



Latino Policy & Politics Initiative

**TESTIMONY OF
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**HEARING ON VOTING IN AMERICA: ENSURING FREE AND FAIR
ACCESS TO THE BALLOT**

**THE COMMITTEE ON HOUSE ADMINISTRATION
U.S. HOUSE OF REPRESENTATIVES**

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I. Introduction

H.R. 1 is a landmark piece of legislation that not only reaffirms the Constitutional right to vote, but ensures Americans have a democracy that fulfills its Constitutional promise of equal protection under law. The Constitution entrusts Congress with the power to legislate to protect the fundamental right to vote.² This power includes legislating to remedy past and present discrimination, and comes at a time in U.S. history where structural racism remains on full display across our health care systems, schools, workplaces, and justice system. Throughout U.S. history to the present, protected classes of Americans, including Latinos, Black Americans, Asian Americans, and indigenous Americans, have faced discrimination in exercising their fundamental rights to cast a ballot, for that ballot to be counted, and to elect their candidates of choice.³ In response, the findings section of H.R. 1 documents the harms to voting that have been inflicted upon racial/ethnic minority communities and how the right to vote has been eroded and diluted through decentralized actions on the part of our states.⁴ Ultimately, congressional action is necessary to protect Americans' access to the ballot box.⁵

Only a few years after the 2006 reauthorization of the Voting Rights Act, legislators in dozens of states introduced a host of laws after the 2010 midterm elections to make it harder to vote in both covered and non-covered jurisdictions.⁶ State legislators accelerated their efforts, from voter identification laws to restrictions on vote-by-mail, to curtail access to the ballot box after the Supreme Court's 2013 decision in *Shelby County v. Holder*.⁷ In 2018, the U.S. Commission on Civil Rights found that these voter suppression measures, "wrongly prevent some citizens from voting" and "have a disparate impact on voters of color and poor voters."⁸ In light of this, the bipartisan and independent U.S. Commission on Civil Rights urged Congress to restore the Voting Rights Act's

² U.S. CONST. amend. XIV, § 2. The text of the Fourteenth Amendment provides in part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.;" U.S. CONST. amend. XV, §1. The text of the Fifteenth Amendment provides in part: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.;" U.S. CONST. amend. XIX. The text of the 19th Amendment provides in part: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex. Congress shall have power to enforce this article by appropriate legislation.;" U.S. CONST. art I, § 4, cl. 1. "The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations."

³ *Reauthorization of the Federal Voting Rights Act, Hearing on Voting Rights Act Before the Subcomm. on the Constitution of the H. Committee on the Judiciary*, 109th Cong. (2005) (statement of Angela M. Arboleda); *See Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016); *North Carolina State Conference of the NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016); *See also* Danielle Lang and J. Gerald Hebert, *A Post-Shelby Strategy: Exposing Discriminatory Intent in Voting Rights Litigation*, *Yale Law Journal Forum* 127 (2017–2018).

⁴ The For the People Act of 2021, H.R. 1, 117th Cong. § 3 (2021).

⁵ BRENNAN CENTER FOR JUSTICE, *State Voting Bills Tracker 2021*, <https://www.brennancenter.org/our-work/research-reports/state-voting-bills-tracker-2021> (last visited Mar. 29, 2021).

⁶ *Id.*

⁷ *Shelby County v. Holder*, 570 U.S. 529 (2013). Section 4(b) of the Voting Rights Act was the "coverage" formula, which indicated which areas of the United States were required to have to have their election changes approved of before they were made by either the Department of Justice or through a lawsuit before the United State District Court for the District of Columbia; *See* THE LEADERSHIP CONFERENCE EDUCATION FUND, *Democracy Diverted, Polling Place Closures And The Right To Vote*, September 2019, <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>.

⁸ U.S. COMMISSION ON CIVIL RIGHTS, *An Assessment of Minority Voting Rights Access In The United States* (2018).

federal preclearance requirement, adding “racial discrimination in voting has proven to be a particularly pernicious an enduring American problem.”⁹

Going into the 2020 Presidential election, voters of color accounted for a third of all eligible voters — their largest share ever.¹⁰ In that election, marginalized voters — those faced with the most barriers to accessing the ballot box — turned out in record numbers, overcoming robust voter suppression efforts and risking their health during a global pandemic. UCLA research estimates that 16.6 million Latino voters cast a ballot in the 2020 presidential election, representing the single largest four-year increase in the Latino vote in U.S. history.¹¹ These historic gains for democracy have been met with troubling backlash. As of February 19, 2021, state lawmakers in 43 states have advanced 253 bills with provisions that restrict voting access.¹² These bills target absentee or mail voting, disability access, focus on purging voter rolls, or otherwise make it harder to vote than it already is. Some of these bills have already been passed into law.¹³ In the face of an energized electorate and the first redistricting cycle without the protection of Section 5 of the Voting Rights Act of 1965, state legislators and their aligned interest groups are advancing a coordinated and purposeful attack on our democracy. H.R. 1 is able to halt this attack across our nation’s state legislatures and repair the damage in the wake of a decade of regressive voting rights actions by setting a uniform, and mandatory floor for a vibrant and inclusive democracy.

The assault on voting rights is a Latino issue. Some of the new voter suppression laws championed by state legislatures are being promulgated in states that saw increased turnout of Latino voters and other voters of color during the 2020 election cycle. In fact, in the three states with the most voter suppression bills this legislative term, Latino voters played a significant role in influencing the outcome of the 2020 Presidential Election, whether they were 25% of a state’s registered voter population or less than 4%, as was the case in Georgia. The Arizona state legislature, controlled by the Republican Party, leads the nation with 22 restrictive voting bills this legislative session.¹⁴ This comes in the face of Joe Biden’s state victory, the first Democrat to take Arizona since 1996, which is largely credited to the 3 to 1 vote support President Biden received from Latino voters.¹⁵ Pennsylvania, which has 8 restrictive voting bills this session, saw the state’s Latino electorate support Biden upwards of 82.6% over Trump (16.7%) in precincts with the highest concentration of

⁹ *Id.*

¹⁰ Michael Herndon Et Al., *The Power Of The New Majority* (2020), <http://lppi.sites.luskin.ucla.edu/research/the-power-of-the-new-majority-a-10-state-analysis-of-voters-of-color-in-the-2020-election/>; See also Anthony Cilluffo & Richard Fry, *An Early Look at the 2020 Electorate*, PEW RESEARCH CENTER (Jan 30, 2019), <https://www.pewresearch.org/social-trends/2019/01/30/an-early-look-at-the-2020-electorate-2/>.

¹¹ Rodrigo Dominguez-Villegas Et Al., *Vote Choice Of Latino Voters In The 2020 Presidential Election* (2020), <https://latino.ucla.edu/wp-content/uploads/2021/01/Election-2020-Report-1.19.pdf>.

¹² *Before the S. Committee on Rules & Administration: Hearing on S. 1, The For The People Act*, 117th Cong. (2021) (statement of Michael Waldman, President, Brennan Center for Justice), <https://www.brennancenter.org/sites/default/files/2021-03/2021-03-22%20Waldman%20-%20Testimony.pdf>.

¹³ The Governor of Iowa passed a restriction, limiting early voting and mail voting. Ryan Foley, *Early Voting in Iowa at Record Pace with Several Days Left*, AP (Oct. 23, 2020), <https://apnews.com/article/election-2020-donald-trump-iowa-elections-iowa-city-d8c7410cde65853bcd7d80b50f6b0a1b>; Ben Nadler and Jeff Amy, *Georgia Gov. Kemp Signs GOP Election Bill Amid an Outcry*, AP (Mar. 25, 2021) <https://apnews.com/article/donald-trump-legislature-bills-state-elections-voting-rights-b2b014cc81894a50fc513168a5f1d0b8>.

¹⁴ Waldman, *Supra*, note 12. This number is as of 3/29/2021.

¹⁵ Dominguez, *Supra*, note 11 at 10. <https://latino.ucla.edu/wp-content/uploads/2021/01/Election-2020-Report-1.19.pdf>; See also BRENNAN CENTER, *Supra*, note 5.

Latino registered voters last November.¹⁶ Finally, Georgia, which has the second highest number of restrictive voting bills this session with 11, saw Latino voters preferring Biden with a 2 to 1 margin.¹⁷ Latino voters played a significant role in influencing the election in all three of these battleground states that were consequential to the outcome of the 2020 Presidential Election and ultimately determined control of the U.S. Congress.¹⁸

H.R. 1 is a narrow and targeted response to a broader problem and is within Congress' enumerated powers under the Constitution to enact such regulations. The key provisions of H.R. 1 expand and improve the ability to cast a ballot for all Americans. This testimony begins by presenting an overview of the contours of the Latino electorate in the U.S., then analyzes how two types of provisions in H.R. 1: 1) those addressing election administration, and 2) provisions aimed at ensuring fair access to democracy implicate the nation's growing and youthful Latino electorate, and concludes that affirmative Congressional action is necessary to restoring U.S. democracy.

II. Contours of the Latino Electorate in the United States and the Targeting of Voter Suppression

Latinos are an incredibly youthful and diverse demographic group that is projected to make up 27.5% of the American population by 2060.¹⁹ This will translate into growing political power as more of that population enters the electorate. Currently, Latinos currently comprise 18.01% of the overall population and 12.39% of the citizen voting-age population (CVAP) in the U.S.²⁰ Latinos, on average, are younger than the general population with a median age of 30 compared to 58 for non-Hispanic whites.²¹ Research suggests that approximately every 30 seconds a Latino in the U.S. turns 18 and becomes eligible to vote.²² Between 2008 and 2019, the Latino citizen voting-age population grew by 54.98%, increasing from 18.46 million voters in 2008 to 28.61 million voters a little over a decade later.²³ By comparison, the White (non-Hispanic or Latino) citizen voting-age population grew by 2.26%.²⁴

¹⁶ Dominguez, *Supra*, note 11 at 28 and 29; *See also* BRENNAN CENTER, *Supra*, note 5.

¹⁷ Dominguez, *Supra*, note 11 at 18-19; *See also* BRENNAN CENTER, *Supra*, note 5.

