

Testimony of

# Ms. Linda Chavez

June 13, 2006

TESTIMONY OF  
LINDA CHAVEZ  
PRESIDENT, ONE NATION INDIVISIBLE  
BEFORE THE  
SENATE JUDICIARY COMMITTEE  
REGARDING THE  
BILINGUAL BALLOT PROVISIONS OF  
THE VOTING RIGHTS ACT  
June 13, 2006

## Introduction

Thank you, Mr. Chairman, for the opportunity to testify before you today regarding the reauthorization of the bilingual ballot provisions of the Voting Rights Act, 42 U.S.C. 1973aa-1a, commonly referred to as Section 203.

My name is Linda Chavez, and I am president of One Nation Indivisible. I am also president of the Center for Equal Opportunity, a nonprofit research and educational organization that focuses on public policy issues that involve race and ethnicity, such as civil rights, bilingual education, and immigration and assimilation.

I have served as Staff Director of the U.S. Commission on Civil Rights (1983-1985), and Chairman of the National Commission on Migrant Education (1988-1992). In 1992, I was elected by the United Nations' Human Rights Commission to serve a four-year term as U.S. Expert to the U.N. Sub-commission on the Prevention of Discrimination and Protection of Minorities, and I was Co-Chair of the Council on Foreign Relations' Committee on Diversity from 1998-2000. Finally, I am the author of *Out of the Barrio: Toward a New Politics of Hispanic Assimilation* (Basic Books 1991), the second chapter of which is entitled, "Hispanics and the Voting Rights Act."

Section 203 requires certain jurisdictions to provide all election-related materials, as well as the ballots themselves, in foreign languages. The jurisdictions are those where more than 5 percent of the voting-age citizens are members of a particular language minority, and where the illiteracy rate of such persons is higher than the national illiteracy rate. The language minority groups are limited to American Indians, Asian Americans, Alaskan Natives, and those "of Spanish heritage." Where the language of the minority group is oral or unwritten, then oral voting assistance is required in that language.

There are basically three policy problems with Section 203 that I would like to discuss today. First, it encourages the balkanization of our country. Second, it facilitates voter fraud. And, third, it wastes the taxpayers' money. In addition to these policy problems, in my view Section 203 is unconstitutional because, although Congress asserts it has enacted this law pursuant to its enforcement authority under the Fourteenth and Fifteenth Amendments, in fact this statute actually exceeds that authority.

## Section 203 Balkanizes Our Country

America is a multiethnic, multiracial nation. It always has been, and this is a source of national pride and strength. But our motto is *E pluribus unum*--out of many, one--and this means that, while we come from all over the globe, we are also united as Americans.

This unity means that we hold certain things in common. We celebrate the same democratic values, for instance, share the American dream of success through hard work, cherish our many freedoms, and champion political equality. Our common bonds must also include an ability to communicate with one another. Our political order and

our economic health demand it.

Accordingly, the government should be encouraging our citizens to be fluent in English, which, as a practical matter, is our national language. And, in any event, the government certainly should not discourage people from mastering English, and should not send any signals that mastering English is unimportant. Doing so does recent immigrants no favor, since true participation in American democracy requires knowing English. See Jose Enrique Idler, *En Ingles, Por Favor*, National Review Online, March 8, 2006, available at <http://www.nationalreview.com/comment/idler200603080757.asp>.

Inevitably, however, that is what the federal government does when it demands that ballots be printed in foreign languages. It also devalues citizenship for those who have mastered English as part of the naturalization process. As Boston University president John Silber noted in his 1996 congressional testimony, bilingual ballots "impose an unacceptable cost by degrading the very concept of the citizen to that of someone lost in a country whose public discourse is incomprehensible to him." Quoted in John J. Miller, *The Unmaking of Americans: How Multiculturalism Has Undermined America's Assimilation Ethic* (1998), page 133.

#### Section 203 Facilitates Voter Fraud

Most Americans are baffled by the bilingual ballot law. They know that, with few exceptions, only citizens can vote. And they know that, again with only few exceptions, only those who speak English can become citizens. So why is it necessary to have ballots printed in foreign languages?

It's a fair question, and there really is no persuasive answer to it. As a practical matter, there are very few citizens who need non-English ballots.

