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Testimony

by

**Arturo Vargas, Executive Director
National Association of Latino Elected and Appointed
Officials (NALEO) Educational Fund**

before

**the United States House of Representatives
Committee on House Administration
Subcommittee on Elections
on the 2008 Election**

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Chair Lofgren, Ranking Member U.S. Representative McCarthy, other distinguished members of the Subcommittee, fellow panelists and guests. Thank you for the invitation to testify before you today on "The 2008 Election: What went right and wrong." I am Arturo Vargas, the Executive Director of the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund, the leading national organization that facilitates full Latino participation in the American political process, from citizenship to public service. We fulfill our mission through programs that promote the civic integration of Latino immigrants into American society, provide technical assistance and skills development to the nation's Latino elected and appointed officials, and conduct research on issues relating to Latino political engagement and impact. The NALEO Educational Fund is a 501(c)(3) non-profit, non-partisan organization, and our constituency includes the more than 6,000 Latino elected and appointed officials nationwide.

The NALEO Educational Fund has been at the forefront of efforts to ensure that all of America's citizens can become fully engaged in the democratic process, including the Latino community, which is the fastest growing group of the nation's electorate. Between 1988 and 2004, the number of Latino voters in Presidential elections more than doubled, growing from 3.7 million voters to 7.6 million, and we estimate that more than 10 million Latinos cast ballots in the 2008 Presidential contest – a near three-fold increase since 1988. Because it is so critical that Latinos have an active presence in our democratic process, our organization's work on voting and elections incorporates a broad range of policy development and voter engagement efforts. Nationally, we were involved in the efforts to shape the Help America Vote Act of 2002 (HAVA), and we continue to educate state and local policymakers about the impact of election reform on the Latino community. We have testified before Congress and the United States Civil Rights Commission on Latino access to the electoral process. Both before and after the enactment of HAVA, we were also invited to testify before prominent private commissions that examined election reform issues, including the Ford-Carter and Carter-Baker National Commissions on Federal Election Reform.

In 2006, we worked together with a national coalition of civil rights and civic associations in a successful effort to secure the reauthorization of key provisions of the Voting Rights Act of 1965 (VRA). We published two reports, which were both submitted to Congress to help document

the continued need for the VRA's protection. One report, "The ESL Logjam: Waiting Times for Adult ESL Classes and the Impact on English Learners," examined the unmet demand for English-as-a-Second-Language classes, and the challenges confronting newcomers in obtaining ESL instruction. The other report, "I Was Asked If I Was A Citizen: Latino Elected Officials Speak Out on the Voting Rights Act," documented the continued existence of discrimination against Latino elected officials and voters in the electoral process. Our VRA activities also included an initiative to educate Latino elected officials and civic leaders about the importance of the reauthorization of the VRA's provisions.

We are also actively involved in efforts to shape election reform initiatives on the state level and in jurisdictions with large populations of Latino voters. We were a member of the California Secretary of State's (SOS) HAVA Plan Advisory Committee, and we have been invited to serve on the Committee which is now updating the state's HAVA Plan. We also served on SOS Advisory Committees on pollworker training and recruitment, election system accessibility, and voter registration database procurement. In Los Angeles County, which is home to more than 1 million Latino registered voters, we are active members of the Community Voter Outreach Committee, where we work with the Registrar Recorder-County Clerk's office on election issues. In the City of Los Angeles, we participate in the Los Angeles Votes Committee (LAVC), which brings together community members with election officials from the Los Angeles City Clerk's office.

Finally, we have extensive experience in educating Latino voters about the importance of electoral participation through our *Voces del Pueblo* non-partisan voter engagement program. Since the inception of the program in 2001, the NALEO Educational Fund has worked closely with elections officials, the media, and other community-based organizations to mobilize Latino voters across the country who do not yet fully participate in the electoral process. This mobilization effort has several important components. First, we listen to Latino voters by conducting voter forums, where we learn about the issues of concern to the voters and their perspectives on the voting and elections. We have conducted these forums in cities with significant and diverse Latino populations, including Albuquerque, Chicago, Denver, Houston, Los Angeles, Miami, New York, and Phoenix.

Additionally, we engage the voters in the community by sending them positive motivational and informational messages through phone, mail and the media. Over the years, we have directly contacted more than 750,000 Latino voters across the country, and we have reached millions more through our media efforts. In 2008, we reached out to 165,000 Latino voters through our non-partisan “Get-Out-the-Vote” activities in Arizona, California, Colorado, Florida, Nevada, New Mexico, New York and Texas.

Our *Voces del Pueblo* program also includes our national bilingual voter information and protection hotline, *1-888-Ve-Y-Vota* (Go and Vote), which has provided assistance to nearly 100,000 callers since September 2004. During the 2008 primary and general election season, our hotline fielded more than 32,000 calls, including close to 1,500 on February 5, 2008 (“Super Duper Tuesday”) and nearly 4,000 calls on November 4, 2008. Through the *Ve-Y-Vota* hotline, we have been able to ensure that thousands of Latino voters across the country have access to information regarding voter registration, where to vote, and how to cast a ballot. Additionally, our hotline has helped us document the challenges facing Latinos and other voters who are not yet fully proficient in English when they attempt to participate in the electoral process.

