



TESTIMONY OF
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BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON HOUSE ADMINISTRATION, SUBCOMMITTEE ON ELECTIONS
REGARDING VOTING RIGHTS AND ELECTIONS ADMINISTRATION IN FLORIDA
FORT LAUDERDALE, FLORIDA. 6 MAY 2019

TO THE HON. MARCIA L. FUDGE, CHAIRPERSON, SUBCOMMITTEE ON ELECTIONS
And MEMBERS OF THE SUBCOMMITTEE ON ELECTIONS

On behalf of LatinoJustice PRLDEF I thank Representative Fudge and the members of the Subcommittee on Elections for inviting me to testify on the important subject of voting rights in the State of Florida. While it is safe to say that full compliance with voter protections in any State, including Florida, is always a timely and critical endeavor, this topic, and indeed this hearing, is coming at an opportune time for democracy in this State. Demographic growth, and the changing racial and ethnic composition of the State, along with an expanded electorate created by changes in State law¹ that belies decades of concerted practices to minimize the vote of eligible voters make Florida an important battleground for Voting Rights Act compliance.

LatinoJustice PRLDEF (formerly known as the Puerto Rican Legal Defense and Education Fund) is a national civil rights, public interest law organization that represents Latinas and Latinos throughout the country in litigation and advocacy, and works to increase their entry into the legal profession. For over ten years we have actively litigated voting rights cases in Florida and for five years we have had a Southeast Regional Office in Orlando. In my capacity as President & General Counsel I have personally litigated Section 2 Voting Rights Act cases and National Voter Registration Act cases in federal courts here in Florida and I supervise a current case under Section 4(e) of the Voting Rights Act against 32 counties in this State. Finally, I have engaged in election protection efforts in several counties in Florida as well to ensure compliance with Voting Rights Act protections for Puerto Rican and other Latino voters.

Demographic Changes and Contested Elections in Florida

Florida occupies a unique place in recent years with respect to election administration and the energy and zeal that voters exert in the State. Much of that reputation stems from its booming

¹ The passage of Amendment 4 of the Florida constitution via public referendum in November 2018 is a milestone event in voting rights that LatinoJustice PRLDEF applauds as we were part of the effort to secure its passage. Restoring the vote to the formerly incarcerated is a longstanding goal of ours and while I have been asked to focus primarily on language assistance in voting for this testimony (others directly in the leadership of securing Amendment Four's passage have been invited to testify today and I defer to them gladly) I welcome any questions the Subcommittee may have on this historic expansion of the eligible electorate as well.



population growth and the fact that in partisan terms it is a closely divided State. This latter point is important not from the lens of Republicans versus Democrats – LatinoJustice is a nonpartisan, tax-exempt organization – but for the mere fact that close elections place inordinate pressures on election administrators and are often the fuel that ignites Voting Rights Act abuses.

Florida is now the third most populous State in America with an estimated population of 21.3 million behind California and Texas and just outpacing New York.² Over the last year Florida had the second largest numeric growth of any state by adding over 322 thousand residents. The State has a voting age population of 80% and its overall African-American population is just under 17% while its Latino population comprises 25.6% of the State's residents.³

Florida is also undergoing dramatic changes in its Latino population.⁴ Latinos number over 5.4 million in Florida as of July 2018.⁵ Based on 2017 Census data Florida now has the highest number of Puerto Rican residents than any other state in the country at 1,128,225 and it grew by over 30% since 2010. Among all Latino populations in Florida Cubans are still the plurality at 28.5% with Puerto Ricans second at 21% of the State's Latino population, but Cubans have a slower rate of growth since the start of the decade (20.8%).

Simultaneously, the white population of the State is declining due to its increased median age and a growing, younger nonwhite population in Florida. For example, Florida has the highest proportion of senior citizens anywhere in the country⁶ while it has reportedly had a decline in young whites as well.⁷ Not surprisingly, local media outlets in Florida seemingly sound the alarm in the face of these demographic changes with headlines like "How soon will minorities make up a majority of Palm Beach County?" when reporting a drop to 56% in 2017 from 70% in 2000 of the white portion of the county.⁸

² Saunders, Jim. Florida population climbs to 21.3 million, News Service of Florida.

