

**Answers by Juan Cartagena,
General Counsel,
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To Written Questions From Members
of the Senate Judiciary Committee
8 June 2006**

**Senator John Cornyn
Questions for Witnesses for ALL Voting Rights Act Hearings
May – June 2006**

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.

Answer: I respectfully submit that the question before Congress presently is whether the record supports reauthorization in the states that are covered; comparisons between minorities and non-minorities in the covered jurisdictions are part of such an inquiry. Please see my answer to Question 2(a) and (b), below.

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?

Answer: The purpose of the hearings on the reauthorization of the VRA to date has been to focus, in part, on the covered jurisdictions: What has been the state of compliance with Section 5 in those jurisdictions? How will findings of voter discrimination under other provisions of the Act inform Congress about the full picture of compliance with VRA guarantees? And whether, given their history of voter discrimination, those jurisdictions should continue to be monitored in their implementation of new voting laws, policies and procedures. For Section 5 purposes, my focus in these hearings has been on only one covered jurisdiction: New York City – specifically the 3 counties covered for Section 5 and 2 counties additionally covered under Section 4(f)(4) of the VRA. These jurisdictions were covered as a result of the presidential elections of 1972. But more importantly, as I’ve outlined in my report “Voting Rights in New York, 1982-2006,” New York continued to violate Section 5 (and other sections of the Act as well) in the relevant period covered. The history of voter discrimination in New York (outlined in Appendix E to my report) that led to its coverage for Section 5 purposes is premised on the discriminatory use of New York’s English literacy requirement for voting and outlined in the seminal case, Katzenbach v. Morgan. Accordingly, that history, coupled with a documented record of noncompliance with VRA guarantees, supports our position that Section 5 coverage is still necessary in New York City.

Additionally, I would add that in previous amendments to the VRA, Congress has sought to add elections to the triggering formulae; not substitute one for another. The question posed herein about adding elections, presupposes that jurisdictions newly covered have a history of voter related discrimination or other indicia of voter discrimination that would warrant federal intervention. Such a record has not been developed to date for any jurisdiction that may fall under any newly devised triggering formula – but clearly exists for New York City, in my opinion.

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?

Answer: Please refer to my answer to Question 2 (a) and (b), above.

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 0.13 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?

Answer: I am not entirely clear on what Senator Cornyn means by “anecdotes.” If the Senator means that the record to date contains mostly stories about voting rights abuses that are unsubstantiated, I would strongly disagree. There is documented evidence of voter discrimination in the record that warrants reauthorization. The matters I cite in the report “Voting Rights in New York, 1982-2006” contain: a) specific findings of racially polarized voting in New York that work in conjunction with voting structures and procedures to fence out, or minimize the ability of racial and language minorities to have an equal opportunity to elect candidates of their choice (see, pp. 20–26 of the Report); b) detailed summaries of the denials of preclearance that stopped the implementation of specific, discriminatory measures proposed by New York authorities in the relevant time period (pp. 4-6); c) descriptions of specific cases that settled or resulted in findings of voter discrimination in related areas to the VRA (pp. 18-20); and d) numerous occasions where language assistance was not fully provided that speak to the issues of Section 4(f)(4) compliance .

In addition, and as I indicated to the Senator in my testimony on May 10, 2006, the effectiveness of the administrative preclearance provisions of Section 5 cannot be evaluated by merely looking at the number of objections issued compared to the number of submissions made. The administrative preclearance process also impedes the implementation of discriminatory measures under Section 5 through the use of More Information Requests from the Department of Justice in ways that exceed the number of objections interposed by the Attorney General. In the data analyzed by researchers from Stanford University (cited in my report on pp. 10-12), New York’s three covered counties rank 6th out of 19 jurisdictions studied, with the highest number of changes prevented by the issuance of More Information Requests letters.

