



Testimony of Juan Cartagena  
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Before the Committee on the Judiciary  
of the  
United States Senate

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Washington, D.C.

Chairman Specter, Ranking Member Leahy, and members of the Committee, I thank you for your invitation to appear before this distinguished Committee and testify on S. 2703, the Voting Rights Act Reauthorization and Amendments Act of 2006 (“VRARA”), in particular the provisions that provide for language assistance for American citizens who speak English as a second language. I am 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 assist racial and language minorities in a number of states.

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. 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.<sup>1</sup>

I will limit my remarks this morning in light of the previous work that I have submitted to the House Subcommittee on the Constitution as it considered the reauthorization of the Voting Rights Act. This includes 1) testimony on behalf of CSS in November 2005 before the House Subcommittee<sup>2</sup> which highlighted the need to reauthorize Section 203 of the VRA in New York City as well as New Jersey with a special emphasis on the voting rights of Puerto Rican voters; 2) The report "Voting Rights in New York 1982-2006"<sup>3</sup> for the Leadership Conference on Civil Rights and submitted for the record in March 2006 which summarizes the state of compliance with all three expiring provisions of the VRA in New York; and 3) the article "Latinos and Section 5 of the Voting Rights Act: Beyond Black and White"<sup>4</sup> published in 2005 by the National Black Law Journal at Columbia Law School which also addresses important issues for Puerto Rican voters under Section 4(e) of the VRA.

Accordingly, I emphasize the following points this morning:

One: CSS applauds the bipartisan efforts in this Congress to address the critical issues of political participation for racial and language minorities. The VRA has consistently received bipartisan support since its inception, and throughout its prior amendments, and we welcome the manner in which these important debates have been held.

Two: The right to vote in this country, the very right that is "preservative of all rights," is too important a right to delay, impede or otherwise fail to make fully and

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<sup>1</sup> I respectfully refer the Committee to my testimony before the House Subcommittee on the Constitution (attached hereto as Exhibit A) for a full description of CSS's voting rights work.

<sup>2</sup> Attached hereto as Exhibit A.

<sup>3</sup> Attached hereto as Exhibit B.

<sup>4</sup> Attached hereto as Exhibit C.

meaningfully available to American citizens who speak English as a second language. Regardless, of the concerns that some opponents to the VRARA may have about the primacy of English in our country, we recognize that voting is fundamental, and democracy is too precious, to condition on full mastery of English for American citizens in certain areas of the country. In saying this we echo the U.S. Supreme Court in *Katzenbach v. Morgan*, which upheld the language assistance provisions of Section 4(e) for Puerto Rican voters in the original Act of 1965 as a valid exercise of congressional enforcement powers under the 14<sup>th</sup> and 15<sup>th</sup> Amendments by noting that Congress in 1965 may have “questioned whether the 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.”<sup>5</sup>

Three: We can not emphasize enough that the rights we are advocating for today are the rights of citizens of this country to full and fair access to the franchise. With the equally important and pressing matters before the Senate concerning immigration policy we cannot conflate the issues. The VRARA, as currently proposed, addresses the rights of American citizens who speak English as a second language. Moreover, as recent research from Arizona State University<sup>6</sup> has documented, three-quarters of all voters who depend on language assistance to vote and enjoy the benefits of Sections 203 and 4(f)(4) of the VRA, are native born. Language assistance in voting embodied in Section 203 of VRA was created to address the concerns of access to the ballot for populations that suffered under significant educational disparities as demonstrated in higher than average literacy rates for certain language minorities in the U.S. Similarly, more severe forms of

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<sup>5</sup> *Katzenbach v. Morgan*, 384 U.S. 641, 658 (1966).

<sup>6</sup> Tucker, James Thomas & Espino, Rodolfo, “Minority Language Assistance Practices in Public Elections,” March 2006.

exclusion of language minority citizens led to the adoption of Section 4(f)(4) of the VRA in 1975. Both provisions still operate today to benefit native born citizens. Puerto Rican voters are a case in point: all of them are U.S. citizens by operation of law, significant numbers of them are either monolingual in Spanish on the Island or due to educational disparities in the U.S., are still not fully proficient here, and finally, circular migration patterns between both points is still present.<sup>7</sup>

Four: The major factors that led to the passage of Sections 203 and 4(f)(4) are still present today for Latino citizens. Educational attainment still lags far behind their white or black counterparts;<sup>8</sup> illiteracy rates are far above national averages;<sup>9</sup> 75% of them (compared to 18% nationwide) speak a language other than English at home;<sup>10</sup> and, Latino voter registration rates are significantly lower than black or white registration rates nationally.<sup>11</sup> Today, the prevalence of ballot referenda where 11<sup>th</sup> or 12<sup>th</sup> grade proficiency is required to understand its text and the advent of new election machinery under the Help America Vote Act, counsels for renewed language assistance.

Finally: Section 203 is self-maintaining, adjusts itself depending on changing demographic patterns – and even more so with the amendments to use more frequently available American Community Survey data from the Census in five year cycles – and

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<sup>7</sup> For a full discussion of the issues facing Puerto Rican voters in the U.S. given their unique legal relationship to the U.S., see Exhibit A and Exhibit C.

<sup>8</sup> See Exhibit A documenting significantly lower high school and college degree rates for Latinos using 2000 Census data.

<sup>9</sup> For example, in Cook County, Illinois, Spanish language Section 203 coverage is premised on an illiteracy rate for Spanish speaking citizens that is 9 times the national rate; in Kane County, Illinois the corresponding rate is 10 times the national rate; and in the 6 Section 203 covered counties in Kansas, the corresponding rate is on average 12 times the national rate.

<sup>10</sup> See Exhibit A.

<sup>11</sup> See Exhibit A citing Pew Hispanic Center survey data show 47% turnout rates in 2005 for Hispanics of all eligible voters (compared to 67% for whites and 60% for blacks). Data from the 2004 November elections reveals that based on Citizenship Voting Age Population data, Hispanics are registered to vote at a rate of 57.9%, or 17.3 points below whites (75.1%) and 7.9 points below blacks (68.6%).

contains a bailout provision hinged on improving illiteracy rates.<sup>12</sup> All of it demonstrates, consistent with *Katzenbach v. Morgan* that it is a proper exercise of Congressional authority in furtherance of Congress' enforcement powers under the 14<sup>th</sup> and 15<sup>th</sup> amendments where Congress' power is at its zenith, even under the current case law from the U.S. Supreme Court.<sup>13</sup>

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<sup>12</sup> Section 203(d) of the VRA.

<sup>13</sup> See, *Boerne v. Flores*, 521 U.S. 507 (1997) where the court noted that the VRA is the model of proper exercise of Congressional power; *Lopez v. Monterey*, 525 U.S. 266, 285 (1999) where the Court noted approvingly that the "Voting Rights Act, by its nature, intrudes on state sovereignty."