

**Written Testimony**

**By**

**The Honorable Luz Urbáez Weinberg  
Commissioner, City of Aventura, Florida**

**Before**

**The United States Senate Committee on the Judiciary**

**At a Hearing Entitled,  
“From Selma to *Shelby County*: Working Together to Restore the  
Protections of the Voting Rights Act”**

**Washington, D.C.  
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Chairman Leahy, Ranking Member Grassley, and Members of the Committee: thank you for the opportunity to submit this testimony on the need to restore the protections of the Voting Rights Act (VRA), and its effectiveness in ensuring equal access to the polls in Florida, particularly for Latinos and other underrepresented voters.

My name is Luz Urbáez Weinberg. I am a Republican elected to the non-partisan Commission of the City of Aventura in 2005. I am currently serving my second term in this beautiful waterfront community in Northeast Miami-Dade County. I am the first, and still the only, Hispanic elected to this office. I have taken on state-wide and national leadership positions as well: earlier this year, Florida Governor Rick Scott appointed me to serve on the Miami-Dade Expressway Authority, and I am also Vice President of the Board of the National Association of Latino Elected and Appointed Officials (NALEO). In my personal life, I am Director of Communications for Bouygues Construction at the PortMiami Tunnel Project, and the proud mother of three children, two of whom are already registered voters of this great nation.

I am here today to share with you my firsthand account of the critical impact of the Voting Rights Act (VRA) in guaranteeing access to the ballot box. The recent Supreme Court decision in *Shelby County v. Holder* effectively stripped the VRA of the provisions at its heart: Section 4, which provided the coverage formula for section 5 preclearance. Today, this landmark legislation cannot provide the protection needed to guarantee that all Americans are accorded the most fundamental democratic rights, to vote and to serve our great nation in public office.

#### Voters From Across the Political Spectrum Call for Renewed Commitment to Ensuring an Even Playing Field in Elections

I call on this Committee to once again demonstrate clear, principled commitment to equal voting rights for all Americans regardless of race, ethnicity, or language spoken, and act swiftly to strengthen the Voting Rights Act. Americans -- Floridians, Latinos and other minorities, citizens who are not yet fully proficient in English, and all other voters of all political persuasions -- depend on you as their representatives to guarantee their right to vote by restoring the protections of the VRA. This Committee will serve our national interest best by encouraging all citizens to take part in elections, and by legislating to guarantee the creation and maintenance of voting systems that facilitate civic engagement.

In the spirit of the Voting Rights Act, I urge you to enact legislation to ensure that our great nation never returns to the era of civil repression and English literacy tests at polling places. We also need a new electoral framework to meet contemporary challenges to the participation of the Latino and other communities in the form of manipulation of districts and election methods, and the imposition of undue scrutiny of voters' qualifications.

I am honored to have the opportunity today to assure you that I support the active civil rights protections for which the Constitution calls. Whether to maintain laws like the

VRA is not a partisan issue; it is an American Issue. Whether Republicans or Democrats, Americans strongly believe in fair and equal electoral opportunities. Time and again, we have come together across the political and cultural lines that sometimes divide us to protest against government policies that would have perpetrated uneven treatment of certain communities.

A Robust Voting Rights Act Is Crucial for Latino Voters, and Will Be Increasingly Important to the Nation, and Florida in Particular, as the Latino Population Continues to Grow and Diversify

In order to secure our long-term prosperity and place of international leadership as a beacon of freedom, we must mobilize all Americans, and Latinos in particular, to participate fully in civic affairs. The VRA has been a cornerstone of these efforts, because it represents a promise that elections will remain a neutral zone in which all enjoy equal opportunities regardless of race, ethnicity, and language. Without its full protection, we risk policies and a culture that precipitate further declines in the numbers of Latino participants in elections, and ultimately, a weakened democracy.

