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Testimony before the Elections Committee of the New York Senate

Regarding Support for S. 7528 New York Voting Rights Act

March 3, 2020

NALEO
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Chairman Myrie, Ranking Member Funke, and Members of the Elections Committee: Thank you for the opportunity to testify today in support of S. 7528, the New York Voting Rights Act, on behalf of the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund.

NALEO Educational Fund is 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 6,800 Latino elected and appointed officials nationwide, and includes Republicans, Democrats, and Independents. As of publication of our 2019 National Directory of Latino Elected Officials, we counted 169 Latinos serving in elected office in New York.

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 of 1965 (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.

On the basis of what we have learned from calls to our hotline and other reports from Latino voters, as well as our partnerships with peer organizations and elected and appointed officials, we have identified, and seek to redress, barriers that continue to impede Latino political participation. We have also observed and documented the success of the VRA and state voting rights laws in eliminating discriminatory laws and limiting their harmful effects. We applaud the New York Senate for pursuing measures that make fair and robust access to the polls a top policy priority, and urge this Committee to vote to advance S. 7528.

Too Many Eligible New York Voters – Especially Members of Historically Underrepresented Communities – Do Not Participate in Elections

In New York, persistently low voter participation rates are strong evidence that election laws and procedures can and must improve. A look back over the most recent decades of Census data about self-reported registration and voter turnout rates reveals that New York has repeatedly fallen below national averages. For example, in November 2004, New York's turnout rate of voting-age citizens lagged behind the national turnout rate by more than three and a half percentage points. Similarly, in 2012, 61.8 percent of American voting age citizens cast ballots compared to 58.7 percent of New York voting age citizens cast ballots. Most recently, interest in Congressional elections in 2018 was high, and 53.4 percent of adult citizens across the country came out to vote, while just 49.5 percent of New York adult citizens participated.

Significant disparities also persist in the turnout rates of voters of different races and ethnicities. These inspired Congress to adopt the VRA, and the same concerns should motivate and inform the New York Legislature's efforts. Historically, and in the most recent decades, New York elections have not been equally open and accessible to all citizens regardless of their demographic characteristics. For example, as the Puerto Rican

population of New York increased rapidly following the 1917 grant of American citizenship to island residents, New York adopted a law mandating that residents demonstrate English literacy to vote. Until the 1965 enactment of the VRA prohibited the application of such laws to U.S. citizens educated in the United States or its territories, New York effectively barred numerous Americans of Puerto Rican origin from casting ballots, including Jose Camacho, who sued the state unsuccessfully in 1961. Mr. Camacho was educated in Puerto Rico in Spanish and voted on the island, but was turned away after moving to New York and failing to pass its English literacy test.

Although the VRA enhanced protections against discrimination in the electoral process, progress has been incremental, and inequities remain in voter participation in New York. During the 2018 general election, a higher percentage of non-Hispanic white New Yorkers than of New Yorkers of any other race or ethnicity cast ballots, and disparities were stark: for example, just 32.4 percent of eligible Asian Americans and 40.9 percent of eligible Latinos voted, compared to nearly 53 percent of non-Hispanic whites. The communities of voters who experienced savage, undisguised discrimination before and during the civil rights era are the same communities that are targets of contemporary discrimination. They continue to be underrepresented in New York polling places in election cycle after election cycle in the modern era. In 2008, while more than 62 percent of non-Hispanic white New Yorkers voted, only about 55 percent of African Americans and Latinos, and just 33.4 percent of Asian Americans, participated. And in 2000, non-Hispanic white voters cast ballots at a rate above 62 percent, but the African American turnout rate was below 57 percent; the Latino rate below 47 percent; and the Asian American rate about 37 percent.

Discriminatory Voting Laws and Policies Cause These Harmful Disparities in Voter Participation

Laws and administrative policies governing the conduct of elections that are designed to discriminate, or have discriminatory practical effects, are a reason for the state's persistently low overall voting rates, and for disparities between the electoral participation rates of New Yorkers of varying races and ethnicities. The history in the state of implementation of discriminatory voting procedures portends future danger and mitigates in favor of strong defense of the equal right to vote. The following examples are representative of other similar incidents and illustrate how law- and policymaking may abridge or deny the right to vote to members of historically underrepresented communities.

Aggressive Purges of Voter Registration Records

On the day of the 2016 Presidential primary, numerous voters in Kings County went to the polls only to discover that their names did not appear on the pollbooks. Contemporaneous news reports indicated that as many as ten percent of intending voters at some polling sites expected to be registered and to have no difficulties voting, but found they had been removed from lists. As reports began to mount up and stakeholders investigated, it became apparent that an unusually large number of registrants in Brooklyn – just over 122,000 in total – had had their registrations cancelled less than a year prior to the hotly-contested Presidential primary. Investigations revealed that this extensive purge of voter registration records had employed improper methods, and that its victims were very disproportionately Latino and Asian American voters. According to an analysis by radio station WNYC, this operation removed the registration of 15.2 percent of all likely Latino voters in the borough, but just 9.5 of all non-Latino voters. Recognizing its errors, the New

York City Board of Elections settled a lawsuit over this matter by agreeing to review each registration record at issue and reinstate those that should not have been removed.

