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**NEW YORK STATE SENATE STANDING COMMITTEE ON ELECTIONS  
PUBLIC HEARING ON THE “NEW YORK VOTING RIGHTS ACT”**

**MARCH 3, 2020**

**I. Introduction**

Chairman Myrie, Ranking Member Funke, and Members of the New York State Standing Committee on Elections, my name is Jorge Luis Vasquez, Jr. and I serve as an Associate Attorney for LatinoJustice PRLDEF. On behalf of LatinoJustice, I thank Chairman Myrie and the members of the Standing Committee on Elections for allowing me to submit this written testimony addressing the ongoing threats to ballot-access in New York elections and the essential protections needed to ensure that all New Yorkers have unfettered ability to exercise their fundamental right to vote. At LatinoJustice we have consistently pushed our state and local governments to protect the franchise for all voters, regardless of background, language, or economic status. Over the past decade, we have used impact litigation to fight against unconstitutional and discriminatory voter purges, limitations on language assistance, and other forms of voter suppression that disproportionately impact language-minority voters in the Latinx, Native American, and Asian-American communities.

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. In the nearly five decades since our inception in 1972, we have actively litigated voting rights cases nationally and throughout New York State to secure protections for Latinx voters that are guaranteed under both the National Voter Registration Act (NVRA) and the Voting Rights Act (VRA). Finally, LatinoJustice is an active partner of the nonpartisan Election Protection



Commission, a coalition of over 100 local, state, and national partners working to ensure that all voters have an equal opportunity to vote and have their vote counted.

## **II. Threats and Challenges to Voting Rights in New York**

Since the Supreme Court's ruling in *Shelby County v. Holder*, voting rights have been under attack on a large-scale basis.<sup>1</sup> By invalidating the pre-clearance provision of the VRA, the Court opened the door for states across the country to pass and enact voting regulations that tighten both residency and identification requirements, and have an immediate, undeniable, and discriminatory impact on minority voters. But even more insidious have been the coordinated purges from voter rolls during election years, causing confusion and disenfranchisement at the polls and leading to tens of thousands of eligible voters being denied their right to vote on election day.<sup>2</sup> It goes without saying that this disenfranchisement has a lasting impact on the composition of all governmental bodies from local to federal.

In New York City in particular, voter purges have targeted "inactive" voters, disproportionately affecting Latinx, Asian-American, and other voters of color. This issue came to the attention of LatinoJustice and other voting rights groups in the lead-up to the April 2016 presidential primary in New York when a total of 122, 454 registered voters were removed from the rolls in Brooklyn alone.<sup>3</sup> Further investigation revealed that "13.9 percent of voters in Hispanic-majority districts were purged, compared with 8.7 percent of voters in all other election districts" and that "15.2 percent of people with last names that are used mainly by Hispanic people were purged from the Brooklyn rolls, compared with 9.5 percent of everyone else."

The impact of these purges, however, expanded far beyond just the Latinx and Asian-American communities in New York City. New York's policy of designating a registered voter as "inactive" and removing them from the rolls based on nothing more than a single piece of returned,

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<sup>1</sup> *Shelby County, Ala. v. Holder*, 570 U.S. 529 (2013)

<sup>2</sup> Brigid Bergin, John Keefe & Jenny Ye, *Brooklyn Voter Purge Hits Hispanics Hardest*, WNYC (Jun. 21, 2016), <https://www.wnyc.org/story/brooklyn-voter-purge-hit-hispanics-hardest> (last visited Feb. 25, 2016).

<sup>3</sup> *Id.*



undeliverable mail, allowed tens of thousands of voters to be purged due to post office mistakes or other issues with mail security at the voter's residence.<sup>4</sup>

This tactic had a particularly pervasive and suppressive effect on youth and minority voters who are more likely to live in areas with less owner-occupied housing and less-secure mailboxes, or in the case of youth voters, who only live at their residence part time. In nearly 45,000 cases, "inactive" registrants still lived at their address of registration, despite never having received mail from the Board of Elections seeking confirmation of continued residence at that same address.<sup>5</sup> Given that there are an estimated 1,061,861 "inactive" registrants in New York, and only 9% voted in the last presidential election, hundreds of thousands of eligible voters are at risk of having their vote suppressed in the 2020 election season.<sup>6</sup>

The tactic of removing "inactive" voters from the poll books predictably led to confusion and longer waits on election-days in 2016; forced completion of thousands of affidavit ballots and stretched poll worker resources to their limits. For voters who work an hourly job, wages were lost as they spent hours attempting to exercise their franchise rights. But short-term impacts such as inability to vote and lost pay are just the tip of the iceberg; decreased confidence in the election system will not only chill voter turnout in the years to come, but will also effectively dilute the voting power of many minority communities to choose their elected officials.

