

Testimony of Nina Perales, MALDEF Vice President of Litigation
Regarding “The State of the Right to Vote After the 2012 Election”

United States Senate Committee on the Judiciary

December 19, 2012

Chairman Durbin and members of the Judiciary Committee, thank you for the invitation to testify regarding “The State of the Right to Vote After the 2012 Election.” My name is Nina Perales and I serve as Vice President of Litigation for MALDEF, the Mexican American Legal Defense and Educational Fund, Inc. MALDEF is a national civil rights organization that conducts community education, policy advocacy and where necessary litigation. Since our founding as a non-partisan civil rights organization in 1968, MALDEF has served as the primary organization that litigates voting rights cases on behalf of Latinos in the United States.

Today, Latinos constitute the largest racial minority group in the United States. According to the Census, the Latino community in the U.S. grew by over 15 million from 2000 to 2010 and accounted for more than half the nation’s total growth.¹ Over the same decade, the number of Latino eligible voters—U.S. citizen adults—also increased, from 13.2 million in 2000 to 21.3 million in 2010.²

As the Latino and other racial minority communities have grown and expanded their share of the U.S. electorate, some states have attempted to cap or even reduce the electoral strength of minority voters. These new practices target voters at various points in the election process, including registration, voting at the polls and in redistricting. This testimony will focus on three examples of recent state laws that operate to limit Latino political participation.

Arizona Requirement of Documentary Proof of Citizenship

In Arizona, the Latino population increased by almost 600,000 from 2000 to 2010 (reaching 29.6% of the state’s population in 2010). In 2004, Arizona voters adopted Proposition 200 which changed voter registration rules to require all new voter registrants to provide documentary proof of U.S. citizenship. Following enactment of Proposition 200, over 30,000 individuals were rejected for voter registration in Arizona.³ Reflecting the demographic composition of voter registrants in Arizona, over 80% of the rejected

¹ JEFFREY S. PASSEL, ET AL., CENSUS 2010: 50 MILLION LATINOS HISPANICS ACCOUNT FOR MORE THAN HALF OF NATION’S GROWTH IN PAST DECADE (Pew Hispanic Center, Mar. 24, 2011), available at <http://www.pewhispanic.org/files/reports/140.pdf>.

² MARK HUGO LOPEZ, THE LATINO ELECTORATE IN 2010: MORE VOTERS, MORE NON-VOTERS (Pew Hispanic Center, April 26, 2011), available at <http://www.pewhispanic.org/files/reports/141.pdf>.

³ *Gonzalez v. Arizona*, No. 06-cv-01268, Dkt. No. 1041, at 13 (9th Cir. Aug. 20, 2008).

voters were not Latino.⁴ Voter registration in community-based voter drives in the state's largest county plummeted 44%.

The Ninth Circuit, sitting en banc, invalidated Proposition 200 as inconsistent with the National Voter Registration Act, 42 U.S.C. 1973gg *et seq.*⁵ The case is now pending in the U.S. Supreme Court.

Proposition 200 has had a broad negative impact on voter registrants across Arizona. Individuals whose voter registration forms are commonly rejected for failure to provide proof of citizenship include Arizona residents who have a driver's license issued before October 1, 1996 (such as those over age 32), who do not have a current Arizona driver's license (including students and new state residents), or who, unbeknownst to them, have a driver's license with a state database code of "Foreign" because the license was issued to them before they became naturalized citizens.

In order to register, these citizens must include with their registration – which otherwise can be a stand-alone form – a copy of their U.S. birth certificate, passport or naturalization papers. Even if a registrant has a document to satisfy the provision, Proposition 200 requires the registrant to locate the document, photocopy it, and mail it to the county recorder. Alternatively, the registrant must travel to the county recorder's office to present the required document. As a result of the additional burdens imposed by Proposition 200, less than one-third of the rejected registrants subsequently registered to vote.⁶

The federal court in Arizona found that naturalized citizens will have difficulty registering with their drivers licenses and are subsequently faced with either purchasing a new license or registering with the naturalization certificate (often in person). This different treatment makes voter registration more difficult for naturalized citizens when compared to native born citizens. The problems for naturalized citizens who try to register are predictable and systemic to Proposition 200 and its implementation by Arizona election officials.

