



**STATEMENT OF KIRA ROMERO-CRAFT
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**U.S. HOUSE COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON THE
CONSTITUTION, CIVIL RIGHTS AND CIVIL LIBERTIES HEARING ON
“CONGRESSIONAL AUTHORITY TO PROTECT VOTING RIGHTS
AFTER SHELBY COUNTY V. HOLDER”**

SEPTEMBER 24, 2019

I. Introduction

Chairman Cohen, Ranking Member Johnson, and Members of the Subcommittee on the Constitution, Civil Rights and Civil Liberties of the U.S House of Representatives Committee on the Judiciary, my name is Kira Romero-Craft, and I serve as the Managing Attorney for LatinoJustice PRLDEF. LatinoJustice PRLDEF led the way in ushering bilingual voting systems to the benefit of millions of language-minority voters in Latinx, Native American, and Asian-American communities. Today we use litigation and advocacy to protect those rights, to stop discriminatory purges of eligible voters, and to stem the dilution of Latino voting strength.

Thank you for the opportunity to testify before you about ongoing discrimination and challenges faced by language minority voters in Florida when they attempt to exercise their fundamental right to vote and why the reinstatement and expansion of federal observer certification by the Attorney General to Section 203 covered jurisdictions, as proposed in H.R. 4, the Voting Rights Advancement Act (VRAA), is of critical importance to ensure that language minority voters enjoy the full protection of the Voting Rights Act.

I began working with the nonpartisan Election Protection Coalition when I joined LatinoJustice PRLDEF as managing attorney for our southeast office located in Orlando, Florida in 2017. The national, nonpartisan Election Protection Coalition works year-round to ensure that all voters have an equal opportunity to vote and have that vote count. The Coalition is made up of more than 100 local, state and national partners and uses a wide range of tools and activities to protect, advance and defend the right to vote.

As a result of my work for LatinoJustice and as an Election Protection partner, I have unfortunately fielded many complaints about discrimination suffered by voters of color and language minority voters during elections in Florida and have witnessed first-hand the resistance of election officials to fully complying with the language assistance requirements of Sections 203 and 4(e) of the Voting Rights Act. Thus, the need to reauthorize important protections lost in the wake of the *Shelby County v. Holder* decision is critical today based upon current conditions that continue to negatively impact the ability of language minority voters to exercise their fundamental right to vote.



II. The Need for Federal Observers at the Polls to Ensure that Language Minority Voters Receive Mandated Language Assistance is of Critical Importance

Voters of color and language minority voters in Florida are covered by the Voting Rights Act of 1965 (VRA) and as of 2011, the State of Florida became a covered jurisdiction for the minority language of Spanish under Section 203 of the Voting Rights Act (Section 203). There are also 13 counties in Florida which are subject to minority language requirements for Spanish language under Section 203. They are Broward, DeSoto, Hardee, Hendree, Hillsborough, Lee, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk and Seminole counties. Florida's Puerto Rican voters of limited English proficiency are also entitled to the protections of the Spanish language assistance provisions of Section 4(e) of the Voting Rights Act.

Despite the theoretical protection of these laws, Florida's language minority voters have continued to face discrimination at the polls and frequently do not receive adequate language assistance they critically need to be able to cast a ballot for their preferred candidates of choice or to make informed decisions when deciding how to cast their votes on ballot initiatives.

As a result of the *Shelby County* decision, the U.S. Department of Justice took the position that the Attorney General could no longer certify jurisdictions for the assignment of federal observers, thereby preventing DOJ from using this important tool to combat discrimination against language minority voters inside polling places. The VRAA's provisions reinstating the ability of the Attorney General to certify jurisdictions for federal observers, which also adds the ability of the Attorney General to certify Section 203 jurisdictions for the assignment of observers, would undoubtedly help to deter and prevent discrimination against language minority voters and ensure that they receive the mandatory language assistance at the polls that they are entitled to receive under the law.

A. The Failure of the State and Counties to Comply with the Language Assistance Provisions in 2018

A prime example of a recent case where federal observers at the polls would have likely made a tangible difference in Florida involved the failure of the State and numerous Florida counties to provide required language assistance to Puerto Rican voters with limited English proficiency in 2018, as required by Section 4(e) of the VRA. As noted above, the State of Florida is also a covered jurisdiction under Section 203 for Spanish language assistance along with 13 counties.

