Supplemental Written Testimony of Joaquin G. Avila

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Before the Senate Committee on the Judiciary

Hearing on S. 2703,

"Renewing the Temporary Provisions of the Voting Rights Act: Legislative Options after *LULAC v. Perry*"

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Responses to Written Questions from Senator Cornyn:

1. What empirical data can you cite that indicates the ability of minorities in the covered jurisdictions to participate fully in the electoral process is substantially different from minorities outside the covered jurisdictions? Please be specific with respect to covered jurisdictions vs. non-covered jurisdictions.

I did not receive Senator Cornyn's questions and the accompanying letter dated July 23, 2006 until July 25, 2006 – five days after the United States Senate passed the Voting Rights Act Reauthorization Act (VRARA) by a vote of 98 to 0. Senator Cornyn's Questions 1-8 are not germane to the topic of the hearing. The topic, as I understand it, focused on what impact, if any, the United States Supreme Court's decision in *LULAC v. Perry* striking down the Texas congressional redistricting plan for discriminating against Latino voters has on reauthorization. As I explain in my response to Question 9, there is little connection between the *LULAC* decision, which was decided under the permanent remedies of Section 2 of the Voting Rights Act, and the recently renewed remedies of Section 5. Furthermore, to the limited extent that the *LULAC* decision is relevant to Section 5, it strongly supports a twenty-five year reauthorization because of its finding of extensive voting discrimination against Latinos in Texas.

Furthermore, the tenor of Questions 1-8 implies that those questions were asked to inform the Senate vote on the VRARA. It is my understanding that these questions were asked and answered by several other witnesses well before the Senate's 98-0 vote in favor of the VRARA. I have reviewed the responses of Professor David Canon, Professor Drew S. Days III, Professor Pamela S. Karlan, and Theodore M. Shaw, among others, and agree with the substance of their responses to Senator Cornyn's questions.

It is also my understanding that Senator Cornyn did not offer any amendments during the Judiciary Committee's markup of S. 2703, the VRARA, and that he was one of the 98 Senators who voted unanimously to renew and restore the expiring provisions of the Voting Rights Act. Apparently, Senator Cornyn was satisfied both with the continuing need for the Voting Rights Act and the congruence and proportionality of the Act to remedy voting discrimination under *City of Boerne v. Flores*. I do not believe I can offer any additional substantive information that could further enhance Senator Cornyn's apparent support for the VRARA at the time of Senate enactment on July 20, 2006. Therefore, in lieu of providing written responses to Questions 1-8, I will rely upon and incorporate by reference the written responses provided prior to the Senate vote by the witnesses that I identified above.

2. Currently, the Voting Rights Act identifies those jurisdictions subject to additional oversight by looking at voter turnout in the presidential elections of 1964, 1968, and 1972. Re-authorization of the Act in its current form would preserve these dates as the "triggers."

a. Would you support updating the coverage formula to refer to the Presidential elections of 2000 and 2004, instead of 1964, 1968, and 1972? Why or why not?

b. Would you support adding the Presidential election of 2000 and/or 2004 as well as any political subdivisions that have been subject to section 2 litigation say, in the last 5 years, to this formula in order to pick up jurisdictions that have begun discriminating since the 1970s? Why or why not?

Please see my response to Question 1.

In *City of Boerne v. Flores,* the Supreme Court indicated that Congress may not rely on data over forty years old as a basis for legislating under the Fourteenth and Fifteenth Amendments. *City of Boerne v. Flores*, 521 U.S. 507, 530 (1997). In striking down the Religious Freedom Restoration Act, the Court observed, "RFRA's legislative record lacks examples of modern instances of generally applicable laws passed because of religious bigotry."

3. Given this statement, would you support removing – at a minimum – the year 1964 from the coverage formula? Why or why not?

Please see my response to Question 1.

4. While I am still reviewing the record, it seems to me the arguments thus far focus mostly on anecdotes regarding specific covered jurisdictions – yet, for the period 1996 through 2005, the Department of Justice reviewed 54,090 Section 5 submissions and objected to 72, or 0.153 percent. What percentage of objections below 0.153 do covered jurisdictions need to achieve before Congress can let Section 5 expire? Last year, according to DOJ data, there was only 1 objection out of 4734 submissions. Is that sufficient to warrant Section 5 coverage? Why or why not?

Please see my response to Question 1.