¹⁸ Greg Moore, *Why is Arizona Turning Blue? Here are the best reasons, starting with Latinos*, ARIZONA REPUBLIC (Nov. 5, 2020), <https://www.azcentral.com/story/opinion/op-ed/greg-moore/2020/11/04/why-arizona-turning-blue-answers-start-latino-voters/6163875002/>; Suzanne Gamboa, *In Georgia, Latinos shatter runoff turnout record as groups make last push for voters*, NBC NEWS (Jan 5, 2021), <https://www.nbcnews.com/news/latino/georgia-latinos-shatter-runoff-turnout-record-groups-make-last-push-n125279>. *See also* Herndon, *Supra*, note 10 at 9, 18.

¹⁹ Jonathan Vespa, Lauren Medina, and David M. Armstrong, *Demographic Turning Points for the United States: Population Projections for 2020 to 2060*, Current Population Reports, P25-1144 (Washington DC: U.S. Census Bureau, 2020).

²⁰ White (non-Hispanic or Latino) make up 60.70% of the population. Black and Asian comprise 12.31% and 5.45%, respectively.

²¹ Katherine Schaeffer, *The most common age among whites in the U.S. is 59- more than double that of racial and ethnic minorities*, PEW RESEARCH CENTER (July 30, 2019), <https://www.pewresearch.org/fact-tank/2019/07/30/most-common-age-among-us-racial-ethnic-groups/>.

²² Tania Karas, *Every 30 seconds a Latino in the US turns 18. Their votes count more than ever*, THE WORLD (February 4, 2020), <https://projects.theworld.org/every-30-seconds>.

²³ U.S. Census Bureau, 2008 American Community Survey 3-year Estimates; U.S. Census Bureau, 2019 American Community Survey 5-year Estimates. (Mar. 25, 2021).

²⁴ *Id.*

In the 2020 Presidential Election, the growth in Latino voters outpaced that of other demographic groups.²⁵ Between the 2016 and 2020 presidential elections, the number of ballots cast by Latinos increased by 30.9%, from 12.7 million votes to an estimated 16.6 million votes. This was the single largest 4-year increase in Latino vote ever.²⁶ Latinos' 31% growth in votes cast between 2016 and 2020 is almost double the national average of 15.9% in overall ballots cast during the same time period.

Two-thirds of Latino eligible voters live in five states: California, Texas, Florida, New York, and Arizona.²⁷ Yet, the proliferation of restrictive voting bills mirrors the growth in the Latino electorate across key states that have an outsized role in national elections. Table 1 identifies the 10 most populous Latino states with respect to each state's share Latino and non-Hispanic white shares of the Citizen Voting Age Population.

²⁵ David Wasserman, Sophie Andrews, Leo Saenger, Lev Cohen, Ally Flinn, and Griff Tatarsky, "2020 National Popular Vote Tracker," The Cook Political Report. <https://cookpolitical.com/2020-national-popular-vote-tracker>.

²⁶ Herndon, *Supra*, note 10 at 6.

²⁷ Karas, *Supra*, note 22.

Table 1. Percent Change in Latino and White Citizen Voting Age Population (CVAP) in the U.S. and Ten Most Populous Latino States, 2008 to 2019²⁸

	Hispanic or Latino			White (non Hispanic or Latino)		
	2008	2019	% Change (2008 - 2019)	2008	2019	% Change (2008 - 2019)
United States	18,457,603	28,606,441	54.98%	153,734,666	157,215,379	2.26%
Nevada	204,235	385,300	88.66%	1,151,237	1,197,533	4.02%
Florida	1,742,427	2,982,323	71.16%	8,749,858	9,245,601	5.67%
Arizona	716,802	1,140,189	59.07%	2,942,952	3,151,218	7.08%
Colorado	420,678	632,655	50.39%	2,685,340	3,069,613	14.31%
California	5,120,457	7,592,753	48.28%	12,174,428	11,828,648	-2.84%
New Jersey	611,503	906,354	48.22%	4,088,567	3,884,102	-5.00%
Texas	3,686,652	5,429,159	47.27%	8,797,298	9,361,625	6.41%
Illinois	715,564	1,015,248	41.88%	6,389,267	6,198,570	-2.98%
New York	1,515,688	1,998,529	31.86%	8,963,222	8,606,398	-3.98%
New Mexico	503,538	638,654	26.83%	666,892	656,760	-1.52%

The number of Latino voters has been rapidly increasing since 2008. Among the competitive battleground states in Table 1--Arizona, Florida, Nevada, and Texas--the percent growth in Latino CVAP outpaced that of non-Hispanic whites. The percentage point differential in the 2008 to 2019 CVAP growth between the two demographic groups is stark: +84.64 in Nevada, +65.49 in Florida, +51.99 in Arizona, and 40.86 in Texas. Notably, between the *Shelby County* decision in 2013 and 2019, there have been nearly 1,700 poll closures across the U.S., the majority of which occurred in three jurisdictions previously covered by Section 5 that have growing Latino electorates-- Texas (750), Arizona (32), and Georgia (214).²⁹

Many of these states have active proposals to suppress access to the ballot box in the 2021 legislative cycle.³⁰ Table 2 analyzes restrictive voting bills in the nation’s ten most populous Latino states. A total of 76 restrictive voting bills have been proposed in the 10 states with the largest Latino populations.³¹ Nearly half of these bills attempt to make absentee voting by-mail less accessible. In

²⁸ The overall citizen voting-age population increased by 10.98% since 2008. The Asian and Black citizen voting-age population grew by 47.31% and 17.38%, respectively.

²⁹ *Supra* note 7 at 12, noting the Shelby decision paved the way for systematic statewide efforts to reduce the number of polling places, especially in states and localities with past histories of racial discrimination in voting. Moreover, these efforts took place “amid a larger constellation of efforts to prevent voters of color from electing the candidates of their choice, such as enactment of stricter voter identification laws, restrictions on voter registration, and voter purges.”

³⁰ BRENNAN CENTER, *Supra*, note 5.

³¹ *Id.*

Arizona alone, where Latinos comprise 23.20% of the citizen voting-age population, 22 restrictive voting bills have been proposed by the legislature.³²

Table 2. Number of Restrictive Voting Bills Proposed in the Ten Most Populous Latino States by Type (Absentee Voting, Voter Registration, Voter Roll Purges, Voter ID, Other), 2021³³

	% Latino CVAP	Total Restrictive Bills	Absentee Voting	Voter Registration	Voter Roll Purges	Voter ID	Other
Arizona	23.20%	22	14	3	1	0	4
New York	14.60%	12	6	3	0	2	1
Illinois	11.20%	12	4	0	1	7	0
Texas	29.90%	10	4	1	4	1	0
New Jersey	14.80%	9	4	1	3	1	0
Nevada	19.10%	3	1	0	0	1	1
Colorado	15.60%	3	1	1	0	0	1
California	29.80%	2	1	0	1	0	0
Florida	19.90%	2	1	0	0	1	0
New Mexico	42.70%	1	1	0	0	0	0

This new 2021 data only accelerates previous efforts over the last ten years to create barriers to voting. For Latinos, one of the most pernicious and targeted comes in the form of proof of citizenship laws that require voters to present a birth certificate, passport, or naturalization papers in order to become a registered voter. These laws give rise to a presumption that the growing and diverse Latino population is under attack; this was especially true of Arizona, where a proof of citizenship law was overturned by the Ninth Circuit.³⁴

As the Latino population ages into the electorate, their share of a state’s electorate can translate into significant political power, but the current avalanche of regressive voting bills are an effort to disenfranchise these voters. Congress must act to ensure all Americans have free and fair access to cast a ballot and eliminate state legislative attempts to enact burdens to the ballot box for voters of protected classes, including racial/ethnic groups and language minorities.

³² LEADERSHIP CONFERENCE, *Supra*, note 12, as of 3/29/20; U.S. Census Bureau, 2019 American Community Survey 5-year Estimates, (Mar. 25, 2021).

³³ The Latino citizen voting-age population percentages were calculated using the U.S. Census Bureau, 2019 American Community Survey 5-year Estimates. The number and type of restrictive bills were calculated from the BRENNAN CENTER FOR JUSTICE, State Voting Bills Tracker 2021, *Supra* note 5. Bills that were listed under multiple types were counted under their leading focus as listed by the BRENNAN CENTER FOR JUSTICE.

³⁴ Jessica A. Gonzalez, CHCI White Paper: New State Voting Laws: A Barrier to the Latino Vote? (2012), <https://chci.org/wp-content/uploads/2017/11/20124131140426004-LawGraduateSummitWhitePaper-JessicaGonzalez.pdf>; *See* Gonzalez v. Arizona, 435 F. Supp. 2d 997 (2006), rev’d in part, 624 F.3d 1162 (9th Cir. 2010), 677 F. 3d 383 (9th Cir. 2012) noting “*de jure* discrimination against Latinos in Arizona existed during most of the twentieth century.”

III. Overview of Factors Impacting Voter Participation & Election Rule Changes for Latino Voters

Social scientists have long studied who participates in politics. Studies have examined how political participation patterns are different for racial minorities than for whites.³⁵ These empirical studies demonstrate that race and ethnicity are associated with political participation; whites are more likely to vote than are Latinos.³⁶ For racial/ethnic minorities, psychological and contextual factors account for varying levels of voter participation.³⁷ These factors include living in cities with co-ethnic officials and candidates, church membership, social networks, candidate effects, group attachments, immigrant status, and contextual demographic factors all impact voter turnout, with the ability to increase or decrease political participation.³⁸ Additionally, the factor of socioeconomic status directly correlates with political participation.³⁹ Studies conclude that, even after controlling for other voter characteristics, political participation can be explained largely by socioeconomic factors.⁴⁰ Research has shown that race and ethnicity often determine a person's socioeconomic status and that communities are often segregated by these variables. Simply put, socioeconomic status impacts an individual's ability to participate in the electoral process, and research has long supported this association. Many of the regressive voting bills introduced across the U.S. over the last decade have targeted low-income voters, in effect targeting racial/ethnically diverse voters.⁴¹

There are significant barriers to political participation that people face due to lower socioeconomic status; these barriers are highly correlated with race/ethnicity. Economic and social science research has established that racial/ethnic minorities are more likely than whites to live in communities that are socioeconomically degraded, have lower incomes, less familial wealth, lower rates of homeownership, and more likely to rely on public transportation.⁴² This differential footing

³⁵ See S.J. ROSENSTONE & J.M. HANSEN, MOBILIZATION, PARTICIPATION, AND DEMOCRACY IN AMERICA (1993); J.E. Leighley & A. Vedlitz, *Race, ethnicity, and political participation: Competing models and contrasting explanations*, 61 J. of Pol. 1092, 1114 (1999). Social scientists Leighley and Vedlitz conducted a study in 199 where they examined several models to determine the extent to which factors from comparisons between white participation and black participation are different in comparisons for Latinos and Asian Americans. They found that differences exist between whites and any other racial minority groups and that these differences are similar across racial/ethnic groups.