<https://www.orlandoweekly.com/Blogs/archives/2018/12/21/floridas-population-climbs-to-213-million> (last accessed 2 May 2019).

³ U.S. Census Bureau, Quick Facts: Florida; Population estimates as of July 1, 2018.

<https://www.census.gov/quickfacts/fl> (last accessed 2 May 2019).

⁴ Figueroa, Damayra. Data Sheet, Puerto Ricans in Florida: 2010-2017. April 2019. Center for Puerto Rican Studies, Hunter College, CUNY, Centro DS2019-01.

https://centropr.hunter.cuny.edu/sites/default/files/data_sheets/fl_datasheet-4-11-19.pdf (last accessed 2 May 2019).

⁵ U.S. Census Bureau, Quick Facts: Florida; Population estimates as of July 1, 2018.

<https://www.census.gov/quickfacts/fl> (last accessed 2 May 2019).

⁶ Wilson, Reid. America's white population shrinks for the first time as nation ages. The Hill, 21 June 2018.

<https://thehill.com/homenews/state-watch/393322-americas-white-population-shrinking-as-nation-ages> (last accessed 2 May 2019).

⁷ Brownstein, Ronald. 46 States Saw Young White Population Decline. The Atlantic, 12 Aug. 2015.

<https://www.theatlantic.com/politics/archive/2015/08/46-states-saw-young-white-population-decline/432546/> (last accessed 2 May 2019).

⁸ Singh, Mahima. How soon will minorities make up a majority of Palm Beach County? The Palm Beach Post. 14 July 2017 <https://www.palmbeachpost.com/news/how-soon-will-minorities-make-majority-palm-beach-county/JQCjU8mfZpo2oX7YE9qM9J/> (last accessed 2 May 2019).

Florida is also a divided state electorally. The 2000 presidential election pitting George Bush and Al Gore resulted in a difference of 537 votes in the certified count of almost 6 million votes cast. Last year the November 2018 elections resulted in recounts for both the Governor's race and the election for the U.S. Senate – in each case the margin of difference in the initial counts was less than one percent – and again Florida gained national attention in how it runs its election apparatus.⁹

From the perspective of Latino and African-American voters in Florida the ability to exercise their constitutional rights to the franchise has been, and will be, tested repeatedly in a State where seemingly every result is contested within in an environment of rapid demographic change.

Failure to Provide Language Assistance to Puerto Rican Voters

In spite of a history of significant Latino migration and immigration to Florida the Secretary of State and a host of local Supervisors of Elections have not deemed it necessary to comply with full panoply of language assistance measures included in the Voting Rights Act. Today, and as of 2016 in addition to statewide coverage for Florida, ten counties are required to provide Spanish-language assistance under Section 203 of the Voting Rights Act: Broward, DeSoto, Hardee, Hendry, Hillsborough, Lee, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk and Seminole.¹⁰

However, it usually takes litigation to force Florida election officials to abide by the will of Congress. In 2002 the U.S. Department of Justice sued Osceola County and entered into a settlement to stop the discriminatory failure of the county to provide voting access to Spanish-speaking voters under Section 2 of the Voting Rights Act.¹¹ Then in 2009 LatinoJustice and others filed suit against Volusia County to provide Spanish-language assistance to Puerto Rican voters under Section 4(e) – the case was settled and assistance was finally provided.¹²

The unprecedented migration of Puerto Ricans to Florida referenced above in this decade brought to light once again, the systemic failure of Florida's election apparatus to meet needs of Puerto Rican Spanish-dominant voters. In *Rivera Madera v. Lee* Puerto Rican voters, represented by LatinoJustice and others, sued 32 counties in August 2018 for compliance with

⁹ Mazzei, Patricia & Robles, Frances. It's Déjà Vu in Florida, Land of Recounts and Contested Elections. *New York Times*, 9 Nov. 2018
<https://www.nytimes.com/2018/11/09/us/florida-ballots-recount-scott-nelson-gillum-desantis.html> (last accessed 2 May 2019).

