



Testimony of Juan Cartagena
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Chairman Chabot, Ranking Member Nadler, and members of the Subcommittee, thank you for the opportunity to appear before this distinguished subcommittee and testify about the reauthorization of certain provisions of the Voting Rights Act, in particular the provisions that provide for bilingual assistance for language minority citizens of this country. I am Juan Cartagena, General Counsel to the Community Service Society in New York City and a voting rights lawyer since 1981 who has used the promises of equal opportunity and full political access established in the Voting Rights Act to represent underserved communities in a number of states and neighborhoods, especially racial and language minorities.

The Community Service Society is an independent, nonprofit organization that for more than 160 years engages in social science research, advocacy, policy analysis, direct service and volunteerism to address the problems of poverty and strengthen community life for all. I direct a small public interest legal unit that engages in legal intervention strategies to supplement the advocacy work that we do at CSS. Since 1989 CSS has used the Voting Rights Act and other legal norms to benefit our most marginalized

communities by ensuring the full and fair representation of the City's poorest neighborhoods, especially African American and Latino voters.¹

¹ The Community Service Society has focused heavily on nonpartisan voter registration, voter education and voter mobilization campaigns that have resulted in over 250,000 new voters in New York City alone. It supplements this street-level engagement in poor communities with legal advocacy which includes a number of lawsuits in the area of voting rights: In 1989 CSS successfully used the Voting Rights Act to stop the discriminatory purge of over 320,000 voters in United Parents Associations v. New York City Board of Elections. Subject to the State's non-voting purge, CSS proved that the law's application had an unlawful, discriminatory effect as Black and Latino voters were 32% more likely to be purged for non-voting. The National Voter Registration Act of 1993 eventually superseded and eliminated New York's non-voting purge. In 1990 CSS used a state law challenge to enforce the Governor's Executive Order to facilitate agency-based voter registration, particularly in agencies serving poor communities in 100% VOTE v. New York State Board of Elections. In 1995 CSS sued in state court to fully implement voter registration in mayoral agencies in Disabled in Action v. Giuliani with the courts only upholding the right of the Commissioner of the NYC Voter Assistance Commission to obtain annual reports on compliance. Starting in 1995 CSS litigated a number of cases under the National Voter Registration Act of 1993 ("NVRA") to ensure that voter registration was fully implemented in agencies that service poor persons, thereby benefiting Black and Latino neighborhoods: National Congress for Puerto Rican Rights v. Sweeney (successfully forced the NY State Department of Labor to provide voter registration at Unemployment Insurance offices reaching 80,000 applicants per year); League of Women Voters v. Merrill (suit in New Hampshire to force the implementation of the NVRA; Congress instead passed a special law to exempt New Hampshire from compliance, thereby mooting our suit); Disabled in Action v. Hammons (suit seeking full NVRA compliance in every setting where Medicaid applications are processed, resulted in a partial victory that applied only to public hospitals); Cartagena v. Hooks (successful suit in New Jersey to force access to public records to demonstrate faulty NVRA compliance); Brenda K. v. Hooks (successful suit in New Jersey to force NVRA compliance for persons with mental disabilities – many of them on fixed incomes). In 1997 in Diaz v. Silver CSS handled an appeal to the U.S. Supreme Court on a constitutional challenge to the 14th Congressional District in New York City currently represented by Congresswoman Nydia Velázquez.

At present, CSS is co-counsel to a Voting Rights Act and constitutional law challenge to New York's felon disfranchisement law in Hayden v. Pataki (along with the NAACP Legal Defense Fund and the Center for Law & Social Justice). The case affects over a hundred thousand persons currently incarcerated and on parole for felony convictions – the bulk of them Black and Latino and New York City residents. The Hayden case has recently been consolidated on appeal with Muntaqim v. Coombe and was heard before a full *en banc* court on June 22, 2005, on the limited issue of whether Section 2 of the Voting Rights Act can challenge state felon disfranchisement laws. Our efforts to assist persons with felony convictions to renew their participation in the

The focus of my remarks today will be in support of the reauthorization of Section 203 of the Voting Rights Act especially as it addresses the concerns of Latino communities in New York City with a particular emphasis on the voting rights of Puerto Rican voters. Additionally, in light of my litigation background and research on Puerto Rican communities in New Jersey, I will also take this opportunity to share my observations on the need for Section 203 reauthorization in that State as well.

The position of the Community Service Society in this regard is clear: With our years of experience in registering the poor and mounting legal challenges to institutional barriers to full political participation, we strongly support bilingual voting assistance as a valid and efficient policy that promotes democracy.

political process resulted in a new policy memorandum in 2003 from the New York State Board of Elections that simplified the process of reintegrating former registered voters back on the rolls once they've completed all their criminal justice supervisory requirements that emanated from their prior convictions.

CSS has also used legal advocacy to address a number of Election Day matters that hinder the rights of African-American and Latino voters to fully exercise the franchise. Along with members of the New York Voting Rights Consortium (a coalition of select legal defense funds that address voting rights issues in minority communities in NYC), CSS was directly engaged in Election Protection efforts in the November 2004 general elections helping to document deficient bilingual assistance compliance for Latinos, unfair policies and breakdowns in the processes that handle absentee ballots, and the total failure of the NYC Board of Elections to properly notify voters of their assigned polling place. In years prior to 2004, CSS along with the Consortium has called for increased monitoring of NYC elections and increased attention to faulty election machine breakdowns in minority neighborhoods.

Finally, CSS was heavily engaged in the advocacy efforts to ensure a fair redistricting plan for the New York City Council in 1992 – including advocacy before the Department of Justice regarding Section 5 preclearance of this plan. CSS was the only independent agency, outside of the City's Districting Commission, to advance a full and detailed redistricting plan, which led to the adoption of additional districts that allowed the election of an unprecedented number of Black and Latino candidates. CSS has weighed in on various other voting changes under the Section 5 preclearance regulations of the Department of Justice.