In addition, during Election 2008, we provided information through our comprehensive bilingual voter information website, which was visited by more than 50,000 Latinos between September 1 and November 4, 2008, including 25,000 who registered to vote through the site. On November 4, 2008, we worked with community partners and Univision Communications Inc. to monitor polling places in 19 different states, ensuring polling places are accessible for all voters, particularly those in need of language assistance.

We conducted many of the foregoing efforts in conjunction with the “*ya es hora*” (“It is time”) campaign, a comprehensive, multi-year effort to integrate Latinos into American civic life. Our Spanish language media partners for the *Ve-Y-Vota* component of this campaign include Univision, Entravision, and ImpreMedia, and our national partners are the National Council of La Raza, and the Mi Familia Vota Educational Fund.

Both our policy development work on voting rights and election reform, and our voter engagement efforts in the Latino community have led us to the same conclusion – there needs to be a comprehensive effort involving the federal, state, and local governments, together with community-based organizations (CBOs) and the private sector, to eliminate barriers to Latino participation in the electoral process and to promote voter engagement within the Latino community. Our experiences with Latino voters in the 2008 election reinforced the need for this effort, and highlighted the specific obstacles in the electoral process that Latinos continue to face. Our experiences also revealed that we have made some progress in making our democracy more accessible to Latinos, and highlighted the practices and activities that are contributing to this progress. In my testimony, I will first describe what we learned from our 2008 *Voces del Pueblo* effort, with a particular emphasis on the issues and concerns raised by callers to our *Ve-Y-Vota* hotline. I will then provide recommendations on policy changes that should be implemented to ensure that Latinos continue their progress toward full participation in the electoral process.

I. The *Voces Del Pueblo* Program and Latino Voters’ Experiences in Election 2008

Through our *Voces Del Pueblo* program, we learned about the challenges that confronted Latino voters during the 2008 election. In particular, the questions raised by callers to our *Ve-Y-Vota* bilingual voter information and protection hotline illuminated the most serious difficulties experienced by Latinos throughout the voting and registration process. The extremely high volume of calls received by our hotline during the 2008 primary and general election season – more than 32,000 - also suggests that the Latino community was eager to participate in the 2008 elections. In addition to calls received close to the November general election, hotline operators fielded thousands of inquiries in the primary election season. We believe the accelerated primary calendar, which provided Latino voters in states such as California, Colorado, Florida, Illinois, New Jersey, and Nevada an opportunity for more meaningful participation in the selection of their parties’ Presidential nominees, helped contribute to heightened Latino interest in the primary elections. Our hotline received the most calls – nearly 4,000 – on November 4, 2008, and the second highest number of calls for one day – nearly 1,500 – were received on “Super Duper Tuesday.”

As in past election cycles, the vast majority of calls in both the primary and general election season involved inquiries for the most basic election information. About 28,000 calls – or 88% - were inquiries of this nature, with almost 20,000 inquiries about how to register or to check registration status, more than 1,200 inquiries about absentee ballot or vote-by-mail procedures, and more than 7,000 inquiries on where or how to cast a ballot. With significant attention surrounding the election, many eligible to vote who had not consistently voted or voted at all in the past wished to participate, and many callers were unsure of how to register and the deadline to register in their state.

The type of information inquiries received by the hotline varied only marginally between the 2008 primary and general election seasons. The most significant difference related to questions on the Presidential candidate nominating process. Variation between each state's primary system – whether open, closed, or modified – lead to some confusion among voters. In California, the modified closed primary system was particularly confusing. Additionally, callers from states that used the caucus system (such as Colorado) expressed uncertainty about the correct way to participate in the caucus process.

On November 4, 2008 alone, we assisted almost 2,500 callers with locating their polling place, and we helped 900 with determining their registration status. Some of these callers indicated that they had not received election materials in the mail, yet lived in a state or jurisdiction that typically does mail materials such as sample ballots.

Callers also reported several problems relating to the voter registration process. Many reported registering prior to the close of registration in their state, but when we checked to verify their registration status with their jurisdiction, we learned that their registration application had not been processed in time. Others found their names missing from rolls, despite having voted within the last two years and living at the same address for at least that period of time. During the primary season, several callers complained that they believed they registered with a given party, only to be denied that party's ballot upon appearing at the polls.

The number of callers who were not found on the registration rolls also contributed to confusion over the proper use of and access to provisional ballots. Many voters were required to cast a provisional vote because they were not found on the registration list, even though they had been voting at the same precinct on previous elections. Of far greater concern, of the calls relating to registration problems, close to 30 voters were turned away at the polls on November 4, 2008, without the offer of a provisional ballot.

One vivid example of misinformation regarding provisional ballots came from Arizona, where the caller and her spouse went to the polls to find their names missing, but instead of being provided with provisional ballots, they were offered voter registration forms. Our hotline operators verified that both voters were registered and advised them to return to their polling site to cast a provisional ballot.

Many of the callers to our *Ve-Y-Vota* hotline experienced challenges relating to the language accessibility of the electoral process, although those inquiries were significantly fewer in number than those relating to basic election information. Most of these calls suggested that Latino voters were made to feel uncomfortable by pollworkers or election officials when they did not speak much English, and as a result were hesitant to ask for help. In some locations, this was exacerbated by a short supply of bilingual poll-workers in areas with a high percentage of Latinos who needed Spanish language assistance. Other callers noted rude or unfriendly pollworkers. In addition, some callers reported that they did not receive election materials in their preferred language, after requesting them from their election officials.