¹⁰ U.S. Census Bureau, Federal Register Notice Dec. 5, 2016.
<https://www.federalregister.gov/documents/2016/12/05/2016-28969/voting-rights-act-amendments-of-2006-determinations-under-section-203> (last accessed 2 May 2019).

¹¹ *U.S. v. Osceola County*, No. 6:02-CV-738-ORL-22JGG (M.D. Fla.). See, Culliton-González, Katherine. Time to Revive Puerto Rican Voting Rights, 19 *Berkeley La Raza Law Journal* 101, 130 (2009).

¹² See, *Perez-Santiago v. Volusia County*, 6:08-cv-1868-Orl-28KRS (M.D. Fla.).

Section 4(e) of the Voting Rights Act of 1965¹³. Section 4(e) “prohibit[s] the States from conditioning the right to vote of [Puerto Ricans] on ability to read, write, understand, or interpret any matter in the English language.”¹⁴ Accordingly, it requires full Spanish language voting assistance to Puerto Ricans within the 50 states, who are all U.S. citizens by operation of law, if they were educated in Puerto Rico. Congress specifically passed Section 4(e) to assist Puerto Rican voters and stop the discriminatory nature of English-only elections.¹⁵

The suit, filed in advance of the November 2018 elections, is still pending but it has already borne fruit. In September 2018 the court issued partial preliminary relief on behalf of thousands of Puerto Rican voters in the 32 counties by ordering that a facsimile of a Spanish language ballot be made available at every voting site. In April 2019 plaintiffs returned to court to ask for full injunctive relief to force compliance with Section 4(e) for all elections in the State from August 1, 2019 through the end of the litigation. That motion specifically requests that all election materials, including paper ballots, voting machine ballots, sample ballots, absentee ballots and envelopes, voting guides, voting instructions, polling place signage, election related websites, and registration materials are provided in Spanish as well as English. Additionally, the court is being asked to order that the State provide bilingual workers ready to give oral assistance with voter registration, absentee voting, and voting at early voting sites and polling places for all elections post-August 1st.

Judge Mark Walker made one, telling observation in his order of September 7, 2018 in *Rivera Madera v. Detzner (now Lee)* that speaks volumes about the administration of elections, federal and local elections, in the State of Florida: “It is remarkable that it takes a coalition of voting rights organizations and individuals to sue in federal court to seek minimal compliance with the plain language of a venerable 53-year-old law.”¹⁶

Rivera Madera v. Lee clearly has had a positive effect in securing compliance with the Voting Rights Act of 1965. Prompted clearly by the litigation and its success to date the Florida Secretary of State on April 25, 2019 issued a Notice of Development of Proposed Rules and Negotiated Rulemaking in the Florida Administrative Register to require Spanish language ballots statewide.¹⁷ The preamble to the rules notice states that Spanish language ballots for all Florida elections are necessary because “the State’s Puerto Rican American population has increased since the devastation of Hurricane Maria in September 2017, but there is currently no uniformity in Spanish-language ballot requirements.” The proposed rules follow an announcement earlier in April 2019 by Governor Ron DeSantis in which he instructed the Secretary of State to begin providing Spanish-language ballots in Florida in time for the 2020

¹³ *Rivera Madera v. Lee*, No. 1:18-cv-00152-MW-GRJ (N.D. Fla.) case pending.

¹⁴ 52 U.S.C. § 10303(e)(1).

¹⁵ See *Katzenbach v. Morgan*, 384 U.S. 643, 645, n.3 (1966).

¹⁶ *Rivera Madera v. Detzner*, *supra*, Slip Op. p. 25, Sept. 7, 2018.