5. In light of the lack of clear differentiation between covered jurisdictions and non-covered jurisdictions, would you support re-authorization for a term of 5 years instead of 25? Why or why not? 10 years? Why or why not?

Please see my response to Question 1.

6. Putting aside the constitutional questions with regard to overturning *Georgia v. Ashcroft* – I want to better understand some of the practical implications.

Assuming the new language in the re-authorization is adopted, would it be your view that even districts that are "influence" districts, with relatively low numbers of minority voters, should be protected under the plan? Why or why not?

Please see my response to Question 1.

7. What do the changes to the Voting Rights Act proffered in the current re-written version mean? Specifically, Section 5 of the currently proposed re-write of the Act says the following:

> **(b) Any voting qualification, or prerequisite to voting, or standard, practice, or procedure, with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.**
>
> **(c) the term 'purpose' in subsections (a) and (b) of this section shall include any discriminatory purpose.**
>
> **Please tell the committee, in a few sentences, what you believe these phrases to mean.**

Please see my response to Question 1.

8. Putting aside the constitutional questions with regard to overturning *Georgia v. Ashcroft and/or Bossier Parrish II* – I want to better understand some of the practical implications.

Assuming the new language in the re-authorization is adopted, would it be your view that even districts that are "influence" districts, with relatively low numbers of minority voters, should be protected under a plan?

Please see my response to Question 1.

9. The Court in LULAC v. Perry indicates that for purposes of Section 2, the analysis should focus on a district in isolation. In other words, the Court said that Texas could not remedy a possible Section 2 violation of "dilution" by creating a new offsetting opportunity district because the analysis must be performed in "isolation." This seems troubling. As Chief Justice Roberts pointed out:

When the question is where a fixed number of majority-minority districts should be located, the analysis should never begin by asking whether a [] violation can be made out in any one district "in isolation." In these circumstances, it is always possible to look at one area of minority population "in isolation" and see a "violation" of § 2…

For example, if a State drew three districts in a group, with 60% minority voting age population in the first two, and 40% in the third, the 40% can readily claim that their opportunities are being thwarted because they were not grouped with an additional 20% of minority voters from one of the other districts. But the remaining minority voters in the other districts would have precisely the same claim if minority voters were shifted from their districts to join the 40%.

If the analysis for Section 5 determination of "candidate of choice" are similarly decided on a district-by-district basis, how can it possibly work?

For the reasons stated in my answer to Question 1, this question is not germane to the topic of the Hearing or to passage of the VRARA. As a preliminary matter, the Supreme Court's decision only involved an interpretation of Section 2 of the Voting Rights Act,[1] not Section 5.[2] To the limited extent that the LULAC decision is relevant to Section 5, it strongly supports a twenty-five year reauthorization because of its finding of extensive voting discrimination against Latinos in Texas. Nevertheless, I will provide a brief response.

The question raised by Senator Cornyn highlights an issue that has already been addressed by the Supreme Court in *LULAC v. Perry*.[3] In assessing whether there is a violation of Section 2, the Court reaffirmed the long-standing analysis required in Section 2 cases, first established in *White v. Regester*,[4] affirmed by Congress in the 1982 reauthorization and amendments to the Voting Rights Act,[5] and reaffirmed by the Court in *Thornburg v. Gingles*.[6] This analysis requires an intense local appraisal that is focused on the impact of a given election district on a minority community's voting strength. This local appraisal is necessary because the Supreme Court has repeatedly stated that a particular election system or redistricting plan cannot be presumed to have a discriminatory effect on minority voting strength. Rather, there must be evidence that the boundaries of a given election district either fragments or over-concentrates a particular politically cohesive minority community such that it is denied an equal opportunity to participate in the political process and elect a candidate of its choice. If the Section 2

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[1] 42 U.S.C. § 1973.

[2] 42 U.S.C. § 1973c.

[3] __ U.S. __, 126 S.Ct. 2594 (2006).

[4] 412 U.S. 755 (1973).

[5] P.L. 97-205, 96 Stat. 131 (1982). *See also* S.Rep. 97-417, 97th Cong.2nd Sess. (1982) *reprinted in* 1982 U.S.C.C.A.N. 177.