Although most people in Arizona register to vote by providing the number of their Arizona driver's license, which under Proposition 200 constitutes "satisfactory evidence of citizenship" if it was issued after October 1, 1996.²³ However, because of flaws in the Arizona Motor Vehicles Division database, naturalized citizens encounter unique problems when attempting to register to vote using their Arizona driver's licenses.

The Arizona MVD codes driver's licenses as "Type F" when the applicant for a driver's license used an identity document showing that he or she has permission by the federal government to be present in the United States. The MVD uses the letter "F" to signify "foreign." Because the Type F license does not show its designation on its face, naturalized citizens who obtained their licenses before they naturalized are unaware that they possess Type F licenses. Instead, they provide their drivers license numbers when they register to vote and are rejected and required to apply to register again and provide different citizenship information.

In 2005 alone, 6,785 people in Arizona naturalized and became eligible to register to vote. The Secretary of State does not know how many of these naturalized citizens

⁴ *Id.*

⁵ *See Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012).

⁶ *Gonzalez v. Arizona*, No. 06-cv-01268, Dkt. No. 1041, at 14 (9th Cir. Aug. 20, 2008).

hold licenses that are coded Type F in the MVD database but the Secretary of State does know that since January of 2005, Service Arizona, its online voter registration system, has rejected approximately 1,300 voter registration applicants who possess either Type F licenses or licenses issued before October 1, 1996.

Although Arizona knows that its naturalized citizens are likely to possess Type F licenses, it continues to reject these voter applicants, thereby forcing them to suffer rejection of their voter registration application and requiring them to register to vote a second time.

The purpose of Proposition 200's registration requirement, as described in the statute, is to combat undocumented immigration. However, Arizona hasn't identified a single instance in which undocumented immigrants registered or voted in Arizona.

The federal court in Arizona found that there were only a handful of "instances" in which non-citizens had registered to vote and even fewer in which noncitizens cast a ballot.⁷ Importantly, the court cited evidence that the small number of non-citizens who had registered to vote had done so mistakenly and without realizing they were ineligible to vote.⁸ Consistent with this finding, the Arizona Secretary of State's office wrote prior to the passage of Proposition 200, the "strong desire to remain in the United States and fear of deportation outweigh [noncitizen's] desire to deliberately register to vote before obtaining citizenship. Those who are in the county illegally are especially fearful of registering their names and addresses with a government agency for fear of detection and deportation."

In all, the court found that Arizona had provided evidence that ten non-citizens had registered to vote (four of whom had voted) in 2005 and nine non-citizens – had registered to vote (five of whom had voted) in 2007.⁹ The evidence amounts to nine voters having cast ballots out of 2.7 million registered voters in Arizona during this same period. The Ninth Circuit concluded, when denying the stay of its mandate, that "Arizona has not provided persuasive evidence that voter fraud in registration procedures is a significant problem in Arizona; moreover, the [National Voter Registration Act] includes safeguards addressing voter fraud."¹⁰

The voting restrictions imposed by Arizona's Proposition 200, ostensibly to curb registration by immigrants who are not qualified to vote, come at a time when Latinos comprise Arizona's fastest-growing citizen voting age population and Arizona is engulfed in an often heated debate about immigrants from Mexico living in the state. As Latinos strive to overcome the effects of past exclusion from the political process, Proposition 200 has operated to thwart Latino entry into the electorate.

Texas 2011 Voter ID

In 2011, the Texas Legislature enacted the strictest photo voter ID law in the nation. The law has not gone into effect however because a federal court in Washington DC concluded that it violated the federal Voting Rights Act.

⁷ *Gonzalez v. Arizona*, No. 06-cv-01268, Dkt. No. 1041, at 34 (9th Cir. Aug. 20, 2008).

⁸ *Id.* at 15-17 (9th Cir. Aug. 20, 2008).

⁹ *Id.*

¹⁰ *Gonzalez v. Arizona*, No. 08-17094 at 8 (9th Cir. June 7, 2012) (order denying stay).