Between the 2000 and 2010 decennial censuses, our nation's Latino population grew by more than 15 million people, or 43%. By 2050, the Census Bureau projects that one-third of all U.S. residents will be Latino. As our community expands, it is also increasing its presence in cities and counties which formerly did not have significant Latino populations. Latinos are also becoming increasingly diverse with respect to their experiences, national origin, and attitudes toward voting and politics.

In Florida, we have experienced a trend of which I am myself a part: in 1960, the state was home to just over 2% of Americans of Puerto Rican origin. By 2010, more than 18% of Puerto Ricans in the U.S. lived in Florida. As Latinos comprise larger shares of the electorate, particularly in communities where they have not been present in the past, our robust participation in elections becomes all the more crucial to the health and strength of American governance.

Aventura, my home city, mirrors many national demographic trends. We are a growing city with a growing Latino community. The number of residents in Aventura increased by more than 41% between 2000 and 2010, and in that period of time, Latinos jumped from nearly 21% to almost 36% of our population. Nearly 25% of eligible voters in Aventura are Latino, but with me as the sole Latino member of a seven-seat City Commission, there is only 14% Latino representation in city government. Aventura is also getting younger, which bodes well for our future. Our population under 18 more than doubled between the last two decennial censuses.

Aventura is also located in Miami-Dade County, which is required to provide language assistance with voting to Spanish-speaking citizens. According to the most recent Census Bureau data available, more than 3,000 adult U.S. citizens living in Aventura are not yet fully fluent in English, out of a total of just over 22,500 potentially eligible voters.

Latino and language minority voters are a significant segment of my constituents, and of the population as a whole in the region in which I live. In my home county of Miami-Dade, nearly 360,000 adult U.S. citizens do not yet speak English fluently – just as I myself did not only 25 years ago. About 90% of them are native Spanish speakers. Thus, Miami-Dade County’s success in making elections accessible to language minorities can make the difference between whether many are able to vote or not.

My experience serving as an elected official in South Florida has ensured that I am personally acquainted with how election policies, absent a proactive impartial check, may negatively affect ethnic and language minority communities. Ever since I moved to Florida from Puerto Rico in 1986, I have had a front-row seat to observe the unfortunate, repeated attempts to adopt and implement policies that reflect and which continue our national history of putting racial, ethnic, and language minority voters at a disadvantage.

### Actions That Threaten Latino Voting Rights in Florida Have Long Occurred, and Persist

In Florida there is a well-documented history of the use of white-only primaries and hefty candidate filing fees, among other tactics, to limit the role of underrepresented groups in government.<sup>1</sup> As far back as 1885, Florida’s Constitution imposed a poll tax, segregated schools serving children of different races and ethnicities, and prohibited interracial marriage. As recently as 1967, the state legislature sanctioned rule-making to separate people riding public transportation according to race and ethnicity.

Some of what I have seen myself has also been documented through litigation in court and investigation by public and private watchdog organizations. In just the past 15 years, there have been a number of troubling incidents, of which the following examples are representative, but not an exhaustive accounting.

*Problems with Language Assistance* – Miami-Dade County has been a battleground for the modern movement to promote English-only rules. In 1980, voters in the County approved an ordinance that reversed the Board of County Commissioners’ prior commitment to bilingualism and biculturalism. The ordinance prohibited, “the expenditure of any county funds for the purpose of utilizing any language other than English or any culture other than that of the United States;” it also required all county meetings, hearings, and publications to be issued in English only.<sup>2</sup>

The infamous hanging chads of the 2000 General Election led to scrutiny of a number of aspects of election administration, which in turn revealed a fact that many South and Central Florida voters could have confidently confirmed, and that is: according to the U.S. Civil Rights Commission, large numbers of voters not yet fluent in English were denied language assistance at polling places around Florida in 2000. Problems included poll workers not adequately trained to handle language assistance needs, who erroneously

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<sup>1</sup> E.g., *DeGrandy v. Wetherell*, 794 F. Supp. 1076, 1079 (N.D. Fla. 1992) (recounting history of discriminatory voting policies in Florida).