After Hurricane Maria devastated Puerto Rico in 2017, an estimated 160,000 people fled to Florida, joining over half a million people who made the exodus during the previous decade because of the island's economic crisis. The state's Puerto Rican population now totals over one million.¹ Section 4(e) of the Voting Rights Act requires the provision of bilingual voting

¹ David Smiley, Bianca Padro Ocasio & Alex Daugherty, Florida Puerto Ricans Say Trump Response to Hurricane Dorian Won't Ease Maria Memories, Miami Herald, Aug. 30, 2019, <https://www.miamiherald.com/news/politics-government/state-politics/article234547237.html>



materials and assistance for Puerto Rican-educated, limited English proficiency United States citizens, as does Section 203.

My organization, LatinoJustice, along with Demos, sent two rounds of letters about the Section 4(e) language assistance requirements to Florida's election officials and also requested a 5-minute time allotment during the Supervisors of Elections' annual conference in the spring of 2018 to discuss their obligations to provide Spanish language assistance under Section 4(e).

After the Supervisors declined our request to speak at the conference and having received no assurances that limited English proficient Puerto Rican voters would receive adequate Spanish language assistance at the polls, LatinoJustice and Demos filed a lawsuit against the Florida Secretary of State and 32 Florida counties that would have forced Spanish-speaking voters to vote in English-only elections.²

On September 10, 2018, the court granted the most significant components of the relief plaintiffs sought in our motion for a preliminary injunction.³ The court ordered the Secretary of State to issue instructions to the 32 defendant counties, requiring them to provide Spanish-language sample ballots at polling places, on county websites, and by mail to guide voters in marking their ballots, and to publicize the availability of these sample ballots and instructions on how to use them.

As a result of our continuing election protection activities, we learned that polling places in counties named in the lawsuit were failing to fulfill their obligations under the court's order. We also discovered through election protection efforts that the Duval County Supervisor of Elections, Mike Hogan, had not posted nor otherwise made available Spanish language facsimile ballots at early voting polling locations despite the court's order requiring Duval County to do so.

Had federal observers been stationed in these polling locations, it is likely that they would have helped to ensure compliance with the mandated Spanish language assistance under the law and deterred the continuing violations of the same by these counties. Additionally, federal observers would have had the authority to investigate and report out on the violations of the language assistance obligations at the polls, which could have led to enforcement efforts and litigation by DOJ.

As a result of the counties' failure to comply with the law and the court's orders, we were forced to file an emergency motion for a preliminary injunction on November 4, 2018, in advance of the midterm elections. On November 5, the court granted part of our motion, directing the Secretary of State to remind County Supervisors of their required compliance with the court's previous order and to provide facsimile sample ballots in Spanish language to all voters entitled to language assistance under Section 4(e). The Court subsequently granted the Secretary of State's

² *Madera v. Detzner*, No. 1:18-cv-00152 (N.D. Fla. filed Aug. 16, 2018), Doc. 1.

³ *Madera v. Detzner*, 325 F. Supp. 3d 1269 (N.D. Fla. 2018).



motion to stay the case pending a rulemaking process for statewide Spanish ballots that was initiated by the Governor as a result of the litigation.⁴

Incredibly, even after the court made it clear that compliance with Section 4(e) as well as the court's orders was mandatory, many County Supervisors of Election voiced objections to adopting rules to ensure language minorities received adequate language assistance at the polls, including rules that would have required efforts be made to recruit bi-lingual poll workers. Some of the concerning comments made during a rule development workshop on May 21, 2019 at the Supervisors of Elections' annual conference included:

"...it was brought out by the large group asking for Spanish language interpreters at every polling place and all the other things that you listed here, and I'm telling you for the whole world to hear that it is a physical impossibility. We have been trying and trying and trying to recruit bilingual election workers in our county and I cannot invent them." Supervisor Alan Hayes, Lake County;

"Hi it's me again, Joyce from Monroe County. Years ago we had a committee of people that from each supervisors office that were the bilingual poll worker committee. We had a professor come and talk to us and told us it is not in the Spanish [inaudible], it is not in the Spanish culture for Latinos to do this type of work. Now my grandmother was 100 percent Cuban, it's my culture. We don't volunteer for these things. I tried to hire people that didn't even have to go to poll worker training, they just had to sit and translate. I paid them, they wouldn't do it. I couldn't find the people to do it. If I couldn't find them then, I'm not gonna find them now. I have a stack of nine, I have someone from Nicaragua, someone from Panama, and someone from Cuba, the poll workers can call us, I do hire, if I hire a Spanish person we pay them extra and we will put them in the precinct we know gets more of a Spanish turnout. This just isn't gonna work and I think you can see that what you're setting us up for is failure. You're setting us up to be breaking the law unless you say to the Spanish community, this is like jury duty you have to do it. If we can't find enough English speaking people to work at the polls that are not [clapping] [inaudible]." Supervisor R. Joyce Griffin, Monroe County; and,

"And yet your proposed rule is likely to inflict a lot of financial damage and a lot of inconvenience and a lot of wasted time." – Supervisor Alan Hayes, Lake County.