¹⁷ See https://www.flrules.org/BigDoc/View_Faw.asp?IID=2855 (last accessed 2 May 2019).

elections. The rules notice also makes a general reference for the need to provide accessible Spanish voting and election materials but there is no specificity as to which materials need to be translated. And specificity is clearly required when dealing with recalcitrant county Florida Supervisors of Elections who look for any loophole to avoid full compliance. For example, the plaintiffs in *Rivera Madera* had to rush back to court in November 2018 on an emergency basis after the Supervisor of Elections of Duval County refused to provide a Spanish facsimile of the ballot during early voting days despite Judge Walker's September 7th order referenced above. The defense? The judge did not specify "early voting" when he referenced November elections. Judge Walker immediately rejected this ridiculous defense and issued a supplemental order. In summary, while this recent proposed rules development is a laudable first step there is no guarantee that the rule would not be diluted in the public comment process or that it will provide the comprehensive relief that Section 4(e) of the Voting Rights Act requires or that it will be implemented in time for the November 2020 elections.

The Myth of Latino Non-Citizen Voters

Long before President Trump unilaterally declared that his failure to capture the majority of the popular vote in 2016 was due to the fact that 2 to 3 million illegal alien voters supported his opponent, the myth of Latino non-citizen voters had taken hold in Florida. As with the President's pronouncement, corroborating evidence was absent in Florida and once again, litigation was required to enforce the will of Congress – this time through the protections of the National Voter Registration Act ("NVRA").

In 2012 then Governor Rick Scott claimed to have evidence of thousands of non-citizens who voted illegally in Florida elections and his Secretary of State Ken Detzner proceeded to purge them from Florida's voter rolls. The evidence of non-citizen voting allegedly emanated from both the State's Department of Highway Safety and Motor Vehicles data base and later from the federal government's immigration database maintained by the Department of Homeland Security. Two U.S. citizens from Miami on the list, Karla Arcia and Melande Antoine, sued under the National Voter Registration Act, among other claims, to stop the illegal purge of otherwise qualified voters. Years later in 2014 their claims were upheld by the 11th Circuit Court of Appeals in *Arcia v. Detzner* because systematic removal programs are barred within 90 days of a federal election.¹⁸ The two voters were joined by the Florida Immigrant Coalition, National Congress for Puerto Rican Rights, and 1199 SEIU United Healthcare Workers East-Florida. They were represented by Advancement Project, Fair Elections Legal Network, LatinoJustice PRLDEF, Project VOTE, SEIU, and the law office of Chavez & DeLeon. The opinion by Judge Beverly Martin concluded that Florida could not systematically remove voters using the Department of Homeland Security's database known as Systematic Alien Verification for Entitlements (SAVE) within 90 days of any federal election: Eligible voters removed days or weeks before Election Day will likely not be able to correct the State's errors in time to vote."¹⁹

¹⁸ *Arcia v. Florida Secretary of State*, 772 F.3d 1335 (11th Cir. 2014).

¹⁹ *Arcia v. Florida Secretary of State*, supra, 772 F.3d at 1346.

The initial purge by Florida targeted 2,700 voters in 2012 – 82% of them were people of color and many of them were eligible citizens. Both Ms. Arcia and Ms. Antoine were naturalized citizens and duly registered voters. The Secretary of State insisted on using both SAVE and 10 to 12 year old databases the state maintained to determine who was a citizen in 2012. Eventually, Florida settled with the plaintiffs in *Arcia* on the purge but insisted on litigating the NVRA claim – leading to its defeat before the Court of Appeals.

Conclusion

Florida is a battleground state in many ways and it's positioning as a state where the administration of its elections in violation of federal law as a recurring theme is not lost on the federal judiciary as Judge Walker noted in his opening paragraph of the *Rivera Madera* decision cited above:

"Here we are again. The clock hits 6:00 a.m. Sonny and Cher's "I Got You Babe" starts playing. Denizens of visitors to Punxsutawney, Pennsylvania eagerly await the groundhog's prediction. And the state of Florida is alleged to violate federal law in its handling of elections."²⁰

I respectfully submit that Congress must be vigilant in Florida. It must monitor the State's election administration and it must be ready to investigate, document and remedy every instance in which it's will – the very laws of the United States – are thwarted or compromised in Florida. To that end I thank you again for sponsoring this important hearing.

Respectfully submitted,

A handwritten signature in blue ink, consisting of a stylized 'J' and 'C' followed by a long horizontal stroke.

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²⁰ *Rivera Madera v. Detzner (now Lee)*, *supra*, Slip Op. p. 1, September 7, 2018.