Less common but of greater concern were problems related to pollworkers who lacked proper information about the rights of voters to have assistance at the polling booth. At least one caller indicated that she was denied the opportunity to bring in a companion to the polling booth to provide translation assistance, and upon heading to the booth, had her ballot discarded as a result. This case was resolved by NALEO Educational Fund staff and the voter cast her ballot, but many more cases likely went unreported and unresolved.

Another significant problem faced by Latino voters in the 2008 elections was the result of confusion surrounding the voter identification requirements of HAVA and various state laws. The polling place identification requirements provided significant discretion to pollworkers as to whether a voter's provided identification was sufficient, and in many cases led to confusion as to who is required to provide identification. Lack of understanding on behalf of voters and in some cases pollworkers exacerbated such problems, and in isolated instances resulted in voters being turned away at the polls. Most of these calls originated in Arizona, where proof of citizenship requirements are particularly stringent.

Participants in our voter forums echoed some of the concerns raised by *Ve-Y-Vota* callers. Several participants noted that their local election officials could do more to provide useful election information to voters. Most significantly, in states where ballot measures are commonplace, participants noted the lack of clear information on measures. When materials are translated into Spanish, the poor quality and clarity of the translation often causes confusion among limited English-proficient Latino voters.

II. Policy Recommendations

Based on our work with Latino voters in the 2008 election, we offer the following recommendations to make the electoral process more accessible for Latinos and all American citizens:

A. State and local jurisdictions must undertake vigorous efforts to improve their practices for providing basic information to voters about voting and elections in a timely manner.

Jurisdictions should make these improvements a part of an overall effort to improve the basic administration of elections.

Both demographic research on Latino voters and our own experiences through our *Voces del Pueblo* program indicate that Latino voters face special challenges in obtaining information when they participate in the electoral process. Latinos tend to be a younger population than non-Latinos, and according to recent estimates, 14% of the potential Latino electorate was age 22 or younger, compared to 9% of non-Latinos. Younger voters who are new to the electoral process may lack basic information about voting and registration. In addition, newly-naturalized

Latino citizens with limited experience in voting comprise a significant share of the Latino electorate – this was particularly acute in the 2008 election cycle, following the record number of naturalizations in 2007 and 2008. Additionally, Latinos are a relatively mobile population, and voters who frequently change addresses experience difficulties in receiving election information from their jurisdictions in a timely manner.

Thus, Latino voters often lack basic information about the importance of voting and the basic mechanics of registering and casting a ballot. Additionally, when jurisdictions do not have well-administered election procedures, they may fail to maintain correct data about Latinos on their voter rolls, or they may fail to provide Latinos with election materials in a timely manner. As noted above, most of the callers to our *Ve-Y-Vota* hotline had several basic questions about voting, including where to find their proper polling site and their voter registration status. In addition, some reported that they failed to receive a sample ballot or other election materials from election officials.

Thus, we believe that jurisdictions need to scrutinize every aspect of the registration and voting process, to enhance the effectiveness of their information dissemination practices. Jurisdictions should implement effective systems to allow voters to quickly verify their registration status and determine the location of their polling places. We have found that jurisdictions vary widely with respect to the quality and accessibility of these systems. The most effective are on-line computer-based systems, such as the interface launched by the Los Angeles County Registrar Recorder's office prior to the 2008 general election, which allows for instant voter registration verification without wait-time. Some jurisdictions operate telephone hotlines for these purposes, while others have little or no capability to assist voters with these matters. Jurisdictions also need to improve the maintenance of their voter rolls to ensure that registered voters receive election materials at their proper addresses in a timely manner.

B. State and local jurisdictions must make significant improvements in their voter registration practices and the maintenance of their voter registration databases.

From our *Ve-Y-Vota* hotline calls, we learned that every misstep in proper voter registration procedures could potentially prevent an eligible voter from being able to cast a ballot. As noted

above, many Latino callers who had been registered to vote and voted in the past found that they had disappeared from voter rolls on or before Election Day. We found that jurisdictions failed to process the voter registrations of many Latinos who reported that they were new registrants, or had re-registered to vote. Because of the relatively high mobility of the Latino population, it is particularly important that voter rolls reflect the most recent address information provided by Latino registrants. We believe that states need to carefully examine their procedures for processing voter registrations and maintaining voter databases to ensure that all eligible registrants are added to and appear on the voter rolls in a timely manner, and that the voter rolls reflect accurate information about the voters' residence addresses.

C. State and local jurisdictions must undertake vigorous and effective efforts to provide language assistance to Latino and other language minority citizens who need such assistance.

Jurisdictions should provide effective language assistance at every point in the electoral process, including the registration process; the provision of voter information through notices, other written communications, and response to oral inquiries from election offices; the vote-by-mail or absentee voter process; and Election Day operations at polling places. Both the VRA and HAVA impose language assistance requirements. Sections 4(f)(4) and 203 of the VRA require certain jurisdictions (“covered jurisdictions”) to provide such assistance to language-minority voters, and Section 2 of the VRA prohibits any kind of discrimination against language-minority voters, even if they are not in the covered jurisdictions. Under HAVA, all voting systems used in federal elections must provide “alternative language accessibility” pursuant to the VRA’s language assistance requirements.

