91 (2004); Michael Parkin and Frances Zlotnick, "The Voting Rights Act and Latino Voter Registration: Symbolic Assistance for English-Speaking Latinos," 36 *Hispanic Journal of Behavioral Sciences* 48 (2014).

underserved. During the 2018 election cycle, anecdotal reports to Election Protection Coalition hotlines, including NALEO Educational Fund's 888-VE-Y-VOTA phonebank, included incidences of Spanish-speaking voters attempting unsuccessfully to request or choose Spanish ballots in jurisdictions with large Spanish-speaking populations in southern California, and shortages of bilingual personnel that forced voters into disproportionately long waits or difficulty attempting to communicate with monolingual pollworkers in California and Arizona. Voters from jurisdictions not yet required under the VRA to provide multilingual assistance nonetheless reported significant unmet need for language assistance in locations including Warren County, New Jersey and Prince William County, Virginia.

More broadly, successful private litigation has proven that contemporary voters still have unsatisfied needs for and entitlements to election materials in languages they can understand. For example, in 2016, a federal court ruled in favor of community advocates who challenged a Texas state law that unlawfully prescribed more stringent qualifications for interpreters than for individuals assisting voters with physical or mental handicaps.²³ Another court granted a preliminary injunction in 2019 in favor of plaintiffs who challenged the failure of several counties throughout Florida to ensure access to elections for expanded communities of eligible voters of Puerto Rican origin who are not yet fluent in English.²⁴ In view of these successes, election administrators legally obligated to provide or permit language assistance should proactively examine the effectiveness of their efforts periodically. Even in areas where there is no legal requirement to provide multilingual materials, election administrators should not presume that there is no need for a formal program of assistance. These administrators should employ polling place observations and community engagement to assess whether and how voters would use translations, interpretation and other language assistance.

Overzealous Registration Purges

Language assistance efforts constitute a strong start to the process of engaging Latino and other language minority voters, but election administrators cannot stop there. It is imperative that those responsible for the conduct of our elections stay vigilant to the unintended effects of administrative decisions for underrepresented communities. Certain contemporary trends in election administration, including aggressive efforts to cancel registrations on the basis of dubious evidence, and frequent reconfiguration of voting locations, are concerning because of the likelihood that they will disproportionately impair voting by members of language minority communities.

Now that they are more than twenty years removed from the National Voter Registration Act's landmark reforms of the voter registration maintenance process, jurisdictions have begun to test its boundaries and implement increasingly sweeping

²³ Order (Filed 8/12/16), *OCA-Greater Houston v. State of Texas*, No. 1:15-cv-00679-RP (W.D. Tex.). Retrieved from: <https://www.courtlistener.com/recap/gov.uscourts.txwd.765875.60.0.pdf>

²⁴ LatinoJustice PRLDEF, "Court Orders Expansion of Spanish Language Access in Florida for Upcoming Elections" (May 10, 2019). Retrieved from: <https://www.latinjustice.org/en/news/court-orders-expansion-spanish-language-access-florida-upcoming-elections>

and error-fraught methods of identifying potentially ineligible voters among those registered. For example, since 2010, a number of states have undertaken cross-comparisons of multiple databases to identify individuals who are registered to vote, but appear to be noncitizens in other state agency records. In the vast majority of cases, these individuals are naturalized citizens who first interacted with the state as legal permanent residents, and who did not know that the state would not automatically update its records when they became U.S. citizens.²⁵ Any such process that targets naturalized citizens is likely to have a disproportionate impact on Latinos, and in one representative instance in Florida, such an effort resulted in creation of a list of suspected noncitizens of whom 87 percent were people of color, and 58 percent were Latino, even though Latinos accounted for less than 20 percent of the state's eligible voters.²⁶

It is alarming that jurisdictions continue to attempt registration purges based on information in state and federal databases that are not designed or useful for voting purposes, as Texas recently did²⁷, despite widespread understanding of those databases' limitations. State agencies, especially drivers' license-issuing entities, have little or no reason to distinguish between long-term legal permanent residents, who are eligible for most public benefits and services, and U.S. citizens. Therefore, their records do not generally contain reliable information about residents' current citizenship status. In fact, agency records sometimes erroneously identify native-born American citizens as immigrants.²⁸ Moreover, state agencies create database records using electronically-captured information, transcription of handwritten documents, and manual data entry. Spelling and other errors inevitably appear in resulting records, and they can become consequential where jurisdictions employ overzealous methods for flagging potentially incorrect or ineligible registration requests, as Georgia attempted to do in 2018 with its exact-match requirement for new voter registrations.²⁹ Many potential Latino voters use both their mother's and