[6] 478 U.S. 30 (1986).

challenge involves a discriminatory redistricting plan and the *Thornburg v. Gingles* conditions and the totality of circumstances evidentiary standards are met, then the redistricting plan must be redrawn to eliminate its discriminatory impact on the local minority community. This aforementioned analysis has been applied for nearly half a century and has not encountered any insurmountable barriers.

The hypothetical presented by Chief Justice Roberts is within the context of a Section 2 analysis. Even if a similar analysis is incorporated in the newly amended Section 5, Chief Justice Roberts' hypothetical does not create an insurmountable barrier that cannot be judicially adjudicated. First, to give full effect to Chief Justice Roberts' hypothetical, one has to assume that elections are characterized by racially polarized voting. Moreover, the levels of racially polarized voting would have to be identical in all three election districts. Practical experience suggests that completely identical levels of racially polarized voting are nearly impossible to duplicate. The most compelling reason is that elections are based upon candidates that are unique to a given election district. However, let's assume that the racially polarized voting analysis is based upon state propositions presented for voter approval that were the subject of an election in all three districts.

The next major assumption involves the totality of circumstances evidentiary standard. In order for this hypothetical to work all three election districts have to not only satisfy the same evidentiary factors but also would have to satisfy them to the same extent. For example, if there were racial appeals in one election district, then there must be the same type of racial appeals in all three election districts. Such a scenario would be nearly impossible to achieve. Quite simply, there is a tremendous variance regarding the presence of these evidentiary factors in each of these jurisdictions. In fact, this variability and the importance ascribed to each evidentiary factor were recognized by Congress as part of the political realities underpinning these types of challenges. Accordingly, Congress directed the federal court to avoid using these evidentiary factors as mechanical counting devices and to recognize that an evidentiary factor that is critical in denying minorities access to the political process in one jurisdiction may not play a similar critical role in another jurisdiction.[7] For all of these reasons, the hypothetical presented by Chief Justice Roberts is not anchored to the political realities existing in many communities.

However, even assuming that there are identical levels of racially polarized voting and that all three election districts have the same set of evidentiary factors specified in the totality of circumstances test, one also has to assume that the demographic characteristics of the three adjoining election districts are such that only two majority minority election

[7] *See supra* note 5, Senate Report 97-417, at 29, note 118 ("The Courts ordinarily have not used these factors, nor does the Committee intend them to be used, as a mechanical point counting device. The failure of plaintiff to establish any particular factor, is not rebuttal evidence of non-dilution. Rather, the provision requires the Court's overall judgment (*sic*), based on the totality of circumstances and guided by those relevant factors in the particular case, of whether the voting strength of minority voters is, in the language of *Fortson* [*v. Dorsey*, 379 U.S. 433 (1965)] and *Burns* [*v. Richardson*, 384 U.S. 73 (1966)], minimized or canceled out." (internal quotation marks omitted)), 30, note 119 ("Section 2, as amended, adopts the functional view of political process, used in *White* [*see supra* note 4] rather than the formalistic view espoused by the plurality in *Mobile* [*v. Bolden*, 446 U.S. 55 (1980)].").

districts can be created and a third district must remain at 40% minority. Such an assumption as with the previous assumptions is not warranted. The hypothetical assumes an even distribution of minority communities and a similar degree of geographic compactness. There are very few, if any, areas in the United States where such a uniform minority population distribution and concentration exist.

Only after assuming that all of the aforementioned evidentiary factors are present, that identical levels of racially polarized voting exist and that the demographics of the three election districts result in only one particular configuration, can one begin to address the hypothetical presented by Chief Justice Roberts. In addressing this hypothetical one becomes immediately aware that all of these uncertainties and practical difficulties incorporated into the hypothetical suggest that the hypothetical assumes too much. When comparing the hypothetical to the real world, there are no such factual scenarios.

Nevertheless, for purposes of addressing this hypothetical, we will assume all of the above. When presented in such a posture, the question posed by Chief Justice Roberts thus becomes, which of the two districts shall be majority minority election districts? The question posed by Chief Justice Roberts does not become non-justiciable simply because there is a Hobson's choice (another assumption) that a federal district court must resolve. The appropriate procedure under our appellate review is to defer to the District Court unless there have been errors of law or factual findings that are clearly erroneous. In addressing the hypothetical the District Court would have to conduct an intense local appraisal to determine which of the two districts would become majority minority districts. The District Court could base its decision on a variety of considerations. Since Chief Justice Roberts based his hypothetical upon speculation, we can also speculate that such a consideration might be based upon a difference in anticipated growth rates for the minority community in each of the three election districts. There may be other considerations as well, such as levels of minority voter registration and turnout.