³⁶ Rosenstone, *Supra*, note 35.

³⁷ See Matt Barreto, *¿Si Se Puede! Latino Candidates and the Mobilization of Latino Voters*, Am. Pol. Sci. Rev., 425–441 (2007); Matt Barreto Et Al., *The mobilizing effect of majority-minority districts on Latino turnout*, Am. Pol. Sci. Rev., 65–75 (2004); Bobo and Gilliam, *Race, sociopolitical participation, and black empowerment*, Am. Pol. Sci. Rev. 84 (2), 377–393 (1990); Dawson, *Behind the mule: Race and class in African American politics*. Princeton U. Press (1995); Ellison and David, *Black political participation revisited: A test of compensatory, ethnic community, and public arena models*, Soc. Sci. Quarterly 70 (1), 101 (1989); Harris, *Something within: Religion as a mobilizer of African American political activism*, The Journal of Politics 56 (1), 42–68 (1994); Highton and Burris, *New perspectives on Latino voter turnout in the United States*, Am. Pol. Research 30 (3), 285–306 (2002); Rocha Et Al., *Race and turnout: Does descriptive representation in state legislatures increase minority voting?*, Pol. Research Quarterly 63 (4), 890 (2010); Tate, *From protest to politics: The new black voters in American elections*. Harv. U. Press (1994).

³⁸ *Id.*

³⁹ SIDNEY VERBA & NORMAN H. NIE, PARTICIPATION IN AMERICA: POLITICAL DEMOCRACY AND SOCIAL EQUITY (1987).

⁴⁰ Jan E. Leighley & Jonathan Nagler, *Individual and Systemic Influences on Turnout: Whose Votes? 1984*, 54 J. of Pol. 3 (1992).

⁴¹ See generally Valencia Richardson, *Voting While Poor: Reviving the 24th Amendment and Eliminating the Modern-Day Poll Tax*, 27 Georgetown J. on Poverty L. and Policy 3 (2020).

⁴² See Centers for Disease Control and Prevention, *Health Equity Considerations and Racial and Ethnic Minority Groups* (Feb. 12, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>.

between racial/ethnic minorities and whites translates into issues of access to the ballot box.⁴³ Researchers have long agreed that regressive electoral reforms and restrictive voting bills discourage and impede eligible voters from casting ballots, while providing no real benefit.⁴⁴ These findings make Latinos uniquely vulnerable to voting laws aimed at restricting the practices and/or procedures relied on by low-income voters, including polling place closures, proof of citizenship laws, voter identification laws, reductions to early and absentee voters, and other measures. This results in a feedback loop, whereby restrictive voting laws and practices that decrease or even hold constant current participation rates will exacerbate the participation between an aging white electorate and growing, youthful Latino electorate, compromising the vibrancy of an inclusive democracy and substantive representation.

Voting restrictions depend on other structural causes to suppress the vote, including socio-economic status. The average per capita income in the U.S. is \$34,103. Yet, when considering race/ethnicity, there are significant income disparities; the per capita income for Blacks is \$23,383 and \$20,515 for Latinos.⁴⁵ Table 3 identifies the racial/ethnic differences in per capita income in the ten most populous Latino states. Notably, the state with the nation's highest number of restrictive voting bills has the second lowest per capita income for Latinos among the top 10 most populous Latino states (Arizona). States with significant per capita income gaps between white residents and non-white residents that advance costly restrictive voting bills complicate access to the ballot box.

⁴³ See generally *Supra*, note 33. See Daniel Weeks, *Why Are the Poor and Minorities Less Likely to Vote?*, ATLANTIC (Jan 10, 2014), <https://www.theatlantic.com/politics/archive/2014/01/why-are-the-poor-and-minorities-less-likely-to-vote/282896/> (“While income and education levels were not recorded in the survey, race and age were major factors influencing who made it to the polls on Election Day and what kind of barriers they faced. Black and Hispanic citizens, for whom the poverty rate is close to three times that of whites, were three times as likely as whites to not have the requisite I.D. and to have difficulty finding the correct polling place.”); See also, Shawn Steven Morrow, *Causes of Low Voter Turnout of the Hispanic Population in Southwest Texas* 90 (2015), <https://core.ac.uk/download/pdf/147833578.pdf> (Research on the Hispanic community in Southwest Texas found that “continued lower socioeconomic status of Hispanics makes it difficult for them to compete within local political organizations.”).

⁴⁴ Joshua Clark, *Widening the Lens on Voter Suppression, From Calculating Lost Votes to Fighting for Effective Voting*, 6, 2018, <https://belonging.berkeley.edu/widening-lens-voter-suppression>

⁴⁵ U.S. Census Bureau, 2019 American Community Survey 5-year Estimates, (Mar. 25, 2021).

Table 3. Per Capita Income by Race and Ethnicity in the U.S. and Ten Most Populous Latino States, 2019

	Per Capita Income	Per Capita Income - White	Per Capita Income - Black	Per Capita Income - Hispanic
United States	\$34,103	\$40,405	\$23,383	\$20,515
New Jersey	\$42,745	\$52,183	\$28,150	\$24,539
New York	\$39,326	\$48,779	\$26,430	\$23,338
Colorado	\$38,226	\$44,864	\$26,733	\$21,333
California	\$36,955	\$53,637	\$29,547	\$20,536
Illinois	\$36,038	\$43,355	\$22,938	\$20,326
Florida	\$31,619	\$39,291	\$20,099	\$23,001
Nevada	\$31,557	\$40,781	\$23,364	\$19,674
Texas	\$31,277	\$43,796	\$24,644	\$19,291
Arizona	\$30,694	\$39,273	\$24,250	\$18,452
New Mexico	\$27,230	\$38,685	\$27,343	\$20,438

Another structural cause that advances voting restrictions is access to digital tools. Disparate levels of access to the internet, often necessary to register to vote or access information about an election, presents an additional barrier for lower income and racial/ethnic minority households. This was especially true during the COVID-19 pandemic when stay-at-home orders impacted traditional voter engagement and mobilization efforts, and left voters who lacked digital access further behind in accessing pertinent information to cast a meaningful ballot.⁴⁶ Disparities with respect to access to internet or technological devices may create barriers to the ballot box that disproportionately affect racial minorities.

Among U.S. households that lack access to the internet and an internet-connected device, Latino and Black households are overrepresented relative to their shares of the national population. Table 4 illustrates that an estimated 25.99% of all U.S. households without internet subscriptions are Latino, 19.61 % are Black, and 48.23% are White.⁴⁷ When factoring in the disparities across the nation’s ten most populous states, the disparities are especially stark as Latinos and Blacks remain overrepresented given their shares of each state’s population. Ultimately, a lack of internet access and technological tools leave some voters behind in accessing information about the administration of an upcoming election, like when, where, and how to vote, and information about what is on the ballot, from local to federal races and even ballot initiatives. Congress has an opportunity to level the

⁴⁶ See Shane Goldmacher, *Knock, knock, who's there? No political canvassers, for the first time maybe ever*, N.Y. TIMES (May 7, 2020), <https://www.nytimes.com/2020/05/07/us/politics/2020-elections.html>; See also Molly Ball, *How COVID-19 Changed Everything About the 2020 Election*, TIME (Aug. 6, 2020), <https://time.com/5876599/election-2020-coronavirus/>.

⁴⁷ U.S. Census Bureau, 2019 American Community Survey 5-year Estimates, (Mar. 25, 2021).

playing field by ensuring, through H.R. 1, that racial/ethnic minorities are not further disadvantaged from casting a meaningful ballot because they lack the means to participate fully in the digital sphere.

Table 4. Total Households Without an Internet Subscription for Latino and Black Households in the U.S. and Ten Most Populous Latino States, 2019⁴⁸

	Total Households without Internet Subscription	% Without Internet Subscription - Latino	Percentage Point Difference from Latino Population Share	% Without Internet Subscription - Black	Percentage Point Difference from Black Population Share	% Without Internet Subscription - White	Percentage Point Difference from White Population Share
United States	22,917,611	25.99%	7.98	19.61%	7.30	48.23%	-12.47
Texas	2,520,760	55.62%	16.28	14.16%	2.38	27.12%	-14.83
California	2,348,580	56.83%	17.81	8.14%	2.62	24.26%	-12.92
Florida	1,698,610	31.91%	6.33	24.92%	9.60	40.88%	-13.02
New York	1,267,534	27.60%	8.59	22.44%	8.19	43.34%	-12.27
Illinois	811,908	24.34%	7.22	23.86%	9.89	46.73%	-14.59
Arizona	508,792	44.74%	13.41	5.19%	0.98	37.10%	-17.61
New Jersey	477,070	34.47%	14.26	21.65%	8.98	38.98%	-16.39
Colorado	297,953	36.73%	15.20	5.71%	1.76	52.24%	-15.82
Nevada	256,193	41.17%	12.47	14.62%	5.88	33.94%	-15.29
New Mexico	230,341	56.37%	7.58	2.16%	0.35	23.64%	-13.75

Ultimately, institutional factors and voting rules, like the reduction of early and absentee voting and digital-only election information dissemination, influence the ability of racial/ethnic minorities to participate in American democracy and cast a meaningful ballot. The nation’s racial/ethnic minority groups are the most sensitive to changes in voting rules and changes to the way elections are administered that limit access.⁴⁹ Evidence has made clear that changes in voting and elections administration that seek to restrict access to the ballot box have a disproportionate impact on racial/ethnic minorities.⁵⁰ Moreover, as is the case with the robust number of restrictive voting bills in front of 43 U.S. states, when the cost of voting increases without an equivalent increase to the benefits of voting, people are less likely to participate.⁵¹ Restrictive election rules that impose higher costs on voting may decrease the opportunities a person has to vote, leading to lower turnout and jeopardizing a vibrant democracy. As a result, the proliferation of restrictive voting rules in places

⁴⁸ U.S. Census Bureau, 2019 American Community Survey 5-year Estimates, (Mar. 25, 2021). Percentage point contrasts are calculated as the difference between the percent share of total households without an internet connection and the percent share of total population for each group.