Finally, it is important to consider how Section 5 preclearance stops discriminatory measures outright in light of the magnitude of the number of voters protected in a jurisdiction as large as New York City. Section 5’s prophylactic reach is enormous in the city this size. Thus, in 1994 when the Attorney General interposed an objection because the City failed to translate candidate’s names and instructions on voter machines into the Chinese language, it protected language minority voters in the city with the largest number of Asian Americans in the country. In 1999 when the city sought to switch the method of counting votes cast in community school board elections, the Attorney General interposed an objection on behalf of all African-American, Latino, and Asian-American voter, numbering in the millions. Given the numbers at stake, and the preventative nature of the Section 5 process, the low number of objections demonstrates that the provision is effective – not that it’s somehow obsolete, or unnecessary.

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?

Answer: We would support an extension for the full 25 year period. The bailout provisions of the VRA are more than sufficient to allay any concerns about the constitutional reach of Congress in an area of fundamental rights under both the 14th and 15th Amendments. These bailout provisions are fully available to jurisdictions that can demonstrate full compliance and the need to avoid Section 5 review well in advance of the 25 year extension period. I would also add that the record before Congress in the 1982 VRA amendments fully supported a 25 year extension at that time and was cited favorably by the U.S. Supreme Court for that proposition. See, Borne v. Flores, 521 U.S. 507; Lopez v. Monterrey, 525 U.S. 266. The record before this Congress today, with hundreds of cases cited, voluminous documentation of voter discrimination, and specific evidence of voter discrimination, exceeds, in all likelihood, the record before Congress in 1982.

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?

Answer: The proper focus of Section 5 where redistricting is concerned, should be on minority opportunities to elect candidates of choice wherever those opportunities exist. This is the purpose of the VRA reauthorization proposal to address the interpretation of Section 5 in the Georgia v. Ashcroft case. The point at which the ability-to-elect exists varies and must be determined on a case-by-case, locality-by-locality basis. The levels of racially polarized voting are critical in this regard – and those too, by their nature, are case specific. The proposed language re-establishes the pre-Georgia v. Ashcroft standard that focused on reductions in the ability-to-elect opportunities and clarifies that, in the Section 5 context, jurisdictions will not be free to trade the ability-to-elect for influence – defined by the Supreme Court as something that less than ability to elect. In general, and again in the absence of case-specific conditions, the pre-Georgia v. Ashcroft standard proposed herein, and which I support, would not account for influence districts.

Ability-to-elect districts are critical to the Latino community at this time. Indeed, as I and other writers have noted, the bulk of the Georgia v. Ashcroft debate going on nationally fails to account for how the new Supreme Court interpretation affects Latino voting strength; indeed it appears to threaten the very gains that have been made over the years. See, Cartagena, J. “Latinos and Section 5 of the Voting Rights Act: Beyond Black and White,” 18 National Black Law Journal (No. 2) 201 (2005)(appended to my testimony before this Committee.); Alvaro Bedoya, “The Unforeseen Effects of Georgia v. Ashcroft on the Latino Community,” 115 Yale Law Journal 2112 (2006). Latinos are rarely elected outside Latino-majority districts (where they clearly have an ability to elect), such that these districts are critical to their ability to integrate the halls of

legislative power, as opposed to the unsubstantiated and purported benefits to Latinos of coalitional or influence districts. *Bedoya, A., supra*, 115 *Yale Law Journal* at 2136. Moreover, Latinos residing in Section 5 covered jurisdictions, 11.2 million, are quickly approaching the number of African-Americans living in covered jurisdictions (12.7 million) signifying that Section 5 – its reauthorization and restoration – is not merely a black-white issue. *Id.* at 2121-2128, tbl. 1. This provides additional justification for the proposed section to restore Section 5 review to a pre-*Georgia v. Ashcroft* standard.

Questions from Senator Tom Coburn
VRA Hearing May 10, 2006

For Cartagena

1. Can you each give one example of a covered jurisdiction denying a minority the right to vote over the last ten years?

Answer: As the Senator is aware, vote denial is only one aspect of the protections guaranteed to racial and language minorities under the VRA. Vote dilution, and its multiple manifestations, has made up the bulk of voter discrimination examples in the only covered jurisdiction that I have studied in depth for my testimony: New York City. Nonetheless, there are significant numbers of vote denial examples in the covered counties of New York City when it comes to language assistance – or more accurately the failure to fully provide for language assistance in voting for language minority citizens. In particular, there are specific examples of how Asian American voters were turned away from the polls because of the failure to comply with the VRA and/or intimidation tactics on Election Day. I respectfully refer the Senator to pages 13-17 of my report “Voting Rights in New York, 1982-2006,” (along with Appendix A of the report) which was attached to my testimony to this Committee.