Compared to the pre-existing voter identification law in Texas, the Texas voter ID law, known as SB 14, permits fewer forms of ID for in-person voting. Specifically, SB 14 eliminates the voter registration certificate as an acceptable form of ID as well as other non-photo documents that are acceptable under the current Texas voter ID law such as utility bills, birth certificates and government correspondence. SB 14 also eliminated certain photo ID that was acceptable under the pre-existing Texas voter ID law such as student ID cards and employment identification.¹¹

Texas has never disputed, and the federal court found, that “there exists a subgroup of registered voters, including minorities, who lack SB 14-approved photo ID.”¹² Even at trial, Texas’s “own expert’s study” concluded the same.¹³ The court found as a matter of “undisputed record evidence,” that “racial minorities in Texas are disproportionately likely to live in poverty and, because SB 14 will weigh more heavily on the poor, the law will likely have retrogressive effect.”¹⁴ Texas was aware of the provisions of other states’ voter identification laws and was also aware that “SB 14 is far stricter than either Indiana’s or Georgia’s voter ID laws.”¹⁵

The U.S. Department of Justice denied preclearance to SB 14 in part because the statistical analysis provided by Texas in the preclearance process showed that “Hispanic registered voters are more than twice as likely as non-Hispanic registered voters to lack” a DPS-issued driver’s license or ID card.

Texas was well aware that its very strict photo voter ID law was likely to have a disproportionate impact on minority voters. In the previous 2009 legislative session, when the Texas House took up the issue of voter ID, the Chairman of the House Elections Committee was aware that minority voters are less likely to have photo voter ID. He also understood that allowing the use of a non-photo ID alternative would “significantly lessen any marginal additional burden” that ID requirements placed on some voters. House members who opposed the 2009 voter ID bill expressed concern about the impact of the bill on minority voters.

In 2011, SB 14 rushed through the legislative process with few amendments to ameliorate its effect on voters who lacked ID. The House Select Committee to which SB 14 was assigned held only one hearing on SB 14 before voting it out of committee. Members of the Select Committee heard expert witnesses explain that restrictive ID requirements adversely impact minority voters, and that most voters who are required to return to the polls and present identification to have their provisional ballots counted do not return.

During House floor consideration, numerous legislators expressed concerns about SB 14’s impact on minority voters. Many of the amendments that were offered but did not pass were accompanied by statements that the amendments would mitigate the bill’s impact on minority voters, including by prohibiting the Department of Public Safety from charging a fee for underlying ID; reimbursing the costs for indigent individuals to travel to obtain compliant ID; requiring a study showing no adverse impact on minorities;

¹¹ TEX. ELEC. CODE § 63.0101.

¹² *Texas v. Holder*, 2012 WL 3743676, at *27 (D.D.C. 2012).

¹³ *Id.*

¹⁴ *Id.*, at *14.

¹⁵ *Id.*, at *15.

requiring the Secretary of State to determine whether a majority of voters who cast provisional ballots were minorities; requiring a study by county and ethnicity to determine access to necessary ID and analysis of impact on voters; and allowing county clerks to issue voter ID cards.

Furthermore, although expired driver's licenses would have been acceptable under the predecessor bills to SB 14 so long as they had expired within the past two years SB 14 did not accept driver's licenses, personal ID cards issued by DPS, US passports, or concealed handgun licenses as acceptable forms of photo ID if they had expired more than 60 days prior to their presentation. An amendment to SB 14, adopted in the House, included language that the statewide public education program should target low-income and minority voters. The amendment was subsequently stripped from the bill in conference committee. The SB 14 conference committee, which consisted of eight supporters and two opponents of SB 14, removed tribal ID as one of the allowable forms of ID, and removed a provision that focused SB 14's voter education program at low-income and minority communities. Thus, despite their knowledge of the potential discriminatory effects on minority voters, Texas legislators refused to alter SB 14. Reviewing the evidence of the impact of SB 14, the federal court concluded that, "[s]imply put, many Hispanics and African Americans who voted in the last election will, because of the burdens imposed by SB 14, likely be unable to vote in the next election."¹⁶

Debates in the three previous legislative sessions on the issue of voter ID often included claims that voter ID was needed to stop voter fraud by non-U.S. citizens. During the year of and before the passage of SB 14, elected public officials in the State of Texas—including Texas State Senators and Representatives, the Secretary of State, the Lieutenant Governor, and the Governor—received a substantial number of letters and emails from constituents that characterized voter ID legislation as legislation related to illegal immigration, often urging them to enact voter ID legislation to stop illegal immigrants from voting, and often using inflammatory references to “criminal aliens,” “wetbacks,” and similar derogatory phrases and racial epithets to refer to unqualified voters who needed to be stopped from casting ballots through the enactment of voter ID.