⁴⁹ BERNARD GROFMAN, ET. AL., *MINORITY REPRESENTATION AND THE QUEST FOR VOTING EQUALITY* (1992); MELISSA S. WILLIAMS, *VOICE, TRUST, AND MEMORY: MARGINALIZED GROUPS AND THE FAILINGS OF LIBERAL REPRESENTATION* (2000).

⁵⁰ Matt Barreto, Et Al., *The Disproportionate Impact of Voter-ID Requirements on the Electorate- New Evidence from Indiana*, 42 Pol. Sci. & Pol. 111-116 (2009).

⁵¹ BRENNAN CENTER, *Supra*, note 5.

with growing and emerging Latino electorates and other voters of color, will jeopardize access to the ballot box and deny these communities a voice. Congress can address these disparities head on by passing H.R. 1.

IV. A Review of How the Administration of Elections Impact Latinos' Access to the Ballot Box

This section identifies how state's elections administration laws and processes impact Latino voters' access to the ballot box by integrating examples from recent legal advocacy work undertaken by the UCLA LPPI Voting Rights Project, and how H.R. 1 can close unequal loopholes to secure the right to vote for all Americans.

a. Robust Vote by Mail: An Electoral Innovation that Improves Democracy & Safeguards Latino Voters' Access to the Ballot Box

During 2020, voting by mail became more important than ever due to the COVID-19 pandemic. The COVID-19 pandemic was the root source of both the expansion of mail voting and large amounts of litigation in both state and federal courts to guarantee the right to vote.⁵² Over 92.1 million absentee or mail ballots were requested or sent to voters in the United States, surpassing that of 2016.⁵³ While federal election officials stated that the 2020 election was the “most secure in American history,”⁵⁴ opponents of democracy have continued to undermine both the election results and the election infrastructure.

When the COVID-19 pandemic started in early March of 2020, the UCLA LPPI Voting Rights Project (“VRP”) was one of the first organizations publishing empirical research on the topic of mail voting.⁵⁵ Ultimately, VRP research found that many states already have a steady vote-by-mail infrastructure in place. Nearly half of all U.S. states have provisions allowing some voting to be conducted by mail-delivered ballots, and several states allow it for all elections.⁵⁶ Before the 2020 election, six states conducted all elections by mail; four states permitted counties to opt into conducting all elections by mail; eight states permitted some elections to be conducted by mail; five states permitted certain jurisdictions or portions of a jurisdiction to be designated as all-mail based on population.⁵⁷ Further, 33 states and Washington, D.C. offer “no-excuse” absentee/mailed ballot

⁵² See Sten Spinella, *COVID-19 could lead to permanent expansion of voting opportunities*, (Jan. 4, 2021), <https://www.theday.com/article/20210103/NWS01/210109858>; Stanford-MIT Healthy Elections Project, *COVID-Related Election Litigation Tracker*, <https://healthyelections-case-tracker.stanford.edu/results> (“This database tracks election law cases arising out of the COVID-19 pandemic—over 500 cases and appeals, comprising over 350 case families (i.e. all cases and appeals arising from a single complaint) in 46 states plus D.C. and Puerto Rico.”).

⁵³ Lazaro Gamio, Et Al., *Record-Setting Turnout: Tracking Early Voting in the 2020 Election*, N.Y. TIMES (Nov. 12, 2020), <https://www.nytimes.com/interactive/2020/us/elections/early-voting-results.html>.

⁵⁴ CYBERSECURITY & INFRASTRUCTURE SECURITY AGENCY, *Joint Statement From Elections Infrastructure Government Coordinating Council & The Election Infrastructure Sector Coordinating Executive Committees*, <https://www.cisa.gov/news/2020/11/12/joint-statement-elections-infrastructure-government-coordinating-council-election>.

⁵⁵ *Id.*

⁵⁶ BARRETO, ET AL., *PROTECTING DEMOCRACY: IMPLEMENTING EQUAL AND SAFE ACCESS TO THE BALLOT BOX DURING A GLOBAL PANDEMIC* (2020).

⁵⁷ *Id.*

voting, meaning any voter can receive an absentee ballot if they request one.⁵⁸ Additionally, 17 states require an excuse in order to vote absentee, and all of the remaining states allow limited absentee/mailed ballot voting for at least some voters.⁵⁹ Of the 17 states that do not provide no-excuse mail voting, Texas and New York were home to the largest Latino populations in the United States and had 2.18 and 1.00 million Latino registered voters, respectively.⁶⁰

VRP immediately advanced social science research with legal advocacy to expand access to the ballot box for Latinos and other voters during COVID-19 in both New York and Texas. After the publication of VRP research on vote by mail in New York outlining the barriers that voters faced to being able to access mail ballots and the deficiencies of the existing election laws, New York expanded mail voting after previously having strict absentee ballot laws.⁶¹

Similarly, Texas does not permit voters to access no-excuse absentee ballots, unless they are over the age of 65 and COVID-19 or ability to contract COVID-19 did not qualify as excuses for a mail ballot. In Texas, the median age of non-Hispanic whites is 42.10 compared to 28.70 for Latinos.⁶² The VRP challenged Texas' no-excuse absentee ballot rule on behalf of voters who were on the frontlines of COVID-19.⁶³ Below is a snapshot of a voter represented by VRP who was disenfranchised because of Texas' discriminatory election rule:

Ms. Brenda Li Garcia, a 44 year old resident of Bexar County, Texas, and a long-time voter faced an arbitrary and unreasonable barrier to casting a ballot during the 2020 Presidential Election. At the time of the election, Ms. Garcia was a registered working nurse, one of a handful of occupational professions that the federal government classified as an essential worker during the COVID-19 pandemic. Texas' law made it so that Ms. Garcia was not eligible for a mail ballot. Despite multiple surges in COVID-19 infection and mortality rates during the 2020 election, Texas did not expand who could utilize a mail ballot during the pandemic. Under H.R. 1, Ms. Garcia would not have been forced to choose between her health and her right to vote because Sec. 1621 of H.R. 1 explicitly expands access to mail ballots to all eligible voters for federal elections by removing conditions or restrictions.⁶⁴

After receiving a preliminary injunction in the federal district court,⁶⁵ the Fifth Circuit stayed the injunction, meaning that voters under the age of 65 were required to have an excuse to vote

⁵⁸ *Id.* Rhode Island lists a number of excuses to vote absentee, but also specifies “No specific reason necessary.” Since any Rhode Islander can request an absentee ballot, NCSL has categorized it as no excuse required; *See also Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options*, NAT. CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx> (last visited Mar. 22, 2020).

⁵⁹ Barreto, *Supra*, note 56.

⁶⁰ Herndon, *Supra*, note 10.

⁶¹ *See* BARRETO ET AL., ANALYSIS OF NEW YORK STATE'S ABSENTEE BALLOT LAWS AND PROCESS AND THE IMMEDIATE NEED FOR ABSENTEE BALLOT REFORM (2020); *2020 Vote: Mail-in Voting Expanded in New York*, ABC7 N.Y. (Aug. 20, 2020), <https://abc7ny.com/new-york-voting-absentee-ballot-governor-andrew-cuomo-election-2020/6380019/>.

⁶² U.S. Census Bureau, 2019 American Community Survey 5-year Estimates (March 25, 2021).

⁶³ *Texas Democratic Party v. Abbott*, 978 F.3d 168 (5th Cir. 2020).

⁶⁴ *Id.*, Declaration of Brenda Li Garcia.

⁶⁵ *Texas Democratic Party v. Abbott*, 461 F. Supp. 3d 406 (W.D. Tex.), vacated and remanded, 978 F.3d 168 (5th Cir. 2020).

absentee. The case is now being heard on remand after the United States Supreme Court denied a motion to vacate the stay and grant relief on the preliminary injunction.⁶⁶

b. Limitations to Vote by Mail: How Costly Requirements to this Voting Modality Result in Disparate Impacts and Impede Access to the Ballot

Despite the benefits of voting by mail, including providing a safe voting method for Americans in the face of an infectious and deadly virus, some states sought to limit access by imposing burdensome costs. In 2020, and again in 2021, states have advanced legislation to require *voters* to pay for postage on their mail ballots. VRP conducted research on how the requirement to pay for postage would affect voters in Georgia during the pandemic, finding that the requirement that voters purchase their own postage stamps in order to cast a mail ballot presents a burden on voters.⁶⁷ This burden is especially heightened for low-income and minority voters and those who reside in rural communities. Demographic data and other trends in Georgia demonstrate that millions of Georgia voters are in at-risk categories of being burdened by the stamp requirement.⁶⁸ Taken individually or together, these hardships present a barrier for a voter to access a post office or stamp retailer and obtain the necessary number of stamps to cast their mail ballot.

A 2020 spatial analysis of Georgia’s voter file and USPS directory, research found that 40% of voters (2.78 million) in Georgia have low access to postal services, and 15% of all voters (1.04 million), face severe isolation from a postal retailer, living in a “postal desert” given either their spatial distance or economic circumstances.⁶⁹ Living in a postal desert is highest for Latinos (17%) and Blacks (28%) on the voter file, compared to whites (8%). Having low-access or living in postal desert creates a significant burden for any registered voter who is being required to purchase a stamp in order to cast their ballot. H.R. 1 would directly address this harm on voters by requiring State or local election officials to provide prepaid postage on mail ballot return envelopes.⁷⁰

c. Limitations to Vote by Mail: Signature Matching and Curing Provisions that Impede the Ability for Latinos’ Ballot to be Counted

While it was clear that expanded vote by mail was the best tool in our nations’ pandemic-response toolbox, signature matching requirements for mail ballots create a potential to disenfranchise Latino

⁶⁶ Texas Democratic Party v. Abbott, 140 S. Ct. 2015, 207 L. Ed. 2d 1094 (2020).

