

Testimony of
John Trasviña

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United States Senate Committee on the Judiciary
Prevention of Deceptive Practices and Voter Intimidation
in Federal Elections: S. 453

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Chairman Cardin, Members of the Committee, I am John Trasviña, President and General Counsel of the Mexican American Legal Defense and Educational Fund (MALDEF). I appreciate this opportunity to testify in support of S. 453, the Deceptive Practices and Voter Intimidation Prevention Act of 2007.

Voter intimidation and deceptive practices present serious threats to the integrity of the American democratic system. Since our founding in 1968, MALDEF has used every legal and policy mechanism at our disposal to protect Latino voters from election practices that limit the ability to fully participate in American democracy. When voters are targeted for intimidation, especially when they are targeted because of their race or national origin, all Americans suffer.

We have recently witnessed an increase in voter suppression, intimidation and deceptive practices aimed at Latino voters. When a community organizes and begins to make new political gains, it often becomes subject to deliberate attempts to halt its electoral advancement by any available means, including the use of deceptive practices and voter intimidation. For example, on Election Day 2006, MALDEF attorneys witnessed an extreme act of voter intimidation in Tucson, Arizona. Vigilantes, at least one of whom was armed, approached Latino voters casting their ballots at the 49th Precinct Polling Place in an apparent attempt to suppress the Latino vote in the congressional midterm elections. One man carried a camcorder, another held a clipboard, and a third wore a law enforcement emblem and a holstered gun as they approached Latino voters exclusively. The vigilantes asked Latino voters pointed questions about their political views, wrote down Latino voters' personal information, and videotaped them as they went to cast their vote. The vigilantes' website indicated that they were videotaping Latino voters in order to confirm that all Latino voters who participated in the election were properly registered to vote.

Also in 2006, approximately fourteen thousand Spanish-surname voters in Orange County, California received letters that utilized deceptive practices in an apparent attempt to suppress the Latino vote in the days leading up to the midterm congressional elections. These letters appeared on the letterhead of the California Coalition for Immigration Reform, a local anti-immigrant group notorious for its hostility to local immigrants and Latinos. They were signed by the fictitious "Sergio Ramirez" and contained numerous deceptive and intimidating statements.

First, the Orange County letter falsely advised prospective voters that immigrants who vote in federal elections are committing a crime that can result in incarceration and possible deportation. This is a false and deceptive statement: naturalized immigrants who are otherwise eligible to vote are free to vote in federal elections without fear of penalties (including but not limited to incarceration and/or deportation). Second, the letter stated that "the U.S. government is installing a new computerized system to verify names of all newly registered voters who participate in the elections in October and November... Organizations against emigration will be able to request information from this new computerized system." Again, the letter adopts an intimidating tone based upon false information in an apparent attempt to undermine voter confidence within the targeted group of voters. Finally, the letter stated that "[n]ot like in Mexico, here there is no benefit to voting." This letter, representing a coordinated and extensive effort to suppress the Latino vote in the days leading up to a congressional election, has been traced to a candidate running for the congressional seat in the district in which the affected voters live.

S. 453 will provide critical tools to address the types of voter suppression and intimidation that MALDEF has combated in previous elections and expect to continue to combat as the Latino vote grows in strength over the coming years. S. 453 will provide administrative and judicial remedies for voters targeted for intentionally deceptive practices, and it will provide security to all voters by allowing for increased federal protections in the elections process. S. 453 would require the Department of Justice (DOJ) to investigate alleged incidents of the intentional use of deceptive practices, prosecute those who would use prohibited means to suppress the vote, and provide corrective actions to counter the deceptive practices used. MALDEF is particularly supportive of the bill's ban on intentionally false communications regarding 1) the time, place, and manner of elections; and 2) qualifications for or restrictions on voter eligibility (including criminal penalties associated with voting by ineligible voters or information regarding a voter's registration status or eligibility). Most acts of voter suppression through deceptive practices targeting Latinos result from intentionally false communications in these areas.

If S. 453 had been in place during the 2006 election cycle, the deceptive practices of voter intimidation described above would have resulted in different outcomes. MALDEF notified the United States Attorney in Arizona regarding the voter suppression in Tucson on the day that it occurred, but we are unaware of any resulting federal investigation or prosecution that has resulted from this timely notice. If S. 453 were federal law at the time, the Department of Justice would have been charged with conducting an investigation and prosecuting the offending parties if they engaged in intentional deceptive practices prohibited under the statute. Also, DOJ would have been required to enact corrective actions to counter any deceptive information that may have been disseminated by the vigilantes. Finally, MALDEF may engage in private litigation against the vigilantes in question as a result of their having violated Latino voters' civil rights; our litigation options may have been strengthened by the private right of action included in S. 453 as introduced, which would provide additional legal bases for the private protection of protected voting rights.

The Orange County voter suppression letter described above also would have triggered federal action under the proposed Deceptive Practices and Voter Intimidation Prevention Act. The letter likely violates S. 453's bar on intentional deception regarding qualifications on voter eligibility (in this case, immigrant status) and voters' registration status or eligibility. In the days following

receipt of the letter by Latino voters, MALDEF sent a letter to the United States Attorney General, who initiated an investigation but instituted no corrective actions to remedy the receipt of the misinformation contained in the letter. Instead, MALDEF worked with the California Secretary of State to distribute corrective action letters to all affected voters that contained the correct voter eligibility information. Had the Deceptive Practices and Voter Intimidation Prevention Act been in place at the time, affected voters could have expected the U.S. Attorney General to promptly implement corrective actions, quickly initiate and conclude an investigation, and prosecute individuals who improperly suppressed the vote using tactics barred under the Act. Latino voters were forced to rely upon corrective actions implemented by state officials at MALDEF's request. Voters are still awaiting resolution, over seven months later, of a DOJ investigation of the matter.

My focus upon the two incidents of voter suppression described above should not be taken to indicate that voter suppression through deceptive practices is rare. On the contrary, additional evidence abounds of the use of deceptive practices during recent election cycles to suppress the democratic participation of eligible voters. Voters are frequently provided false information about the time, place & manner of elections. In Virginia, Colorado, New Mexico and Ohio, for example, registered voters have recently been misinformed about their registration status in the days leading up to the elections through phone calls claiming that their registration was cancelled and threatening arrest if they tried to vote. Additionally, voters in New Mexico received phone calls that provided incorrect information about the constituents' voting place after the caller verified the voters' names and addresses. Whether these incidents would rise to the level of intentionally deceptive practices that would violate the Deceptive Practices and Voter Intimidation Prevention Act cannot be known without the investigations that would be required under S. 453.

Additional evidence also exists of recent incidents in which voters were intentionally deceived about voting requirements. In Lake County, Ohio, for example, a fraudulent memo written on fake Board of Elections letterhead was sent to county residents informing them that registration obtained through Democratic Party and NAACP registration drives were invalid. In Charleston County, South Carolina, certain voters received deceptive letters purporting to be from the NAACP that threatened voters with arrest if they had outstanding parking tickets or unpaid child support. In Pittsburgh, Pennsylvania, flyers printed on county letterhead advertised the wrong election date, stating that the voting date had been changed to one day later than the actual voting date. Also, poll workers at precincts across the country have often provided incorrect information regarding the identification required to vote. While many of these incidents may have been honest mistakes that would not trigger penalties under S. 453, in several of these incidents poll workers explained that they imposed additional identification requirements in order to keep non-citizens from voting.

MALDEF supports S. 453 as a remedy against voter intimidation and deceptive practices that limit Americans' ability to freely participate in the democratic process. Prevention of the reprehensible practices barred under S.453 strengthens democracy.