



MALDEF

The Latino Legal Voice for Civil Rights in America.

WRITTEN STATEMENT OF
ERNEST I. HERRERA
STAFF ATTORNEY
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

" Oversight Hearing on Enforcement of the Voting Rights Act in Texas"

United States House of Representatives Judiciary Committee

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Mr. Chairman and members of the House Judiciary Committee, thank you for the invitation to testify regarding the enforcement of the Voting Rights Act in Texas from the perspective of a civil rights attorney. My name is Ernest Herrera, and I am a staff attorney at MALDEF, the Mexican American Legal Defense and Educational Fund. Since our founding as a non-partisan civil rights organization in 1968 in San Antonio, Texas, MALDEF has served as the leading organization that litigates voting rights cases on behalf of Latinos across the United States.

Today, Latinos constitute the largest racial minority group in Texas. According to the most recent U.S. Census Bureau estimates, Latinos constitute approximately 40% of the Texas population and 29% of the Texas eligible voter population.

As the Latino community and other racial minority communities have grown and expanded their share of the Texas electorate, the State of Texas and some local jurisdictions have sought to impede Latinos' access to the ballot.

In my time as a MALDEF attorney, I have helped litigate the current Texas redistricting case, the challenge to the 2019 Texas purge, and cases against localities involving voter ID and redistricting. My colleagues and I have also investigated complaints of voters across the state who had concerns about their ability to vote and we have advocated on policies contemplated by Texas and local jurisdictions that limit Latinos' voting power.

Over the years, MALDEF has been involved in landmark voting rights litigation in Texas and beyond. In 1973 MALDEF won a ruling from the U.S. Supreme Court that struck down Texas multi-member State House districts as discriminatory against Latinos. And in 2006 MALDEF won the first favorable U.S. Supreme Court ruling for Latinos advancing a vote dilution claim under the Voting Rights Act. In 2018, MALDEF again won a ruling from the U.S. Supreme Court, this time striking down redistricting in Texas that racially gerrymandered Latino voters.

However, following the U.S. Supreme Court's decision in *Shelby County AL v. Holder*, 570 U.S. 2 (2013), MALDEF and Latino voters have faced greater obstacles to securing fair election systems. The release of previously-covered jurisdictions from federal preclearance, combined with the failure of the DOJ to increase its enforcement, leave Latino and other minority voters less protected than they were before *Shelby*. Now it is private litigants—individual Latino voters and groups like MALDEF—who must bear the significant burdens of monitoring discriminatory election changes and challenging them in court.

One example involves MALDEF's successful challenge of an unconstitutional redistricting in Pasadena, Texas, just outside of Houston. Three weeks after the *Shelby* decision, in July 2013, the Mayor of Pasadena announced a plan to change the method of electing members to the City Council. The Mayor

chose to change the election system in Pasadena precisely because, as he declared at the time, “DOJ can no longer tell us what to do.”

At that time, Pasadena elected all eight-members of its council from single member districts. Mayor Isbell and his allies faced increasing opposition from a voting block of four council members who were either elected by or responsive to the growing Latino electorate. In order to prevent the emergence of a Latino-majority city council, the Mayor proposed, and the City’s electorate approved, converting two single member district positions on the council to at-large seats. Shifting these seats from single member districts to at-large voting solidified Anglo control over the council even as the City became majority Latino.

Before the *Shelby* decision in 2013, Pasadena would have been required to submit this change for preclearance, and in past years the U.S. Department of Justice had denied preclearance for similar conversions from single member districts to at-large seats by cities in Texas. After *Shelby*, Pasadena was not required to secure preclearance and the discriminatory change went into effect immediately upon enactment.

On behalf of several Latino voters, MALDEF filed suit in 2014 challenging Pasadena’s new election system. The discovery process was time-consuming and expensive. We took and defended 35 depositions. Seven expert witnesses served

in the case. We relocated the litigation team to Houston and tried the case in federal court in November and December of 2016.

In January 2017, the federal court ruled that Pasadena intentionally discriminated against Latino voters in adopting the change in its method of election, and that the change also had the effect of illegally diluting Latino voting strength. The court ordered Pasadena to restore its previous method of election and “bailed in” the City under section 5 through the next redistricting cycle.

Pasadena appealed and unsuccessfully sought an immediate order from the Fifth Circuit to block the trial court’s order. We then briefed the appeal, which took an additional nine months. Finally, Pasadena agreed to settle the case, drop the appeal, go back to its eight district election plan and submit its election changes for section 5 preclearance until 2023.

In the end, Pasadena spent \$3.5 million in attorney’s fees (including paying MALDEF’s fees). Resolution of the controversy took just short of three years. Compared to the previous preclearance regime, the Pasadena case took a drastic toll on the City, draining its financial resources and fraying relationships between community members.

At the same time, MALDEF battled for its Latino clients in the Texas redistricting litigation. Although Texas’s congressional and state house redistricting plans were initially blocked under section 5 in 2012, the U.S. Supreme

Court vacated that decision following *Shelby* and we were forced into litigation that is still ongoing today. After eight years of litigation, MALDEF has won revisions to the State's 2011 maps, several findings of intentional racial discrimination, and the U.S. Supreme Court ruling in 2018 that Texas unconstitutionally racially gerrymandered Latinos in Fort Worth. However, Texas has yet to remedy this racial gerrymander, and the federal three-judge panel in San Antonio that has presided over the case continues to work on a remedy, including at a hearing yesterday.

Most recently, MALDEF took Texas to court in February of this year to challenge the state's attempt to purge close to 100,000 naturalized U.S. citizens from the voter rolls. We represented Latino voters who proudly took the oath of U.S. citizenship at naturalization ceremonies and then just as proudly registered to vote. Texas targeted those same voters for elimination from the rolls because they were born outside the United States. With other litigants, MALDEF secured a TRO that halted the voter purge. And, this past Monday, we ended the case (and the purge) with a favorable settlement for the voters. As with redistricting, this debacle of a voter purge would never have gone into effect if Texas was required to preclear its changes in election practices.

In sum, in the post-*Shelby* era, Latino voters have their hands full in Texas. And DOJ is doing little to help. The *Shelby* decision did not affect the ability of

the Department of Justice to enforce the remaining sections of the Voting Rights Act. If anything, the Voting Section has more resources to investigate and enforce the Voting Rights Act because the Section is no longer processing the same volume of section 5 submissions.

Following the loss of preclearance across the South, private plaintiffs cannot and should not have to bear the burden of challenging post-*Shelby* discriminatory changes alone. The comprehensive solution is to enact a new coverage formula that revives the protections of Section 5 for Latino and minority voters in Texas.

Thank you again for your time, Mr. Chairman.