2. Would you support creating a de minimis exception to pre-clearance to focus enforcement efforts where they are needed most? For example, if a polling place is moved less than one-tenth of a mile, DOJ will not review the move unless a voter complains.

Answer: I would not. Section 5 preclearance review is ultimately a fact intensive endeavor into numerous factors that may lead to a proper determination that the submitting jurisdiction has failed to carry its burden that a polling site change is free of discriminatory purpose or effect. In cities like New York with high residential segregation, buildings that house polling sites may very well have negative connotations associated with them, or are viewed in the minority community as places that cater only, or primarily, to whites. The multiple examples of racial violence in New York City, or police brutality, speak to areas of the City where minorities may not be welcomed. When those factors are present, changes in polling sites may result in unequal opportunities to participate – a circumstance that I would

never consider “de minimis.” My own experience is that the Department of Justice will contact my office for information on changes – including polling site changes. When I cannot offer any further information about potential problems, they invariably preclear. Accordingly, the burden should still remain on the submitting authority – and that burden is not insurmountable.

Hearing on S.2703, the Voting Rights Acts Reauthorization and Amendments

Questions for Juan Cartagena

Submitted by Senator Patrick Leahy

May 17, 2006

1. You are the author of a report, "Voting Rights in New York, 1982-2006: A Report of RenewtheVRA.org," which was included in the record in the House of Representatives. What impact does enforcement of Section 203 of the Voting Rights Act have on language minority participation in elections? Can you point to specific examples from New York or elsewhere?

Answer: Enforcement of the guarantees of Section 203 have, only until recently, been relegated to a small cadre of private attorneys general who must attend to a host of multiple voter discrimination problems for citizens of this country for whom English is a second language. It is clear that enforcement and monitoring are critical to full compliance with the VRA. In New Jersey (cited in my testimony before the House in November 2005) enforcement was critical to establishing access to the voting booth during Election Day challenge procedures (in the Vargas v. Calabrese litigation) and to providing translated written materials for voters in Passaic County (as per the U.S. v. Passaic City litigation). The latter resulted in the deployment of 454 federal observers to ensure compliance and prevent intimidation against voters who merely sought access to materials and assistance in a language they could understand.

In New York enforcement of the language assistance guarantees resides in the leverage granted language minority citizens in the Section 5 preclearance process, in the request to the Attorney General for the deployment of federal observers, and in lawsuits alleging violations of either Section 203 or Section 4(f)(4) of the Act. Thus, the Attorney General interposed objections under Section 5 against efforts by New York City that: a) Inadequately provided language assistance to Chinese-American voters (Aug. 9, 1993); and b) Failed to translate candidate's names and machine operating instructions for the benefit of Chinese-American voters (May 13, 1994). Requests to the Attorney General to deploy federal observers for VRA compliance resulted in the deployment of 881 observers from 1985 to 2004 to monitor elections in Bronx, Kings, New York, Queens, and Suffolk counties. Specifically, observers were necessary to force compliance with Section 203 guarantees on multiple occasions in the same time period including: ten instances for Chinese language compliance alone; seven instances for both Spanish and Chinese language compliance; and two instances for Spanish and Korean language compliance. For citizens in need of Spanish language assistance, the following elections were also the subject of federal intervention: September 2001 (Kings & New York); October 2001 (Bronx) and September 2004 (Queens). See, "Voting Rights in New York, 1982-2006," pp. 12-18. Litigation in New York by the Department of Justice was required in both Suffolk and Westchester counties. See, U.S. v. Suffolk County; U.S. v. Westchester County; U.S. v. Brentwood Union Free District ("Voting Rights in New York, 1982-2006, pp. 17-18). Finally, private attorneys general in New York have used the courts to enforce these protections for American citizens. See, Campaign For A Progressive Bronx v. Black and Chinatown Voter Education Alliance v. Ravitz (pending) ("Voting Rights in New York, 1982-2006, pp. 19-20, 15).