There are, however, a great many noncitizens who can use non-English ballots. And the problem of noncitizens voting is a real one. The Justice Department has brought numerous criminal prosecutions regarding noncitizen voting in Florida, as documented in a recent official report. Criminal Division, Public Integrity Section, U.S. Department of Justice, *Election Fraud Prosecution and Convictions, Ballot Access & Voting Integrity Initiative*, October 2002 - September 2005. This problem has also been extensively reported on in the press. See Ishikawa Scott, "Illegal Voters," Honolulu Advertiser, Sept. 9, 2000; Dayton Kevin, "City Steps Up Search for Illegal Voters," Honolulu Advertiser, Sept. 9, 2000; Audrey Hudson, "Ineligible Voters May Have Cast a Number of Florida Ballots," Washington Times, Nov. 29, 2000 ("A sizable number of Florida votes may have been cast by ineligible felons, illegal immigrants and noncitizens, according to election observers. ...This would not be the first time votes by illegal immigrants became an issue after Election Day. Former Republican Rep. Robert K. Dornan of California was defeated by Democrat Loretta Sanchez by 984 votes in the 1996 election. State officials found that at least 300 votes were cast illegally by noncitizens."); "14 Illegal Aliens Reportedly Voted," KSL NewsRadio 1160, Aug. 8, 2005; Associated Press, Untitled (first sentence: "Maricopa County Attorney Andrew Thomas has charged 10 legal residents who are not U.S. citizens with fraudulently registering to vote, and more residents are being investigated, he said."), Aug. 12, 2005; Joe Stinebaker, "Loophole Lets Foreigners Illegally Vote," Houston Chronicle, Jan. 17, 2005; Lisa Riley Roche & Deborah Bulkeley, "Senators Target License Abuses," Desert Morning News, Feb. 10, 2005; Teresa Borden, "Scheme To Get Noncitizens on Rolls Alleged," Atlanta Journal-Constitution, Oct. 28, 2004; Associated Press, "Harris County Cracking Down on Voting by Non-U.S. Citizens," Houston Chronicle, Jan. 16, 2005; John Fund's Political Diary, Wall Street Journal, Oct. 23, 2000 (voter fraud a growing problem since "47 states don't require any proof of U.S. residence for enrollment"); Doug Bandow, "Lopez Losing," American Spectator, Oct. 28, 2005 (Nativo Lopez's Hermandad Mexicana Nacional "registered 364 non-citizens to vote in the 1996 congressional race in which Democrat Loretta Sanchez defeated incumbent Republican Bob Dornan").

#### Section 203 Wastes Government Resources

As I just noted, there are few citizens who need ballots and other election materials printed for them in languages other than English. The requirement that, nonetheless, such materials must be printed is therefore wasteful. On the one hand, the costs of printing the additional materials is high. It is a classic, and substantial, unfunded mandate. For example, Los Angeles County had to spend over \$1.1 million in 1996 to provide Spanish, Chinese, Vietnamese, Japanese, and Filipino assistance. General Accounting Office, *Bilingual Voting Assistance: Assistance Provided and Costs* (May 1997), pages 20-21. Six years later, in 2002, it had to spend \$3.3 million. Associated Press, "30 States Have Bilingual Ballots," Sept. 25, 2002. There are 296 counties in 30 states now that are required to have such materials, and the number is growing rapidly. See "English Is Broken Here," Policy Review, Sept-Oct. 1996. Frequently the cost of multilingual voter assistance is more than half of a jurisdiction's total election costs. GAO May

1997, pages 20-21. If corners are cut, the likelihood of translation errors increases. (Indeed, the inevitability of some translation errors, no matter how much is spent, is another argument for why all voters need to master English. See *The Unmaking of Americans*, page 133; Amy Taxin, "O.C.'s Foreign-Language Ballots Might Be Lost in Translation: Phrasing Is Found To Differ by County, Leading to Multiple Interpretations and Possibly Confusion for Some Voters," *Orange County Register*, Nov. 3, 2005; "Sample S.J. Ballot Contains Error: Spanish Translation Doesn't Make Sense," *Stockton Record*, Feb. 27, 2003; Jim Boulet, "Bilingual Chaos," *National Review Online*, Dec. 19, 2000; English First Foundation Issue Brief, *Bilingual Ballots: Election Fairness or Fraud?* (1997), available at <http://www.englishfirst.org/ballots/efbb.htm>.)

On the other hand, the use made of the additional materials is low. According to a 1986 General Accounting Office study, nearly half of the jurisdictions that provided estimates said no one--not a single person--used oral minority-language assistance, and more than half likewise said no one used their written minority-language assistance. Covered jurisdictions said that generally language assistance "was not needed" by a 10-1 margin, and an even larger majority said that providing assistance was either "very costly or a waste of money." General Accounting Office, *Bilingual Voting Assistance: Costs of and Use During the November 1984 General Election*, Sept. 1986, pages 25, 32, 39. According to Yuba County, California's registrar of voters: "In my 16 years on this job, I have received only one request for Spanish literature from any of my constituents." Yet in 1996 the county had to spend \$30,000 on such materials for primary and general elections. *The Unmaking of Americans*, page 134.

What's more, to quote from John J. Miller's excellent book, *The Unmaking of Americans: How Multiculturalism Has Undermined America's Assimilation Ethic* (1998), pages 242-243: Getting rid of bilingual ballots "does not mean that immigrant voters who still have difficulty communicating in English would not be without recourse. There is a long tradition in the United States of ethnic newspapers--often printed in languages other than English--providing political guidance to readers in the form of sample ballots and visual aids that explain how to vote. It would surely continue." I should add that Mr. Miller concluded that "Congress should amend the Voting Rights Act to stop the Department of Justice from coercing local communities to print election materials in foreign languages."