Once the District Court decided which of the two majority districts would be created, the Supreme Court would ultimately review the decision to determine if there was an error of law committed or if the factual findings were clearly erroneous. If either of these two standards was not met and the Supreme Court concluded that an impermissible factor was utilized, the case would be remanded to the District Court for further proceedings. This is the standard procedure for adjudicating cases in our federal court system. The hypothetical presented by Chief Justice Roberts is no different from other seemingly difficult issues presented for judicial adjudication. Such a conclusion becomes even more compelling when such judicial adjudication is conducted within the context of nearly half of century of precedent that has considered similar difficult issues.

10. In a 2002 article in the Berkeley La Raza Law Journal, you wrote:

> ***"Another major obstacle primarily affecting the Latino community is the prerequisite of citizenship as a voting requirement. This, of course, is a controversial topic."***
>
> **Do you believe that the idea that only citizens should vote is "controversial?"**

In a UCLA Chicano Studies Research Center brief that you authored, entitled "Political Apartheid in California: Consequences of Excluding a Growing Noncitizen Population," you said:

> ***"Latino political empowerment has often been measured in terms of the increasing number of Latino elected officials or the elimination of discriminatory election structures. Today another critical gauge of Latino political empowerment merits a renewed focus: the issue of noncitizens and voting..."***
>
> **Again, is it your position that a requirement that one be an American citizen to vote is analogous to apartheid?**

Although Senator Cornyn has taken my comments out of context, I want to thank him for raising the very important question of restrictions on the franchise.

Our Republic has always excluded large classes of people from civic engagement and political participation: African-Americans, Asians (particularly Chinese in the West), Alaska Natives and American Indians; Latinos; women; persons without land or property; non-Protestants (particularly Catholics and Jews); illiterate persons, including those who were victims of educational discrimination; new residents to communities, which included anyone (including citizens) who had lived in a community for sometimes as much as three years. For much of our Nation's history, the number of persons who could not vote far exceeded the privileged few who could.[8]

Senator Cornyn's own State of Texas has historically imposed some of the most discriminatory limitations on the franchise. Texas is home to The White Primary Cases, a series of four decisions between 1927 and 1953 in which the United States Supreme Court struck down increasingly insidious efforts to disenfranchise African-Americans.[9] Texas has fared little better in its treatment of Latinos. In the landmark decision of *White* v. *Regester*,[10] the United States Supreme Court described the intentional efforts by Texas to adopt mechanisms that when combined with extreme racial bloc voting by Anglos,

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[8] *See generally*, Alexander Keyssar, The Right to Vote, The Contested History of Democracy in the United States (2004).

[9] *Terry v. Adams*, 345 U.S. 461 (1953); *Smith v. Allwright*, 321 U.S. 649 (1944); *Nixon v. Condon*, 286 U.S. 73 (1932); *Nixon v. Herndon*, 273 U.S. 536 (1927).

[10] *See supra* note 4.

denied Latinos an equal opportunity to elect their candidates of choice.[11] In 1975, Congress used the extensive discrimination against Latinos in Texas as the basis for extending Section 5 coverage to language minority citizens.[12]

Unfortunately, much of Texas's sad legacy of discrimination against over one-third of its citizens, African-Americans and Latinos, continues to this day.[13] Some of the strongest evidence for the recent twenty-five year renewal of the expiring provisions of the Voting Rights Act came from Texas. Since 1982, Texas has the second highest number of Section 5 objections interposed by the United States Department of Justice, including at least 107 objections, ten of which were for statewide voting changes.[14] A majority of all Section 5 objections to discriminatory voting changes in Texas have been since 1982, affecting nearly 30 percent of Texas's 254 counties, where 71.8 percent of the State's minority voting age population resides.[15] Texas also leads the nation in several categories of voting discrimination, including recent Section 5 violations and Section 2 challenges.[16] For example in 2004, Waller County was stopped from disenfranchising African-American students at Prairie View A&M who were trying to vote for two African-American students running for County office. In 2002, the City of Seguin tried to dismantle a Latino city council district and cancel the candidate-filing period to prevent Latino candidates from running in the district and winning a majority of seats. The Senate considered countless other recent examples prior to reauthorizing the Act late last month.