Finally, there is documented evidence that language assistance for Latino and Asian-American citizens in six counties in New York have salutary effects – namely the positive correlation between language assistance and increased voter registration in these counties. The study (cited in my Report on p. 14) indicates that even after controlling for other factors that influence registration, the use of ballots and registration materials in the covered language was significantly correlated to increased registration levels for both Spanish and Chinese-speaking voters. This corresponds to the numerous examples cited in Appendix A of the Report where Asian American voters surveyed consistently pointed to the need to have language assistance on Election Day.

2. What voting practice, procedures, and educational barriers demonstrate the continued need for Section 203?

Answer: There is significant evidence of disparities and barriers to the full participation of American citizens for whom English is a second language throughout the record before this Congress. I rely, for the purposes of this answer, on the testimony I gave to the House Committee on the Judiciary in November 2005, the report I authored (“Voting Rights in New York, 1982-2006”), the important report on practices of election authorities subject to Sections 203 and 4(f)(4) by Professors James Tucker and Rodolfo Espino (“Minority Language Assistance Practices in Public Elections” March 2006) and the testimony of Prof. Tucker before the House Committee on the Judiciary in May 2006 on this very issue. For Latino citizens in the U.S. the factors that led to the passage of Sections 203 and 4(f)(4) are still present today: educational attainment still lags far behind their white or black counterparts; illiteracy rates are far above national averages; 75% of them (compared to 18% nationwide) speak a language other than English at home; and Latino voter registration rates are significantly lower than black or white registration rates nationally (in the November 2004 elections, using Citizenship Voting Age Population data, Latinos are registered to vote at a rate of 57.9% or 17.3 points below whites (75.1%) and 10.7 points below blacks (68.6%)). Of the population 25 years and older, 80% are high school graduates and 24% have bachelor’s degrees – the corresponding rates for Latinos in this country are 52% and 10%. As recently as 2001 elections in New York, the City Board of Elections was short 33% of the Spanish interpreters it needed. Similar and more egregious barriers to full access to the voting booth for Latino voters in New York outside of New York City, Passaic County, New Jersey and Becks County, Pennsylvania have been documented and litigated by the Voting Rights Section of the Department of Justice, at length.

This evidence of persistent disparities and barriers is clearly present when one conflates all language minority citizens protected by the VRA together. Thus, (1) there are very high LEP rates among voting-age citizens in the covered jurisdictions as high as 13.1% of the citizens of voting age population, as per the Tucker/Espino report; (2) according to the July 2002 Census determination, reported in the Tucker/Espino report, these LEP voting-age citizens suffer from very high illiteracy rates: on average, it is 18.8 percent, nearly fourteen times the national rate, for all of the group and highest among elderly Alaskan Natives and American Indians; (3) these high LEP and illiteracy rates have resulted from unequal educational opportunities, as documented by the courts in findings of educational discrimination as per the testimony of Prof. Tucker before the House in May of this year. Equally important is the documented record of flagrant noncompliance with Sections 203

and 4(f)(4) – perpetuating barriers that Congress sought to eradicate years ago. Thus, the Tucker / Espino report shows that 19.4 of the jurisdictions surveyed, self-reported that they provide no language assistance and 14% of all jurisdictions admitted to providing only bilingual written materials.

3. We have heard testimony that a minority of actions brought to enforce Section 203 have been in the last three years. Was there insufficient enforcement of Section 203 prior to that time? If so, how does the lack of enforcement demonstrate the continuing need for Section 203?