²⁵ Letter from Diana Kasdan, Democracy Counsel, Brennan Center for Justice at NYU School of Law and Deirdre Macnab, President, League of Women Voters of Florida, to the Hon. Ken Detzner, Secretary of State of Florida 4-6 (June 27, 2012), https://www.brennancenter.org/sites/default/files/legacy/Democracy/VRE/062712_Letter_to_Detzner.pdf

²⁶ Rachel Weiner, "Florida's Voter Purge Explained," *The Washington Post* (June 18, 2012). Retrieved from: https://www.washingtonpost.com/blogs/the-fix/post/floridas-voter-purge-explained/2012/06/18/gJQAhvcNIV_blog.html

²⁷ Amy B. Wang, "Texas agrees to stop effort to purge voter rolls," *The Washington Post* (April 26, 2019). Retrieved from: <https://www.washingtonpost.com/politics/2019/04/26/texas-agrees-stop-effort-purge-voter-rolls/>

²⁸ Marc Caputo, "How Rick Scott's noncitizen voter purge started small and then blew up," *Miami Herald* (June 12, 2012). Retrieved from: <https://www.miamiherald.com/news/politics-government/article1940542.html> (noting that Bill Internicola, a U.S.-born veteran, was among those wrongly singled out as a noncitizen when Florida cross-referenced its Highway Safety and Motor Vehicles agency database and voter registration database in 2011).

²⁹ Under this policy, new voter registration applications throughout the state were placed in suspense, and eventually discarded, if there were any discrepancies between them and parallel records in state ID and social security databases that voters failed to explain and correct. Differences as small and inconsequential as missing dashes or single-letter differences in spelling led to suspension of applications. Miriam Valverde, Politifact, "Georgia's 'exact match' law and the Abrams-Kemp governor's election, explained" (October 19, 2018). Retrieved from: <https://www.politifact.com/georgia/article/2018/oct/19/georgias-exact-match-law-and-its-impact-voters-gov/>

father's last names in a convention that is not familiar to non-Hispanic Americans, which is one of the reasons that Latino voters frequently find accidental discrepancies between records about them that various government agencies maintain.³⁰

In recognition of state databases' weaknesses, states have also sought to verify registrants' citizenship through checks against the Department of Homeland Security's (DHS) Systematic Alien Verification for Entitlements (SAVE) database. However, because its focus is on cataloguing people who have contact with the federal government as noncitizens, SAVE is far from a comprehensive list of U.S. citizens, and also omits some noncitizen residents. Native-born American citizens are not listed in it, nor are people who derived U.S. citizenship by law but have not sought a declaration of their citizenship from DHS, or undocumented people who have never come to the attention of immigration enforcement authorities. DHS itself cautions that the system was not designed to verify voter eligibility, and has taken steps to ensure that states that use the system for that purpose allow voters ample opportunity to correct any erroneous indication arising from a SAVE check that they might be noncitizens.³¹

Latino voters also are disproportionately vulnerable to wrongful denials of the vote when jurisdictions aggressively cancel the voter registrations of individuals who have failed to vote and to respond to official mailings. In Ohio, for example, county Boards of Elections use a registered voter's failure to vote in a single election as evidence that the voter has moved. In light of Latino and language minority voters' persistently lower rates of turnout, this process is virtually guaranteed to target

³⁰ The experience of North Carolina voter Maria Sanchez is typical of this phenomenon. Ms. Sanchez's full given name is Maria del Carmen Sanchez Ennes, and Sanchez, her father's last name, is the last name she went by before her marriage. After marriage, Ms. Sanchez's North Carolina driver's license listed her married name, Maria Sanchez Thorpe, but mistakenly denoted "Sanchez" as her middle name. When she first obtained a Social Security Number as a child, moreover, her name was mistakenly recorded with "del" denoted as her middle name, and without any notation of "Carmen" or "Ennes." In 2007, when Ms. Sanchez attempted to renew her North Carolina driver's license, she was initially refused service because employees determined that the married name on her previously-existing driver's license record did not match the name on her U.S. passport: Maria del Carmen Sanchez. Unbelievably, the solution employees offered her was to obtain a divorce so that her legal name would revert to that reflected on her passport. Although she ultimately was able to renew her drivers' license, in 2015 Ms. Sanchez discovered that the name now on her driver's license did not match her name in voter registration records, and that she might be refused a ballot in future elections in which the state's new voter ID requirement applied on that basis. North Carolina voter registration records identify voters' races and ethnicities, but Ms. Sanchez was further dismayed to learn that her own registration record did not list her as Latina. Deposition Testimony recorded May 5, 2015, *North Carolina NAACP v. McCrory*, No. 1:13-cv-658 (M.D. N.C.).