Aggressive voter registration purges are a rising trend around the country, and election administrators have implemented them in numerous ways that have foreseeable discriminatory effects. For example, as in Brooklyn, purges may involve premature cancellation of registration records of people who have not cast a ballot for just one or two federal election cycles. Based on persistently disparate turnout rates, the average New York voter of color is more likely to have missed an election than the average white New York voter. Purges may mismatch the drivers' license, out-of-state voter registration, or other records of similarly-named people to produce erroneous conclusions about voters' current residences and other eligibility factors. Such purges put people who share common names at risk, and those are disproportionately people of color in the United States. A Census Bureau study of surnames reported in the 2000 decennial Census revealed, for example, that 12.1 percent of the nation's Latino population shared one of the six most common family names among Latinos, and 10.1 percent of all African Americans shared the six most popular family names among African Americans, while people who shared the six most common family names among white Americans accounted for just 3.3 percent of the total white population.

Inadequate Language Assistance

New York is lucky to be home to a vibrant and talented population that is remarkably linguistically diverse. According to 2018 American Community Survey 1-year statistics, there are ten languages other than English that are spoken by at least 100,000 New Yorkers in their homes, and many more languages in common usage in the state. The majority of New Yorkers who frequently speak a language other than English are Latino or Asian American, and voters from these communities are entitled to linguistic assistance with voting under federal law. Unfortunately, New York election administrators have struggled to meet these voters' needs. For example, in 1993 and 1994, the Department of Justice denied preclearance to several New York City boroughs that proposed to assign Chinese interpreters and disseminate translated materials using formulas that would have provided services to fewer than half of voters for whom the VRA required information in-language.

The city's plans also haphazardly assigned single interpreters to each polling site in spite of wide differences in the number of limited English proficient voters assigned to various locations, and failed to seek community guidance. Although Department of Justice recommendations and community interventions supported election administrators in addressing failures in language assistance programs, problems endure. For instance, the Asian American Legal Defense and Education Fund observed Chinese interpreters trying to assist Korean-speaking voters at a polling place in Queens in 2014, due to personnel shortages. NALEO Educational Fund and our partners in the Election Protection Coalition received voters' reports on Election Day in 2018 of missing or inadequate in-language materials and interpreters at multiple locations in Queens and Brooklyn, following a pattern we observed in the 2016 General Election and previous cycles. Each one of these failures creates a new hurdle that New York voters of color must overcome to vote, and that, inevitably, many cannot cross.

Failing and Insufficient Voting Equipment and Long Lines

With increasing frequency in recent election cycles, serious equipment failures and other administrative challenges on Election Day have caused voting to halt, and have effectively prevented ever-larger numbers of voters concentrated in communities of color from casting ballots. Events occurring during the 2018 election cycle raised acute concerns about potential discriminatory consequences of policies that determine the number and placement of voting resources and the nature of contingency plans. Our national voter assistance hotline takes calls nearly exclusively in Spanish, and on Election Day 2018, more than one-third of all incoming calls reporting broken machines came from New York. Many of the individuals who observed these problems also reported that voters were forming long lines because of extended waits for access, and that some people were leaving before having cast ballots. When all was said and done, the New York City Board of Elections noted that it received more than 10,000 calls about equipment breakdowns, more than five times as many as it received in 2016, during a higher-turnout election cycle.

Machine malfunctions, ballot shortages, and other issues that arise from administrative mismanagement contribute to a problem of physical access to polling places that systemically inhibits voters of color from participating in elections. In New York and elsewhere around the country, increasing numbers of voters have encountered long waits when they attempted to vote in person. Numerous studies have relied upon varying sources to conclude that African American, 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, a group of professors from UCLA, Carnegie Mellon University, and the University of Chicago published their analysis of cell phone geolocation data for the period of the 2016 general election; controlling for factors like varying length of ballots, they found, among other observations, that voters in majority-black precincts waited more than 15 percent longer on average to vote than voters in majority-non-Hispanic white precincts. In these researchers' opinion, their work produced, "substantial and significant evidence of racial disparities in voter wait times."

These 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. 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. The frustrations stemming from logistical hurdles at overburdened polling sites block or discourage significant numbers of voters. 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. 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.