Answer: In my opinion, there was insufficient enforcement of Section 203 requirements in the period of time in which the Department of Justice became actively engaged. Indeed, given the need, the breadth of coverage, and the empirical evidence on non-compliance generally (see, Tucker & Espino and their Arizona State University study cited above and in my testimony to this Committee), there is even insufficient enforcement right now. To allow Section 203 to lapse would, in effect, reward jurisdictions who have yet to fully comply with its mandates – all to the detriment of Latino and other language minority citizens. Finally, lack of enforcement contributes to the lower voter registration rates by Latino citizens of the U.S. for whom English is a second language – as cited above in my answer to question 2.

4. Why does Section 203 remain necessary in states with parallel laws that require language assistance, such as California, New Mexico, and New Jersey?

*Answer: In my years of litigating VRA cases since 1981, I am unaware of any actions taken by either the New Jersey or New York Attorney General's office to force compliance with any equivalent state election code mandate for language assistance. Indeed, the office of the New Jersey State Attorney General has been designated as the Chief Election Office of the state for both National Voter Registration Act and Help America Vote Act purposes – meaning that it must police itself. Section 203 is necessary because it allows private attorneys general to force compliance to the extent their limited resources allow. Parallel state laws are either antiquated (as in New Jersey) or simply ignored by county election authorities. Moreover, in 1975 when Section 203 was enacted in 1975, only seven states required that bilingual materials and/or language assistance be provided to limited-English proficient voters: California; Connecticut; Florida; Massachusetts; New Mexico; New Jersey; and Pennsylvania. [Source: S. REP. NO. 94-295, 94th Cong., 1st Sess. 33 n.35 (1975), reprinted in 1975 U.S.C.C.A.N. 799-800 n.35]. Nonetheless, six of the seven states have been sued repeatedly to force compliance with 203 – effectively admitting noncompliance or having been found to violate the VRA. These include: **California:** United States v. City of Azusa, CA (C.D. Cal. 2005); United States v. City of Paramount, CA (C.D. Cal. 2005); United States v. City of Rosemead, CA (C.D. Cal. 2005); United States v. San Benito County (N.D. Cal. 2004); United States v. San Diego County (S.D. Cal. 2004); United States v. Ventura County (C.D. Cal. 2004); United States v. Alameda County (N.D. Cal. 1995); United States v. City and County of San Francisco (N.D. Cal. 1978). **Florida:** United States v. Orange County (M.D. Fla. 2002); United States v. Metropolitan Dade County (S.D. Fla. 1993). **Massachusetts:** United States v. City of Boston, MA (D. Mass. 2005); United States v. City of*

Lawrence (D. Mass. 1998). **New Jersey:** *United States v. Passaic City and Passaic County* (D.N.J. 1999); *Vargas v. Calabrese* (D.N.J. 1990); *Marquez v. Falcey* (D.N.J. 1973). **New Mexico:** *United States v. Bernalillo County* (D. N.M. 1998); *United States v. Socorro County* (D. N.M. 1993); *United States v. Cibola County* (D. N.M. 1993); *United States v. State of New Mexico and Sandoval County* (D. N.M. 1988); *United States v. McKinley County* (D. N.M. 1986); *United States v. San Juan County* (D. N.M. 1979). **Pennsylvania:** *United States v. Berks County*, 277 F. Supp.2d 570 (E.D. Pa. 2003); *Arroyo v. Tucker*, 372 F. Supp. 764 (E.D. Pa. 1974).

5. What evidence supports extension of Section 4(f) (4) coverage in the three states covered in whole and the six states covered in part by that Section? Why is coverage under Section 5 necessary in those states?

Answer: Congress enacted Section 4(f)(4) in 1975 by amending the triggering mechanisms for Section 5 coverage to include within its definition of “test or device” the use of English only election materials under certain circumstances. Those limited jurisdictions (2 of the 3 Section 5 counties in New York are also covered under Section 4(f)(4), had a record of demonstrating more severe forms of voter discrimination. In addition to providing language assistance for the applicable language minority group, these jurisdictions were also separately covered for Section 5 preclearance and also subject to the federal observer provisions.

I respectfully refer the Senator to my Report for the 4(f)(4) jurisdictions located in New York. The numerous objections interposed by the Attorney General on behalf of Latino voters (along with withdrawals occasioned by the issuance of More Information Request letters) speak to the continued need for 4(f)(4) coverage in that jurisdiction. Indeed, in New York alone over 881 federal observers were deployed from 1985 to 2004 in large part to address language minority access.