<sup>2</sup> Concerning the social context for this ordinance, see Max J. Castro, *The Politics of Language in Miami*, in *MIAMI NOW* 109, 119 (Guillermo J. Grenier & Alex Stepick III, eds., 1993).

prevented volunteers and workers from providing language assistance to needy voters. Language assistance implementation problems have also been seen since then. The Department of Justice found that Orange County, for example, fell short in making elections accessible to its sizable number of Spanish-speaking voters in 2002.

*Problems with Methods of Structuring Electoral Districts* – One of the areas of Florida that has seen the most dramatic growth in its Latino community is the “I-4 Corridor”, which runs from Daytona Beach through Seminole, Orange, Osceola, and Polk Counties to Tampa. This area of Central Florida has also increasingly drawn scrutiny for practices that have imperiled Latinos’ electoral opportunities. This is not surprising given that authorities including the Supreme Court have noted a tendency of jurisdictions to act to limit the access and influence of new voting populations just as they are beginning to have a notable impact.<sup>3</sup>

Osceola is one of many Florida counties that have maintained, at various times, an at-large election system for County Commissioners. Osceola County voters elected to switch to single-member districts in 1992, and as a result, the first Hispanic Commissioner in the history of the County was elected in 1996. This development led directly, however, to a decision to return to at-large elections in 1998. The Department of Justice, reviewing events, concluded that the Commissioners favored a return to at-large elections in part because they recognized that the substantial growth of the County’s Latino population would lead to Latino voters electing candidates of their choice in one or more districts under a single-member district scheme. Since 2002, Osceola County has twice made voluntary changes to its election administration practices and district structure in response to charges that electoral methods would reduce or eliminate Latinos’ opportunity to elect their chosen representatives.

*Problems with Voter Registration Rules* – A recent change in state law governing community voter registration drives also threatened to have a disproportionate negative impact on Latino participation in Florida. Nationally, Latino voters are more likely than white, African American, or Asian American voters to report that they registered to vote with a form provided by a non-governmental third party. In Florida, Latinos are also more likely than average to have become registered to vote with the assistance of a third party registrar. In my community, when a trusted local organization goes out into public areas and asks citizens to register, more individuals have the confidence to complete the process knowing their personal information will be protected.

Third party registrars, however, became subject to strict reporting requirements, deadlines to return registration forms, and large fines for violations in 2011. Although these requirements were later withdrawn, the change in the law initially led to multiple organizations, including the League of Women Voters, suspending their voter registration operations in Florida. During this period of suspension, registration applications were down 39% compared to the same pre-2008 election period in my home county of Miami-Dade, whose residents are 65% Latino.

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<sup>3</sup> See, e.g., *LULAC v. Perry*, 548 U.S. 399, 440 (2006).

## The VRA's Preclearance Process Has Been a Highly Effective Deterrent Against Implementation of Policies that Threaten Florida Latino Voters

Florida's laws and policies have reflected the anti-Latino bias that necessitated the expansion of the VRA. In 1975, the preclearance procedures of Section 5 of the VRA were extended to cover counties and states in which, as of 1972, elections were conducted in English only, and voter registration or voting rates were less than 50%, where members of a single language minority group made up at least 5% of eligible voters. Congress also created Section 203 of the VRA, which requires jurisdictions to make all voting procedures and materials available in certain languages if spoken by more than 5% or at least 10,000 members of the voting-eligible community, and if the jurisdiction's language minority community has a higher than average illiteracy rate.

The Congressional record assembled that year showed that the Latino community faced particularly egregious misconduct. Witnesses and experts from the public and private sectors testified to observing and documenting economic threats, other intimidation, and even efforts couched in seemingly neutral terms, such as a shift to at-large elections, to diminish opportunities for Latinos to meaningfully influence election outcomes. In the end, Congress concluded that, "Election law changes which dilute minority political power...are widespread in the wake of recent emergence of minority attempts to exercise the right to vote."<sup>4</sup>

Five Florida counties were singled out for electoral discrimination against Latino voters and low participation rates that made them subject to the preclearance process set forth in Section 5 of the VRA. At latest count by the Census Bureau, these five counties, Collier, Hardee, Hendry, Hillsborough, and Monroe, all in the South and Central regions of Florida, were home to more than 190,000 Latino adult U.S. citizens.