Limiting voting to citizens has been a more recent component of historical efforts to disenfranchise minorities. If anything, for much of our Nation's history, imposing citizenship requirements to vote was unaccepted nearly everywhere. At the time of the foundation of our Republic, "the concepts of citizenship and voting were not linked. Voting eligibility then depended primarily on property owning."[17] Every state allowed non-citizens to vote until 1814, when New Hampshire enacted the first citizenship

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[11] *See supra* note 4.

[12] *See* David H. Hunter, *The 1975 Voting Rights Act and Language Minorities*, 25 CATH. U. L. REV. 250, 254-57 (1976); S. REP. NO. 94-295, at 24-31, 37-39, *reprinted in* 1975 U.S.C.C.A.N. at 790-797, 804-06; 121 CONG. REC. H4709-4713, H4716-4718 (daily ed. June 2, 1975) (statement of Rep. Edwards); U.S. COMM'N ON CIVIL RTS., THE VOTING RIGHTS ACT: TEN YEARS AFTER 22-25, 57-59, 85-87, 97-99,103-04,108-111, 114-21, 123, 144, 160, 166, 220-30, 242-48, 251-54, 331-32 (1975).

[13] Census 2000, STF-3 and STF-4 data.

[14] NINA PERALES, LUIS FIGUEROA & CRISELDA RIVAS, THE MINORITY VOTING EXPERIENCE IN TEXAS SINCE 1982: DEMONSTRATING THE IMPORTANCE OF REAUTHORIZATION OF THE VOTING RIGHTS ACT 3, 15-16 (2006).

[15] *Id.* at 3, 15.

[16] *Id.*

[17] Paul Kleppner, "Defining Citizenship: Immigration and the Struggle for Voting Rights in Antebellum America," *in* VOTING AND THE SPIRIT OF AMERICAN DEMOCRACY 45 (Donald W. Rogers ed. 1992).

requirement.[18] As late as the Civil War, Georgia and South Carolina continued to permit non-citizens to vote.[19]

Non-Hispanic white men, who were the only elected officials at the time, tied citizenship to voting in earnest in the 1840s and 1850s as "part of a larger movement aimed at preserving native-stock culture and customs in the face of a floodtide of immigration from Europe, especially from Germany and Ireland."[20] Efforts to suppress the vote of immigrants, particularly Irish Catholics, culminated in the growth of the Native American and Know Nothing Parties. The platform for both was very similar. Each party advocated a twenty-one year probationary period prior to naturalization, and limiting voting and public office holding to native-born citizens.[21] Although they failed to achieve their goals of limiting voting to native-born citizens, the efforts of these anti-immigrant parties bore fruit by the mid-nineteenth century by restricting voting to citizens.

In response to this new citizenship requirement for voting, nearly one hundred years after the Declaration of Independence, the federal government and states worked together to limit who was eligible to become a "citizen." African-Americans were excluded until the ratification of the Fourteenth and Fifteenth Amendments in 1868 and 1870, respectively, although millions were denied the fruits of their citizenship until after the passage of the Voting Rights Act of 1965. Although women could be citizens, they were denied the franchise until ratification of the Nineteenth Amendment in 1920. American Indians were denied citizenship until the passage of the Indian Citizenship Act in 1924,[22] although many states, including Arizona, New Mexico, South Dakota, and Utah effectively disenfranchised them until the 1960s and the 1970s.[23] The racist exclusion of many so-called "undesirable" groups, especially Chinese, Filipinos, and Japanese, was not lifted until 1952, when Congress enacted the Walter-McCarran Act that "removed the bar to immigration and citizenship for races that had been denied those privileges prior to that time."[24] In this context, it is evident that citizenship and naturalization requirements have routinely been used to achieve political apartheid for millions of Americans.

Unfortunately, even today we continue to see efforts to use our naturalization laws to deter the influx of "undesirables," particularly Latinos.

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[18] *Id.*

[19] *Id.*

[20] *Id.* at 46.

[21] *Id.* at 48-50.

[22] Act of June 2, 1924, ch. 233, 43 Stat. 253.

[23] *See* Jeanette Wolfley, "Native American Political Participation," *in* VOTING RIGHTS IN AMERICA: CONTINUING THE QUEST FOR FULL PARTICIPATION 153, 157-63 (Karen McGill Arrington & William L. Taylor eds. 1992).