⁶⁷ MATT BARRETO, POSTAGE STAMP REQUIREMENTS WILL SIGNIFICANTLY BURDEN GEORGIA VOTERS: DECLARATION OF MATTHEW A. BARRETO, PH.D. (2020).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ The For the People Act of 2021, H.R. 1, 117th Cong. § 623 (2021).

voters.⁷¹ Generally, mail voting may also increase voter turnout,⁷² especially among minorities⁷³ and the differently abled.⁷⁴ Decreases in voter participation associated with vote by mail schemes can also be mitigated with adequate voter communication.⁷⁵ However, mandatory signature matching coupled with failing to provide voters with alternatives to verify their identity or a reasonable opportunity to cure ballot defects, will likely result in disparate impacts on whose vote is and is not counted. Ultimately, mandatory signature matching is likely to have a disproportionate effect on the young, elderly, disabled, racial/ethnic minorities, and limited English proficient voters.⁷⁶

Voting is a fundamental right that cannot be abridged without due process.⁷⁷ Granting election officials unchecked discretion in rejecting non-compliant ballots from eligible voters may be facially violative of the Constitution.⁷⁸ Vote-by-mail schemes are typically adopted alongside measures to verify the identity of the voter casting the mail-in ballot. While States must have methods to ensure that mail voting is secure, all too often they adopt signature verification methods that disenfranchise voters. Here, election officials often compare signatures on file from a voter's registration or another government record to the signature on their ballot, without safeguard requirements like requiring at least 2 election officials to make the verification determination or requiring officials to receive training in how to verify signature that would help curtail voter disenfranchisement.

Litigation in California in 2018 revealed that as many as 45,000 vote-by-mail ballots were rejected by election officials.⁷⁹ Worse, voters were never notified that their vote was not counted and were never

⁷¹ See Generally, Lily Hay Newman, *Vote by Mail Isn't Perfect. But It's Essential in a Pandemic*, WIRED. (Apr. 9, 2020), <https://www.wired.com/story/vote-by-mail-absentee-coronavirus-covid-19-pandemic>; See also Devan Cole & Abby Phillip, *Michelle Obama's Voter Registration Group Throws Support Behind Mail-in Voting Push*, CNN (Apr. 14, 2020), <https://www.cnn.com/2020/04/13/politics/michelle-obama-mail-in-voting-support-coronavirus/index.html>.

⁷² Alan S. Gerber, Gregory A. Huber, & Seth J. Hill, *Identifying the Effects of All-Mail Elections on Turnout: Staggered Reform in the Evergreen State*, POL. SCI. RES. & METHODS, 1 (2013), <https://www.cambridge.org/core/journals/political-science-research-and-methods/article/identifying-the-effect-of-allmail-elections-on-turnout-staggered-reform-in-the-evergreen-state/3725E51B9B7F331D77DC9B49130D7F7D>; GEORGE PILLSBURY ET AL., NONPROFIT VOTE AND ELECTIONS PROJECT, AMERICA GOES TO THE POLLS 2018 (2019), <https://www.voteathome.org/wp-content/uploads/2019/03/america-goes-polls-2018.pdf> (Nonprofit Vote provided comprehensive research into the 2018 elections showing the three reforms that had the most positive impact on voter engagement. They were: VAH, Same Day Registration, and Automatic Voter Registration).

⁷³ Vote by mail facilitates participation by Latino and Black voters. See Priscilla L. Southwell, *A Panacea for Latino and Black voters? Elevated Turnout in Vote by Mail Elections*, 47 SOC. SCI. J. 819 (2010).

⁷⁴ Arlene Kanter & Rebecca Russo, *The Right of People with Disabilities to Exercise Their Right to Vote Under the Help America Vote Act*, 30 Mental and Physical Disability L. Rep. 852 (2006).

⁷⁵ ELIZABETH BERGMAN ET AL., HOW DOES VOTE BY MAIL AFFECT VOTERS? A NATURAL EXPERIMENT EXAMINING INDIVIDUAL-LEVEL TURNOUT (2020).

⁷⁶ Daniel Smith, *Analysis of Absentee ("Vote-By-Mail") Ballots Cast in Florida*, ELECTION SMITH, (Sept. 13, 2016), <https://electionsmith.files.wordpress.com/2016/10/smith-coie-jenner-report-dnc-fdp.pdf>.

⁷⁷ The First and Fourteenth Amendments of the United State Constitution protect the fundamental right to vote. See *Burdick v. Takushi*, 504 U.S. 428, 433-44 (1992).; See also *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). The political franchise of voting "is regarded as a fundamental political right, because preservative of all rights."

⁷⁸ See UCLA Voting Rights Project: Mindy Acevedo, Matthew A. Barreto, Michael Cohen, & Chad W. Dunn, Sonni Waknin, *Ensuring Equal Access to the Mail-in Ballot Box*, 68 UCLA L. Rev. Discourse 4, 8 (2020).

⁷⁹ *Peter La Follette v. Padilla*, No. CPF 17-515931, 2018 WL 4050727, (Cal.Super. Apr. 09, 2018). Ultimately the ensuing appeal of the trial court's ruling in favor of plaintiffs was dismissed because on September 17, 2018, the Governor of California signed Senate Bill No. 759 (2017-2018 Reg. Sess.), which amended former section 3019(c)(2) to provide voters an opportunity to cure a mismatched signature before the certification of election results. As revised, the statute now provides the remedy sought by plaintiffs in the underlying litigation. (Elec. Code, § 3019, subs. (d)(1)-(2) [notice provision] & (d)(3) [cure procedure].)

afforded an opportunity to cure their ballot's defect under sections of the California Elections Code that were ultimately amended in response to advocacy efforts and plaintiffs' success at the trial court level.⁸⁰ Mindy Romero, PhD, declared in her supporting declaration to the complaint upon appeal that in the 2016 general election, "[l]atino voters' ballots were rejected at over twice the rate of non-Latino, non-Asian voters in 11 of the 29 counties, while Asian-Americans' ballots were rejected at over twice the rate of non-Latino, non-Asian voters in 6 counties."⁸¹ Additionally, in the State of Washington, there is evidence that those with Latino surnames are more likely than White voters to have their signatures flagged for potential mismatch.⁸² Washington also lacks uniform statewide standards across counties for signature verification because there are no codified standards.⁸³ The nation's patchwork of signature matching requirements imperils the ability of Latino voters to not only cast a mail ballot, but to ensure that their ballot is counted, dependent solely on what state they live in. The examples of California and Washington illustrate that even in states with more progressive election laws, Latino voters face barriers to their fundamental right to cast a meaningful ballot.

During the 2020 Presidential Election, the VRP advocated on behalf of voters in New Mexico to ensure voters were not only able to cast a ballot, but that their ballot was counted. New Mexico has the largest share of Latino voters in relation to its total electorate among any state in the U.S.⁸⁴ An estimated 356 thousand Latinos form 38.9% of the state's total registered voters in New Mexico.⁸⁵ It is also home to a robust mail voting scheme. In early 2020, New Mexico's election laws were silent regarding a curing process for rejected absentee ballots. In New Mexico, rejected ballots were recorded and placed in a designated container, without affirmative communication to voters who cast those ballots. While a voter may contest or appeal the rejection and provide the required missing element of the ballot under state law, no provision of New Mexico's election law covered how voters were to be contacted about their rejected ballot.⁸⁶ Data is limited, but in 2018, for example, New Mexico rejected at least 1,562 provisional ballots and 240 absentee ballots.⁸⁷ After the VRP's advocacy, New Mexico signed into law a curing provision on June 26, 2020, ahead of the general election.⁸⁸

Congress can remedy the disparate impact of signature matching requirements and procedures that disadvantage Latino voters. H.R. 1 remedies this problem in two ways: it provides a national uniform standard for how election officials can make a determination that a signature discrepancy

⁸⁰ *Id.*

⁸¹ *Id.* Court of Appeals Complaint at 31.

⁸² Joy Borkholder, *Latino Voters Have Higher Than Average Ballot Signature Rejection Rates in Washington State*, INVESTIGATEWEST (Feb 15, 2021), <https://www.invw.org/2021/02/15/latino-voters-have-higher-than-average-ballot-signature-rejection-rates-in-washington-state/>.

⁸³ *Id.*

⁸⁴ Herndon, *Supra*, note 10.

⁸⁵ *Id.*

⁸⁶ N.M. Stat. § 1-6-14, NMSA 1978.

⁸⁷ ELECTION ADMINISTRATION COMMISSION, 2018 ELECTION ADMINISTRATION AND VOTING SURVEY REPORT 34 (2019), https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf.

⁸⁸ STATE OF NEW MEXICO, *Senate Executive Message No. 2*, <https://www.sos.state.nm.us/wp-content/uploads/2020/06/CH2-SB4-2020-Sp-Session.pdf>.

exists⁸⁹ and requires states to provide a curing period.⁹⁰ It is not enough for racial/ethnic minority voters to overcome barriers to access a ballot; federal legislative action is necessary to ensure those ballots are actually counted.