Based on the experiences of Latino voters during the 2008 election, we believe that jurisdictions need to improve several aspects of their election administration practices to enhance the language accessibility of the electoral process. First, they must significantly improve the training provided to pollworkers, and they must enhance their efforts to recruit pollworkers who have appropriate language assistance skills. Pollworkers serve on the “frontlines” of election administration, and they are often the first point of contact for voters. In the Latino community, where many citizens are not fully familiar with the voting process, it is critical that there be

well-trained pollworkers who can effectively serve voters at each polling place. Jurisdictions must institute effective pollworker recruitment programs, particularly for bilingual pollworkers.

Jurisdictions must also ensure that they provide comprehensive training to these workers which covers the specific needs and rights of language minority voters, and the non-discriminatory application of voter identification requirements. The training should also cover HAVA's requirement that voters be provided with the opportunity to cast a provisional ballot. A small but significant number of *Ve-Y-Vota* callers were not offered provisional ballots, or found that pollworkers were not familiar with them; in some cases, our callers were not able to cast any ballot because of these problems. Finally, pollworker training should cover basic "customer service" and cultural sensitivity techniques for pollworkers. As noted earlier, from our experience with *Ve-Y-Vota*, we learned that some Latino voters experience rude or unhelpful treatment from pollworkers, particularly those voters who are not yet fully proficient in English. While these instances were relatively rare, they should not be occurring at all.

We believe that state and local jurisdictions should work closely together on pollworker training and recruitment. States can provide overall guidance to local jurisdictions by creating basic standards for pollworker training, and states should also consider providing local jurisdictions with a general training curriculum. These standards and curricula should be broad enough to provide local jurisdictions with the flexibility they need to tailor pollworker training to the specific needs of their voters; however, there should be some sense that there is a uniform set of guidelines for pollworker training that will ensure all voters in the state receive quality service at the polling place.

In addition, jurisdictions must improve their practices with respect to the timely mailing of alternate language voting materials - we have consistently received reports of voters who fail to receive these materials after requesting them, or who receive them later than the English language materials.

D. The Department of Justice should strengthen its enforcement of the VRA, HAVA and the NVRA to enhance Latino access to the electoral process.

The Department of Justice (DOJ) is responsible for enforcing the VRA, which protects Latinos and other under-represented groups from discrimination in the voting process. The DOJ also enforces HAVA and the National Voter Registration Act of 1993 (NVRA), which help ensure that all American citizens have a fair opportunity to participate in our nation's elections. Stronger enforcement of all of these statutes would help address many of the challenges described in this testimony that confronted Latinos and other voters during the 2008 election. We have attached to this testimony a memorandum which sets forth very specific recommendations with respect to the enforcement activities and priorities of the DOJ that we believe will greatly enhance the effectiveness of the agency's efforts.

E. States should cease efforts to impose proof of citizenship and voter identification requirements that are more restrictive than those contained in HAVA.

When Congress enacted HAVA, the legislation included new provisions which required certain first-time voters to provide identification (ID) when casting their ballots. We opposed these requirements because we were concerned that they would create new obstacles for Latino participation in the electoral process. However, HAVA's requirements are somewhat narrowly-drawn – they apply to only one segment of the voting population (generally, first-time voters who register by mail), and as jurisdictions implement HAVA-compliant statewide databases, most voters will undergo a verification that will eliminate any need for them to show identification at their polling places.

Since HAVA's enactment, there has been an alarming proliferation of state efforts to impose proof of citizenship and voter ID requirements that go far beyond its federal mandates. According to the Pew Center on the States' report, "HAVA at 5," only 11 states required voters to show some kind of identification to vote in 2000. According to the National Conference of State Legislatures, as of October 2008, 24 states had verification or identification requirements that go beyond the mandates of HAVA. These requirements vary greatly by state - for example, in Arizona, voters must provide proof of citizenship when registering to vote; other states have no proof of citizenship requirements for registration, but do require all voters to present photo ID

before casting a ballot, and some states impose fairly limited identification requirements at the polling place. We believe that all of these measures will make it more difficult for citizens to register to vote and greatly increase the risk that eligible voters will be denied the right to vote.

Arizona's proof of citizenship measure generally requires citizens who do not have an Arizona driver's license issued after October 1996 to provide documentary evidence of citizenship when registering to vote, such as a birth certificate, U.S. passport or certificate of naturalization. Registration applicants who lack these documents may have to incur substantial costs to obtain them. Additionally, under the NVRA, citizens must be able to register to vote by mail, and Arizona's proof of citizenship measures have resulted in a cumbersome mail-in registration procedure where some citizens must submit photocopies of documents that prove their citizenship. Most of the calls to our *Ve-Y-Vota* hotline involving problems with proof of citizenship or voter ID problems originated in Arizona.