[24] Karen McGill Arrington, "The Struggle to Gain the Right to Vote: 1787-1965, *in* VOTING RIGHTS IN AMERICA at 25, 34.

Senator Cornyn also inquires whether "the idea that only citizens should vote is 'controversial.'" The Merriam-Webster dictionary defines a "controversy" as an issue that is "disputable" or "a discussion marked especially by the expression of opposing views."[25] To answer the question therefore requires a determination of whether tying citizenship to voting is universally accepted. It clearly is not.

As I have detailed above, citizenship has not been accepted as a prerequisite to voting for much of our Nation's history. It did not become a requirement until the federal and state governments decided to use it to suppress political participation by undesirable groups, including Latinos. Even today, citizenship is not a universal requirement within the United States. For example, six towns in Maryland, including Takoma Park, permit resident aliens to vote in local elections.[26] I have documented other examples in my articles cited by Senator Cornyn in his question.

Moreover, citizenship requirements for voting are clearly out of step with the emerging trend among the world's other democracies. Today, some forty nations allow some form of resident alien voting. The trend accelerated in 1992, when members of the European Union "agreed that citizens who were living in other member nations could vote in municipal and European Parliament elections of the host country."[27] As noted international law scholars T. Alexander Aleinikoff and Douglas Klusmeyer observed in their book, *Citizenship Policies for an Age of Migration*: "Why should [a European Union] citizen who has just recently moved to another member state enjoy a right to vote in a local election while a third-country national who has lived there for years but does not yet qualify for naturalization is excluded from participating in his or her city?"[28] Indeed, since 2004, Austria, Belgium, and Rome have adopted laws permitting resident alien voting.[29] These trends suggest that restricting the franchise to citizens is far from an accepted notion, and therefore is indisputably "controversial" according to the dictionary definition.

In this day and age when we are sending resident aliens and their sons and daughters overseas to fight and die for their country, it is wrong to deny these Americans the right to vote. As tax-paying residents of their communities who contribute to our economy and have made and will continue to make the ultimate sacrifice for our Nation, they have already proven that they are "citizens" in everything but name.

Finally, as to the question of whether it is my "position that a requirement that one be an American citizen to vote is analogous to apartheid," Senator Cornyn misconstrues the main point of the article. First, the article describes that due to laws enacted by States

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[25] *See* http://www.m-w.com/dictionary/controversy.

[26] *See* David C. Earnest, "Noncitizen Voting Rights: A Survey of an Emerging Democratic Norm," paper given at the 2003 annual convention of the American Political Science Association in Philadelphia (August 29, 2003), at 2 n.4.

[27] *See http://www.immigrantvoting.org/material/world.html*.

[28] *Id.*

[29] *Id.*

limiting the right to vote to citizens, there is an increasing number of adult non-citizens who are excluded from participating in the electoral process. This process is very important to local communities. This process results in the election of officials who enact ordinances and adopt policies. These ordinances and policies have a direct impact on the daily lives of Latina/o communities, both citizen and non-citizen. Both citizens and non-citizens are part of the social and economic fabric of local communities.

In addition, both citizens and non-citizens pay taxes and contribute to the economic well-being of local communities. Yet non-citizens are prevented from electing those individuals who will directly affect the well-being of their communities. In effect, there is taxation without representation and a denial of a non-citizen's right to petition their government for a redress of grievances. Accordingly, when there is a growing number of non-citizens contributing in so many ways to their local communities and are excluded from electoral participation, there will be an increase in the political alienation of these communities. Such political alienation will not contribute to the social cohesiveness that is essential for a smooth functioning and vibrant body politic. The absence of such cohesiveness should concern all of us.

Within this context, the reference to political apartheid is an appropriate description. As noted in my article, there are numerous communities where over half of the adult population is non-citizen. In some instances the percentage of adult non-citizens in California approaches 65% of the total adult population. A similar observation can be made with respect to Senator Cornyn's State of Texas. As the following table[30] illustrates, in Texas there are 147 cities that have a 10% or more adult non-citizen population, 42 cities that have a 20% or more adult non-citizen population, 17 cities that have a 30% or more adult non-citizen population, and 3 cities that have a 50% or more adult non-citizen population.