³¹ Mark K. Matthews, "Florida demands access to federal database to purge illegal voters," *Orlando Sentinel* (June 7, 2012). Retrieved from: http://articles.orlandosentinel.com/2012-06-07/news/os-florida-voter-battle-20120607_1_voter-registration-voter-rolls-dhs; Department of Homeland Security, U.S. Citizenship and Immigration Services, and the Iowa Secretary of State, *Memorandum of Agreement Concerning the Use of the Systematic Alien Verification for Entitlements (SAVE) System to Verify Citizenship and Immigration Status of Registered Voters* § (B)(1)(m-n), Aug. 14, 2013, <https://sos.iowa.gov/elections/pdf/SAVEMOA.pdf>.

relatively higher proportions of the state's voters of color at its outset. Where a registrant has failed to vote for a two-year period, the voter receives a notice in the mail; if the voter does not respond to the notice or vote in the subsequent four-year period, the voter's name is removed from the registration rolls.

However, Ohio's mailed Confirmation Notice, which explains the steps voters must take to avoid removal from the rolls, is generally only provided in English. Meanwhile, more than one-third of Latinos nationwide speak a language other than English at home, and according to 2018 American Community Survey 1-year data from the Census Bureau, more than 132,000 eligible Ohio voters are not yet fully fluent in English. This means that Latinos and other minorities for whom English is a second language are far more likely to find themselves removed from the voter registration rolls in Ohio, and elsewhere, without explanation they can understand.

Polling Place Closures

For many voters, ability to access polling places still determines whether or not they can participate in elections. While the ability to vote-by-mail (VBM) or absentee ballots might appear to provide an easily accessible alternative to polling place voting, in fact, many voters face significant difficulties in casting VBM ballots. According to the National Conference of State Legislators, as of July 2019, 19 states still required voters to present one of a limited number of approved excuses in order to obtain an absentee or VBM ballot that need not be cast in-person at a polling place. For example, in Texas, only four categories of voters are eligible for VBM ballots: people 65 years or older, people with disabilities, people who will be outside their county of residence on Election Day and during all early voting periods, and people who are in jail but still eligible to vote. Even in states that offer no-excuse VBM voting to all, voting without visiting a polling place requires advance planning and preparation. Most states require voters to send in absentee ballot requests days, or weeks, in advance of Election Day, and some make no emergency provision for people who do not meet the deadline but cannot get to a polling place.

In-person voting is particularly important to Latino and other language minority voters. In many jurisdictions around the country, successfully completing administrative prerequisites for securing VBM ballots is a more difficult task for voters not yet fluent in English for the straightforward reason that forms and information are often not provided in any language other than English. In addition, voters with limited English proficiency enjoy greater access to in-language materials and assistance in polling places than when voting absentee. In many jurisdictions, voters can more easily identify bilingual workers and find in-language information in physical polling places than they do when voting remotely.

Given that so many voters need, or prefer, to vote in-person at a polling place, it is difficult to rationalize the extremely disturbing trend among a significant number of jurisdictions to reduce the number of polling places available to voters. For example, in just 757 counties formerly covered under Section 5 of the VRA, there were 1,688

fewer polling places in 2018 than in 2012.³² Dramatic changes to the number and location of polling places that happen close in time to major elections have proven to be particularly confusing and frustrating for voters from language minority communities; thus, when administrators adopt polling place reductions without inviting public feedback or conducting significant community outreach, as is often the case, it is highly likely that there will be negative effects on vulnerable voters.

When jurisdictions have consolidated or relocated polling places in recent years, the aggregate distance from residence to a polling place has often increased for historically underrepresented communities of color. This results in part from the fact that segregation still exists within our nation and the localities where these communities reside. As a 2018 *Washington Post* headline stated, “America is more diverse than ever – but still segregated.”³³ Americans are more likely than not to live near others who predominantly share the same race and ethnicity³⁴, and according to the Brookings Institution, “[a]t the rate of progress we’ve seen since the 70s, 268 of our [largest] metro areas will not be integrated until the year 2120.”³⁵ As a result, the disparate disruptions that polling place moves cause to different communities of voters have often fallen most heavily on the shoulders of segregated neighborhoods of voters with low participation rates who have also been the targets of decades of intentionally discriminatory election laws and practices.