But the VRA protected not just Latino voters in the five Florida counties formerly subject to preclearance, it protected all voters statewide. The state of Florida has determined that implementing a voting change in a non-covered county that would be impermissible in a covered county is inappropriate and could violate the equal protection guarantees in Florida's Constitution.<sup>5</sup> As a result, Section 5 determinations have effectively controlled the shape of election policies not only in those (formerly) covered counties that surround my home, including Monroe and Collier, but also in Miami-Dade and other Latino-rich Florida counties.

For example, through the 1980s and 1990s, preclearance was used actively in Florida to ensure that absentee balloting procedures did not put underrepresented voters at a

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<sup>4</sup> H.R. REP. NO. 94-196, at 19 (1975).

<sup>5</sup> Fla. Div. of Elections Op. DE 98-13 (August 19, 1998) at 2, *online at* <http://election.dos.state.fl.us/opinions/new/1998/de9813.pdf> (stating that all 67 Florida counties should decline to implement new laws that had been denied preclearance because, "To do otherwise, in our opinion, has the potential to cause widespread voter confusion, affect the integrity of the elections process, impair uniform application of the election laws and could violate Federal and State laws and both the Florida and United States Constitutions.")

disadvantage. Absentee ballots can be a lifeline to some members of our communities, including elderly voters. Elderly citizens are the Floridians most likely to need language assistance to cast ballots.<sup>6</sup> Had it not been for Sections 4 and 5 of the VRA, my state would have allowed certain nearby counties with significant Spanish-speaking citizen populations to omit Spanish language translations of documents required to be executed by absentee voters from the packets mailed to those individuals.

Preclearance procedures have also been used to ensure that Hillsborough County restructured its local electoral districts fairly in the early 1980s, and that state-wide redistricting preserved opportunities for Latino voters to elect representatives of their choice. The 1992 plan to reapportion state Senate districts was determined by a federal court to be intentionally designed to diminish Latino electoral opportunities in the Hillsborough County area. This same Court noted that similar allegations not actionable under Section 5 were made against non-covered counties, including Escambia and Miami-Dade.<sup>7</sup> Ten years later, a plan for state House districts that proposed elimination of a majority-Latino district that included Collier County was halted by VRA-prescribed procedures, and we were ultimately successful in preserving a district in which Latino Floridians' votes were effective.

Most recently, the preclearance process forced the careful reconsideration of the disproportionate impact that Latinos might experience because of decisions to reduce our state's early voting period, and to re-scrutinize the citizenship of Floridians already registered to vote.

*Early Voting Period* – Florida acted to reduce early voting days and hours for the 2012 election, eliminating days and hours during which, if we assume the early voting rates recorded in 2008, an estimated 124,000 Latino Floridians would have cast their ballots in 2012. This action was taken despite Latino voters having been making increasing use of early voting periods in recent elections. According to a Pew Hispanic Center analysis, a greater percentage of Latino voters utilized early voting than of all voters combined in 2006 and 2010. Litigation based on Sections 4 and 5 of the VRA, however, led to a settlement that resulted in the covered counties and my own home county of Miami-Dade offering the maximum number of early voting hours allowed under the new law.

*Citizenship Purges* – Likewise, the preclearance process had a positive influence on an effort that gathered steam in the months leading up to the 2012 General Election: a decision to review the citizenship of already-registered voters and to challenge the qualifications of certain voters. Initially, this initiative was carried out through the use of state agency records, which are known to frequently mis-identify naturalized citizens as non-citizen immigrants based on their prior provision of immigration documents to the state. As a result, large numbers of Florida voters were alleged to be non-citizens when in fact they were naturalized citizens, many of them Latino. The pending pressure of a

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<sup>6</sup> Census figures show that of all eligible voters in Florida, those aged 70 and older are most statistically likely to report that they do not speak English fully fluently.