Although legal permanent resident immigrants and other immigrants with authorized status possess Texas driver's licenses and state-issued photo ID cards, in responding to constituents, elected officials consistently affirmed that a voter ID was needed to prevent non-citizens from voting. In February 2011, Lt. Gov. Dewhurst wrote to a constituent regarding photo ID, stating, “Voter ID will help stamp out voter fraud and increase public confidence in our election process by ensuring that only U.S citizens -- who are legally eligible -- vote in Texas elections.” At the same time, Lt. Gov. Dewhurst's U.S. Senate campaign website listed his support of voter ID legislation under the heading: “David Dewhurst Opposes Illegal Immigration.” Under this topic of illegal immigration, which included news articles on strengthening the U.S. Border and increasing the size of the Border Patrol, Lt. Gov. Dewhurst posted news articles describing his “push for the voter ID law for two sessions” and quotes himself as saying: “At the end of the day, there's nothing more important than protecting the sanctity of everyone's right to vote.” Upon Senate passage of SB 14, Lt. Gov. Dewhurst issued a press release stating that SB 14 will increase voter confidence “by ensuring only U.S.

¹⁶ *Id.*, at *29.

citizens – who are legally eligible – vote in Texas elections.” Non-citizens, the vast majority of whom in Texas are Latino, thus became the target of the voter ID debate in 2011.

Some legislators went as far as to connect Latinos and Spanish-speakers directly to fraudulent voting. In her testimony in the voter ID litigation case, Rep. Riddle, when asked about specific incidents of voter fraud, described one incident in which she saw a Hispanic, Spanish-speaking woman who appeared at a polling place to vote but needed assistance because she was unable to communicate in English and was unfamiliar with the process. Rep. Riddle offered this incident as an example of voter fraud despite the fact that she also testified that she had no knowledge of whether the voter was a citizen or not, only that she was Hispanic and Spanish-speaking.

Voter Purges in Florida and Colorado

By 2010, Latinos constituted 22.5% of the Florida population.¹⁷ In May 2012 the Florida Department of State launched a deeply flawed voter purge effort that originally identified 180,000 registered voters as potential non-citizens. The Department of State sent letters demanding proof of citizenship to 2,600 registered voters. Sixty percent of the people on the list were Latino even though Latino voters constitute just 13 percent of the state's electorate.¹⁸ Many who received the letters were U.S. citizens. In Broward County, a 91-year-old World War II veteran was forced to provide proof of his citizenship in order to remain on the voter rolls.¹⁹ And in Seminole County, an election official tweeted a picture of himself with one man who received a warning letter. In the picture, the two men stood side by side, holding the suspect voter's U.S. passport.²⁰

By September, the purge, which had faltered when county elections officials questioned the methodology, started up again, this time with a much smaller list of 198 registered voters, the majority of whom were also Latino and African American. The list was purportedly from the Department of Homeland Security but also contained serious flaws. For example, Yeral Arroliga, a U.S. citizen who immigrated from Nicaragua in

¹⁷ JEFFREY S. PASSEL, ET AL., CENSUS 2010: 50 MILLION LATINOS HISPANICS ACCOUNT FOR MORE THAN HALF OF NATION'S GROWTH IN PAST DECADE (Pew Hispanic Center, Mar. 24, 2011), available at <http://www.pewhispanic.org/files/reports/140.pdf>.

¹⁸ Janell Ross, *Florida Voter Purge Will Continue, Defying Federal Warning*, HUFFINGTON POST, June 2, 2012, http://www.huffingtonpost.com/2012/06/02/florida-voter-purge-federal-warning_n_1564131.html.