There are numerous good policy reasons that warrant the continuation of the bilingual assistance provisions of Section 203 that allow language minority citizens an equal opportunity to vote. I will summarize them here now and elaborate below:

Section 203 is viable and necessary in 2005 because the full participation of Latino language minority citizens has yet to be achieved and, equally important, since the last renewal of Section 203 in 1992, New York and New Jersey have required aggressive enforcement activity to force compliance from both the Department of Justice and private attorneys general. As a result, Latino communities in both jurisdictions have yet to reap the full benefits that Congress devised in their favor.

Section 203 is required to address the unique needs of our country's citizens from Puerto Rico.

Section 203's guarantees promote responsive government -- a government that is in sync with the changing demographics of our times; a government that is open and inclusive. Its renewal represents a fair and reasonable expenditure of government resources to accomplish the promise of equal opportunity for this country's most cherished right: the right to vote.

Section 203 is devised in a way that automatically readjusts itself in response to changing migration patterns within our respective states. Accordingly, its coverage formula targets mandated assistance efficiently. The language characteristics of Latino citizens today warrant continued Section 203 coverage. Indeed, CSS supports a lowering of the numerical threshold for Section 203 coverage from 10,000 to 7,500 language minority citizens and also supports the use of newer Census Bureau data to adjust coverage in between decennial Census cycles.

Section 203 will provide bilingual oral assistance at a time when many jurisdictions are undergoing significant changes in election apparatus under the Help America Vote Act while simultaneously continuing the practice of translating complex legal jargon in public referenda into a language that is more accessible to many language minority citizens.

SECTION 203 IS VIABLE AND NECESSARY IN 2005

For Latino citizens, the important work that Congress began to benefit language minorities in 1975 and in the 1992 amendments remains unfulfilled. This alone justifies an extension of Section 203.

Congressional policy under the triggering provisions that lead to Section 5 and Section 4(f)(4) coverage hinges on disparities in voter registration and voter turnout along with the presence of a test or device for voting. Section 203 coverage is pegged on a critical mass of Limited English Proficient language minority voters whose illiteracy rate is higher than the national average.

A number of indicators demonstrate that for Latino voters Spanish dominance is still an identifiable phenomenon and registration and turnout rates of the *eligible* Latino voting population is still way behind their White and Black counterparts. Add to this the extremely low number of Latino elected officials, commensurate with their share of the citizen population and the conclusion is inescapable: bilingual assistance is still viable and necessary in today's political environment. In numbers well above the national average 75% of Latinos in the U.S. speak a language other than English at home – the

national average is 18% -- and invariably that language is Spanish (see discussion below). Survey data in 2002 on Latino voters² corroborates these general findings to show that nearly a quarter (23%) of registered Latinos identify Spanish as their primary language and indicate that they speak little to no English. For the November 2004 election both the number of Latinos registered to vote (9.3 million) and the number of Latinos who cast ballots (7.6 million) evidenced significant increases compared to 2000. In both registration and turnout rates Latinos were lower than their White or Black counterparts according to a 2005 report commissioned by the Pew Hispanic Center.³ The report concluded that only 47% of the eligible Hispanics turned out to vote compared to 67% of Whites and 60% of Blacks, attributing most of the difference to registration differentials. The Census Bureau's Current Population Survey data for 1996 confirms similar trends: Of the citizen, voting age population in November 1996, 59% of Hispanics were registered (44.3% voted); 66.5% of Blacks were registered (53% voted) and 73% of Whites were registered (60.7% voted).⁴ Equally important, the share of Latino office-holders among all elected positions in the U.S. has led one political scientist to conclude that for Latinos the Voting Rights Act has "failed to meet its goals of enhancing minority

² The Pew Hispanic Center / Kaiser Family Foundation National Survey of Latinos: The Latino Electorate released in October 2002 surveyed 2,929 Latino adults in April and June of 2002. See www.pewhispanic.org

³ Roberto Suro, Richard Fry & Jeffrey Passel, Hispanics and the 2004 Election: Population, Electorate and Voters. Pew Hispanic Center. Washington D.C. 2005. See www.pewhispanic.org The report relies predominately on the Census Bureau's Current Population Survey data.

⁴ Lynne M. Casper & Loretta E. Bass, "Voting and Registration in the Election of November 1996," Census Bureau, p. 5, Current Population Reports, July 1998. The report relies exclusively on Current Population Survey data; figures for Whites and Blacks are for non-Hispanic Whites and non-Hispanic Blacks, respectively.

representation relative to population.”⁵ The conclusion was reached after calculating the number of Latino elected officials among the 493,830 such offices that exist in the country to find that Latinos compose only 0.9% of the officeholders – well below their share of the adult citizen population.

It is generally accepted that both voter registration and voter turnout is strongly correlated with certain socioeconomic factors including education and income. Data from the 2000 Census clearly demonstrate that Latinos lag behind national averages in each of these critical areas.⁶ Of the population over 25 years of age, over 80% are high school graduates or more and 24% have a bachelor’s degree or higher. Nationally, Latinos are at 52% and 10% on each of these measures, respectively. For Puerto Ricans and Dominicans (two Latino national origin groups that are prevalent in both New York and New Jersey) the figures are as still considerably below the national average: 63% of Puerto Ricans have a high school diploma or more schooling (about 13% of them have a college degree or more); 51% of Dominicans are high school graduates or more (and 11% of them have a bachelor’s degree or higher). The 2000 Census also reported poverty rates as follows for all ages: Total population: 12.4%; Latinos: 22.6%; Puerto Ricans: 25.8%; and Dominicans 27.5%.

Finally, as set forth below, in both New Jersey and New York, the promise of full compliance with Section 203’s guarantees is still unmet and requires additional attention.

⁵ Louis DeSipio, “Latino Voters: Lessons Learned and Misunderstood,” The Unfinished Agenda of the Selma-Montgomery Voting Rights March, pp. 138-139. Landmarks in Civil Rights History, Black Issues in Higher Education.

⁶ The data in this paragraph are derived from the Census Bureau: Roberto R. Ramirez, We the People: Hispanics in the United States. Census 2000 Special Reports, issued December 2004.