In sum, as a simple matter of dollars and sense, bilingual ballot are just not worth it. The money would be much better spent on improving election equipment and combating voter fraud.

#### Section 203 Is Unconstitutional

Finally, Mr. Chairman, I would suggest that Section 203 raises serious constitutional problems, and, if it is reenacted, may well be struck down as unconstitutional. It certainly should be.

The Supreme Court has made clear that only purposeful discrimination--actually treating people differently on the basis of race or ethnicity--violates the Fourteenth and Fifteenth Amendments. See *Washington v. Davis*, 426 U.S. 229 (1976); *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1976); *City of Mobile v. Bolden*, 446 U.S. 55 (1980). The Court has ruled even more recently that Congress can use its enforcement authority to ban actions that have only a disparate impact only if those bans have a "congruence and proportionality" to the end of ensuring no disparate treatment. *City of Boerne v. Flores*, 521 U.S. 507 (1997); see also *United States v. Lopez*, 514 U.S. 549 (1995). This limitation is likely to be even stricter when the federal statute in question involves areas usually considered a matter of state authority. See, e.g., *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356 (2001).

Now, it seems to me very unlikely that the practice of printing ballots in English and not in foreign languages would be a violation of the Fourteenth or Fifteenth Amendments--that is, it is very unlikely that this practice could be shown to be rooted in a desire to deny people the right to vote because of race or ethnicity. See *Out of the Barrio*, page 46; see also Abigail Thernstrom, *Whose Votes Count?: Affirmative Action and Minority Voting Rights* (1987), pages 40, 57. Rather, it has perfectly legitimate roots: To avoid facilitating fraud, to discourage balkanization, and to conserve scarce state and local resources. Accordingly, Congress cannot assert that, in order to prevent discrimination in voting, it has authority to tell state and local officials that they must print ballots in foreign languages.

The rather garbled text of Section 203, however, apparently says that Congress was concerned not with discrimination in voting per se, but with educational disparities. That is, the poorer education that, say, Latinos receive is what makes bilingual ballots necessary. Of course, if these disparities are not rooted in discrimination, then there

remains a problem with Congress asserting its power under Section 5 of the Fourteenth Amendment or Section 2 of the Fifteenth Amendment to require bilingual ballots. But let us assume that Congress did have in mind unequal educational opportunities rooted in educational discrimination, presumably by the states.

Even here, I think there are insurmountable problems. There is, in short, a lack of congruence and proportionality between the asserted discrimination in education and the bilingual ballot mandate in Section 203. Are all the language minorities covered by Section 203 subjected to government discrimination in education--and, if not, then why are all of them covered? Are there language minorities that are subject to government discrimination that are not covered by Section 203--and, if so, then why aren't they covered? How often does education discrimination result in an individual not becoming fluent enough in English to cast a ballot? Isn't it much more likely that this lack of fluency has some other cause (like recent immigration, most obviously, or growing up in an environment where English is not spoken enough)? Finally, is it a congruent and proportional response to education discrimination to force states to make ballots available in foreign languages? How likely is Section 203 to result in the elimination of education discrimination? Does this "remedy" justify Congress's overruling of the legitimate reasons that states have for printing ballots in English and not in foreign languages?

Mr. Chairman, I am frankly skeptical that Congress can answer these questions satisfactorily. I hope the committee will go into these hearings with an open mind, and not with a verdict-first-hearings-later mindset. Does anyone really believe that the reason for Section 203 has anything to do with remedying state discrimination in education? Of course not. As I discuss in *Out of the Barrio*, the Voting Rights Act of 1965 was motivated by a desire to stop discrimination; the later expansion of the Voting Rights Act at the behest of Latino special interest groups was simply about politics. There was little factual record established even to show that Hispanics were being systematically denied the right to vote. This disenfranchisement would have been particularly difficult to demonstrate in light of the number of Hispanics who had previously been elected to office, which included Governors, U.S. Senators, Members of the House of Representatives, as well as numerous state legislators and local officials, many of these officials serving in jurisdictions that would soon be subject to the special provisions of the Voting Rights Act. See also Thernstrom, chapter 3. There is no credible way to equate the discrimination that African Americans in the South suffered to the situation of Latinos, who had voted--and been elected to office--in great numbers for decades. That was true when Section 203 was first enacted, and it is even more true now, which is what matters for purposes of reauthorization. The reason for the bilingual ballot provision is not and never has been about discrimination--it is about identity politics.

#### Conclusion

Let me conclude, Mr. Chairman, by saying again that, even if Section 203 were not unconstitutional, it would still be unwise legislation, because it encourages balkanization, facilitates voter fraud, and wastes the taxpayers' money. Congress should not reenact it.