¹⁹ Greg Allen, *World War II Vet Caught Up In Florida's Voter Purge Controversy*, National Public Radio (May 31, 2012), available at <http://www.npr.org/blogs/itsallpolitics/2012/05/31/154020289/world-war-ii-vet-caught-up-in-floridas-voter-purge-controversy>.

²⁰ Michael Ertel, *Passport of one of our voters who recently was incorrectly targeted by the State of Florida as a non-citizen*, TWITTER (May 21, 2012), available at <https://twitter.com/MikeErtel/status/204678285383307264/photo/1>.

1995 and has been a Florida voter since 2007, appeared on the new list after he already sent proof of citizenship in response to having been placed on the first purge list.²¹

The results of this effort were wasted government resources, official embarrassment over targeting U.S. citizens for a voter purge, lawsuits, and voter confusion close to the election. In terms of identifying non-citizen voters, the outcome was predictably small in scope. In Miami Dade 13 registrants reported they were not citizens, two of whom had voted. This is consistent with what we know: non-citizen registrants are very few and normally under the mistaken impression that they are eligible to vote. In Florida, after all was said and done, one individual, a Canadian citizen was convicted for voting in the 2008 General Election.²² There are 12 million registered voters in Florida.²³

In Colorado, where Latinos constitute 20.7% of the population, the Secretary of State launched a similarly flawed voter purge of alleged citizens that also dwindled to very small numbers. After claiming there were up to 11,000 non-citizens on the Colorado voter rolls, and then sending almost 4,000 letters accusing individual registered voters of non-citizenship, Colorado Secretary of State Scott Gessler admitted that he thought 141 voters were potentially non-citizens and that he could not confirm that any were non-citizens before the General Election.²⁴ Ultimately 14 of these voters were removed from the rolls; none had voted.²⁵ There are 3.6 million registered voters in Colorado.²⁶

Texas 2011 Redistricting

Following release of the 2010 Census, which showed an increase of over 2.7 million Latinos in Texas, and the increase of four seats in the congressional delegation,

²¹ Marc Caputo, et al., *Fla. Gov. Rick Scott's voter purge efforts start anew*, TAMPA BAY TIMES, Sept. 27, 2012, <http://www.tampabay.com/news/politics/national/fla-gov-rick-scotts-voter-purge-efforts-start-anew/1253538>.

²² Toluse Olorunnipa, *Canadian man living in Broward pleads guilty to voting illegally in '08 presidential election*, THE MIAMI HERALD, Aug. 30, 2012, <http://www.miamiherald.com/2012/08/30/2977205/canadian-man-living-in-broward.html>.

²³ VOTER REGISTRATION STATISTICS, FLORIDA DIVISION OF ELECTIONS, <http://election.dos.state.fl.us/nvra/affiliation.asp> (last visited Dec. 18, 2012).

²⁴ *Voter Purging Resurfaces in Colorado* (ABC News/Univision Oct., 24, 2012), http://abcnews.go.com/ABC_Univision/voter-purging-resurfaces-colorado/story?id=17552694#.UM_DKHdsalE.

²⁵ Sam Levin, *Out of fourteen illegal voters banned after Scott Gessler's campaign, how many voted? Zero*, DENVER WESTWORD BLOGS (Oct. 12, 2012), http://blogs.westword.com/latestword/2012/10/scott_gessler_illegal_colorado_voters_fou_rteen.php.

²⁶ TOTAL REGISTERED VOTERS BY STATUS, 2012 VOTER REGISTRATION STATISTICS, COLORADO SECRETARY OF STATE, <http://www.sos.state.co.us/pubs/elections/VoterRegNumbers/2012/November/VoterCountsByStatus.pdf> (last visited Dec. 18, 2012).

the Texas Legislature enacted redistricting plans that intentionally thwarted the growing Latino electorate. The Legislature's redistricting plans for state House of Representatives and U.S. Congress were blocked by a federal court in Washington DC on the grounds that both plans reduced minority political strength and that the Congressional plan was purposefully discriminatory on the basis of race.

Despite the fact that Latinos constituted 65% of the State's overall population growth over the past decade, and was therefore the leading reason Texas gained four new congressional seats, the State did not increase the number of Latino majority districts in its Congressional redistricting plan. This was a particularly challenging task in light of the fact that most of the Latino growth occurred where there was already substantial Latino population. In addition, all of the Latino majority districts in South and West Texas were overpopulated and this required Latinos to be shifted into other districts in order to comply with the mandate of one person one vote.