Additional evidence of the need for Section 4(f)(4) coverage exists in the report of the National Commission on the Voting Rights Act “Protecting Minority Rights: The Voting Rights Act at Work, 1982-2005 (February 2006) (available at www.votingrightsact.org).

6. I would like to better understand the relationship between Section 203 and Section 5 of the Voting Rights Act. How does Section 5 pre-clearance protect language minority citizens from discriminatory voting changes? Why does pre-clearance need to be applied to certain jurisdictions with language minority populations?

Answer: In some ways the preclearance experience in New York speaks to this very issue. Asian-American voters primarily (though not exclusively) have benefited from the interplay of Section 203 monitoring and enforcement measures in the Section 5 preclearance process. The dynamics between compliance with these two distinct provisions, along with the tools inherent in federal observer coverage, has resulted in a better understanding of the relationship of these provisions in New York City. As an example, I respectfully refer the Senator to the May 13, 1994 denial of preclearance cited on page 6 of my Report.

7. How does the “pocket trigger” in Section 3(a) of the Act ensure that Section 5 pre-clearance applies to jurisdiction where it is needed?

Answer: Section 3(a) authorizes federal courts as part of a voting rights action to certify a jurisdiction for examiner and observer coverage to prevent unconstitutional racial vote discrimination. Section 3(c)—a permanent provision—allows a court which has found a voting rights violation under the Fourteenth or Fifteenth Amendment to require a jurisdiction not subject to Section 5 to submit certain future election changes to the Attorney General for preclearance for an “appropriate” period of time. Violations of the 14th and 15th Amendments, as the Senator is aware, are premised on a finding of intentional discrimination. This so-called “pocket trigger” of preclearance coverage has been applied to the state of New Mexico and has resulted in the Attorney General interposing an objection under this court-ordered authority, during this limited period.. The pocket trigger has also been applied in the state of Arkansas; Escambia County, Florida; Buffalo County, South Dakota; and Cicero, Illinois. The provision provides an important deterrent to voter discrimination, appropriately limited to court order and supervision, and capable of addressing egregious violations of the Act in limited, specific jurisdictions.

**Senator Kennedy
Voting Rights Act
Written Question for May 9 and May 10 Witnesses**

Juan Cartagena

1. When most people talk about the Voting Rights Act and Section 5, they’re referring to the impact of the Act on the South. Please describe how the expiring provisions of the Act have affected political participation in New York City, and whether these provisions are still needed in the city?

Answer: The Senator from Massachusetts poses an interesting question that has been the subject of my scholarship for some time now. Stemming directly from the efforts of New York

Senators Robert Kennedy and Jacob Javits, a bipartisan effort in the Senate in 1965, clearly evidenced the need to consider voter discrimination issues outside the Deep South. The result was Section 4(e) of the Voting Rights Act of 1965 – a permanent provision directly aimed to cure voting discrimination against certain Latino citizens (i.e., Puerto Ricans) and the precursor to the panoply of language assistance provisions for language minority citizens ten years later in 1975. As a result, Section 4(e) specifically tailored to fulfill the guarantees of equality for Puerto Rican voters in the United States, set the stage for both Section 5 coverage, Section 4(f)(4) coverage and Section 203 coverage in New York. (I respectfully refer the Senator to my article “Latinos and Section 5 of the Voting Rights Act: Beyond Black and White,” 18 National Black Law Journal (No. 2) 201 (2005) appended to my testimony before this Committee.)