Restrictive voter ID requirements also impose significant burdens on voters, particularly the elderly, the poor or people living in rural areas who may not have such forms of identification as driver's licenses, utility bills or bank statements. Many of the voter identification laws require that the addresses on the identification exactly match the address on the voter rolls. However, it is difficult for citizens who are particularly mobile to ensure that their identification documents consistently reflect their most current address – for example, in some states, when citizens send their driver's license agency their new address, the notification may trigger their address being updated in the voter rolls, but they may not receive a new driver's license. Thus, pollworkers may refuse to allow them to vote because of the “mismatch” of the address on their identification and the voter rolls. This would create serious obstacles for population groups that are particularly mobile, such as Latinos. For example, at least one caller to our hotline reported such a problem, with pollworkers at his Florida precinct denying him a ballot when his driver's license address did not match his address on the voter rolls.

Both proof of citizenship and voter identification requirements are difficult to administer, and impose new and costly burdens on election officials and pollworkers, who must comply with complicated documentation requirements, or make hundreds of judgment calls as to whether

certain forms of identification are acceptable. There is also a significant risk that pollworkers or election officials will arbitrarily use these types of requirements to prevent Latino voter participation. Polling place ID requirements give election workers enormous discretion in determining whether the identification presented by voters meet the requirements, and these workers often make these decisions quickly at busy polling places. It is likely that pollworkers will subject Latino voters to more rigorous and unfair scrutiny in determining whether they are qualified to vote, particularly those whom they view as “problem voters” because of their need for language assistance. Some of the voter ID problems experienced by callers to our *Ve-Y-Vota* resulted from pollworker confusion about the proper application of voter ID requirements.

In Texas, which has a significant Latino electorate, the legislature is considering a bill that would impose more restrictive voter ID requirements on the state’s citizens. Under the legislation, Texas voters would be required to show photo ID or two alternative forms of identification. While these requirements are not as onerous as those imposed by Arizona, the debate over the Texas legislation is of great concern because proponents are attempting to justify the requirement by perpetuating the myth of widespread voter fraud. In fact, documented occurrences of voter fraud are rare and isolated. We can prevent these occurrences through improvements in current election laws and procedures, including improved voter database management and enforcement of existing federal and state laws.

Ultimately, we believe that proof of citizenship and voter ID provisions that go beyond the scope of those included in HAVA are unnecessary and will create barriers for the participation of Latinos and other population groups in the electoral process. These requirements will also impose costly and time-consuming burdens on election officials and pollworkers. The experiences of some of our hotline callers demonstrate the problems created by these requirements. In Arizona, a voter with a voter registration card was turned away from his polling place for insufficient identification, while other callers to the hotline expressed concern over identification requirements and proof of citizenship, even in states such as California where requirements do not go beyond those mandated by HAVA. The record turnout of Latino voters nationwide in the 2008 election was an important milestone for Latino political progress.

Restrictive proof of citizenship and voter ID requirements are unfair and unnecessary obstacles that will hinder the continued progress of the Latino community.

F. State and local jurisdictions must establish stronger partnerships between election officials and CBOs.

In order for election officials to improve the election practices and procedures in a manner that ensures full participation by all eligible citizens, they must establish strong partnerships with CBOs that serve population groups such as Latinos who are underrepresented in the electoral process. These CBOs have expertise in the challenges facing underrepresented voters, and can provide invaluable assistance in nearly every aspect of election administration. For jurisdictions that are covered by the language assistance requirements of the VRA, CBOs can assist election officials with the implementation of language assistance programs, including the translation of materials and the recruitment and training of pollworkers. CBOs can also provide guidance to localities on the effectiveness of their voter outreach and education efforts. In addition, jurisdictions should also involve CBO representatives in the review of the curriculum and standards they develop for pollworker training.

The willingness of election officials in some jurisdictions to strengthen their partnerships with CBOs was a positive development in Election 2008, and it contributed to the progress made during the election with respect to Latino access to the electoral process. We note that some jurisdictions, such as Los Angeles County and the City of Los Angeles have on-going committees that meet with election officials on a regular basis. The model of the Los Angeles County Community Voter Outreach Committee (CVOC) is a positive example of what election administration officials can do to improve their outreach and lessen challenges faced by voters. In the run-up to the California primary and general Election Days, regular meetings by the CVOC provided an opportunity for our organization and other CBOs to have “face-to-face” discussions with election officials on common challenges, such as the implementation of language assistance programs, pollworker training and voter education. These meetings provided an opportunity to “troubleshoot” election administration problems and develop practical solutions to address them. We recommend that all states and localities establish

on-going advisory committees that include representatives of CBOs familiar with the needs of voters in underrepresented communities.

G. The political parties and policymakers should examine the impact of the 2008 accelerated primary season on voter turnout, and should consider additional changes to the primary schedule (such as a national or regional primaries) that would further increased voter participation during the primary season.

Our experiences with Latino voters during the primary season (including the volume of our hotline calls) suggest that the Latino interest in primary elections increased between the 2004 and 2008 Presidential elections in states which moved their primaries to an earlier date. Exit poll data suggest that primary turnout increased since 2004 in those states as well. We believe that this heightened interest was due in part to the fact that Latinos in those states felt that they had a more meaningful opportunity to participate in the selection of their parties' Presidential nominees. In addition, candidates who might have ignored such states in past Presidential elections actively campaigned and made appearances in them during the primary season, which also contributed to higher Latino turnout. Thus, we recommend that the political parties and policymakers examine the impact of the accelerated primary on electoral participation, and consider whether additional changes to the primary schedule would further the political engagement of our citizens.