V. A Review of How the Regressive Voter Bills Impact Latinos' Fundamental Right to Vote & Elect their Candidate of Choice

This section analyzes the implications of restrictive voting bills on Latino voters' fundamental right to vote and ability to elect their candidate choice. Here, H.R. 1 will enable all Americans to cast a ballot by removing barriers that attempt to suppress their votes.

a. Onerous Voter Registration Requirements

As stated, the number of Latino voters has been rapidly increasing since 2008. In the 2020 Presidential Election, the growth in Latino voters outpaced that of other demographic groups. Yet, barriers to voting, starting with the ability to even register to vote, have impacted the gap between eligible Latino voters and registered Latino voters. Registration barriers disproportionately impact first-time voters, like young people and new citizens, which, in part defines the nation's emerging Latino electorate.⁹¹ Voter registration requirements function as a dis-invitation to participate, and the unwelcoming attitude fueling their adoption has been on full public display for a number of years. Latino voters follow political and social news and are very aware that politicians advocate restrictive voting laws by citing concerns about the qualifications of voters like them, who have immigrant origins or are students, or belong to other disproportionately Latino segments of the population.⁹²

This is especially true of overly restrictive voter registration laws that require the use of a driver's license in order to register to vote or unduly burdensome registration timelines. Latinos are more likely to In 2016, “more than one in 10 [B]lack and Hispanics missed the registration deadline to vote in 2016, as opposed to just 2 percent of white.”⁹³

The goal of H.R. 1 is to preserve the vote, vote integrity, and election integrity in order to protect and further the American electoral democratic system itself. H.R. 1 would allow for automatic voter registration and same-day and online registration, which would remove the registration barrier that Latino voters face. It would also allow minors to register up to two years early so long as they would be 18 on election day. Because Latinos as a whole are younger than other racial populations, face barriers to registration, and are most likely to vote on election day, this reform will positively impact Latinos on a whole.

⁸⁹ The For the People Act of 2021, H.R. 1, 117th Cong. § 307(b) (2021).

⁹⁰ *Id.*

⁹¹ BRENNAN CENTER FOR JUSTICE, *The Redistricting Landscape, 2021-2022*, 15. https://www.brennancenter.org/sites/default/files/2021-02/2021_2_11_State%20of%20Redistricting.pdf; *What Republicans Need to Know As We Move Toward the 2020 Election*, Pub. Opinion Strat. (June 2019), <https://pos.org/wp-content/uploads/2019/06/Republicans-and-the-2020-Election-June-2019.pdf>.

⁹² Atiya Kai Stokes, *Latino group consciousness and political participation*. *Am. Pol. Research* 31, no. 4 361-378 (2003).

⁹³ Vann R. Newkirk, *Voter Suppression is Warping Democracy*, ATLANTIC (July 17, 2018), <https://www.theatlantic.com/politics/archive/2018/07/poll-prri-voter-suppression/565355/>.

b. Unduly Restrictive Photo ID Laws Impede Latino Voters Ability to Cast a Ballot

Over the past 10 years, states all over the country have enacted laws that require voters to present photo identification or other identification at the polling place in order to cast a ballot.⁹⁴ By 2016, 14 states had new voting restrictions in place for the first time in a presidential election: Alabama, Arizona, Indiana, Kansas, Mississippi, Nebraska, New Hampshire, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Wisconsin.⁹⁵ In 2017, Arkansas and North Dakota adopted new voter ID bills, and Missouri implemented a restrictive law that was passed by ballot initiative the year prior. Georgia, Iowa, Indiana, and New Hampshire also enacted restrictions, in addition to laws that were on the books for previous elections.⁹⁶ In 2018, Arkansas, Indiana, Montana, New Hampshire, North Carolina, and Wisconsin enacted new restrictions. In 2019, Arizona, Florida, Indiana, Tennessee, and Texas maintained the trend.⁹⁷ 2020 featured more of the same.⁹⁸ Already in 2021, numerous states have introduced or adopted restrictions on absentee voting and voter registration as well as a host of voter ID laws.⁹⁹ Notably, this year, Georgia recently passed a sweepingly restrictive voting law, SB 67.¹⁰⁰

The primary rationalization for voter ID requirements at the poll is to prevent voter fraud. Yet, there is a proven disconnect between the pretextual justification for voter ID requirements and the dearth of evidence of voter fraud in U.S. elections. In *Crawford v. Marion County Election Board*—the Supreme Court challenge to Indiana’s strict photo voter ID law—the state of Indiana argued that their voter ID law was a reasonable attempt at reducing voter fraud.¹⁰¹ There was no evidence of recent in-state fraud, whether it be duplicate voting, voter impersonation, or false registration. Voter fraud in the United States is extremely rare.¹⁰² What is not rare, however, is how Latinos and other voters of color are disproportionately disenfranchised by restrictive and discriminatory voter identification requirements.

Racial/ethnic minorities are among those most sensitive to changes in voting rules.¹⁰³ As such, reforms that enact voter identification laws to participate in an election have a disparate impact on minority voters voting. Black Americans and Latinos were found less likely to possess or have access to the valid forms of photo ID required by the Wisconsin, Indiana, and Texas voter identification

⁹⁴ Ari Berman, *The GOP War on Voting*, Rolling Stone (Aug. 30, 2011), <https://www.rollingstone.com/politics/politics-news/the-gop-war-on-voting-242182/>.

⁹⁵ BRENNAN CENTER FOR JUSTICE, *New Voting Restrictions in America* (Nov. 19, 2019), <https://www.brennancenter.org/sites/default/files/2019-11/New%20Voting%20Restrictions.pdf>.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ BRENNAN CENTER FOR JUSTICE, *Voting Laws Roundup 2020* (Feb. 4, 2020), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2020>

⁹⁹ See BRENNAN CENTER FOR JUSTICE, *Voting Laws Roundup 2021* (Jan. 26, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-january-2021>.

¹⁰⁰ Nick Corasaniti, *Georgia G.O.P. Passes Major Law to Limit Voting Amid Nationwide Push*, N.Y. Times (March 25, 2021), <https://www.nytimes.com/2021/03/25/us/politics/georgia-voting-law-republicans.html>.

¹⁰¹ *Crawford v. Marion County Election Bd.*, 533 U.S. 181 (2008).

¹⁰² BARRETO ET AL, *DEBUNKING THE MYTH OF VOTER FRAUD IN MAIL VOTING* (2020).

¹⁰³ Dominguez, *Supra*, note 15.

laws than their white peers.¹⁰⁴ Recent studies show that these effects are even more disastrous for youth of color, who have even less access to valid forms of identification.¹⁰⁵ Research suggests that voter identification laws have an effect on Latinos more than any other racial or ethnic group.¹⁰⁶

Voter identification laws have well-documented and significant disenfranchising effects on the nation's growing and youthful Latino electorate. Research found that Latinos are less likely to have access to the underlying documents needed to secure a government-issued photo ID and are subject to socioeconomic disparities which can raise the cost of finding out about voter identification rules and visiting government offices.¹⁰⁷ Another study found that between 2006 and 2014, Latino turnout was 7.1% lower in strict voter identification states in general elections, and 5.3% lower in primaries, while white turnout was 0.2 percent higher in general, and 0.4 percent higher in primaries.¹⁰⁸ In fact, the white vs. non-white gaps in turnout were more pronounced among Latinos than any other racial/ethnic group.¹⁰⁹

In addition to empirical studies, U.S. courts have consistently found that States that have implemented voter identification laws did so to intentionally discriminate against voters of color. In *Veasey v. Abbott*, Latino voters, represented by VRP's litigation director, Mr. Chad Dunn, alleged they were discriminated against under Texas' strict voter identification law.¹¹⁰ Two federal judges during the duration of the case found that Texas' voter identification law, SB 14, was passed with a discriminatory purpose in violation of the United State Constitution and Section 2 of the Voting Rights Act.

H.R. 1 remedies the disparate impact of State's onerous and discriminatory voter identification requirements by permitting voters in federal elections to sign a sworn written statement under penalty of perjury attesting to their identity and voter eligibility.¹¹¹

¹⁰⁴ See *Veasey v. Perry*, 2:13-cv-00193 (S.D. Tex. Dec. 11, 2013), *Expert Report of Dr. Matt Barreto and Dr. Gábel Sanchez Behalf of Plaintiffs*.

¹⁰⁵ J.C. Rogowski and C. J. Cohen, *Black and Latino Youth Disproportionately Affected by Voter Identification Laws in the 2012 Election*. Black Youth Project, 2012.

¹⁰⁶ Zoltan Hajnal, Nazita Lajevardi, and Lindsay Nielson, *Voter Identification Laws and the Suppression of Minority Votes*, 79 *Journal of Pol.*, 363-379 (2017).

¹⁰⁷ See Matt Barreto, Stephen Nuño, & Gabriel Sánchez, *The Disproportionate Impact of Voter-ID Requirements on the Electorate—New Evidence from Indiana*, 42 *Pol. Sci. & Pol.*, 111-116 (2009); M.V. Hood III & Charles S. Bullock III, *Worth a Thousand Words?: An Analysis of Georgia's Voter Identification Status*, 36 *Am. Pol. Research* 555 (July 2008); Keesha Gaskins & Sundee Iyer, *The Challenge of Obtaining Voter Identification*, THE BRENNAN CENTER FOR JUSTICE (2012), <http://www.brennancenter.org/publication/challenge-obtaining-voter-identification>; Zoltan Hajnal, Nazita Lajevardi & Lindsay Nielson, *Voter Identification Laws and the Suppression of Minority Votes*, 79 *J. of Pol.* 363 (2017).

¹⁰⁸ Zoltan Hajnal, Nazita Lajevardi & Lindsay Nielson, *Voter Identification Laws and the Suppression of Minority Votes*, 79 *J. of Pol.* 363, 368 (2017). The authors expressly disavow finding a causal connection between voter ID and voter turnout given the difficulty of disaggregating the impact of voting procedures from other factors such as the popularity of candidates or election day weather, but the authors' results are strongly suggestive. See *Id.*

¹⁰⁹ *Id.* at 368-369.

¹¹⁰ *Veasey v. Abbott*, 2:13-cv-00193 (S.D.T.X. April 4, 2017).