New Jersey

The struggle to provide access to language minority voters of Spanish heritage in the State of New Jersey has a long history in the Garden State – all of it initiated as a result of the efforts of civil rights advocacy organizations and, recently, the U.S. Department of Justice to enforce the guarantee of the right to vote for citizens who have yet to fully master the English language. In short, New Jersey’s Latino voters have rarely, if ever, enjoyed the full benefits promised in Section 203 – such has been the state of noncompliance.

Over 30 years ago, in 1973, a federal court in Newark ordered election officials in Hudson and Essex counties to comply with Section 4 (e) of the Voting Rights Act by providing bilingual (Spanish and English) voter registration forms and other materials and assistance to the mostly Puerto Rican populations of those counties at that time in the case of Marquez v. Falcey.⁷ With the subsequent passage of Section 203 additional counties in the State were required to provide written and oral assistance to the growing Latino population of New Jersey. In the 1990’s these included Essex, Hudson, Middlesex, Passaic and Union counties. In this decade, Bergen and Cumberland counties were added in recognition of the growing population of Latinos in the State.⁸

⁷ Civil No. 1447-73 (D.N.J.) (Consent Decree, Oct. 9, 1973).

⁸ Jurisdictions Covered under Sections 4(f)(4) and 203(1) of the Voting Rights Act of 1965, as amended, 28 C.F.R. app. §55 (2004).

And yet enforcement of these language minority protections is left to the federal courts. In 1989, a federal court in Vargas v. Calabrese⁹ issued a Consent Decree to increase the availability of Spanish speaking district board members at the polls in Hudson County and to ensure that new procedures and complaint forms for voters being challenged were available in Spanish. In the late 1990's the U.S. Department of Justice sued Passaic county and city election officials (United States v. Passaic City) for their failure to comply with the bilingual provisions of the Voting Rights Act which resulted in a comprehensive Consent Decree that forced election officials to engage in recruitment of bilingual election workers, publish election notices and materials in Spanish, and provide voter assistance to Spanish-speaking voters.¹⁰

The experience of language minority voters in Passaic County is especially egregious and speaks to the continued need to renew both Section 203 *and* the federal observer provision of the Voting Rights Act. According to the materials prepared for the Northeast Regional Hearing of the National Commission on the Voting Rights Act,¹¹ between 1999 and 2004, a total of 454 federal election observers were deployed in

⁹ Civil No. 85-4725, (Consent Decree issued January 3, 1990). For background on this litigation, *see*, Vargas v. Calabrese, 634 F.Supp. 910 (D.N.J. 1986); 714 F.Supp. 714 (D.N.J. 1989); 750 F.Supp. 677 (D.N.J. 1990).

¹⁰ United States v. Passaic City, No. ____ (D.N.J. issued Consent Decree June 1999), *available at* www.usdoj.gov/crt/voting/sec_203/documents/passaic.htm (last visited Jan. 12, 2005).

¹¹ The National Commission on the Voting Rights Act, chaired by former U.S. Senator Charles Mathias and former Assistant Attorney General for Civil Rights, Bill Lann Lee, is a project of the Lawyers' Committee for Civil Rights Under Law (www.votingrightsact.org) with the goal of gathering testimony from around the country and submitting it to this Congress for its consideration as it debates the reauthorization of the Voting Rights Act. The author was a Guest Commissioner for the Northeast Regional Hearing of the Commission which was held on June 14, 2005.

Passaic County in 18 different elections to monitor compliance with Section 203, ensure that Latino voters were not intimidated and that translated materials were available in sufficient supply. This massive and necessary federal engagement was the culmination of a federal investigation and Department of Justice litigation that targeted the County's following municipalities: Passaic, Paterson, Clifton, Haledon and Prospect Park. As recently as 2003, municipal officials in Clifton were still questioning the need to comply with federal law and provide bilingual assistance to voters.¹²

New York

The historical development of New York's bilingual assistance efforts for Latino voters is set forth below in the section on Puerto Ricans and Section 203. But recent data on Latinos and voting in New York documents depressed levels of participation in the City. A recent report on Latino political participation noted some increases in voter registration rates from 1990 to 2000 but still concluded that "Electoral participation is generally low among Latino registered voters. A million and a half voting age Latinos live in New York City, but only about 700,000 Latinos are registered to vote and only about 455,000 regularly participate in elections."¹³ This report noted that political participation among Latinos was actually lower in concentrated Latino neighborhoods in the City with few exceptions and it concluded that "to the extent that [these voters]

¹² Amanda Gerut, "Clifton Seeks Proof of Need for Translators," The Record, Feb 12, 2003.

¹³ John Mollenkopf & Luis Miranda, "Latino Political Participation in New York City: 2002." Hispanic Federation, March 2002.

continue to rely on Spanish, political campaigning conducted in English does not reach them as directly.”¹⁴

The prevalence of Spanish language use at home and corresponding lower proficiency in English is clearly a phenomenon in New York City as well.¹⁵ For Latinos nationally, the percentage of persons who speak English less than “very well” and who report that Spanish is spoken in their homes is 40.6%. In New York City 51% of Latinos who speak Spanish at home report lower proficiency levels in English. It is important to emphasize again that the measure of speaking English less than “very well” is the measure used by the Census Bureau, along with other indicia, to certify Section 203 coverage. Family literacy centers in New York City – indeed, all places where adults can try to learn English – are in very short supply with demand far exceeding supply.¹⁶

Three counties in New York City are covered under Section 5 of the Voting Rights Act. Materials prepared for the Northeast Regional Hearing of the National Commission on the Voting Rights Act (referred to above) demonstrate a pattern of Section 5 objections interposed by the Department of Justice, especially in redistricting plans at all levels of government, that documents the City and State’s failure to comply

¹⁴ Id. at p. 18.

¹⁵ New York City data reported in this paragraph comes from the 2000 Census as analyzed by the Queens College Department of Sociology. Nina Bernstein, “Proficiency in English Decreases Over a Decade,” The New York Times, 19 January 2005. National data is derived from the Census Bureau: Roberto R. Ramirez, We the People: Hispanics in the United States. Census 2000 Special Reports, issued December 2004.