<sup>7</sup> Letter from John R. Dunne, Assistant Att'y Gen., Civil Rights Div., to Robert A. Butterworth, Att'y Gen., State of Fla. 4 (June 16, 1992).

lawsuit arguing that Florida had to obtain preclearance in order to remove registrants as a result of this process helped push the state to promise not to purge any voters prior to the 2012 election.

A pending Section 5 lawsuit against the restrictive third party registration rules cited above likewise influenced the state to eventually agree not to enforce some of the most punitive of the proposed rules.

The successful application of Section 5 to Florida has occurred not only in the course of formal requests for preclearance. The very fact that state policymakers have had to anticipate fulfilling preclearance requirements influenced them to voluntarily reconsider and reshape proposed new laws. In 1998, 2001 and 2002, for example, exchanges between Florida state leadership and the Department of Justice resulted in clarification that new voter list maintenance procedures would not be implemented in a way that would negatively impact Latino voters in particular. As a result of concerns expressed by the Department of Justice, moreover, our state decided to voluntarily withdraw a proposal to require particular IDs from all Florida voters.

#### Floridians Need New Protections to Replace the Oversight Lost with the Invalidation of Section 4 of the VRA

I wish that I and the constituents I represent through my various roles could rest easy knowing that the VRA's work is done; that our ability to participate and compete in elections on a fair and equal basis is assured for the long term. Unfortunately, this is not the case; the surviving Sections of the VRA will not be fully effective in protecting me and many communities in Florida. Many of the election laws and policies I have discussed today are highly likely to continue in force or to reappear on the state legislature's agenda, particularly now that the state is free to immediately implement any and every policy it adopts. There are three pending circumstances that underscore my lingering concerns:

*One: The Remaining VRA Will Not Adequately Address Discriminatory Citizenship Checks* – Citizenship checks that disproportionately target naturalized citizens, for example, are likely to recommence shortly. Citizenship checks have a very strong, clear disproportionate impact on the Latino community. More than half of those initially identified by the state, and 41% of those on a later reduced list, were Latino, even though Latinos are about 16% of eligible voters in the state of Florida. Moreover, in Florida, more than 51% of naturalized citizens are Latino.

Changes in electoral policy like this that associate Latinos with election fraud act to alienate our community further from the voting process. A number of supporters of citizenship checks claim that new methods of scrutiny of voters' qualifications are necessitated by the prevalence of unauthorized registration and voting by non-citizens. The association of undocumented immigrants, stereotypically imagined to be Latino, with increased need to fight fraud in elections pushes members of the public to conclude that illegal Latino voters are casting votes in great numbers, when in fact the evidence tells us



that eligible Latino citizens are underrepresented among participating voters, and that non-citizens voting fraud is almost non-existent and very heavily penalized.

*Two: The Surviving VRA Cannot Be Counted Upon To Remedy Long Lines* – Another indication that the VRA’s work is not done is found in Latino Floridians’ experience of extremely long lines at polling places in 2012. I had the opportunity to observe this phenomenon first-hand in Miami-Dade County both during our early voting period and on Election Day.