¹¹¹ The For the People Act of 2021, H.R. 1, 117th Cong. § 1903 (2021).

c. Ineffective Language Assistance for Limited English Proficient Voters

While the Voting Rights Act of 1965 was a landmark piece of legislation that opened access to the ballot box for millions of Americans, some voters did not acquire full access to the ballot box for another ten years. President Gerald Ford signed the 1975 amendments to the Voting Rights Act after Congress heard extensive testimony about voting discrimination suffered by Latino, Asian American, and Native American voters.¹¹² Ultimately, Section 203 closed the access gap by providing language minority voters access to election materials in their native language in jurisdictions that met the statutory threshold. In 1982, Congress amended the Voting Rights Act by adding Section 208, which states in part that “any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice.”¹¹³ Although established primarily as an accommodation measure for disabled and illiterate voters, Section 208 has been applied to limited-English-proficient voters when those voters require assistance to understand an English-only ballot. Polling places, particularly those in jurisdictions covered by Section 203, provide language assistance and employ bilingual poll workers, providing an essential service to Latino voters who may have limited English proficiency.¹¹⁴ As a result, Section 203 has been instrumental in the growth of Latino political participation, and research suggests that “language assistance provisions have a direct effect on Latino representation.”¹¹⁵

While statutory protections exist to support some limited English proficient voters cast a ballot, issues with compliance, underenforcement, and limitations to the statutes result in persistent disparities. For example, today, many states do not offer the same language assistance to voters voting by mail or otherwise not voting in-person.¹¹⁶ Further, there are an estimated 11.13 million voting-age citizens that are limited-English proficient in the U.S..¹¹⁷ Put simply, as of 2019, 4.82% of the U.S. CVAP needs to cast a ballot in a language other than English. An estimated six million eligible Latino voters nationwide are not fully fluent in English, and require some form of language assistance in order to vote, necessitating broad language access provisions.¹¹⁸

Table 5 details the nation’s ten most populous Latinos states with respect to their share of the citizen voting age population that is limited English proficient. It is important to note that these numbers do not disaggregate by language, and ultimately some states, like California, Texas, and New York are home to diverse voting age residents who speak dozens of languages. As a result,

¹¹² UNITED STATES DEPARTMENT OF JUSTICE, Language Minority Citizens, <https://www.justice.gov/crt/language-minority-citizens>, noting Congress mandated language access after finding that, “through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process....The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices.”

¹¹³ 42 U.S.C. 1973(a)(a)6. Section 208 contains an exception precluding an assistor who is “the voter’s employer or agent of that employer or officer or agent of the voter’s union.”; *Id.*

¹¹⁴ U.S. Department of Justice, *Supra*, note 112 at 9.

¹¹⁵ Melissa J. Marschall and Amanda Rutherford, *Voting Rights for Whom? Examining the Effects of the Voting Rights Act on Latino Political Incorporation*, 60 Am. Journal of Pol. Sci., 590–606 2016, www.jstor.org/stable/24877483.

¹¹⁶ *Id.*

¹¹⁷ U.S. Census Bureau, 2019 American Community Survey 5-year Estimates, (Mar. 25, 2021).

¹¹⁸ *Id.*

some language minorities do not reach the statutory thresholds for language assistance under Section 203 and are vulnerable to being left out of the franchise because of their language proficiency.

Table 5. Citizen Voting Age Population that are Limited English Proficient and Proportion of Total CVAP in the U.S. and Ten Most Populous Latino States, 2019

	2012		2016		2019	
United States	9,654,395	4.5%	10,470,207	4.7%	11,132,333	4.8%
California	2,624,011	11.4%	2,834,348	11.5%	2,950,559	11.6%
New York	1,131,131	8.6%	1,191,800	8.8%	1,225,266	8.9%
New Jersey	450,475	7.6%	475,315	7.8%	495,720	8.1%
Florida	916,555	6.9%	1,060,095	7.5%	1,173,699	7.8%
Texas	1,106,244	7.0%	1,222,654	7.1%	1,321,638	7.3%
Nevada	102,313	5.8%	119,456	6.3%	125,413	6.2%
New Mexico	80,471	5.7%	80,032	5.5%	87,506	5.8%
Illinois	426,913	4.8%	446,536	5.0%	454,613	5.0%
Arizona	197,107	4.6%	215,427	4.7%	236,588	4.8%
Colorado	95,281	2.7%	102,324	2.7%	112,710	2.8%

Across non-Section 203 jurisdictions, language assistance and outreach is expected to be performed by the jurisdiction based on state law provisions or goodwill. As a result, voters often have no reason to expect a facsimile – translated sample – ballot when arriving at a polling place. Furthermore, bilingual poll workers are not consistently required to be available to voters, and when they are provided, they are not reliably identifiable for voters. Meeting the language assistance needs of the nation’s youthful language minority communities is fundamental to ensuring equal access to the electoral process.

Although there is no centralized provision of H.R. 1 that codifies and expands language access, there are several sections that work together to increase accessibility for voters with limited English proficiency. H.R. 1 mandates that jurisdictions provide election materials in a variety of languages and that voter help hotlines must be able to provide services in several languages. As a result, H.R. 1 builds off of Section 203, by clarifying language access requirements and providing a means of enforcement for language access issues. Combined, these key provisions serve to expand access to marginalized voters and codify rights that many states are currently attempting to strip away.

d. Vote Dilution & the Undermining of Electing Candidates of Choice for Latinos

U.S. history is ripe with examples of discriminatory voting laws and election practices that dilute and suppress the voting power of Latinos and other racial/ethnic communities. Districts across the country have been drawn such that Latino voters are intentionally divided, which when combined with laws that restrict voting access and impose burdens on voting, makes it nearly impossible for Latino voters to elect candidates of their choice. Legal barriers include restrictive voter ID laws, the reduction of polling locations in communities of color, restrictions on who can vote by mail, the understaffing and under-resourcing of polling locations that serve communities of color, and more.¹¹⁹ Many of these practices would have been prevented if preclearance were still in place, but the Supreme Court gutted the requirement set forth by section 4(b) of the Voting Rights Act in *Shelby County v. Holder*.¹²⁰ Yet, without the requirement to submit preclearance requests to the federal government and on the heels of accelerated actions to suppress the vote, states and localities across the country have proceeded to dilute Latino political voice.

This trend of state laws and practices targeting communities of color persists, imperiling the ability of Latinos and other voters of color to cast a meaningful ballot and elect their candidates of choice.¹²¹ Over the last decade, several cases illustrate the vote dilution that seeks to undermine Latino political voice in key jurisdictions across the U.S. A 2020 Texas law reduced the number of ballot drop-boxes, which had been drastically increased due to the COVID-19 pandemic, to one per county.¹²² This resulted in counties closing existing sites and disproportionately harming Black and Latino voters who were harmed by the cutbacks to ballot drop-boxes.¹²³ The counties with the highest proportion of Latino voters were also some of the most populous, meaning that the law disproportionately affected Latino voters by subjecting them to a greater burden.¹²⁴ With respect to districting, a 2016 challenge by MALDEF on behalf of Latino plaintiffs successfully found that the county supervisors in Kern County adopted a discriminatory district map that diluted the Latino vote such that Latinos were unable to elect a second candidate of choice to the five-member

¹¹⁹ One example is the Texas law litigated in *Veasey v. Abbott*, which imposed strict ID requirements that disproportionately targeted Black and Latino voters. The bill was found to be an unconstitutional burden on the right to vote, had an unconstitutional discriminatory purpose against Black and Latino voters, and constituted an unconstitutional poll tax. For more information, see <https://latino.ucla.edu/research/veasey-vs-perry-abbott/>. Another example is in Georgia, where voters of color must wait in line for hours to vote due to the scarcity of polling places in neighborhoods where voters of color live. See Stephen Fowler, *Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours? Too Few Polling Places*, NPR (Oct. 17, 2020), <https://www.npr.org/2020/10/17/924527679/why-do-nonwhite-georgia-voters-have-to-wait-in-line-for-hours-too-few-polling-pl>. Another example is in Florida, where the signature requirement for absentee voting led to Black registered voters being disproportionately more likely to cast an absentee ballot that is rejected by election officials than their white counterparts. Daniel A. Smith, *Analysis of Absentee ("Vote-By-Mail") Ballots Cast in Florida* (2016), <https://electionsmith.files.wordpress.com/2016/10/smith-coie-jenner-report-dnc-fdp.pdf> [<https://perma.cc/347H-9AWN>]; Nicholas O. Stephanopoulos, *Disparate Impact, Unified Law*, 128 Yale L.J. 1566, 1644–45 (2019); For the People Act, *Supra*, note 89.

¹²⁰ *Shelby County v. Holder*, 570 U.S. 529 (2013).

¹²¹ Ruth Igielnik and Abby Budiman, *The Changing Racial and Ethnic Composition of the U.S. Electorate*, PEW RESEARCH CENTER (Sept. 23, 2020), <https://www.pewresearch.org/2020/09/23/the-changing-racial-and-ethnic-composition-of-the-u-s-electorate> (finding that between 2000 and 2018, “Hispanic voters have come to make up increasingly larger shares of the electorate in every state.”).

¹²² The subsequent case was *LULAC v. Abbott*. For more information, see <https://campaignlegal.org/cases-actions/lulac-v-abbott>

¹²³ *Id.*

¹²⁴ *Id.*

board.¹²⁵ The court, in finding in favor of the plaintiffs also noted the county's long history of discrimination against Latinos, including a history of political suppression by the KKK.¹²⁶ In 2021, Latino vote dilution persists in Washington State, where the votes of Latinos are being rejected at disproportionately high rates.¹²⁷

Over the past two years, VRP has been involved in legal advocacy on behalf of Latino voters in Yakima, Washington to combat pernicious vote dilution actions. to protect the Latino vote, particularly in Washington State. In 2014, a federal court ordered Yakima to create new, single-member districts to remedy an unconstitutional districting scheme that diluted the Latino vote and barred their ability to elect their candidates of choice.¹²⁸ Under the new, federally mandated districting scheme, Latino voters were able to elect their candidates of their choice. Within a few years, Latino voters were able to elect the city's first three Latino city council members.¹²⁹ In response, the non-Hispanic white members of the Yakima city council attempted a retaliatory change to the charter as a way to reduce the power of the city council to ensure that Latinos could not have a majority of the representation on the seven person council, in violation of Section 2 of the Voting Rights Act.¹³⁰ VRP successfully intervened on behalf of Latino plaintiffs to stop the proposed districting change to a mayor-council system, which if adopted, would revert the single-district council to an at-large election that dilutes the Latino vote. Vote dilution remains a persistent issue for Latino voters, even in seemingly progressive states. Today, VRP remains in active legal advocacy in Franklin County, Washington to combat a discriminatory district scheme that dilutes the Latino vote.¹³¹

Enacting H.R. 1 targeted would prevent many of the harms stated above and help preserve the fundamental right to vote. Ultimately, insidious vote dilution necessitates additional legislative action that is beyond the contours of H.R. 1, but exists in separate legislation, the John Lewis Voting Rights Advancement Act, which passed the last Congress as H.R. 4.¹³² To ensure Latinos are able to elect their candidates of choice and cast a meaningful ballot, Congress must act to correct the Supreme Court's 2013 *Shelby County* decision and account for the evolution of vote dilution over the past decade, in places that seemingly disregard the will of Latino voters.