¹⁶ Nina Bernstein, “Proficiency in English Decreases Over a Decade,” *supra*.

with the mandates of equal opportunity in the political process for Latinos.¹⁷ Moreover, the inability to fully comply with Section 203 requirements for Latino voters resulted in the assignment of federal observers in a number of elections since the 1992 amendments to Section 203. Of the multiple times federal observers were present the following elections were identified specifically because of concerns over Latino voters and bilingual assistance: September 2001 (Kings and New York Counties); October 2001 (Bronx County); September 2004 (Queens County).

SECTION 203 AND PUERTO RICANS LIVING IN THE UNITED STATES

In 1917 Congress declared Puerto Ricans citizens of the United States.¹⁸ This fact alone speaks volumes about how the ultimate badge of citizenship, voting, must be analyzed separately for Puerto Ricans who come to reside in the United States. Congress established U.S. citizenship for Puerto Ricans with no concern, requirement, or test for English proficiency.¹⁹ Indeed, the historical and present day record of military service by

¹⁷ A cursory review of the Section 5 letters denying preclearance (available from the U.S. Department of Justice, Voting Section) demonstrates a number of instances where election authorities were stopped from implementing changes that would hinder equal opportunities for Latino voters in New York City. November 1996: objection to the replacement of elected community school board members with appointees in a heavy Latino school district; June 1992: objection to Assembly redistricting plan as it affected Latino voting strength; June 1991: objection to City Council councilmanic redistricting plan for its effects on Latino voters. Plus numerous other instances before the last amendments to Section 203.

¹⁸ Re-codified at 8 U.S.C. § 1402.

¹⁹ Decades earlier, albeit in a different context and for different reasons, the United States granted U.S. citizenship to thousands of Mexicans in what is now the American Southwest without a prerequisite of English proficiency upon the adoption of the Treaty of Guadalupe Hidalgo in 1848.

Puerto Ricans on behalf of the United States is also one that is not predicated on English proficiency.²⁰

Equally important, however, are the policies adopted by Congress and the Executive Branch to address language issues in Puerto Rico since 1898 when American troops first entered the island. In 1965 a three-judge district court in New York in United States v. County Board of Elections of Monroe County, New York, 248 F.Supp. 316 (W.D.N.Y. 1965) fully understood the breadth of Congress' power over U.S. territories under Article IV of the Constitution, the anomaly of federal language policies towards Puerto Rico and the right to vote of Puerto Ricans once they migrated to the States. The court confronted the claims of a Puerto Rican woman educated through the 9th grade in Puerto Rico who sought to register to vote in Rochester, New York, despite New York's English literacy requirement for voting. I set forth a number of excerpts from Judge Kaufman's opinion to give this Congressional Subcommittee a context for the positions I advance herein for Puerto Rican voters:

“[B]y means of this all pervasive Article IV power Congress controlled the very structure and existence of Puerto Rican life and, for over half-century, effectively shaped its institutions in accordance with Congress' own territorial policies. But, throughout most of this period, Congress, cognizant of evolving principles of international law, recognized the inherent right of a people and the wisdom of a foreign policy which sought to preserve the territory's culture and the integrity of its mother tongue . . .

While in the earlier years of the territorial administration the Commissioners [of Education appointed by the President of the United States] decided that the English language would be the medium of instruction in these schools, it was soon apparent that the attempt to 'Americanize' the inhabitants of the newly acquired territory by the artificial introduction of a foreign language into its

²⁰ It has been generally reported in Puerto Rico that Puerto Ricans in the armed services receive a higher proportion of medals and recognition for valor, per capita, than any State in the Union.

educational processes was not only impracticable, but disadvantageous to this country's relations with other Latin American nations. . .

This educational policy, deliberately determined by the United States, is at the core of the problem that gives rise to the instant action. *Specifically, we are confronted with American citizens of Puerto Rican birth or residence who have been encouraged by our government's Puerto Rican educational and foreign policy to use Spanish as the means of communication in both public and private life. Moreover, since the Jones Act of 1917, American citizens of Puerto Rican birth have been permitted free and unrestricted migration to the mainland of the United States. As a result they are enabled to become residents of any state, 'there to enjoy every right of any other citizen of the United States, civil, social and political . . .'* This policy, and peculiarly mid-twentieth century influences, gave rise to a phenomenon theretofore unknown in the history of American immigration. During the decade from 1951 through 1960, when Puerto Rican migration to the continental United States was at its height there developed a considerable circular movement of immigrants back and forth between New York City, the heart of the mainland Puerto Rican population, and San Juan, Puerto Rico. The reason . . . stemmed from the fact that: 'The links between the New York Puerto Ricans and the island Puerto Ricans are close and complex, and quite different from the relationship of earlier migrant groups to their homeland. Puerto Rico is part of the United States, and there is no control over movement between the island and the mainland.' . . .

The Congressional policies of encouraging the use of Spanish as the native tongue of Puerto Rican-Americans and unrestricted travel between mainland United States and Puerto Rico, have caused a very substantial Spanish-speaking population . . . to become residents of New York State. *It is this body of American citizens whose plight results from American policy, who, in an attempt to integrate their community into the mainstream of American life and to improve their economic and social position by making their presence felt in government councils, are faced with the requirement imposed by the State of New York that one must read and write the English language in order to register to vote.*"²¹

As important as this opinion is in the historical development of full and equal access to the voting booths for language minority citizens, it is equally important to recognize that the conditions that led to this judicial pronouncement have not abated in any major way in the last 40 years:

²¹ United States v. County Board of Elections of Monroe County, New York, supra, 248 F.Supp. at 319-320 (citations omitted; emphasis added).

