



KNOW YOUR VOTING RIGHTS

I. THE VOTING RIGHTS ACT

The Voting Rights Act contains an arsenal of protections for minority voters. These include:

A Nationwide Ban on Discrimination in Voting

The Voting Rights Act bans any practice or procedure that results in discrimination against Latino voters. The law covers all areas of voting, from registration through actual election to office. It bars unequal registration opportunities, mistreatment of voters at the polls, and election systems that keep Latinos from their fair share of seats in governmental bodies, from the smallest city council to the US Congress. This protection is found in Section 2 of the Voting Rights Act.

Special Protections (some areas) against New Discriminatory Procedures

All or parts of 16 states, including all of Texas and Arizona, must go before either the US Justice Department or the federal court in Washington, DC before they use new voting procedures – before they move a polling place, redistrict, or make any other change that has any effect on voting. They must establish that the new procedure will not make things worse for minority voters. Until they do, it is illegal to implement the change.

The period during which the Justice Department is reviewing the change offers an opportunity for local Latinos to alert Justice to discriminatory procedures and provide information showing that the new procedure will decrease minority opportunities to vote and elect candidates of their choice.

These protections are in Section 5 of the Act. Answers to frequently asked questions (FAQs) can be found here: <http://www.justice.gov/crt/about/vot/misc/faq.php>.

A Right (for some) to Spanish Language Election Information

The Census Bureau identifies certain areas that must provide election information in Spanish. These are counties (and in some states, townships or cities) where over 5% of the citizens in the county, or over 10,000 citizens do not speak English very well. Currently, these requirements apply to the entire state of Texas and Arizona, respectively, as well as most of California and Florida and parts of numerous other



states. A complete list is available at <http://www.justice.gov/crt/about/vot/28cfr/55/28cfr55.pdf> and also from the LULAC Washington, DC office.

“All election information” includes all notices and other written materials that local governments provide in English, as well as information provided by election workers in the polling place and in the local election office. These procedures are set forth in Sections 203 and 4(f)(4) of the Voting Rights Acts. These provisions are targeted to areas of actual need. Individuals who are fluent in English have no right to Spanish materials or Spanish assistance at the polls. Where there is a need, however, it must be met completely.

The Voting Rights Act also addresses the special situation of Puerto Ricans. Everyone born in Puerto Rico is a US citizen by birth. Congress has decided, however, that they should receive their public education in Spanish. Congress therefore prohibits any English-language voting requirement for any person who was educated through the 6th grade in the Spanish language schools of Puerto Rico. This means that at least core voting information in Spanish, including registration materials and ballot, must be available to Puerto-Rico-educated voters, and that there must be Spanish speaking polling place workers to serve their needs.

The Census Bureau will announce new counties that must provide Spanish language election information early in 2012, and every five years after. With the continuing growth of the Latino population, the number of counties required to have bilingual elections is likely to increase.

A Right to Assistance from A Person of Your Choice

Many voters need assistance in voting due to physical disabilities or difficulties reading English. Those voters have a right to assistance in casting their ballots. They also have a right to select any person they want to provide that assistance. They do not have to receive assistance from a polling place worker or other person whom they may not trust. “Any person” means just that. Voters cannot be denied assistance by a non-citizen, a campaign worker, or an individual who already has assisted a number of other voters. Voters who need assistance may receive it in Spanish. This requirement is in Section 208 of the Act.

The requirement for Spanish speaking polling place workers where they are needed opens an important door to the Latino community for participation and political empowerment. This is a key area for Council leadership to monitor and address.

Mistreatment at the Polls



The Voting Rights Act requires state and local officials to prevent discriminatory treatment of minority voters at the polls. Poll workers must stop any persons who make comments about voters' language skills, race or ethnicity, or other matters that insult or demean Latino voters. Poll workers cannot have one set of rules for Anglos and another set for Latino voters: all voters must be treated equally. Section 2 of the Act guarantees this right.

Election Systems

The manner in which public officials are elected can be discriminatory. There have been hundreds of successful lawsuits against "at-large" election systems. In an at-large system, all city voters cast ballots for all members of the city council. If Anglo voters are a majority, they have the power to prevent Latinos from ever winning a seat on the council. The usual remedy to this unfair practice is to divide the city into districts, with one member elected from each district. Latinos would form a majority in one or more districts and could elect council members.

It is possible to draw those districts in a discriminatory manner as well. The two main methods are "cracking," where a Latino neighborhood is split between two or more Anglo-majority districts, and therefore cannot have the majority in either district, and "packing," or cramming all Latinos into a district with a larger majority than they need, so that they cannot control a second district and will only have power within one district. Section 2 of the Voting Rights Act prohibits discriminatory election systems.

II. OTHER FEDERAL LAWS

The National Voter Registration Act (NVRA)

The NVRA requires that each driver's license office and each public assistance or disability services agency must offer their customers a chance to register to vote. That is, each citizen who gets a driver's license or a non-driver's ID, or who gets public assistance or uses other agency services, must be given a chance to register to vote or to update current address or other voter registration information. The agency also must assist each citizen in completing the voter registration form. If the agency fails to offer each citizen a chance to register or update information, they are in violation of federal law.