H. The public and private sector should make effective investments in non-partisan voter education and engagement efforts.

Through our extensive work with Latino voters during the 2008 election, we have learned that there is a critical need for non-partisan CBO voter engagement and education efforts in underrepresented communities. Traditional voter engagement campaigns conducted by political parties and candidates target voters who are already likely to vote - citizens referred to as "high-propensity voters." Since Latinos are less likely to be "high-propensity voters" than non-Latinos, traditional voter engagement campaigns tend not to target Latinos. Low Latino participation rates are partly attributable to demographic factors such as youth, high mobility, and lack of access to education and economic opportunities. However, the traditional voter engagement approaches of political parties and candidates also contribute to a cycle that

reinforces the low Latino participation rates. Because traditional mobilization efforts fail to promote participation among Latinos and other low-propensity voters, they vote infrequently, which means that the mobilization efforts continue to ignore them in the future.

Additionally, strategic political considerations in each election cycle have a significant impact on how parties and candidates target their outreach efforts. For example, during the primary season, candidates made appearances and significantly increased their outreach in states which had moved their primary dates forward under the 2008 accelerated primary schedule. As the general election approached, the parties adopted a “battleground state” strategy where they concentrated their voter engagement resources in states they believed would be the most significant for an Electoral College vote victory. As a result, the parties conducted minimal voter engagement activity in the states which were not considered “battlegrounds.” The battleground strategy had a particularly pronounced impact in shifting voter engagement resources away from states with large numbers of Latino voters. About two-thirds of Latino registered voters lived outside of the battleground states.

As a result of the ebb and flow of the 2008 election season, outreach efforts to Latinos fluctuated dramatically, with candidates alternately paying attention to and ignoring different groups in the Latino electorate depending on the time of the election cycle and the state in which the Latino voters resided. Thus, while candidates conducted more intensive outreach to Latinos at certain times in certain early primary states, those voters were frequently ignored once the general election approached unless they resided in battleground states. In the battleground states, there was record spending on Spanish language media and ground efforts to persuade and mobilize the Latino electorate, while significantly fewer resources were invested in outreach to Latinos who lived outside those states.

The traditional mobilization approaches of parties and many candidates generally try to produce short-term increases in turnout among certain select groups of voters. They do not aim to create the long-term, fundamental changes in voter attitudes and behavior that are needed to ensure that underrepresented groups become full participants in the electoral process. Many non-profit organizations that conduct non-partisan voter education and engagement activities target those

voters who are ignored by traditional mobilization campaigns, and seek to conduct consistent and long-term outreach to make fundamental changes in Latino civic participation. Efforts by CBOs and civic groups can complement the voter education work of state and local election officials. In some cases, Latinos or members of other ethnic population groups feel more comfortable contacting CBOs than government agencies to obtain information. CBOs also have relationships with ethnic media that can prove invaluable in disseminating election information within their communities. Non-partisan efforts to engage low-propensity Latino voters often yield success in increasing turnout. The *Voces del Pueblo* program's direct GOTV efforts to such voters are consistently proven to be effective, most recently in the run-up to California's February 5th Presidential primary, where the program's efforts increased targeted voters' likelihood of voting by 8%, and 19% among youth.

However, CBOs and civic groups often lack the resources they need for their election information activities. A few states offered HAVA funding to non-governmental groups for non-partisan voter education, but most states tended to use HAVA funding for already-established activities conducted by government agencies. Thus, the private sector, including corporations and foundations, should explore ways to generate more resources for the non-partisan CBO voter information and engagement work. A vital and responsive democracy that is truly representative of our nation's diverse voices is a laudable goal, and the private sector can play an important leadership role in helping us to achieve it.

III. Conclusion

Latino voters turned out in record numbers during the 2008 elections, motivated by a strong desire to make their voices heard in the electoral process. Our nation now has an opportunity to sustain and build upon this momentum to ensure that Latinos and other underrepresented population groups become full participants in our democracy. This will require a partnership between the federal, state and local jurisdictions, together with CBOs, civic organizations, and the philanthropic and private sector. But the effort is critical for our nation. Between 1960 and 1996, we saw a general decline in voter turnout for Presidential elections. While this trend started to reverse itself in this decade's Presidential elections, estimates of 2008 voter turnout

from the U.S. Elections Project at George Mason University suggest that more than a third of the nation's eligible voters (38%) did not cast ballots in November 2008.

Latinos and other underrepresented groups are eager to participate in the electoral process and become active and informed citizens. As the federal government, state and local jurisdictions look to the future after the 2008 elections, we urge them to embrace the opportunity to make significant improvements to make elections more accessible for Latinos and all American citizens. We stand ready to work with election officials and policymakers throughout the nation to help ensure that our democracy remains vital and responsive to the voices of all of its citizens.

I thank the Chair, the Ranking Member, and the Subcommittee once again for providing us with the opportunity to share our views today on the 2008 election and the Latino community.