1) Puerto Rico is still an unincorporated territory of the United States subject to plenary Congressional authority under Article IV. Spanish is still, by far, the dominant language of most of its residents and the language of instruction in its public schools. Census 2000 data for Puerto Rico reveal a very large proportion of the population that speaks English less than “very well” and a corresponding portion of the residents that are monolingual in Spanish.²² Of the over 3.5 million residents of Puerto Rico over the age of five, 85% speak Spanish and over 1.355 million do not speak English at all representing 45% of all Spanish-speakers and 38% of all persons in that age group. When data is analyzed on the basis of who speaks English less than “very well” in Puerto Rico (the measure used by the Census Bureau for Section 203 coverage) the numbers are stark: over 2.5 million persons, 72% of all persons in this age group (and 84% of all Spanish speakers) report their ability to speak English as less than “very well.”

Debates in the 1990’s over the island’s own language policies resulted in survey findings by researchers Kenji Hakuta, Leonni Huddy and David Sears²³ that documented extremely strong loyalties to the Spanish language among Puerto Rico’s residents: 95% of respondents were in favor of continuing government operations in Spanish; only 25% of respondents considered their English skills to be good or excellent, and only 11% answered that they use English as part of their work duties.

²² The data in this paragraph are the author’s calculations from the Census 2000 Summary File 4 (SF4) for persons over the age of 5 in Puerto Rico (native and foreign born).

²³ The survey was commissioned by the Ateneo Puertorriqueño and released by Hispania Research on January 9, 1993. Pedro Juan Rua, La encucijada del idioma [Language at a crossroads], p. xii. Editorial Instituto de Cultura Puertorriqueña. San Juan 2002.

2) Puerto Ricans in the United States still maintain very strong ties to the Spanish language -- less than in the 1960's but strong nonetheless today.²⁴ Put in another way, a sizeable portion of Puerto Ricans in the United States is not proficient in English. The 2000 Census reveals that 18% of the nation's population age five and over speak a language other than English at home -- for 60% of them it was Spanish. Among Latinos, 75% of them spoke a language other than English at home -- in virtually all cases it was Spanish. Over 40% of all Latinos reported speaking English less than "very well" -- the measure used by the Census Bureau that pegs compliance with the bilingual assistance provisions of Section 203. The proportion dropped to 26.7% for Puerto Ricans. In New York and New Jersey²⁵ the proportion of Puerto Ricans who speak English less than "very well" is slightly higher than the national average for Puerto Ricans in the U.S.: 27.4% of New York State's Puerto Rican community speaks English less than "very well" and the corresponding figure for New Jersey is 28.7%.

3) Census population figures for 2003 estimate the Puerto Rican population in the United States at 3.7 million, which will soon match and exceed the 2000 Census figures for the population of the island (3.8 million).²⁶

4) Puerto Rican migration between Puerto Rico and the United States is still characterized by the circular patterns noted in the Monroe County decision in 1965.

²⁴ The data in this paragraph are derived from the Census Bureau: Roberto R. Ramirez, We the People: Hispanics in the United States. Census 2000 Special Reports, issued December 2004.

²⁵ The data in this paragraph for New York and New Jersey are the author's calculations from the Census 2000 Summary File 4 (SF4) for persons over the age of 5 in those States.

²⁶ The estimate is from Census Bureau's American Community Survey 2003 Data Profile, Table 1 General Demographic Characteristics estimating 3,717,941 Puerto Ricans in the U.S.

Professor Jorge Duany noted that in the 1980's and 1990's mass emigration from Puerto Rico resumed in large numbers while return migration continued unabated, the hallmarks of circular migration: "In short, contemporary Puerto Rican migration is best visualized as a transient and bidirectional flow (a 'revolving door' movement), rather than as an irrevocable and unilateral displacement."²⁷ Migration patterns for the Puerto Rican population are important indicators to consider as Congress tackles the question of Section 203 reauthorization. Since migration is bidirectional (and has been for some time) the flow of Puerto Ricans who speak English less than "very well" in the island – 72% of all persons over five years of age – with the same category of Puerto Ricans in New York and New Jersey (whose difficulty with English is higher than the national average for all Puerto Ricans) is an important factor to consider in this debate.

PUERTO RICANS IN NEW YORK CITY²⁸

New York City has been considered the epicenter of Puerto Rican life in this country. The proportion of Puerto Ricans living in New York City has changed, however, in the last 40 years: In 1960 a total of 757,231 Latinos lived in New York City, over 80% of which were Puerto Rican; in 1970 a total of 1,202,281 Latinos lived in the

²⁷ Jorge Duany, Puerto Rican Nation on the Move: Identities on the Island and in the United States, p. 211. University of North Carolina Press. Chapel Hill 2002.

²⁸ A more detailed discussion of this section, especially the development of Puerto Rican politics and its relationship to the Voting Rights Act of 1965, is found in Juan Cartagena, "Latinos and Section 5 of the Voting Rights Act: Beyond Black and White," 18 *National Black Law Journal* (No.2) 201 (2005). www.votingrights.org/resources/ (last visited 4 Nov. 2005) (hereafter "Cartagena 2005").

City, two-thirds of which were Puerto Rican.²⁹ In 1980 1.4 million Latinos lived in the City including 869,500 Puerto Ricans; in 1990 Puerto Ricans numbered almost 897,000 out of 1.8 million Latinos and in 2000 Puerto Ricans represented 36% of all Latinos in the City (789,200 out of 2.2 million).³⁰ Although the Puerto Rican share of Latino population in the City decreased, it is important to note that over 789,000 Puerto Ricans is nonetheless a sizeable force in the City and easily the largest ethnic group in all of New York City.³¹ By comparison, the 2000 Census documented that there were still over one million Puerto Ricans living in New York State, but with Florida (with 482,027) and New Jersey (with 366,798) growing more rapidly.³²

The first Puerto Rican ever elected to public office in the United States was Oscar García Rivera who was elected to the New York Assembly in 1937 on the Republican and American Labor Party ticket. But it took decades after that break through for the Puerto Rican community to regain a foothold in national American politics in the 1970's with the election of Herman Badillo, a Democrat, as the first Puerto Rican elected to Congress in 1971. By the 1990's and into this decade New York's Puerto Rican representation in Congress was increased only by one with the election in 1992 of Nydia Velázquez, Democrat, representing parts of New York, Kings and Queens counties.