Restrictions on Ability to Elect a Candidate of Choice

Port Chester, NY is a community whose Latino population has increased exponentially over the course of the most recent decades. Between the 1990 and 2000 Censuses, the number of Latino residents increased by 73 percent; as of the release of 2014-18 American Community Survey 5-year statistics, more than 65 percent of its residents were Latino. As

the town grew and its demographics shifted, its maintenance of an at-large electoral system began to have noticeable, discriminatory consequences. All of the town's eligible voters – a majority of whom were non-Hispanic white – voted for mayor and each of the six positions on its Board of Trustees. Even though more than twenty percent of Port Chester's citizen voting-age population was Latino by 2000, no town official was Latino at that time, and a Latino candidate for a Trustee position lost in the election of 2001. Experts found that Port Chester's Latino voters tended to vote cohesively, and that the town's non-Latino white electoral majority had voted against its Latino bloc in the vast majority of contests they studied. The system for electing Port Chester's Board interacted with both outright and subtle expressions of antipathy toward Latino voters, detailed in the federal court's resolution of the matter in favor of voter activists, to artificially and discriminatorily diminish the influence of Latino residents' votes. Today, a decade after litigation ended at-large elections for city office, two of Port Chester's six Trustees are Latino.

Particularly in communities throughout the state that continue to change as their populations shift, New Yorkers remain vulnerable to the potential negative effects of manipulation of methods of election and of the redistricting process. At-large and multi-member district systems like Port Chester's have a long history and carry high likelihood of diluting minority votes. In either system, where communities of color and white majorities consistently support different candidates and vote as racial blocs, white majorities regularly outvote minorities and sustain political control. Because racial bloc voting persists, the dispersion or concentration of communities of color in the redistricting process can have a similar effect. Distortions like these impair the fair representation of historically underrepresented voters, and have contributed to persistent disparities on legislative bodies. For example, as of the publication of our 2019 National Directory of Latino Elected Officials, just 10.8 percent of members of the New York Legislature were Latino, compared to 19.2 percent of the state's population.

The Supreme Court Severely Weakened Federal Protection Against Voting Discrimination, Enhancing the Importance of State and Local Protections

It is particularly essential that states and localities take action in 2020 and beyond to defend equal voting rights, because the VRA is not at full strength, and weakened federal anti-discrimination protections have made it more possible and likely that discriminatory election policies go unchallenged, and mar our democracy. Before the Supreme Court ruled in *Shelby County v. Holder* in 2013, Bronx, Kings, and New York Counties submitted new voting laws for review before implementation; elsewhere around the state, jurisdictions were on notice that repeated or egregious discriminatory action could attract a request that a court order similar systematic monitoring. The preclearance process also operated by deterring discriminatorily-conceived voting changes from being proposed in the first place, and in sum, it proved very successful, halting thousands of problematic proposals and helping to achieve significant advances toward parity in voter participation and electoral outcomes.

Unfortunately, in June 2013, the Supreme Court dealt a blow to the VRA by striking down the Section 4(b) coverage formula which determined which jurisdictions were covered by Section 5, in a narrow five-to-four decision in *Shelby County, Alabama v. Holder*, 570 U.S. 529 (2013). This decision left millions of New Yorkers and voters of color throughout the country without ability to stop voting discrimination before it occurred, and the country without an efficient mechanism to resolve voting rights disputes. The years following the

Shelby County decision have seen ongoing voting discrimination, particularly in jurisdictions that were previously covered by Section 5. From shortening voting hours and days, erecting new barriers to voter registration, purging eligible voters from the rolls, implementing strict voter identification laws, and closing polling places to reconfiguring election systems and voting districts, a number of states and local jurisdictions have adopted laws and policies that disproportionately deny or abridge the votes of Americans of color since 2013.

Because federal anti-discrimination law has lost effectiveness and Congress has not yet acted in concert to restore it, voters must rely on state legislators to strengthen legal protections and election administration standards, and to clarify the state's authority and will to block discriminatory laws. We applaud the Elections Committee for taking this step today to examine the problem of unequal access to the democratic process, and to make law that redresses it.

The New York Voting Rights Act Prescribes Sound Protections

NALEO Educational Fund is pleased to endorse enactment of the New York Voting Rights Act. The bill constitutes an extremely strong commitment to holding inclusive elections that inspire all New Yorkers' confidence in democracy. We applaud its strong assurance of language assistance to more of those Americans not yet fully fluent in English, for whom the voting experience can be the most difficult and demoralizing. The bill's adoption of a preclearance process would wisely apply what is widely considered our most effective civil rights law ever throughout New York, in targeted instances where discriminatory intent and effects are most likely to occur. By making private citizens civilly liable for intimidation or deception of voters, this bill extends the reach of and fills a critical gap in existing voting rights law. In addition to these measures, we appreciate that the bill would lower barriers to private and non-profit plaintiffs' vindication of equal voting rights, thereby evening a playing field that otherwise favors officials, and the status quo. The New York Voting Rights Act's comprehensiveness and attention to empowerment of all of the state's many diverse historically underrepresented communities are guarantors of its future success in ensuring that New York elections are equally open to every one of its citizens.

Thank you for holding this hearing and for taking our views into account as you consider this legislation.