"Inactive" voter purges were compounded by a substantial deficiency of language assistance in many election districts across New York State. Despite years of court orders to districts with significant language-minority voting populations, discrimination against language-minority voters persists. Lack of bi-lingual poll workers or consistent availability of language-minority ballots has greatly restricted access to the ballot for many communities of color.

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<sup>4</sup> Decl. of Mark N. Meredith at 8, *Common Cause New York et al v. Board of Elections in the City of New York, et al*, No. 1:17-cv-06770-AJN app. 1 at PG ## HERE (S.D.N.Y. Sept. 26, 2019)

<sup>5</sup> *Id.* At 9

<sup>6</sup> *Id.*



### III. Litigation versus Preemptive Provisions

Upon discovering the extensive purges throughout New York City particularly in Kings and Queens Counties, LatinoJustice along with The Lawyers' Committee for Civil Rights and the law firm of Dechert LLP filed a lawsuit on behalf of Common Cause New York and individual purged voters against the New York City Board of Elections (NYC BOE) in November 2016. The coalition sought the restoration of voting rights for all New York City voters who had been improperly removed from the rolls, in violation of section 8 of the NVRA, and successfully reached a consent decree and settlement with the NYC BOE.<sup>7</sup> The resulting settlement agreement provided much needed oversight, including implementation of standard protocols and procedures to prevent unlawful removals, and critical enforcement remedies to ensure that all eligible voters in New York City are equally able to exercise their constitutional right to vote.

LatinoJustice has also successfully litigated numerous voting rights matters outside of New York. Most recently, in 2018, our Southeast Regional Office successfully obtained a preliminary injunction to enforce language assistance provisions under Section 4(e) of the VRA – protecting Puerto Rican-educated, limited English proficiency United States citizens – in 32 counties in Florida.<sup>8</sup> Despite the injunction, however, limited-English proficiency voters still face a huge deficit in language-assistance at the polls.

What these repeated lawsuits make clear is that resorting to litigation in order to compel government elections' officials to comply with the law and to protect all voters' access to the polls on a case by case basis is a serious obstacle to guaranteeing universal access to the franchise. Time-intensive and expensive litigation may push forward protection at the local level, but it does so at a glacial pace, often without any effect until after another major election cycle passes. Further, judicial remedies are limited to the election district against which they are enforced and they do nothing to retroactively address the dilution of voting power of minority communities, not to mention the skewed composition of government bodies that results. When tens of thousands of

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<sup>7</sup> *Common Cause/New York v. Brehm*, No. 17-CV-6770 (AJN), 2020 U.S. Dist. WL 122589, app. 2 at PG ## (S.D.N.Y. Jan. 10, 2020).

<sup>8</sup> *Madera v. Detzner*, 325 F.Supp.3d 1269 app. 3 at PG ## (N.D.Fla. Sept. 10, 2018).



registrants are stripped of their right to vote at the polls, they can never recover those lost votes or their potential impact on election night.

This is all to say that preemptive legislation with proactive protections is needed if we are to reestablish the rights long guaranteed under the Voting Rights Act of 1965. In particular, the return of pre-clearance mechanisms for any changes to voting regulations is absolutely crucial to recapture pre-*Shelby* protections for minority voting communities.

#### **IV. Conclusion**

For this reason among many others, LatinoJustice strongly supports the New York Senate Bill S7528 – New York Voting Rights Act. The provisions requiring assistance for language-minority voters in any electoral jurisdictions where more than 2 percent of citizens (or 4,000 registrants) of voting age are part of a single-language minority group will ensure that all New Yorkers are able to exercise their right to vote without facing insurmountable language barriers.

As stated over 130 years ago in *Yick Wo v. Hopkins*, the right to vote is “preservative of all other rights,” and if we cannot guaranteed the protection of the most fundamental right of Americans – access to the franchise – then all other rights are illusory at best.<sup>9</sup> We respectfully submit this testimony in support of the New York Voting Rights Act and applaud the Standing Committee on Elections and Chairperson Myrie for bringing this essential legislation to the floor this 2019-2020 legislative session.

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<sup>9</sup> *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