For example, county boards of election across the state of North Carolina changed the locations of about one-third of early voting polling places in 2014. Researchers who calculated registered voters’ resulting distance to travel to a new location found that the average white voter’s distance from the nearest early voting site had increased by just 26 feet, while the average black voter’s distance from the nearest early voting site had increased by a quarter of a mile.³⁶ In Alaska, numerous Native American voters live in rural, geographically isolated locations, and have found themselves at risk of being effectively barred from voting by proposed polling place closures and consolidations such as a series of changes proposed in 2008 that would have assigned some voters to sites they could only reach by plane.³⁷

³² Leadership Conference Fund, *Democracy Diverted: Polling Place Closures and the Right to Vote* 10 (September 2019). Retrieved from: <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>

³³ Aaron Williams and Armand Emamdjomeh, “America is more diverse than ever - but still segregated,” *The Washington Post* (May 10, 2018). Retrieved from:

<https://www.washingtonpost.com/graphics/2018/national/segregation-us-cities/>

³⁴ Solomon Greene, Margery Austin Turner and Ruth Gourevitch, “Racial Residential Segregation and Neighborhood Disparities” (August 29, 2017). Retrieved from:

<https://www.mobilitypartnership.org/publications/racial-residential-segregation-and-neighborhood-disparities>

³⁵ Dayna Bowen Matthew, Edward Rodrigue and Richard V. Reeves, Brookings Institute, “Time for justice: Tackling race inequalities in health and housing” (October 19, 2016). Retrieved from:

<https://www.brookings.edu/research/time-for-justice-tackling-race-inequalities-in-health-and-housing/>

³⁶ William Busa, insightus, “North Carolina’s Shell Game of Electoral Apartheid: How the Board of Elections Shoved Black Voters Away From the Ballot Box in 2014” (November 23, 2015). Retrieved from:

https://insight-us.org/fair_places.html

³⁷ Amici Curiae Brief of the Alaska Federation of Natives, Alaska Native Voters and Tribes in Support of Respondents 21-23 (filed February 1, 2013), *Shelby County v. Holder*, No. 12-96. Retrieved from:

https://www.narf.org/bloglinks/shelby_county_brief.pdf

In addition, persistent findings of disparate impact in wait times at polling places support the proposition that individual polling place consolidation decisions form a pattern that hurts underrepresented voters in the aggregate. When polling places close, election administrators often assign steady or increasing numbers of voters to fewer locations with static supplies of space, personnel, and equipment, and the action can create bottlenecks. Numerous studies have concluded that Latino and other voters of color wait longer at polling places today than non-Hispanic white voters, and are disproportionately likely to face a wait of 30 minutes or more. In 2019, professors who analyzed cell phone geolocation data for the period of the 2016 general election concluded that there was “substantial and significant evidence of racial disparities in voter wait times.”³⁸ Their findings echo voters’ subjective impressions: for example, respondents of color in MIT’s 2016 Survey of the Performance of American Elections reported longer wait times, and higher likelihood of waiting more than ten minutes to vote, than their non-Hispanic white counterparts.³⁹ Responses to the 2006, 2008, 2012, and 2014 Cooperative Congressional Election Studies revealed, similarly, that the average voter of color in these elections waited almost twice as long to vote as the average non-Hispanic white voter.⁴⁰

When polling place closures and realignments mean that fewer resources and employees are available to serve larger numbers of voters from language minority communities, lost votes are a direct result. Professor Charles Stewart estimates that in 2012 alone, approximately 500,000-730,000 votes were likely lost to voters’ unwillingness or inability to appear in person and wait for as long as necessary to vote at a polling place.⁴¹ In light of racial and ethnic disparities in access to a smoothly-functioning polling place, it is very likely that lost votes are disproportionately those of voters of color.

Linguistically Diverse Communities Need More Engagement Between Community Leaders and Public Officials, and More Widespread Adoption of Inclusive Election Administration Practices

NALEO Educational Fund and Latino elected and appointed officials throughout the country are extremely concerned about the increasing and sometimes unmet need for language assistance, and administrative trends that have a disparate negative effect on language minority voters’ access to elections. These concerns are particularly salient in light of the fact that there is relatively less federal oversight of election administration, and less effort by some federal agencies to help states and localities engage language minority voters. For example, even as representatives of

³⁸ *Id.* at 9.

