

**Testimony**

**Voting Technology and Language Minority Voters**

**Presented by:**

**Angela M. Arboleda  
Civil Rights Policy Analyst**

**National Council of La Raza  
1111 19<sup>th</sup> Street, NW, Suite 1000  
Washington, DC 20036  
(202) 785-1670**

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## **I. INTRODUCTION**

Chairman Soaries, and Commissioners De Gregorio, Martinez, and Hillman, on behalf of the National Council of La Raza (NCLR), thank you for holding this hearing on an issue that is very important to the Latino community. NCLR is the largest national Latino civil rights organization in the U.S., serving as an “umbrella organization” for more than 300 local affiliated community-based organizations (CBOs). In addition to providing capacity-building assistance to our affiliates and essential information to our associates, NCLR serves as a voice in public policy debates for all Hispanic ethnic subgroups representing all regions of the country.

I appreciate the opportunity to appear before you today to support a thorough revision of voting technology. The right to vote is a fundamental civil right for all Americans, and NCLR supports efforts to remove barriers that inhibit Americans, especially the most vulnerable in our society, from exercising their right to vote.

For many years NCLR, the Latino community, and other language minority groups<sup>1</sup> have been patiently waiting for technology that responds to the needs of limited-English- proficient citizens. As a result of the election irregularities observed during the 2000 presidential election, NCLR dedicated two years to advocating for reforms that would make it easier for all voters to cast their ballots. The Help America Vote Act (HAVA), P.L. 107-252, was enacted in October 2002. This law was designed to ensure that the voting process is accessible to all American citizens – regardless of their English-language capability, disability, or literacy rate. For the first time, thanks to technological advances, we have the potential to fully empower language minority voters, those with sight impairments, and people with limited literacy levels.

In this testimony I will discuss the advantages and challenges of different voting technologies and systems with respect to language minority voters.

## **II. HISPANIC AND LANGUAGE MINORITY BARRIERS**

The right to vote is guaranteed to all U.S. citizens by the Fifteenth Amendment to the U.S. Constitution. Every voter has the right to cast an informed and effective vote. This right is extended to all people including those for whom English is not their first language. Language

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<sup>1</sup> NCLR is grateful for the assistance of the Asian Pacific American Law Center of Southern California (APALC) and the National Association of Latino Elected and Appointed Officials (NALEO) for their assistance in preparing this statement. NCLR works closely with the Mexican American Legal Defense and Educational Fund (MALDEF), the National Asian Pacific American Legal Consortium (NAPALC), the Asian American Legal Defense Fund, NALEO, APALC, and other organizations to monitor developments on accessible voting technology. The views cited herein are those only of NCLR, and may not represent the opinions of other organizations.

minorities are ensured protection and full participation in the electoral process by two separate provisions of the Voting Rights Act of 1965 – Section 203 and Section 4(f)(4),<sup>2</sup> and a number of state and local statutes. Despite these provisions of current law, there is evidence that some jurisdictions do not comply with federal language assistance requirements.

The following selected examples illustrate the pervasiveness of the lack of compliance with the language assistance provisions of the Voting Rights Act and related statutes.

- The Puerto Rican Legal Defense and Education Fund reported that, in the 2000 election in Florida, Spanish-speaking Latino voters received no bilingual assistance at most polling sites. In most precincts, the entire election staff spoke English only and could not assist language minority voters.<sup>3</sup>
- In testimony presented by Marleine Bastien<sup>4</sup> before the NAACP on November 11, 2000, in Florida, she described the hardship experienced on Election Day by the Haitian American community: There were 47 precincts located in areas where the majority of the population is Haitian or of Haitian descent, for whom Creole is their native language. State law mandated that ballots be printed in Creole to serve the Haitian American community living in those 47 precincts. Ms. Bastien indicated that many Haitian American voters left polling places without voting because the ballots confused them and there was no one to assist them. At one site, even though there was a Creole-speaking volunteer willing to assist Haitian American voters, the polling place supervisor denied assistance to the voters, claiming that none were entitled to special treatment. Ms. Bastien showed the polling place supervisor a pamphlet printed by the Florida Department of Elections, which authorized a procedure to secure volunteer language assistance to people who needed it, but even then Haitian American voters were denied assistance.
- On November 7, 2000, Asian American Legal Defense and Education Fund (AALDEF) attorneys and volunteers monitored 20 polling sites in New York City; they observed:
  - Inaccurate translations. The Chinese translations for “Democrat” and “Republican” were reversed on some ballots. Paper ballots requested by absentee voters also contained mistakes in the Chinese-language instructions.

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<sup>2</sup> In 1975 Congress added minority language provisions to the Voting Rights Act, and recognized that large numbers of American citizens who primarily spoke a language other than English had been effectively excluded from participation in the electoral process. The denial of the right to vote among language minority citizens was “directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation.” 42 U.S.C. Sec. 1973aa-1(a).

<sup>3</sup> Testimony of the Puerto Rican Legal Defense and Education Fund, before the U.S. Commission on Civil Rights, January 2001.