Despite the outcry of Supervisors of Elections regarding the difficulties in providing minority language materials and assistance, it can be done. Take the case of Pinellas county. Pinellas county was notified that it was designated a Section 203 jurisdiction by the DOJ on December 15, 2016. Yet, the county faced a municipal election in March 14, 2017.

The county was forced to comply with minority language materials provisions and assistance requirements under Section 203 in under 2 months because the DOJ was overseeing the change and monitoring compliance. Election monitoring by the DOJ continued for Pinellas County during the November 2018 elections. While this was an instance involving DOJ monitors and not

⁴ *Madera v. Detzner*, No. 1:18-cv-00152 (N.D. Fla. ordered May 10, 2019), Doc. 131.



federal observers, it serves as an example of the importance of DOJ oversight in ensuring minority language assistance and that having federal observers present in polling stations would help to deter and prevent incidents of discrimination in the first instance.

The reinstatement and expansion of the federal observer provisions of the VRA that are proposed by Section 6 of the VRAA, would have likely deterred the violations of the Spanish language assistance requirements at the subject polling stations that we saw in 2018 and would have helped avoid time consuming and expensive litigation.

Federal observers would have also likely made a difference in another serious incident that occurred during the 2018 election cycle in Florida. During the early voting period in November 2018, while LatinoJustice was conducting election protection monitoring, we received a call from a voter who said he was forced to vote a blank ballot in Orange County, Florida. Both Orange County and the State are covered jurisdictions for Spanish language assistance under Section 203.

The voter relayed the experience of being shuttled to a scanning machine by a poll worker and told to cast a blank ballot, without having had the opportunity to mark his ballot in secrecy. The voter reported being a naturalized citizen who could not speak English and reported that a couple of other voters were told to do the same.

At the time of the call, the voter was incensed by the action taken by the white, male poll worker which he perceived to have been intentional. Because of our Election Protection model, we were able to contact counsel for the county and the voter was eventually able to cast a provisional ballot which was ultimately counted. While our election protection efforts saved this elector's vote, the presence of federal observers inside polling locations could have deterred this conduct in the first instance.

The case of Osceola County serves as another illustrative example about how the reinstatement of the Attorney General's ability to certify Section 203 jurisdictions under the VRAA for the assignment of federal observers would play an important role in ensuring compliance with Section 203 in Florida.

Osceola County is a jurisdiction covered for Spanish language assistance under Section 203. Despite a long history of voting rights violation, including voting rights litigation brought by DOJ in 2002, 2005 and 2008, there were reports as recently as the 2018 election regarding the complete lack of bilingual poll workers in the Buena Ventura Lakes precinct—which has over 40% Hispanic/Latino registered voters.

Had federal observers been deployed to this precinct, they would have been able to investigate whether and to what extent the county was complying with the language assistance requirements of Section 203 and whether the lack of bi-lingual poll workers was preventing Spanish speaking voters from obtaining the language assistance they needed at the poll.

These are just several instances of how minority language voters would benefit from expanded federal observer coverage under the VRAA. There are, unfortunately, many more instances of



discrimination that take place inside of the polls that we never learn about through our Election Protection coalition, since we cannot be stationed inside the polls in Florida. The reinstatement of and expansion of the observer program to Section 203 covered jurisdictions would go a long way to ensure compliance with the language assistance provisions of the law and to deter discrimination against language minority voters at the polls.

B. The Re-Authorization of Federal Observers in the VRAA

Under the VRAA, Section 203 covered jurisdictions would be added to the jurisdictions that the Attorney General would be able to certify for the assignment of federal observers. Additionally, the Attorney General would have the authority to certify jurisdictions for the assignment of observers in jurisdictions subject to preclearance, including when the Attorney General believes doing so is otherwise necessary to enforce the guarantees of the 14th or 15th Amendment, any provision of the VRA or “any other Federal law protecting the right of citizens of the United States to vote.”

This would be an incredibly impactful update to the Voting Rights Act because it would put non-partisan, trained observers inside polling stations to potentially deter and prevent the disenfranchisement of language minority voters needing critical language assistance at the polls. Federal observers would also play an important role in deterring and preventing other forms of discrimination against voters of color and language minority voters.

In closing, we support passage of the VRAA with the goal of improving language access services to language minority voters by supporting coverage under Section 203 and Section 4(e) of the Voting Rights Act, and all other provisions of the law which support assistance to voters needing it.

Thank you very much for your time and attention and for the opportunity to speak on behalf of language minority voters today.