²⁹ Gabriel Haslip-Viera, "The Evolution of the Latino Community in New York City: Early Nineteenth Century to the Present," in Latinos in New York: Communities in Transition, Gabriel Haslip-Viera & Sherrie L. Baver, Eds., University of Notre Dame Press, pp. 14-15. Notre Dame 1996.

³⁰ Maite Junco, "Adiós, 'Puerto Rican,'" The Daily News, 14 March 2004.

³¹ Angelo Falcón, "De'tras Pa'lante: The Future of Puerto Rican History in New York City," PRLDEF Institute for Puerto Rican Policy. New York, January 2001.

³² Roberto R. Ramirez, We the People: Hispanics in the United States. Census 2000 Special Reports, December 2004, Table 1, p.4.

Congressman José Serrano, Democrat, represents the congressional district in the Bronx that went from Herman Badillo to Roberto García to Mr. Serrano.³³

In 1965 an entrenched impediment to the full enfranchisement of African Americans and a clear target of the VRA was the use of literacy tests. Despite the Supreme Court's pronouncement that literacy tests were facially constitutional,³⁴ the danger of the tests in the Deep South was also in their discriminatory application. As a result, the coverage formula for Section 5's protections specifically included literacy tests among the "tests or devices" that were used to trigger the VRA's most exacting provisions. Section 5's initial geographic scope was limited to a small number of states and jurisdictions, all of them in the South.³⁵ In 1965, however, the discriminatory use of literacy tests, as a prerequisite for voting was not within the exclusive domain of Southern states. New York was a prime example.

New York's literacy test requirement already had a history of discriminatory use against vulnerable populations of the state. In general, historians have identified Southern and Eastern European immigrants as the target for literacy tests' exclusionary function in the area of immigration.³⁶ In New York the 1921 state constitutional

³³ Congressman Luis Guitierrez from Chicago is also Puerto Rican. I do not include the Resident Commissioner from Puerto Rico in this count because that position is established as a non-voting member of Congress.

³⁴ Lassiter v. Northampton County Bd. Of Election, 360 U.S. 45 (1959).

³⁵ Alaska, originally covered under Section Five's protections, successfully sued to be exempted, but was recovered with the subsequent amendments to the VRA. See, S. REP. 94-295, 1975 U.S.C.C.A.N. 774, 779, n. 5.

³⁶ The tests "provided a highly 'respectable' cultural determinant which could also minister to Anglo-Saxon sensibilities." John Higham, Stangers in the Land: Patterns of American Nativism, 1860 – 1925, Atheneum, p.101. New Brunswick, 1985 (1955).

provision mandating literacy tests for voting was equally exclusionary. As early as 1915 the debates by constitutional delegates established its clear racial purposes.³⁷

By mandating English literacy exclusively, New York's literacy test impeded the full participation of Puerto Rican migrants who used the courts to challenge its discriminatory nature. In Camacho v. Rogers, 199 F.Supp. 155 (S.D.N.Y. 1961), Puerto Rican voters tested the limits of the State's literacy test when applied to citizens from Puerto Rico. Mr. José Camacho was schooled in Puerto Rico in Spanish – itself a feat of decades of Puerto Rican nationalistic struggle against the failed attempts by the United States to Americanize the public schools of the island.³⁸ He voted in Puerto Rico before migrating to New York but was unable to demonstrate literacy in English under New York law. The case was dismissed but the issues raised in Camacho v. Rogers became the focal point of Puerto Rican political activism for years to come.

As the VRA was winding its way through Congress the Puerto Rican community in New York was intent in finding a federal legislative solution to the issues raised in Camacho v. Rogers. The ultimate result of this effort was Section 4(e) of the Voting

³⁷ One New York constitutional delegate noted: “More precious even than the forms of government are the mental qualities of our race. They are exposed to a single danger, and that is that by constantly changing our voting citizenship through the wholesale but necessary and valuable infusion of Southern and Eastern European races, whose traditions and inheritances are wholly different from our own, without education, we shall imperil the structure we have so laboriously struggled to maintain. The danger has begun. It is more imminent than ever before. We should check it.” Record of the Constitutional Convention of the State of New York 1915, Begun and Held at the Capitol in the City of Albany on Tuesday the Sixth Day of April, Vol. III, p. 2912, J.B. Lyon Co. Albany 1915.

³⁸ In addition to the Monroe County case, supra, see Aida Negrón de Montilla, Americanization in Puerto Rico and the Public School System 1900 – 1930, Editorial Universitaria, Universidad de Puerto Rico. San Juan 1975.

Rights Act of 1965³⁹ which effectively provided that citizens educated in, and achieving a 6th grade education from an American flag schools in which the language of instruction was other than English, could not be denied the opportunity to registered to vote by an English only test or qualification.

With bipartisan support from Senator Robert Kennedy and Senator Jacob Javits, Section 4(e) was touted as an important remedy to the exclusion of Puerto Rican voters who, through Congress' deliberate policies, were schooled substantially in a language other than English, but who were also required under New York constitutional law to demonstrate proficiency in English before exercising the franchise. Indeed, Senator Javits made it a point to grant his full support for the amendment despite his political observation that his party may not stand to benefit from an electorate that is likely to vote for Democrats. His support of the measure within the Republican Party was not an isolated act as then Congressman (and later Mayor) John Lindsay also endorsed the Puerto Rican amendment. Clearly, the injustices inherent in removing the barriers to full electoral participation by Puerto Rican voters led these political leaders to action despite partisan interests.

Puerto Rican activists also participated in this debate through the testimony of three community leaders who supported Section 4(e): Herman Badillo, Irma Vidal Santaella and Gilberto Gerena Valentín.⁴⁰ Their testimony⁴¹ was clear: New York's

³⁹ 42 U.S.C. § 1973b(e).