<sup>4</sup> Testimony of Ms. Marleine Bastien, before the NAACP, November 11, 2000. Ms. Bastien, a Haitian American community leader in South Florida, spent part of her day on Election Day at a Creole radio station receiving calls from Haitian American voters who called complaining about the treatment they encountered at polling places.

- Lack of Chinese interpreters. At polling sites across the city, particularly those places with dense Asian populations, there were insufficient numbers of interpreters to serve Chinese-speaking voters.
- Lack of bilingual materials. A number of polling sites and election districts did not have Chinese-language materials or did not use them effectively, as mandated by Section 203 of the Voting Rights Act.<sup>5</sup>

Mr. Chairman, as illustrated above, language barriers to voting are not limited just to Latinos in the Southwest; on the contrary, diverse groups of limited-English-proficient voters encounter similar difficulties throughout the nation. Clearly, these and other language-related barriers have a disparate, disproportionate, and negative effect on Latinos and other ethnic minorities. In the absence of both policy interventions and technological improvements, language minority voters are more likely to be turned away or deterred from voting, and less likely to have the opportunity to cast a fully informed vote, than other Americans. Moreover, barriers to voting based on language undermine one of the fundamental tenets of our democratic system of government – the idea that all American citizens are equal under the law.

### III. VOTING TECHNOLOGY AND LANGUAGE MINORITIES

#### A. Overview

NCLR frequently and repeatedly has urged more vigorous enforcement of the language assistance provisions of the Voting Rights Act and related state statutes as one essential element of any strategy designed to address the needs of language minority voters. The enactment of HAVA establishes a new opportunity to augment an enforcement strategy with improved technology that has the potential to simultaneously reduce burdens on both language minority voters and election officials.

NCLR believes that three considerations should guide the decisions made in reforming the nation's voting systems, whether the equipment is purchased or leased, the operation of new or existing machines, or in the design of future machines. Voting technology must provide for:

- 1) ***Nondiscrimination:*** The administration of elections must be guided by nondiscrimination practices. This includes ensuring that the most secure and modern technology is available to all voters in every precinct. Too often, low-income communities lack the capacity to purchase the latest technology or ensure appropriate levels of on-site support. Many voters who disproportionately reside in these communities – including racial and ethnic minorities and those with low education levels and limited-English-proficiency – are effectively disenfranchised as a result.
- 2) ***Second-Chance Voting and Voter Verification:*** HAVA requires for the first time that a voter be able to correct and confirm his or her ballot before it is cast and counted.

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<sup>5</sup> Letter from AALDEF to Mr. Daniel DeFrancesco, New York Board of Elections, December 22, 2000.

- 3) **Compliance with National Certification Standards:** Federal certification standards required under HAVA require that voting technology meet basic but important conditions to ensure that: ballots are properly cast and counted; machines are secure and reliable; and that they provide for second-chance voting and verification. Such certification will also assist state and local governments in the selection and implementation of voting systems.

## **B. Direct Recording Electronic (DRE) Voting Machines**

In light of these considerations, we believe that:

- **DREs have the inherent capacity to allow language minorities, people with disabilities, and those with limited literacy skills the opportunity to vote independently and privately.** For the first time language minority voters will not have to rely on interpreters – who often are not available – or be forced to compare a translated sample ballot to the actual ballot. Voters with sight impairments will be able to vote independently instead of relying on a pollworker or caregiver to read and mark the ballot. And research shows that people with low literacy skills are more likely to be able to operate a DRE voting machine, thanks to its didactic nature. In Orange County, California, for instance, voters using electronic machines can vote in Chinese, English, Korean, Spanish, and Vietnamese, or use headsets to listen to the ballot read in those languages. By contrast, optical scan voting systems cannot provide this multilingual capacity.
- **Data show that voters prefer electronic voting because it is easy to use, thus increasing voter confidence.**
  - According to the San Bernardino County Registrar of Voters, a recent survey found that 98% of the voters considered their electronic voting system “superior” or “very superior” to any voting system they had ever used before. Additionally, 92% indicated that they had confidence or a high degree of confidence that their votes were accurately recorded on the DRE machine.<sup>6</sup>
  - A Solano County, California, survey of 14,500 voters showed that 97% of the voters found the new touch screens easy to use; 86% liked touch screen systems more than punch card systems.<sup>7</sup>
  - Ranked-choice voting becomes much easier to understand with DRE systems. In fact, among voters who have traditionally been disenfranchised – minorities, people with disabilities, new voters – DREs have been especially well-received.
- **Problems with over-voting and uncounted ballots are reduced with electronic voting systems.** According to an article from *USA Today*, in Georgia, “[T]he number of uncounted ballots in the 2002 election dropped to fewer than 1% with electronic

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<sup>6</sup> News Release from the San Bernardino County Registrar of Voters, March 2, 2003.