Recent analysis by Professors Michael Herron of Dartmouth and Daniel Smith of the University of Florida has confirmed that Latino voters were most affected by this barrier to the ballot box, both within and across county lines. In Miami-Dade County, the precincts with the longest lines and latest closing times on Election Day had some of the most significant Latino populations. Likewise, Broward County precincts that served an electorate that was more than 90% white generally closed earlier, having processed every voter who came to cast a ballot, than those that served concentrations of Latino voters. The more Latino a precinct, the longer the precinct took to serve its voters, and the longer those voters waited in line, in Alachua, Hillsborough, Orange, and Osceola Counties. Long lines concentrated in heavily Latino precincts, both during early voting and Election Day polling, may have been caused in part by Florida’s truncated early voting schedule last year. We do know, based on polling and social science, that just as Latino Floridians are overrepresented among early voters, Latino Floridians also spent a longer time, on average, waiting to vote than white Floridians.<sup>8</sup>

The problem of long lines simply cannot be remedied through the after-the-fact litigation that remains an option under today’s VRA. We cannot go back to recapture the votes of the many participants who likely left their polling precincts without exercising their right to vote because of their experience of long wait times.

*Three: The Remaining Provisions of the VRA Do Not Address the Full Range of Discriminatory Policies Proposed in Florida* – Finally, this Committee must recognize that remaining provisions of the VRA are not always effective means to combat voting policies that ought to spark concern and careful reconsideration. For example, litigation based on Section 2 of the VRA has met with limited success in Florida.

## Conclusion

Latino voters in South and Central Florida are today left unacceptably vulnerable to the ill effects of policies that in recent years were stopped or slowed by Section 5-related procedures. For us Floridians, and particularly for Latino voters in South and Central

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<sup>8</sup> *New State Voting Laws II: Protecting the Right to Vote in the Sunshine State: Hearing Before the Subcommittee on the Constitution, Civil Rights, and Human Rights of the Senate Judiciary Committee*, 112<sup>th</sup> Cong. 14 (2012) (Written Testimony of Michael C. Herron and Daniel A. Smith), *online at* <http://www.judiciary.senate.gov/pdf/12-1-27SmithTestimony.pdf>; Michael C. Herron and Daniel A. Smith, *Congestion at the Polls: A Study of Florida Precincts in the 2012 General Election* 56 (June 24, 2013), *online at* [http://b3cdn.net/advancement/f5d1203189ce2aabfc\\_14m6vzttt.pdf](http://b3cdn.net/advancement/f5d1203189ce2aabfc_14m6vzttt.pdf).

Florida, Sections 4 and 5 of the Voting Rights Act have not only been effective, but also crucial in ensuring the preservation of equal electoral opportunities. The preclearance mechanism has no peer: it is uniquely tailored to prevent irreparable harm to voters and candidates by requiring review for discriminatory effect before a new law may be implemented. It ensures against backsliding in the face of increases in the numbers of underrepresented individuals eligible to vote. It applies rigorous review to investigate the possibility of discriminatory effect, and does not require difficult and ambiguous inquiries into the nature of the intent in legislators' minds. It is, by its very definition and design, still very much necessary in our United States of America today.

On a personal note, I arrived in this country as a native-born citizen, one of millions of Puerto Ricans who leave the island for the mainland to build a better life. I registered to vote as a young adult who had just a couple of years earlier not spoken any English. I have three children who are also native-born citizens. I was very proud when my oldest child, my now 20-year old son Jonathan, registered to vote a couple of years ago and immediately exercised his right in an election concerning a county ballot issue. Last year, my daughter Jessica turned 18 – unfortunately, two weeks after the November election – but she proudly filed her voter registration papers through school and is now eagerly awaiting her first opportunity to vote. Jonathan registered Democrat. Jessica registered Independent. Their elected official mother is a Republican. In my home, we are Latinos, Afro-Latinos, Jews and Catholics who speak English and Spanish, and sometimes Spanglish, but first and foremost, we are Americans. In my household, participating in the electoral process, exercising the right to vote, and ensuring that the Voting Rights Act is preserved are non-partisan, non-racial, non-religious and non-language-dependent priorities. I entrust these critical issues to this honorable Committee on behalf of my children, my constituents and the more than 153 million registered voters in this nation, as well as the millions more that will register in the years to come. I urge you once again to demonstrate your commitment to equal voting rights for all Americans regardless of race, ethnicity, or language spoken, and to please act swiftly to strengthen the Voting Rights Act.

I thank you for this opportunity.