The NVRA also allows voters to mail in voter registration forms. Voter registration forms are easily accessible through the state government's website, where the form can be printed out and then mailed in or dropped off at county clerk's office. Registration offices are open from 9:00 to 5:00 Monday through Friday. The locations of the offices are listed on your secretary of state's website or you can always go to



your local DMV to find out the information. Today, all citizens should have an easy opportunity to register to vote during the normal course their daily lives.

The Help America Vote Act (HAVA)

HAVA established several important requirements. First, all polling places must be accessible to persons with disabilities. And each polling place must have at least one voting machine that has an audio ballot and other features that make it accessible. In the counties that must provide voting information in Spanish, the audio version of the ballot must be in Spanish.

HAVA also established the right of voters to cast a “provisional ballot.” A provisional ballot allows the individual to vote, but there is a possibility that their vote may not be counted. A provisional ballot allows the individual to vote if their name is not on the list when they enter their polling place. It too often happens that a voter’s name is not on the poll list. Before HAVA, such citizens often could not vote. As a result of HAVA, voters whose names are not on the poll list have a right to cast a provisional ballot. Generally, the voter marks a regular ballot which is placed in an envelope. The voter completes an attached form. At the end of the day, election officials check all records to find if the individual is registered. If so, the ballot is counted. If not, the voter has a right to know what was wrong and to fix the problem so that the problem will not happen again in the next election.

It is crucial to remember that HAVA allows each state to determine the standards for counting provisional ballots. Some states are very restrictive in which provisional ballots they will count. It is crucial to identify the law in your state.

Finally, HAVA has a voter ID requirement. Each person who registers to vote by mail, rather than in person, must present a photo ID, a utility bill, bank statement, paycheck or other government document with their name and address. The documents must be presented the first time she votes at the polls in that state. Voters who initially vote absentee must send in copies of one of the identifying documents. Again, HAVA allows each state to impose additional ID requirements for all elections. Voters who lack identification can cast provisional ballots, but those ballots may or may not be counted, depending on state law.

Information on state rules on identification and provisional ballots should be available through your state and local elections office. The LULAC Washington, DC office can help you determine how to contact these officials.

Uniformed and Overseas Citizens Absentee Voting Act

Congress has recognized the special problems facing members of the military and others who are outside the United States. Getting ballots to and from soldiers on the



front lines of combat takes time. Military officials as well as state and local election officials can explain these requirements. They should do all that they can to help. If an individual is overseas, it is important that they look up their voting regulations on www.overseasvotefoundation.org/. The information regarding your specific state will be listed on your state government's website. If there is any question regarding the ability for overseas citizens to vote, contact the individual's county clerk.

III. HOW TO USE FEDERAL LAW

The Voting Rights Act is a very powerful tool, but it is only effective if you use it actively and wisely. First, most election procedures ---voter registration deadlines, procedures for running polling places and so on – are controlled by state law. Your taxes help pay the salaries of state and local officials who know those rules – and who administer them. These officials are a key resource. Get to know them. Ask questions, especially if a law is unclear or difficult to understand. Offer suggestions. Get them used to working with you as part of their jobs.

Sometimes cooperation doesn't work. Sometimes you need to go to court to protect the rights of your community. Winning lawsuits is all about evidence: reliable documents and the testimony of individuals who actually witnessed key events. This guide will help you navigate each step of the election process in a way that helps you create and gather evidence as you go along, as a regular part of your advocacy. You will find that that the very process of documenting matters and identifying witnesses strengthens your hand in dealing with troublesome officials. Being ready for a possible lawsuit will help you get relief without having to go to court.

A. VOTER REGISTRATION

In addition to the forms produced by your state, you can register to vote using a federal form produced by the US Election Assistance Commission, or EAC. All states, including those that do not publish their own Spanish forms, must accept the EAC form, including the Spanish version available at <http://www.eac.gov/assets/1/Page/A%20Voter's%20Guide%20to%20Federal%20Elections%20-%20Spanish.pdf>.

Most people register to vote when they get their driver's license, or when they visit a public assistance office or other state agency. The agencies vary somewhat from state to state. There should be a list on the web site of your Secretary of State or other state elections office, or you can contact LULAC in Washington, DC.

Many believe that some agencies, including particularly public assistance agencies, regularly violate this law. They do not bother to offer their customers a chance to register. You can test this. Have a couple of members interview people as they leave



agency office. Ask if the people were given a chance to register or update their voter information, and if they were given all of the help they needed. If they were not, note their names and their contact information, plus the agency name and the date and time. LULAC members and others can similarly document their own experiences with state agencies. Again, you should keep a log of the name of the citizen and contact information, the agency name, and the date and time.

Voter registration is limited to US citizens. Just because an individual has driver's license or a green card, does not make them a citizen. It is important that non-citizens know that they must not try to register to vote. If they do register, they may go to jail or face deportation. If an individual has recently received their US citizenship, do not register that individual to vote until they have received their citizenship papers in the mail.