ATTACHMENT

MEMORANDUM

To: Presidential Transition Justice and Civil Rights Team
From: NALEO Educational Fund
Date: December 19, 2008
RE: Recommendations for Enhanced Protection of Voting Rights under the New Administration

The NALEO Educational Fund very much appreciates the opportunity to share our perspectives with the Presidential Transition Justice and Civil Rights Team on how the new Administration can strengthen our democracy through enhanced protection of the voting rights of Latinos and other underrepresented groups. This memorandum will describe the NALEO Educational Fund's voter education, outreach and advocacy work. We will then provide our policy recommendations for actions the Department of Justice (DOJ) can take to address barriers in the electoral process and ensure full political participation by all Americans.

The NALEO Educational Fund's Voting and Election Work:

The NALEO Educational Fund has been at the forefront of efforts to ensure all of America's citizens can become fully engaged in the democratic process, including the Latino community, which is the fastest growing group of the nation's electorate. We have extensive experience in educating Latino voters about the importance of electoral participation and in working with elections officials nationwide to improve access to the electoral process for language minorities through our *Voces del Pueblo* non-partisan electoral program which includes:

- A get-out-the-vote (GOTV) effort which reached out to more than 170,000 Latino voters in eight states during the 2008 general election;
- Our 1-888-*Ve-y-Vota* ("Go and Vote!") bilingual voter information and protection hotline, which has aided over 50,000 callers in 43 states, and fielded over 4,000 calls on Election Day 2008 alone; and
- Our comprehensive bilingual voter information website, which was visited by more than 50,000 Latinos between September 1 and November 4, 2008, including 25,000 who registered to vote through the site.
- Our work with elections officials in jurisdictions covered by Section 203 and 4(f) 4 of the Voting Rights Act of 1965 (VRA) to ensure adequate assistance for voters who are not yet fully proficient in English.
- The extensive poll monitoring we conduct on Election Day to ensure that polling places are accessible for all voters, particularly voters in need of language assistance. In 2008, we worked with community partners and Univision Network News to monitor polling places in 19 different states.

We conducted all of the foregoing efforts in conjunction with the "*ya es hora*" ("It's time") campaign, a comprehensive, multi-year effort to integrate Latinos into American civic life. Our Spanish-language media partners for the *Ve-Y-Vota* component of this campaign include Univision, Entravision, and ImpreMedia, and our national partners are the National Council of La Raza, and the Mi Familia Vota Educational Fund. We have also been active participants in national voting rights

policy development and advocacy efforts. In 2006, we worked together with a national coalition of civil rights and civic associations in the successful effort to secure the reauthorization of key provisions of the VRA. We published two reports, which were both submitted to Congress to help document the continued need for the VRA's protection. One report examined the challenges confronting newcomers in obtaining English language learning instruction and the other documented the continued existence of discrimination against Latino elected officials and voters in the electoral process. Our VRA activities also included an initiative to educate Latino elected officials and civic leaders about the importance of the reauthorization of the VRA's provisions.

RECOMMENDATIONS

Based on our extensive experience with educating, mobilizing and advocating on behalf of Latino voters, we recommend the following:

1) Strengthen enforcement of key provisions of the VRA: We believe that more vigorous enforcement by the DOJ of the following VRA provisions will greatly enhance Latino access to the electoral process:

- Sections 4(f)(4) and 203: The DOJ must focus on ensuring that covered jurisdictions are complying fully with the language minority protections of the VRA. This includes more intensive follow-up with jurisdictions where the DOJ has secured settlement agreements or judgments, and enhanced enforcement to include more political subdivisions of covered jurisdictions. It is particularly critical that the DOJ prepare to implement an effective outreach program to jurisdictions that are newly-covered by the determinations made after the 2010 Census, to inform those jurisdictions of their compliance obligations and how to meet them.

In addition, the DOJ must expand its focus when assessing language assistance compliance to include all aspects of the electoral process. In practice the DOJ has focused primarily on Election Day operations at the polling place. However, as our experience has taught us, adequate language assistance that covers the voter registration process, vote by mail, voter purging, and direct inquiries to election offices is vital. This includes notices and other communications coming from the election official as well as the process by which voters can request language assistance, if needed.

- Section 2: The DOJ needs to utilize Section 2 more frequently and effectively to protect minority voters. The DOJ should bring more cases challenging the following types of practices:
 - discriminatory vote dilution in redistricting plans;
 - “at large” election systems that prevent Latinos and other minorities from electing the candidates of their choice;
 - discriminatory location of polling places (often times polling place locations that serve minority voters are placed in geographic areas that are uncomfortable or intimidating for those voters);
 - the selection of pollworkers that do not reflect the demographics of a jurisdiction or precinct;