⁴⁰ Mr. Badillo, as noted above, became the first Puerto Rican elected to Congress and represented the Legion of Voters before Congress in 1965. Ms. Vidal Santaella, a former justice on the New York County Supreme Court and was the first Puerto Rican woman admitted to the bar of New York State (www.uvm.edu/~culture/site/social_action.html (last visited on 26 Feb. 2005)). She also represented the Legion of Voters in 1965 before

English only literacy test requirement was discriminatory on its face *and* as applied to Puerto Ricans in the City. Estimates were offered that of 730,000 Puerto Ricans in the City of all ages, 150,000 registered to vote but close to 330,000 were prevented from registering. Accounts were given about how literacy test certificates would “suddenly disappear,” causing delays of hours, if not the entire day, to replace them, or how basic supplies like pencils would be missing whenever Puerto Ricans sought to take the test.⁴² Finally the witnesses sought to defuse the “myth in our State of New York that a citizen can be an intelligent, well-informed voter only if he is literate in English.”⁴³

New York State challenged the constitutionality of Section 4(e) in the U.S. Supreme Court. The court in Katzenbach v. Morgan, 384 U.S. 641 (1966), upheld Section 4(e) as a valid exercise of Congressional authority under the Fourteenth Amendment. In doing so it unequivocally recognized the purpose of Section 4(e) as an exclusive protection for Puerto Rican voters:

Congress. Mr. Gerena-Valentín was a renowned community activist who organized the massive Puerto Rican mobilization for the Rev. Martin Luther King, Jr.’s Poor People Campaign in 1968 (Andrés Torres, “Political Radicalism in the Diaspora – The Puerto Rican Experience,” in Andrés Torres & Jose E. Velázquez, Eds. The Puerto Rican Movement, Temple University Press, p. 5. Philadelphia 1998), became a New York City Councilman from the Bronx in the 1970’s and was the lead plaintiff in Gerena-Valentin v. Koch, 81 Civ. 5468 (KTD), consolidated with Herron v. Koch, 523 F.Supp. 167 (E.D.N.Y. 1981), see, Gerena-Valentin v. Koch, 554 F.Supp. 1017, 1018-1019 (S.D.N.Y. 1983), one of the earliest and most important cases in New York City regarding injunctive relief under Section 5. In the 1965 testimony he represented the National Association of Puerto Rican Civil Rights.

⁴¹ Voting Rights: Hearings on H.R. 6400 Before the Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess. (1965) at 508-517.

⁴² Id. at 511.

⁴³ Id. at 510.

[Section] 4(e) may be viewed as a measure to secure for the Puerto Rican community residing in New York nondiscriminatory treatment by government – both in the imposition of voting qualifications and the provision or administration of governmental services, such as public schools, public housing and law enforcement.⁴⁴

Thus, the 1965 version of the VRA contained powerful and necessary limitations on state power embodied in Section 5's coverage of the Deep South, nationwide prohibitions on voting discrimination under Section 2,⁴⁵ and discrete protections against discrimination against Puerto Rican voters because of their unique language minority status under Section 4(e).

A number of federal court decisions in New York under Section 4(e) underscored how New York's literacy test and English only elections worked to discriminate against eligible voters, specifically Puerto Rican voters.⁴⁶ In Lopez v. Dinkins, 73 Civ. 695 (S.D.N.Y. Feb. 14, 1973), Puerto Rican voters used Section 4(e) to secure assistance in Spanish at the polls.⁴⁷ In Coalition for Education in District One v. Board of Elections, 370 F.Supp. 42 (S.D.N.Y. 1974), the federal court was compelled to overturn a school board election because of the city's failure, *inter alia*, to provide adequate bilingual assistance to Puerto Rican voters. Both of these cases paved the way for the wholesale provision of bilingual assistance in the case of Torres v. Sachs, 381 F.Supp. 309 (S.D.N.Y. 1974). The court made two important findings. First it established that the

⁴⁴ Id. at 652.

⁴⁵ 42 U.S.C. § 1973.

⁴⁶ For a discussion on how Section 4(e) cases led to the recapture of three New York counties under Section 5 of the Voting Rights Act, see Cartagena 2005.

⁴⁷ See, Torres v. Sachs, 381 F.Supp. 309, 312-313 (S.D.N.Y. 1974).

City’s “English-only election system constitutes a condition on the plaintiffs’ right to vote based on their ability to ‘read, write, understand, or interpret any matter in the English language’ as presently proscribed by Section 4(e) *and* the 1970 Voting Rights Amendment.”⁴⁸ This conclusion effectively supported the construction that English only elections were a “test or device” under the VRA – a critical legal interpretation at the time. Secondly, the court concluded that the right to vote requires meaningful access: “Plaintiffs cannot cast an effective vote without being able to comprehend fully the registration and election forms and the ballot itself.”⁴⁹

In a broader context the benefits gained from Section 4(e) litigation reached all language minority voters throughout the country as it demonstrated the viability of creating comprehensive, bilingual alternatives to English-only electoral systems, and on a large scale. With over 668,000 Puerto Ricans in New York City in 1960 and close to 812,000 in 1970, the electoral reforms generated by Section 4(e) litigation inured to the benefit of hundreds thousands of other Latinos in the City alone. Torres v. Sachs and the other Section 4(e) cases outside of New York City,⁵⁰ in part, justified the full expansion of bilingual voting assistance to all language minorities in the 1975 VRA amendments that created Section 203, in the view of the House Committee on the Judiciary:

There is no question but that bilingual election materials would facilitate voting on the part of language (sic) minority citizens and would at last bring them into

⁴⁸ Id. at 312 (emphasis added).

⁴⁹ Id.