The impact of the expiring provisions of the VRA on the fair and full representation of racial and language minorities in New York is the subject of the Report I submitted to the House Committee on the Judiciary. I conclude in that report that this impact is enormously important for African-American, Latino, and Asian-American voters of the City measured in many ways, not the least of which is the ability of the expiring provisions to overcome racially polarized voting in the City and measured as well by the breadth of preclearance denials and submission withdrawals made by election authorities therein. The expiring provisions on language assistance are also critical for Asian-American and Latino voters even today, as documented in the Report. And the provisions on deploying federal observers – 881 observers were required to ensure compliance and stop voter intimidation from 1985 to 2004 alone! – are also critically important to enforce the guarantees of the 14th and 15th Amendments to the Constitution. In a City with over 5,700 election districts, 6,400 voting machines and 25,000 poll workers on any given Election Day, the task of ensuring fairness and non-discrimination cannot be left to the resources of a limited cadre of private attorneys general – only the weight of federal interventions, still needed today, can assist us in securing the promise of democracy.

2. Some critics of reauthorizing the Voting Rights Act have suggested that recent increase in voter registration for minority voters indicated that the expiring provisions of the

Voting Rights Act are no longer needed. Does that argument apply to Latino voters especially in New York City?

Answer: Nationally, citizenship voting age population data from the November 2004 elections reveal that Latinos are registered to vote at a rate of 57.9% or 17.3 points below whites (75.1%) and 10.7 points below blacks (68.6%). In New York these patterns are similarly reflected in the voting participation of Latino citizens. As documented in my testimony to the House Committee on the Judiciary in November 2005, there are depressed levels of political participation overall, with 1.5 million voting age Latinos but only 700,000 registered to vote and a turnout of approximately 455,000. Indeed the same report cited notes that turnout is low in concentrated Latino neighborhoods where political campaigning in English does not reach their intended targets. At the same time (as noted in my report to Congress “Voting Rights in New York, 1982-2006, p. 14), there is statistical evidence that in 6 counties in New York covered for language assistance in Spanish (and Asian languages), there is a positive correlation between providing assistance under Section 203 and increased voter registration, even when controlling for other factors that influence registration (like education level, nativity, mobility, etc.). It would be a setback for the burgeoning Latino community in New York to withdraw some of the very protections that enhance their ability to have equal access to the vote, by failing to renew the expiring provisions of the VRA.

3. Has the provisions of language assistance under Section 203 had an impact on voter registration of language minority voters?

Answer: As noted above in my answer to Question 2, my Report documents numerous examples of noncompliance with Section 203 mandates in New York. And I have also cited a study by Michael Jones-Correa and Karthick Ramakrishnan (p. 14 of the Report) where after studying six Section 203 counties in New York they conclude that coverage is positively correlated with voter registration, even after controlling for other variables that affect voting, such as, education levels, nativity, residential mobility and the like.

Moreover, the Department of Justice has provided important testimony to Congress in this regard, summarizing the salutary effects of their Section 203 litigation: “Hispanic voter registration is up over 24 percent since the Division’s Section 203 lawsuit. In San Diego

County, California, Spanish and Filipino registration rates are up over 21 percent, and Vietnamese registration is up over 37 percent since the Division's enforcement action."

[Source: Statement of Bradley J. Schlozman, Acting Assistant Attorney General, before the House Judiciary Committee, at p. 4 (Nov. 8, 2005)]. Equally important is their recognition of the beneficial effects of Section 203 compliance in New Jersey and Texas: "A Section 203 lawsuit in Passaic, New Jersey, was so successful for Hispanic voters that a Section 2 challenge to the at-large election system was subsequently withdrawn. A Memorandum of Agreement in Harris County, Texas helped double Vietnamese turnout, and the first Vietnamese candidate in history was elected to the Texas legislature – defeating the incumbent chair of the Appropriations Committee by 16 votes out of over 40,000 cast."

[Source: Statement of Bradley J. Schlozman, Acting Assistant Attorney General, before the House Judiciary Committee, at p. 4 (Nov. 8, 2005)]. For Native Americans, the evidence points the same way: As a result of language assistance and outreach efforts pursuant to Section 203, turnout in Navajo precincts in Apache County, Arizona increased 26 percent in four years. In 2004, 17,955 registered voters cast ballots in the 33 Navajo precincts, compared to 14,277 voters in 2000. *[Source: Testimony of Penny Pew, Election Director of Apache County, Arizona, before the Subcomm. on the Const. of the House Judiciary Committee (Nov. 15, 2005)].*