

“Restoring the Voting Rights Act: Combatting Discriminatory Abuses”

Hearing before the Senate Committee on the Judiciary, Subcommittee on the Constitution

September 22, 2021

QUESTIONS FROM SENATOR BLUMENTHAL

Questions for Mr. Thomas Saenz:

1. Statements at the hearing reflected that there was record turnout by white and minority voters in recent elections, undermining the need for preclearance and to restore the Voting Rights Act more generally.
 - a. Did the statistics cited in support of this argument present a fair and representative assessment of the state of voter access during the 2020 election? If not, why not?

Answer: Record turnout relates to the specific nature of the election, in this case a highly contested presidential race with one candidate who had significantly alienated Latino voters through racialized rhetoric and punitive policies. Within the context of the specific election, higher rates of participation, particularly within minority communities, should surprise no one. There are many specific reasons that turnout and participation may increase among all voters, and among subgroups of voters, from one election to another; the absence of success in minority-vote suppression is not an explanation for increased turnout in comparison to prior elections. Differential vote suppression manifests in other ways, as explained below. Overall turnout ebbs and flows across elections for many reasons; unless and until turnout reaches 100 percent for all groups, an increase in turnout from one election to another can, as a matter of clear logic, shed no light on the presence or absence of racially-differential vote suppression.

- b. Is overall turnout the appropriate metric to use to evaluate whether Congress should enact voting protections specifically for minority communities? If not, why not and what other metrics should be considered?

Answer: As explained above, the specific nature of a particular election determines overall turnout. Of course, measures to facilitate participation – including some measures undertaken in some states in 2020 in response to the COVID-19 pandemic – do likely increase overall turnout, but such race-neutral measures should generally have the same proportional impact on all groups. The better measure of whether we have overcome differential vote suppression efforts is the difference in turnout between groups. Only when such differentials are virtually eliminated

can we say that voting protections for minority communities may no longer be necessary; only after the elimination of such differentials has persisted for a significant period of time should we begin to eliminate such protections. Our constitutional principles and our belief in racial equality should cause us to expect and to strive for equity in participation among all racial communities. When such equity does not exist, we know there is a problem that still needs to be addressed. According to the Census Bureau, in 2020, there was still a significant gap between Latino voter participation and white voter participation. Indeed, Latinos experienced the largest gap in turnout compared to white voters of any group. Nor was the gap appreciably lower than prior elections. In fact, the gap was higher than several elections measured by the Census Bureau in the last 40 years. In other words, nothing in the 2020 turnout gap for Latinos suggests any diminution in the need for vigorous protections against vote suppression.

- c. How has the racial turnout gap been affected since the Supreme Court's *Shelby County* decision in 2013?

Answer: In the elections since 2013, the Census Bureau data show a voter turnout gap between Latinos and whites that is on average about one percent higher than the average turnout gap reported by the Bureau for the 18 election years before 2013. There have only been four election years since the *Shelby County* decision, but that one percent increase is a matter of concern for the Latino community, particularly if it persists in future elections. It suggests that, at least for the Latino community, the absence of pre-clearance in Texas, Arizona, and other states may have begun to manifest in an increasing racial turnout gap.