¹²⁵ Luna v. County of Kern, 291 F. Supp. 3d 1088 (E.D. Cal. 2018).

¹²⁶ *Id.*

¹²⁷ Joy Borkholder, *Latino Voters Have Higher Than Average Ballot Signature Rejection Rates in Washington State*, INVESTIGATEWEST (Feb 15, 2021), <https://www.invw.org/2021/02/15/latino-voters-have-higher-than-average-ballot-signature-rejection-rates-in-washington-state/>.

¹²⁸ Montes v. City of Yakima, 40 F. Supp. 3d 1377 (E.D.Wash. 2014).

¹²⁹ Mike Faulk, *Four years after historic wins for Latino politicians, the Yakima City Council is getting less diverse*, CROSSCUT (Oct. 22, 2019), <https://crosscut.com/2019/10/four-years-after-historic-wins-latino-politicians-yakima-city-council-getting-less-diverse>.

¹³⁰ Wright v. City of Yakima, *see* Complaint for Declaratory and Injunctive Relief, <https://columbialegal.org/wp-content/uploads/2019/12/Wright-v.-City-of-Yakima-Complaint-for-Declaratory-and-Injunctive-Relief.pdf>.

¹³¹ The VRP sent a letter to the Franklin County Commissioners, as required under the Washington Voting Rights Act, notifying them that their districts impermissibly divide the Latino community and dilute their voting power. If the Commission does not work with the VRP to adopt a solution or does not obtain a court order stating their solution is equitable, then the VRP will file suit to seek a new district map that allows Latinos to fully exercise their right to vote.

¹³² The Voting Rights Advancement Act of 2019, H.R. 4, 116th Cong. (2019), which will update the VRA's coverage formula.

e. Voter Roll Purges Disenfranchise Latino Voters

Voter purging, or the deletion of voter names from voter registration lists, is a critical contributor to the reduction of votes in U.S. elections. In states nation-wide, especially those previously covered by the Voting Rights Act's preclearance requirement, voters have been unduly removed and made ineligible because of system errors, breaks in voting activity or even similarities in name. Between 2016 and 2018, 17 million people were purged from voter rolls, and the rate of purges was 40% higher in jurisdictions previously covered by the VRA than those not previously covered.¹³³ While some voters are provided with notification of their potential removal, these mailers often come at a time too close to the election to make the appropriate adjustments, leaving many voters confused and disenfranchised.

Purging has largely been conducted through the use of error prone database programs which identify duplicate voter registrations by voter name. The key system at use, the Interstate Crosscheck System, has been found to incorrectly identify 200 voters, to everyone true case of ineligible voting.¹³⁴ Crosscheck and systems like it have also been found to disproportionately purge voters of color from voter registration lists. Latino voters are more likely than white voters to have one of the most common 100 surnames in the country.¹³⁵

Voter purges have not only incorrectly identified voters as ineligible by their name, but also by unfair classifications. In Arkansas, nearly 8,000 voters were listed as ineligible to vote because of a felony conviction, who'd never been convicted of a felony or who'd had their voting rights restored.¹³⁶ In Texas, state officials identified almost 100,000 registered voters under a citizenship review, claiming that recently naturalized citizens were not eligible to vote without first proving their citizenship status.¹³⁷ This attempt, which largely targeted Latino voters, followed an election year wherein Latino voters doubled their turnout.¹³⁸ The disingenuous targeting of naturalized voters was not unique to Texas, but also found in 16 states where inaccurate immigration data identified and purged rightfully registered Latino voters.¹³⁹

Attempts at purging voters illegally, both successful and unsuccessful, have a negative residual impact on voters, as many fear illegally voting and do not vote to avoid that risk. VRP's director of

¹³³ Wendy Weiser, Et Al., *Congress Must Pass the For the People Act*, BRENNAN CENTER FOR JUSTICE (Mar 18, 2021), <https://www.brennancenter.org/our-work/policy-solutions/congress-must-pass-people-act#s1-sa-p3>.

¹³⁴ Christopher Ingraham, *This anti-voter-fraud program gets it wrong over 99 percent of the time. The GOP wants to take it nationwide*, WASH. POST (July 20, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/07/20/this-anti-voter-fraud-program-gets-it-wrong-over-99-of-the-time-the-gop-wants-to-take-it-nationwide/>.

¹³⁵ Kevin Morris & Myrna Pérez, *Purges: A Growing Threat to the Right to Vote*, BRENNAN CENTER FOR JUSTICE (July 20, 2018), <https://www.brennancenter.org/our-work/research-reports/purges-growing-threat-right-vote>.

¹³⁶ Benjamin Hardy, *Data mix-up from Ark. Secretary of State purges unknown number of eligible voters*, ARK. TIMES (July 25, 2016), <https://arktimes.com/arkansas-blog/2016/07/25/data-mix-up-from-ark-secretary-of-state-purges-unknown-number-of-eligible-voters>.

¹³⁷ Alexa Ura, *Texas will end its botched voter citizenship review and rescind its list of flagged voters*, TEX. TRIBUNE (April 26, 2019), <https://www.texastribune.org/2019/04/26/texas-voting-rights-groups-win-settlement-secretary-of-state/>.

¹³⁸ Suzanne Gamboa, *'Racist voter suppression': Texas Laws Keep Latinos From the Ballot Box, Group Says*, NBC NEWS (Oct. 3, 2020), <https://www.nbcnews.com/news/latino/racist-voter-suppression-texas-laws-keep-latinos-ballot-box-groups-n1241862>.

¹³⁹ Juan Cartagena & Judith Browne Dianis, *Voter Id Laws, Purges Threaten Latino Americans' Voting Rights*, U.S. NEWS (Sept. 24, 2012), <https://www.usnews.com/opinion/articles/2012/09/24/voter-id-laws-purges-threaten-latino-americans-voting-rights>.

litigation, Mr. Chad Dunn has been at the helm of defending voters against illegal purges. Mr. Dunn served as legal counsel against Texas' incorrect identification of naturalized citizens in 2019, successfully suing Secretary of State, David Whitley. Dunn's work led Texas officials to admit to knowing the discriminatory impact of their citizenship review on naturalized citizens.¹⁴⁰

Passing H.R. 1 puts the necessary safeguards in place to counteract improper purges. The bill will prohibit election officials from using citizens' failure to vote in previous elections as a justification for removal and will allow voters time to rectify issues with registration by requiring a timely notice and an opportunity for rectification before being removed. Additionally, H.R. 1 protects against unfair removals due to database programs by requiring a voter's full name, date of birth and last four digits of their social security number or documentation from a certified third party that a voter is no longer a resident of the duplicate state, before removal. Overall, H.R. 1 will require that voter purges be based on "objective and reliable" evidence that a voter is no longer eligible to vote, rather than subjective tactics that have a disparate impact on Latino voters.

VI. H.R. 1 is a Necessary and Permissible Exercise of Congressional Power to Restore Americans' Fundamental Right to Vote

H.R. 1 is a narrow and targeted response to a persistent and growing problem of voter suppression that seeks to bar too many Americans from accessing their fundamental right to vote. Over the last decade, and especially in the wake of the *Shelby County* decision, too many jurisdictions have enacted laws and practices that stifle Latino electoral engagement and unconstitutionally infringe on Latino voters' fundamental right to cast a ballot. Congress must not only make uniform, statutory guarantees so that all Americans can vote, but it must also restrain the discretion of jurisdictions that have continuously infringed on the fundamental right of Latino voters and other voters of color to cast a ballot and to elect their candidates of choice adopting a preclearance regime.

The 2020 general election gave way to an avalanche of restrictive voting bills across the nation that infringe on Americans ability to vote. While some states expanded voting opportunities through mail-in voting and by providing materials in languages other than English, many instead chose to make voting harder in the face of a once in a century public health crisis. It is no coincidence that these bills have been introduced in the aftermath of the historic turnout of the 2020 general election, where non-white voters made up a third of the nation's electorate for the first time. These attempts to suppress the vote are deliberate and reactionary—voters of color turned out in record numbers to vote in the 2020 general election and represent the greatest share of Democratic voters, especially in states with Republican controlled legislatures, where the majority of these voter suppression bills are taking shape.¹⁴¹

Latino voters had a monumental impact on the results of the 2020 Presidential Election and control of the U.S. Congress.¹⁴² Latino's voting preference for the Democratic presidential candidate was critical to that candidate's victory, and most pronounced in Arizona, California, Colorado, Illinois, New Mexico, Nevada, New York, Pennsylvania, and Wisconsin, where the margin between Biden

¹⁴⁰ Wright, *Supra*, at note 130.

¹⁴¹ Herndon, *Supra*, at note 10.

¹⁴² Dominguez, *Supra*, at note 11.

and Trump was 3:1.¹⁴³ In jurisdictions where Latinos made up small shares of a state's electorate, their vote preference provided the slight margins to shape outcomes. This was true in four particular states that were consequential in 2020; Latinos were 25% of voters in Arizona and less than 5% in Wisconsin, Pennsylvania and Georgia, yet their vote preference in those jurisdictions were significant to determining electoral outcomes.¹⁴⁴ The threats to democracy in the form of restrictive voting bills across the U.S. are direct responses to the perceived and real threat of an inclusive, multiracial democracy that is not solely bound by the policy preferences of an aging white electorate. Congress has the power to change that by setting a national standard through H.R. 1. to modernize our elections and secure access to the ballot box for all Americans.

¹⁴³ *Id.* at 6.

¹⁴⁴ *Id.* at 36.