In order to equalize population across districts, but not create additional Latino majority districts, Texas engaged in a sophisticated project of racial gerrymandering. First, the Legislature significantly redrew the boundaries of Congressional District ("CD") 23. (This was the district re-drawn in 2006 in response to the Supreme Court's holding in *LULAC v. Perry*, 548 U.S. 399 (2006), that Texas's 2003 Congressional redistricting plan violated section 2 of the Voting Rights Act and bore the mark of racial discrimination against Latino voters). Following the boundary revision by the *LULAC* district court, CD 23 had elected the Latino-preferred candidate in 2006 and 2008. In 2010, an Anglo-preferred candidate Francisco Canseco defeated the Latino-preferred incumbent with 49.3% of the vote. In 2011, Texas redistricting officials feared Mr. Canseco would be defeated in 2012 and sought to make CD 23 safer for Mr. Canseco.²⁷

While he was drawing CD 23 using the Texas Legislative Council's computer software, the Legislature's chief Congressional mapper moved precincts into and out of CD 23 for the purpose of strengthening the district for an incumbent who is not the Latino candidate of choice.²⁸ In particular, he "swapped out" precincts where Latino registered voters were more likely to turn out to vote and "swapped in" precincts with lower Latino turnout. Although benchmark CD 23 was overpopulated by approximately 149,000 and needed to release population to meet the new population ideal, Texas redistricters shifted more than 600,000 people into and out of the district.²⁹

An email exchange between lawyers for the Texas House Speaker who were working on the redistricting plans stated that the goal of changes to CD 23 was to "help pull the district's Total Hispanic Pop[ulation] and Hispanic CVAPs up to majority status, but leave the Spanish Surname [Registered Voter] and [turnout numbers] the lowest," which would be "especially valuable in shoring up [CD 23 incumbent] Canseco."

In altering CD 23, the State's mapper testified that he moved majority Anglo counties north of the Pecos River into CD 23, and split the heavily Latino, politically mobilized Maverick County so that half of it would be located outside of CD 23.³⁰ He did this even though he and Senate Redistricting Committee Chairman Kel Seliger

²⁷ *Texas v. United States*, 2012 WL 3671924, at *57 (D.D.C. 2012).

²⁸ *Id.*, at *60.

²⁹ *Id.*, at *59-60.

³⁰ *Id.*, at *60

admitted that “the excess population in CD 23 could have been addressed by simply moving CD 23 down toward the border with Mexico,” and Chairman Seliger admitted that if this were done, “Hispanic voters would ‘determine[] the outcome’ of the election in CD 23.”³¹ The State’s mapper admitted to removing the highly— and increasingly— mobilized Maverick County voters, who are over 95% Latino, from CD 23 because they would not vote for the incumbent he sought to protect.³²

While redistricters were swapping Latino voters in and out of CD 23, they were keeping a careful eye on both Latino population and how the district performed electorally so that the final product would have the ability to elect the Latino-preferred candidate in only one of ten elections.³³

The State’s own expert witness, Dr. John Alford, testified with respect to the Legislature’s changes to CD 23 and the 2003 redistricting of CD 23 that was invalidated by this Court’s decision in *LULAC v. Perry*, that “[t]here are some obvious parallels between what happened previously and what happened this time” and “we feel like we are all having déjà vu[.]”.

The district court found “an abundance of evidence that Texas, in fact, [used] various techniques to maintain the semblance of Hispanic voting power in the district while decreasing its effectiveness.”³⁴

In the Dallas Ft. Worth Metroplex, Texas redistricters excised Latino voters from the City of Fort Worth congressional district and joined them with a heavily Anglo electorate to the north in Denton County.³⁵ This “lightning bolt” extension of the predominantly Anglo CD 26 into Ft. Worth also used race methodically to separate Latino voters from African American voters in the area, splitting 38 precincts in the process.³⁶