³⁹ MIT Election Lab, “Insights into Voting Wait Time from the 2016 Elections Performance Index” (September 10, 2018). Retrieved from: <https://medium.com/mit-election-lab/insights-into-voting-wait-time-from-the-2016-elections-performance-index-6693576e9b99>

⁴⁰ Stephen Pettigrew, “The Racial Gap in Wait Times: Why Minority Precincts Are Underserved by Local Election Officials,” 132 *Political Science Quarterly* 3 (2017). Retrieved from: <http://www.stephenpettigrew.com/articles/pettigrew-2017-psq.pdf>

⁴¹ Charles Stewart and Stephen Ansolabehere, “Waiting in Line to Vote” (July 28, 2013). Retrieved from: <https://www.eac.gov/documents/2017/02/24/waiting-in-line-to-vote-white-paper-stewart-ansolabehere/>

language minority communities have raised concerns about the comprehensiveness and effectiveness of assistance, especially in jurisdictions like Gwinnett County, Georgia that are newly covered under language assistance provisions⁴², there is no public evidence that the Department of Justice has devoted concomitant attention to sharing guidance with election administrators and observing the results of their efforts.

To ensure our nation's continued progress toward equal participation of all Americans in elections, regardless of race, ethnicity, or linguistic preference, election administrators must adopt a wide range of inclusive election practices. They must consult regularly with community institutions and leaders who represent language minority communities; train all employees regularly on the importance and contours of measures to ensure linguistic accessibility; and adapt administrative practices to account for and avoid disparate negative impact on language minority voters. Language minority community leaders and elected officials can play an integral role in demanding that election administrators implement these practices.

To effectively serve all voters, officials responsible for elections need pertinent information about their communities, including Census data concerning the residential location and socio-economic characteristics of U.S. citizens who are not fully fluent in English or who speak a language other than English at home. Because Census data are based on sampling and may not perfectly reflect the rates at which eligible voters prefer and choose in-language materials over those available in English, administrators also benefit from the knowledge they gain by requesting new voters' language preference when they register, and by sending existing voters multilingual postcards asking them to identify their preferred language.

Additionally, one of the best methods for determining the need for language assistance and best means of engaging language minority voters is to consult regularly with leaders of local language-minority communities. As the Department of Justice has explained: "The cornerstone of every successful program is a vigorous outreach program to identify the needs and communication channels of the minority community. Citizens who do not speak English very well often rely on communication channels that differ from those used by English-speakers. Each community is different. The best-informed sources of information are people who are in the minority community and those who work with it regularly. Election officials should talk to them."⁴³

Whether or not they provide formal language assistance, jurisdictions benefit from the closer relationships they build by forming Language Assistance Advisory Committees that meet throughout the year in order to institutionalize the process of collecting feedback from the community of voters who use multilingual materials and services. Members of these Advisory Committees typically include the leaders of

⁴² LatinoJustice PRLDEF and GALEO, "LatinoJustice PRLDEF and GALEO Send Letters to Gwinnett County Municipalities Seeking Compliance with Section 203 of the Voting Rights Act" [Press Release] (July 21, 2017). Retrieved from: <http://galeo.org/latinojustice-prldef-galeo-send-letters-gwinnett-county-municipalities-seeking-compliance-section-203-voting-rights-act/>

⁴³ Dept. of Justice, *Language Minority Citizens*, <https://www.justice.gov/crt/language-minority-citizens> (last visited Mar. 19, 2018).

social service organizations, churches, social clubs, schools and parent-teacher organizations, in-language media outlets, chambers of commerce, and professional organizations. At their most effective, these efforts will result in election administrators obtaining invaluable feedback from both community leaders and a broad cross-section of potential voters, including unregistered individuals, those who cannot speak or read English, and naturalized and young citizens who lack voting experience. Building partnerships with community leaders also helps create a pipeline to a stronger language-minority community presence among the officials who implement and oversee elections.

Comprehensive pollworker and election employee training is a key component of successful election administration that fully engages all voters. In many jurisdictions, violations of language assistance requirements have frequently been discovered alongside hostile, intimidating, and coercive behavior directed at language-minority voters. Thus, even monolingual election workers need to be educated on the requirements for providing language assistance under federal and state law so that they will be sensitive to the needs of language-minority voters and not interfere with assistance.