	Texas Municipality	%Non-Citizen 18 Years Old & Over
1	Cactus city, Moore County	63.7%
2	El Cenizo city, Webb County	51.3%
3	Presidio city, Presidio County	50.2%
4	Cockrell Hill city, Dallas County	46.3%
5	New Summerfield city, Cherokee County	45.9%
6	Hidalgo city, Hidalgo County	42.9%
7	Rio Bravo city, Webb County	42.1%
8	Progreso city, Hidalgo County	40.7%
9	Sullivan City city, Hidalgo County	40.6%
10	Roma city, Starr County	37.1%
11	South Houston city, Harris County	36.1%

[30] U.S. Census Bureau, American Factfinder, Data Sets, Summary File 4, Table GCT-P16, Citizenship Status for the Population 18 Years and Over: 2000.

	Texas Municipality	%Non-Citizen 18 Years Old & Over
12	La Joya city, Hidalgo County	34.6%
13	Alton city, Hidalgo County	33.5%
14	San Juan city, Hidalgo County	33.4%
15	Palmhurst city, Hidalgo County	31.7%
16	Mobile City city, Rockwall County	31.3%
17	Bovina city, Parmer County	30.2%
18	Galena Park city, Harris County	29.9%
19	Pharr city, Hidalgo County	29.8%
20	Palmview city, Hidalgo County	29.3%
21	Jacinto City city, Harris County	29.2%
22	Socorro city, El Paso County	28.3%
23	Brownsville city, Cameron County	26.8%
24	Penitas city, Hidalgo County	26.6%
25	Eagle Pass city, Maverick County	26.1%
26	Dell City city, Hudspeth County	25.1%
27	Laredo city, Webb County	24.8%
28	Irving city, Dallas County	24.3%
29	Arcola city, Fort Bend County	23.9%
30	Rio Grande City city, Starr County	23.8%
31	Houston city	22.9%
32	Port Isabel city, Cameron County	22.9%
33	Dallas city	22.7%
34	Alamo city, Hidalgo County	22.5%
35	Los Fresnos city, Cameron County	22.4%
36	Farmers Branch city, Dallas County	22.2%
37	McAllen city, Hidalgo County	21.9%
38	Donna city, Hidalgo County	21.8%
39	Mission city, Hidalgo County	21.2%
40	Conroe city, Montgomery County	20.8%
41	Mount Pleasant city, Titus County	20.6%
42	Richmond city, Fort Bend County	20.0%
43	Wilmer city, Dallas County	19.8%
44	Pasadena city, Harris County	19.7%
45	Webster city, Harris County	19.0%
46	Industry city, Austin County	19.0%
47	Del Rio city, Val Verde County	18.9%
48	Stafford city	18.7%
49	Edinburg city, Hidalgo County	18.4%

	Texas Municipality	%Non-Citizen 18 Years Old & Over
50	El Paso city, El Paso County	18.3%
51	North Cleveland city, Liberty County	18.3%
52	La Feria city, Cameron County	18.3%
53	Anna city, Collin County	18.2%
54	Palacios city, Matagorda County	17.9%
55	Perryton city, Ochiltree County	17.7%
56	Brookside Village city, Brazoria County	17.6%
57	Freeport city, Brazoria County	17.5%
58	Elgin city	17.3%
59	Garland city	17.3%
60	Big Lake city, Reagan County	17.1%
61	Edcouch city, Hidalgo County	17.1%
62	Hart city, Castro County	16.2%
63	Keene city, Johnson County	16.0%
64	Winfield city, Titus County	16.0%
65	Friona city, Parmer County	15.7%
66	Carrollton city	15.7%
67	Ennis city, Ellis County	15.5%
68	Clute city, Brazoria County	15.4%
69	Weslaco city, Hidalgo County	15.2%
70	San Benito city, Cameron County	14.9%
71	Kemah city, Galveston County	14.8%
72	Gruver city, Hansford County	14.8%
73	Rosenberg city, Fort Bend County	14.6%
74	Pittsburg city, Camp County	14.6%
75	Nixon city	14.4%
76	Brookshire city, Waller County	14.3%
77	Dumas city, Moore County	14.1%
78	Kermit city, Winkler County	14.0%
79	La Grulla city, Starr County	14.0%
80	Center city, Shelby County	13.8%
81	Richardson city	13.8%
82	Hempstead city, Waller County	13.8%
83	Austin city	13.8%
84	Grand Prairie city	13.8%
85	Brackettville city, Kinney County	13.8%
86	Waelder city, Gonzales County	13.8%
87	Fort Worth city	13.7%