Based on this evidence, the U.S. District Court for the Western District of Texas, which was tasked with drawing interim plans for use while the enacted plans were being litigated, determined that it could not legally incorporate the enacted CD 26 into its interim plans.³⁷ The U.S. Supreme Court found in *Perry v. Perez* that the state’s redistricting in the Dallas Ft. Worth Metroplex “appear[s] to be subject to strong challenges in the §5 proceeding” and that departing from the State’s enacted plan in the interim plan “seems appropriate.”³⁸ Similarly, the U.S. District Court for the District of Columbia found that, “[t]he purpose behind the split VTDs was to move Hispanic populations into enacted CD 26 and split the non-Hispanic population out of the district.”³⁹

The Legislature’s plan for the State House: reduced the number of Latino-opportunity districts; drew oddly shaped districts in areas with concentrated Latino

³¹ *Id.*

³² *Id.*, at *61.

³³ *Id.*, at *62.

³⁴ *Id.*, at *16.

³⁵ *See id.*, at *71-72.

³⁶ *Id.*

³⁷ *See Perez v. Texas*, 2012 WL 4094933, at *15 (W.D. Tex, 2012).

³⁸ *Perry v. Perez*, 132 S.Ct. 934, 944 (2012).

³⁹ *Texas v. United States*, 2012 WL 3671924, at *72.

populations that impaired Latino voters' ability to elect the candidates of their choice; and refused to draw majority-Latino districts in areas with significant increases in the Latino population.

For example, Texas eliminated House District 33 (HD 33) in Nueces County, a majority-Latino county in South Texas where Latino population growth was substantial. In the benchmark plan, HD 33 is located inside the City of Corpus Christi and contains 55% Spanish-surnamed voter registration. The Legislature's plan relocates HD 33 to Rockwall and Collin counties in North Texas where the district contains 8.5% Spanish-surnamed voter registration and is not a Latino-opportunity district.⁴⁰

In addition to reducing the number of Latino-majority districts, the Legislature also drew districts in areas with substantial Latino populations in ways that minimized Latino voters' opportunity to elect their preferred candidates. In El Paso County, which is 80% Latino, the State re-drew HD 78 into a bizarre shape that maximized the number of Anglo voters in the district. As a result, although the remaining House districts in El Paso County have an average of 74% Latino registered voters, HD 78 in the Legislature's plan contains 47% Latino registered voters. The Legislature's reconfiguration of HD 78 splits 15 voting precincts, and does not follow traditional features such as the mountain range that dominates the area's geography. The U.S. District Court for the Western District of Texas concluded that the "deer antler" protrusions of the district and "the high number of split precincts in the protrusions increases the likelihood that the map-drawers were focused on race because partisan voting data are not available below the precinct level" and found that the plaintiffs in that case had presented a viable claim of purposeful discrimination.⁴¹

In Bexar County, where Latinos are in the majority and the Latino population over the last decade increased by 250,000, Texas withdrew HD 117 from more active precincts and extended the district into rural areas with relatively lower Latino turnout in order to protect the incumbent who was not Latino-preferred.⁴²

The U.S. District Court for the District of Columbia concluded that the Texas Legislature's State House plan reduced minority ability to elect and that "Texas did not create any new ability districts to offset those losses."⁴³

Conclusion

Although Latino registration and voting rates still lag behind those of Anglos, Latino voters are steadily increasing in number and achieving record high levels of voter participation in each successive 4-year cycle.⁴⁴ State practices that seek to "freeze in

⁴⁰ *Id.*, at *27.

⁴¹ *Perez v. Texas*, No. 11-cv-00360, Dkt. No. 690 at p. 10-11 (W.D. Tex. Mar. 19, 2012).

⁴² *Texas v. United States*, 2012 WL 3671924, at *31, 88.

⁴³ *Id.*, at *26.

⁴⁴ MARK HUGO LOPEZ ET AL., A RECORD 24 MILLION LATINOS ARE ELIGIBLE TO VOTE, BUT TURNOUT RATE HAS LAGGED THAT OF WHITES, BLACKS (Pew Hispanic Center, Oct. 1, 2012), available at

http://www.pewhispanic.org/files/2012/10/trends_in_Latino_voter_participation_FINAL_REVISED.pdf.

place” their current electorates and limit the entry of Latino voters can run afoul of federal law as well as the Constitution and are fundamentally undemocratic.