- one-time “episodic” occurrences of discrimination that may discourage minority voters from future participation (this includes pre-election activities such as unwarranted voter challenges or communications from elections officials regarding voter eligibility aimed at discouraging naturalized citizens from participating in the electoral process);
 - discriminatory election practices that affect Latino voters who are in jurisdictions that are not covered by Section 4(f)(4) or Section 203; and
 - the implementation of voter identification (ID) laws, where they are shown to have a discriminatory effect on racial, ethnic, or language minority voters. For example, the disparate application of voter ID requirements; discriminatory access to securing a qualifying ID; or the use of voter ID to intimidate/discourage language minority citizens (especially naturalized citizens) from voting.
- Criminal provisions: The DOJ should be more proactive in enforcing the criminal provisions of the VRA on behalf of racial, ethnic, and language minorities (such as cases involving voter intimidation or harassment).
- 2) Ensure that the DOJ is adequately prepared to vigorously enforce Section 5 during the post-2010 redistrictings: Building upon some of its effective practices in the redistrictings following 2000, the DOJ should:
- Establish a Redistricting Committee in the Voting Section of the Civil Rights Division which is responsible for training trial attorneys, attorney-reviewers, civil rights analysis, and other staff on legal standards, use of GIS systems, Census data, and procedures for Section 5 review of redistricting submissions. The DOJ should require all Section personnel to attend a mandatory training on redistricting.
 - Conduct extensive outreach to state legislatures, secretaries of state, and other state and local officials responsible for redistricting. This should include presentations to organizations such as the National Conference of State Legislators, the National Association of Counties, the National Association of Secretaries of State, the National League of Cities, and the National Lieutenant Governors Association which provide detailed guidance on how to make the Section 5 submission process smoother and how to facilitate preclearance by following legal standards and DOJ procedures.
 - Conduct extensive outreach to civil rights organizations and community leaders on their critical role in assessing Section 5 submissions.
- 3) Ensure that the DOJ carefully scrutinizes the implementation of redistrictings conducted by independent commissions, including the process established by California’s Proposition 11: Several states now conduct some or all of their redistricting process through independent commissions; after the passage of Proposition 11 in California, a new commission will be responsible for drawing the lines for the state’s legislative and Board of Equalization seats. Several leading minority voting rights organizations vigorously opposed the measure, including the Asian Pacific American Legal Center, the NAACP Legal Defense and Educational Fund, the Mexican American Legal Defense and Educational Fund, the NALEO Educational Fund, and the William C. Velasquez Institute. We believe that the measure contains serious flaws that will jeopardize minority electoral opportunities, including the prospect of a new redistricting commission which lacks gender, ethnic, or geographic diversity; a two-pronged redistricting process which will impede public participation; and problematic redistricting criteria. The DOJ

should carefully scrutinize California's implementation of Proposition 11 to ensure that it does not violate minority voting rights protections.

- 4) Ensure that the DOJ takes timely steps to coordinate with the Census Bureau on the compilation and analysis of data which affect voting rights protections: The DOJ should initiate efforts to coordinate with the Census Bureau on its efforts to compile the PL 94-171 data which will be used for post-2010 redistrictings. In addition, the DOJ should work with the Census Bureau with respect to the manner in which American Community Survey data will be used to determine the jurisdictions that will be covered by the VRA's language minority protections.
- 5) Strengthen enforcement of the National Voter Registration Act of 1993 (NVRA): The DOJ should more vigorously enforce NVRA violations by bringing new enforcement actions, and by seeking additional relief in places where there is a judgment or consent decree in place. The types of violations that the DOJ should target include:
 - The failure of designated voter registration sites at state agencies to provide voter registration information and forms, and to affirmatively ask all customers whether they have registered;
 - The failure of designated voter registration sites to timely transmit new registrations to the designated state agency (typically the Secretary of State or the equivalent statewide elections office);
 - The failure of the designated state agency to process new registrations in a timely manner; and
 - The failure of election officials to comply with the statutory notice requirements for voter purges.
- 6) Strengthen enforcement of the Help America Vote Act of 2002 (HAVA): The DOJ should also undertake more vigorous enforcement of HAVA's provisions, including action to combat the following practices:
 - The failure of poll workers to offer provisional ballots and to honor the requirement that no voter be turned away without being provided an opportunity to cast a provisional ballot;
 - The failure of jurisdictions to inform voters about the status of their provisional ballots after the election (e.g., was their ballot counted and if not, why not); and
 - The failure of election officials in jurisdictions covered by the minority language assistance provisions of the VRA to ensure that voting machines purchased with HAVA funds provide bilingual voting information and audio instructions in all required languages.
- 7) Establish a "blue ribbon" commission to conduct a comprehensive "top-to-bottom" review of the DOJ's practices to ensure that appointments, removals, and hirings of career staff are conducted lawfully in a manner that furthers the agency's credibility and decision-making integrity: In 2008, the DOJ's Office of the Inspector General (OIG) conducted at least three investigations that revealed improper or unlawful personnel actions by DOJ staff. These included improper practices surrounding the removal of nine U.S. attorneys; the unlawful consideration of political or ideological affiliations in the hiring of career assistant U.S. attorneys and immigration judges; and the consideration of such affiliations during the evaluation of candidates for the DOJ's Honors Program and Summer Law Intern Program.

The DOJ should establish a "blue ribbon" commission which should carefully review the findings and recommendations of the reports of the foregoing OIG investigations. The

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commission should also review and make recommendations regarding any needed changes to federal legislation, and the DOJ's internal policies and rules to eliminate any "politicization" in the agency's personnel practices.

Thank you for your attention to the recommendations provided in this memorandum. Should you have any questions, please do not hesitate to contact Rosalind Gold, Senior Director of Policy, Research and Advocacy, at rgold@naleo.org, 213-747-7606, ext. 4420, or Efrain Escobedo, Senior Director of Civic Engagement at eescobedo@naleo.org, 213-747-7606, ext. 4422.