	Texas Municipality	%Non-Citizen 18 Years Old & Over
88	Lyford city, Willacy County	13.7%
89	Morgan city, Bosque County	13.6%
90	Royse City city	13.6%
91	Baytown city	13.5%
92	Muleshoe city, Bailey County	13.5%
93	Turkey city, Hall County	13.5%
94	Dublin city, Erath County	13.5%
95	Ackerly city	13.5%
96	San Perlita city, Willacy County	13.4%
97	Mercedes city, Hidalgo County	13.1%
98	Bardwell city, Ellis County	13.1%
99	Elsa city, Hidalgo County	13.1%
100	Sunray city, Moore County	13.1%
101	Buffalo city, Leon County	13.0%
102	Bridgeport city, Wise County	13.0%
103	Jacksonville city, Cherokee County	13.0%
104	Balcones Heights city, Bexar County	12.9%
105	Corsicana city, Navarro County	12.9%
106	Humble city, Harris County	12.9%
107	Sansom Park city, Tarrant County	12.8%
108	Rio Hondo city, Cameron County	12.7%
109	Plano city	12.7%
110	Pecos city, Reeves County	12.7%
111	Arlington city, Tarrant County	12.5%
112	Harlingen city, Cameron County	12.3%
113	Hillsboro city, Hill County	12.3%
114	Beverly Hills city, McLennan County	12.2%
115	Eagle Lake city, Colorado County	12.1%
116	McKinney city, Collin County	12.1%
117	Katy city	12.1%
118	Hutchins city, Dallas County	12.0%
119	Rice city, Navarro County	11.9%
120	Willis city, Montgomery County	11.9%
121	Haltom City city, Tarrant County	11.8%
122	Crane city, Crane County	11.8%
123	Spearman city, Hansford County	11.7%
124	Horizon City city, El Paso County	11.5%
125	Kaufman city, Kaufman County	11.4%

	Texas Municipality	%Non-Citizen 18 Years Old & Over
126	Diboll city, Angelina County	11.4%
127	Decatur city, Wise County	11.3%
128	Cleveland city, Liberty County	11.3%
129	Giddings city, Lee County	11.2%
130	Uvalde city, Uvalde County	11.2%
131	Iraan city, Pecos County	11.2%
132	Sealy city, Austin County	11.2%
133	Uhland city	11.1%
134	Sugar Land city, Fort Bend County	11.0%
135	McGregor city	11.0%
136	Morton city, Cochran County	11.0%
137	Stratford city, Sherman County	10.8%
138	Hedwig Village city, Harris County	10.8%
139	Bryan city, Brazos County	10.6%
140	Lewisville city	10.5%
141	Euless city, Tarrant County	10.4%
142	Seagraves city, Gaines County	10.4%
143	Dickinson city, Galveston County	10.2%
144	Gunter city, Grayson County	10.2%
145	Marfa city, Presidio County	10.1%
146	Manor city, Travis County	10.1%
147	Athens city, Henderson County	10.1%

Continuing to exclude a community that is becoming a larger proportion of the adult population will produce a barrier between these two communities that can be described as political separatism. It also is inconsistent with efforts by many localities in the United States and a growing number of democracies around the world to ensure that all adult residents of their communities have a voice in their governments.

Conclusion

In closing, I want to thank the Chairman for the opportunity to testify and to respond to these questions. As I explained in my response to Question 1, no post-enactment evidence can inform the Senate's vote on the VRARA, which occurred with the unanimous passage of S. 2703 on July 20, 2006.

I would commend the Senate Judiciary Committee to continue to exercise oversight over enforcement of the Voting Rights Act by the United States Department of Justice. In that vein, I am attaching two articles that show that the Committee must remain vigilant in ensuring that the Department addresses widespread non-compliance with the Act. The

first piece, an article I prepared entitled "*Report of Section 5 Non-Compliance: The Absence of Federal Enforcement*," identifies more than two hundred voting changes in Merced County, California, that have not been submitted for Section 5 approval. The second report, by the National Association of Latino Elected and Appointed Officials (NALEO), identifies several examples of voting discrimination and suggested ways to improve enforcement of the Act's renewed provisions.