<sup>7</sup> Assemi, Yasmin and Warren Lutz, “Touchscreen voting sees smooth debut,” *Daily Republic*, March 3, 2004

voting. In a 1998 statewide election, the number of uncounted ballots totaled nearly 5%.”<sup>7</sup>

- **DRE voting technology meets the voter verification provisions required under HAVA.** DREs allow for voters to review the ballot prior to officially casting it via a final review screen. DREs also allow the voter to make changes to the ballot before it is cast, within the privacy of the voting booth. Optical-scan and other paper-based systems require the issuance of new ballots if the voter wishes to make a change, and often the review process is not carried out privately.
- **DREs can work accurately and effectively, but like all voting systems they require adequate procedural safeguards and management.** DREs are not immune to malfunctions or security threats. As with all systems, steps should be taken to improve their reliability, access, and security. In response to public concerns about potential security problems, the states of Ohio and Maryland commissioned independent studies to examine DREs. Both states are implementing the recommendations and moving forward with the use of DREs, as are many other jurisdictions.
- **Allegations of wrongdoing by a particular manufacturer are not a justification to scrap the technology or punish all manufacturers.** There are several vendors that produce electronic voting machines, including Sequoia, Hart, and ES & S. Some, such as Diebold, produce both electronic voting machines and the optical-scan machines. Certification guidelines should be strengthened for all voting equipment, and regardless of the voting technologies used we expect federal and state laws designed to punish criminal and civil wrongdoing in the electoral process to be enforced.

Over the past year there have been a number of highly-publicized and alarming missteps by leading manufacturers, as well as several reports of administrative and technical glitches in the early use of the machines. This apparently has eroded confidence in DREs among some groups. DRE systems admittedly are new, especially complex devices, and security concerns among voters must be addressed. Given these challenges, NCLR believes that it is essential to take additional measures to improve security and ensure voters that a ballot cast is a ballot counted.

However, we note in this context that, to date, Voter Verified Paper Trail (VVPT) technology is unproven. This new method of electronic voter verification using a paper trail is still in its developmental stages. Hence, it has not been certified as a system that fully provides access to language minorities and people with disabilities. Since no VVPT system is certified, it is simply unrealistic to expect that it can be both certified and widely implemented in time for the 2004 election.

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<sup>7</sup> Campbell, Don, “Electronic voting can zap skeptics’ concerns,” *USA Today*, March 1, 2004.

#### IV. RECOMMENDATIONS

Consistent with the interest of the Latino and language minority communities, NCLR urges that the following recommendations be taken into account to ensure that limited-English-proficient voters have the right to cast a ballot with certainty and assurance that it will be counted. NCLR recommends that:

- 1) The Election Assistance Commission (EAC) promptly develop voting system guidelines, including standards that address security concerns of computers, computer data storage, and networks used in standards for both DRE and VVPT, as well as future technology.
- 2) The EAC take steps to ensure that voting technology complies with national certification standards with ample time for elections officials to put in place any security systems necessary to ensure voter confidence and participation.
- 3) The EAC articulate that extensive pollworker training on voting technology is essential as new systems are implemented. Jurisdictions with DREs must undertake extensive pollworker training on the operation of the machines. In addition, recruitment and training of bilingual pollworkers is particularly important, given that they are often on the front lines on Election Day.
- 4) The EAC support broad voter education efforts to help the public understand how to use specific new voting technology systems, well in advance of Election Day. Such campaigns should be implemented in all appropriate languages, and should work with representatives of key communities likely to be most affected, including language minorities, other ethnic minorities, and persons with disabilities. We believe that on-site “practice sessions” with the technology in community settings are likely to be especially useful in this context.
- 5) The EAC commission or supports a rigorous study that assesses the costs and benefits of DRE systems with respect to limited-English-proficient voters. Such a study, we believe, would help inform affected communities, election officials, and other policy-makers, academics, and manufacturers about the true value that this technology has in increasing the access of language minority voters to the electoral process.
- 6) The EAC focus public attention on other equally important aspects of the electoral process to promote more effective and equitable election administration. Minority voters encounter difficulties at different stages of the electoral process, which may preclude voters from ever actually encountering modern voting technology. Latinos and other minorities encounter serious barriers at every stage of the process – when registering to vote, during periodic purges from voter rolls, purported “anti-fraud” campaigns that frequently are nothing less than thinly-disguised voter suppression efforts, to actual intimidation at the polling place. These issues and others should be scrutinized carefully by all committed to the principle of equal opportunity in the electoral process.

NCLR looks forward to the day that new, modern voting technologies help to secure the right of all Americans to vote. Voting technology reform must be guided by and fully consistent with current laws that seek to ensure full access of language minority voters to the electoral process. It should not become a vehicle for adding new barriers to any part of the voting process. Given our experience during the HAVA debate, we are especially concerned that additional, unnecessary voter identification verification systems purportedly designed to deter fraud – which cannot be justified on the basis of any evidence suggesting a serious problem and which have a clear, disparate impact on Latinos and language minorities – are not imposed during this process.

I thank the Chairman and the Commissioners once again for providing NCLR an opportunity to share our views.