Training programs for all election administration staff and poll workers should focus on language-minority voters' rights, with special emphasis on the universal right to assistance under Section 208 of the Voting Rights Act. Pollworkers must be trained to allow all voters requesting assistance to get it from the person of their choice, without regard to whether or not the assistor is eligible to vote him- or herself.

Training programs should equip all elections employees to recognize, actively combat, and better understand the negative and legal consequences of implicit and explicit bias. All poll workers should also be trained on culturally unique characteristics of language-minority populations that may pose problems if encountered by uninformed and unprepared individuals. For example, in jurisdictions that provide assistance in Spanish or serve significant communities of Latino voters, every election worker should understand that it is common for Latinos to use more than one surname. This practice makes it possible that voters may register under a different last name than the one they provide to a poll worker when they are checking in to vote on Election Day, and some poll workers are not familiar with this practice. Training on known causes of potential miscommunication like this can minimize the chances of a qualified, registered voter being turned away on Election Day.

Jurisdictions should provide pollworker training in person, in advance of Election Day, and should reinforce the training through self-guided written or video materials. Training programs for first-time poll workers may need to last longer than those designed for more experienced poll workers. The temporary nature of poll work and the modest pay usually associated with it make it difficult to secure workers' commitments for Election Day, and all the more difficult to secure workers' attendance at training programs. Therefore, jurisdictions should set aside funding to pay workers for the time they spend obtaining the necessary training to provide consistent, high quality service to all voters. At the conclusion of training, workers

should individually affirm that they are knowledgeable about language assistance rights and obligations, and should commit to treating each voter equally.

Election administrators who wait to be informed of problems with the provision of language assistance, or with the disfranchising consequences of administrative decisions about purging practices, polling place locations, and other administrative decisions, do so at peril of becoming subject to protracted, expensive litigation, and an oversight process that may feel onerous. Instead, jurisdictions should make it their standard practice to evaluate in advance of implementation the likely effects of administrative decisions on all voters, and particularly those voters who face heightened barriers to the ballot. Prospective disparate negative impact on underrepresented voters of color and language minority voters should mitigate extremely strongly against adoption of any procedure or plan for allocation of resources that would impose obstacles to the participation of voters from those communities.

Administrators must also actively monitor polling place and election operations, accept and investigate complaints, and discipline personnel who impede the provision of language assistance to and voting by language minority citizens. Administrators may, for example, solicit voters' individual comments with comment cards and electronic forms placed in election-related locations and on election websites. These cards and forms should ask voters to relate their experiences concerning availability of voting materials and live assistance, poll workers' linguistic abilities, waiting times for voting, and the civility of poll workers and other voting officials. Election officials should also collaborate with community groups to solicit feedback and better understand the experience and needs of their voters.

To support and further election administrators' efforts to extend elections' accessibility, we urge Members of Congress to support legislation and conduct oversight that sets and enforces inclusive administrative standards in federal elections. Such standards would enhance language minority voters' access to elections and investment in the political process by encompassing a wide range of important safeguards and practices, including: protections against cancellation of qualified federal voters' registration records; prohibitions against discriminatory or unfair polling place closures and other limits on voting opportunities in federal elections; and financial support and other incentives for administrators' active engagement with language minority voters.

Finally and unfortunately, given the countervailing influence of an Administration that is inclined to reduce or neglect language accessibility mandates⁴⁴, organizational and Congressional advocates of accessibility must be prepared to defend the basic necessity and utility of providing language assistance for our elections. As the

⁴⁴ E.g., Asian & Pacific Islander American Health Forum, "Trump Administration Rolls Back Health Care Rights Puts Protections for Language Access, Women and LGBT Persons at Risk" (May 24, 2019). Retrieved from: <https://www.apiahf.org/press-release/trump-administration-rolls-back-health-care-rights-puts-protections-for-language-access-women-and-lgbt-persons-at-risk/>; Tere Ramos, "When Access to Language Means Access to Justice" (June 2018). Retrieved from: <https://www.povertylaw.org/clearinghouse/articles/Ramos> (noting that, "The Trump administration's Justice Department has not been as active in Title VI enforcement.").

number of Americans of diverse national origins and linguistic abilities grows, our effectiveness in engaging those citizens as active voters will increasingly determine the health of our democracy, and the credibility of our government as the product of a truly representative political process. Otherwise put, our nation's values demand language assistance which helps ensure that our elections are open to all citizens, and that all of those citizens can cast an informed ballot. These elections will confer an invaluable benefit to all Americans who hold a stake in strengthening our government by, for, and of all the people.