⁵⁰ In Chicago: Puerto Rican Organization for Political Action v. Kusper, 490 F.2d 575 (7th Cir. 1973); in New Jersey: Marquez v. Falcey, Civil No. 1447-73 (D.N.J. Oct. 9, 1973); in Philadelphia: Arroyo v. Tucker, 372 F.Supp. 764 (E.D. Pa. 1974); in New York State: Ortiz v. New York State Bd. of Elections, Civil No. 74-455 (W.D.N.Y., July 10, 1975).

the electoral process on an equal footing with other citizens. *The provision of bilingual materials is certainly not a radical step.* . . . Courts in New York have ordered complete bilingual election assistance, from dissemination of registration information through bilingual media to use of bilingual election inspectors.⁵¹

The principles that led to the Congress' adoption of Section 4(e) in 1965 led to the adoption of Section 203 in 1975 and its amendments in 1992. The unique legal status of Puerto Rican citizens in the United States has not changed in the intervening period – nor have the principles enunciated by the federal courts, the U.S. Supreme Court, and this Congress. Section 203 effectively codified most of the previous legal foundation for ensuring electoral access to the Puerto Rican community, regardless of its language characteristics. Inasmuch as Puerto Ricans are still a vibrant and significant part of many of our neighborhoods in New York, New Jersey and elsewhere in the country, the promise of equal opportunity inherent in Section 203 must be extended. This is an additional reason to reauthorize the provisions of Section 203.

**SECTION 203 PROMOTES A RESPONSIVE, INCLUSIVE GOVERNMENT AND
PROTECTS OUR FUNDAMENTAL RIGHT TO VOTE**

⁵¹ Voting Rights Act Extension: Report from the Committee on the Judiciary together with Additional, Supplemental, Separate Views, 94th Cong., 1st Sess. (1975) at 24-25 (emphasis added).

The right to vote is considered a fundamental right in our democracy – and rightfully so. Among the rights we enjoy in this country voting is paramount because all other rights are “illusory” without its protection.⁵²

CSS is in fundamental disagreement with various organizations and political leaders who, in their quest to demonstrate that somehow English is in jeopardy in the United States, are prepared to deny the ballot to many language minority citizens. CSS as been on record⁵³ opposing proposed legislation that would declare English the only language that could be used to administer our election systems. English language proficiency within our poor and working class communities is often a function of resources – time, finances, transportation and availability of classes – that many deserving people do not fully possess. To deny full access to political participation on the premise that such a hard-line would force people to learn English makes a mockery of our democracy – this is especially so when so many proponents of so-called English as Official Language Laws fail to appropriate any additional dollars toward English language instruction.

In two separate U.S. Supreme Court cases addressing the issues we raise in this testimony – full access to political participation for language minority citizens, especially Puerto Ricans – the primacy of voting has been elevated above concerns of English

⁵² Wesberry v. Sanders, 376 U.S. 1, 17-18 (1964): “Other rights even the most basic are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of a people in a way that unnecessarily abridges that right.”

⁵³ David R. Jones (President and CEO of the Community Service Society) and Juan Cartagena “Statement of the Community Service Society of New York in Opposition to the Proposed English-Only Legislation before the U.S. Congress (H.R. 1005 & H.R. 123), May 1995 (on file with author). Mr. Jones had written in opposition to these laws as early as 1989.

language policy. In Katzenbach v. Morgan, supra, 384 U.S. 641, the majority opinion noted favorably that Congress in passing Section 4(e) of the VRA thought that the right to vote is too fundamental to deny on the chance that its denial would force citizens to learn English:

“Congress might have also questioned whether denial of a right deemed so precious and fundamental in our society was a necessary or appropriate means of encouraging persons to learn English, or of furthering the goal of an intelligent exercise of the franchise.”⁵⁴

In a previous decision, Justice Douglas, who wrote the majority opinion upholding the constitutionality of literacy tests in general,⁵⁵ wrote a dissenting opinion in Cardona v. Power, 384 U.S. 672, 675 (1966), that relied on the Equal Protection Clause and took issue with discriminating against literate voters who happen to be literate in Spanish only:

“[T]here is no rational basis – considering the importance of the right at stake – for denying those with equivalent qualifications except that the language is Spanish.”⁵⁶

Once again we urge this Subcommittee to remember the fundamental nature of the rights at stake in its deliberations.

Section 203, on the other hand, balances the nature of the rights at stake, tailors its guarantees with the changing demographics of our times and promotes an open and inclusive government.

⁵⁴ Id. at 654.

⁵⁵ Lassiter v. Northampton County Bd. Of Election, supra, 360 U.S. 45.

⁵⁶ Id. at 676.

SECTION 203 CAN BE IMPROVED BY LOWER ITS NUMERICAL THRESHOLD
AND ACCELERATING ITS COVERAGE DATES

In light of the issues raised above the Community Service Society supports a limited number of modifications to Section 203, which will improve its promise of providing equal opportunity for language minority voters. Lowering the numerical threshold from 10,000 limited English proficient, language minority citizens to 7,500 would go a long way towards providing assistance where needed. It is my understanding that such a modification would allow Latino voters in Camden County, New Jersey to reap the benefits of bilingual assistance in voting.

Similarly, allowing the use of the Census Bureau's American Community Survey data at 5-year intervals, before the traditional decennial census cycles, would provide for additional relief in language minority communities that undergo sharper demographic shifts. It is important to recognize that such a change in Section 203's coverage formula requires a corresponding appropriation to the Census Bureau to assure compliance with a full American Community Survey program in years to come.

SECTION 203 IS ESPECIALLY NEEDED NOW AS ELECTION SYSTEMS ARE
UPGRADED

The Help America Vote Act is slowly changing the face of polling booths throughout the country. Along with change comes confusion and uncertainty for many marginalized citizens who do not receive the benefit of timely notice, training and education. Oral assistance at polls is critical in this regard, especially for our language minority citizens. This also speaks to the need to continue Section 203 coverage.

Finally, written translations for citizens who are still Spanish dominant is very important as elections consistently place referenda on the ballot on a number of important public questions. The language used on these referenda can be a challenge even for English proficient voters – the requirement that they be translated into a language more accessible to language minority voters is very important and speaks to the need to continue Section 203 coverage.

CONCLUSION

On behalf of the Community Service Society I urge the Subcommittee on the Constitution of the House Committee on the Judiciary to support our efforts to extend coverage of Section 203 of the Voting Rights Act, with the modifications advanced herein.

Dated: New York, NY
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Respectfully submitted,

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