B. PREPARING FOR ELECTION DAY

Elections are complicated. They have many rules and many moving parts. Many election functions are left over from years ago and are out of date. Many of the election workers are temporary workers who may lack both skill and knowledge of their jobs. Things can and will go wrong. You can handle on the problems that may arise by taking a careful look at each phase of the process.

Reviewing the polling places

County election officials can provide a map of all of the voting precincts in your county and a list of all of the polling places. Review the list of polling places. Which ones serve Latino voters? Are they within walking distance of Latino voters? Is there enough parking? Is it a suitable location, or a building that Latino voters might consider hostile, such as a site used by an anti-immigrant group? What other locations that would be better?

If there is a need to change a polling place, contact local election officials and raise the issue. Be certain to suggest another location that you are sure will be available and that meets federal accessibility standard (or that can with a portable ramp.)

After you meet with local officials, send them a letter or an email message. Thank them for the meeting and detail the outcome of the meeting. If they agreed to the change, thank them. If they did not agree, note each of their reasons or concerns, and also each reason you believe a change is needed. Also note when they said they would make a decision or get back to you (and follow up.) Offer help in finding an alternative. Ask for another meeting or for more information. The letter will be a key part of your documentation for court, if a lawsuit is necessary. Keep a copy of the letter.

You may need to send a series of letters on this and similar issues. Each letter should



be cooperative and reasonable, and include an offer to work together. Make sure you keep a copy of each letter.

Poll workers

Local election officials will have a list of the individuals who worked at the polls at the most recent elections. Ask for a copy of the list, and ask which poll workers speak Spanish. Make a note of whether they know. If they do not, you will be able to find out who is fluent in Spanish by reviewing the list with LULAC members and others. Your review may also reveal that there are Anglo poll workers who should be replaced because of their bias and mistreatment of Latino voters, or because they are no longer up to their jobs.

Are there enough Spanish speaking poll workers? You will know most of the polling places with Latino voters, and you can see whether those sites have enough Spanish speaking poll workers. Some states, such as Florida and Georgia, maintain the number of Latino voters in each precinct. Other states, such as Texas and New Jersey, send the number of Spanish-surnamed voters in each precinct to county election officials.

Pay particular attention to areas into which Latinos are moving. Local realtors can help you identify these areas. These are areas the least likely to have Latino poll workers. They also are where Latino voters are most likely to face hostility at the polls.

When you have identified polling places that need Spanish speaking poll workers, meet with local election officials and alert them to the problem – AND provide them with a list of people -- LULAC members or others -- who are willing to serve. Keep a copy of the list. After your meeting, send a letter similar to the one on polling places: identify the need, document their response, and offer help.

Monitoring the Polls

The locations without Spanish-speaking poll workers are key precincts to monitor on Election Day. Each state determines who may be inside the polls to observe and record problems. Local officials or the Washington DC office of LULAC can tell you the rules in your state. Some states only allow the political parties to appoint poll watchers: no one else can stay in the polls. LULAC is non-partisan and cannot coordinate directly with the political parties. You can, however, urge local citizens to contact the political party or campaign of their choice and serve as poll watchers. The LULAC Washington DC office will be able to provide guidance on what poll watchers should look for and how they should record the information. The key is to record names and contact information for victims and witnesses.

C. ELECTION SYSTEMS



Legal challenges to discriminatory election systems are highly complex. In broad terms, if there is a gap between the Latino share of the population and the Latino share of representation, the system may be vulnerable. That is, there may be a case in a 40% Latino county if there are no Latinos, or only one on a 5-member county commission. There are concrete actions you can take to test election systems, and then to change them. The first step is for good Latino candidates to run for office. No one can better represent the Latino population than a strong Latino politician. If Latinos usually lose, their losses build evidence to change the system. You cannot change the system unless you test it. The more tests the better the evidence.

Much additional evidence will be needed. By using this guide, you will have created powerful evidence, such as the county's refusal to change discriminatory polling places, their refusal to appoint Latino poll workers, and the abuse of Latino voters by Anglo poll workers. Your letters and notes of voting problems, together with similar records of other local discrimination in education, law enforcement and other areas, will build a successful case.

D. VOTING CHANGES

If your area is subject to Section 5 of the Voting Rights Act – if it is one of those where voting changes must be reviewed by the Justice Department for possible discrimination – you can play an especially important role. Each week the Voting Section of Justice sends a Weekly Notice of all voting changes submitted to it for review. You can get on the mail or email list by calling 202-307-2767 or 1-800-253-3031. The Notice lists changes by state, alphabetically, and by county alphabetically within each state. Your local officials, they should have consulted you about each change. That early consultation – on which you should insist – gives you an opportunity both to head off discriminatory changes, and also to build a record to help Justice find that the change is discriminatory. The types of potential problems with voting changes are too numerous to describe. The Voting Section website includes a list of all of the changes to which Justice objected at <http://www.justice.gov/crt/about/vot/misc/faq.php>, and links to recent letters describing the reasons for the objection – what made the change discriminatory. These can help guide you. You also can contact the Washington DC LULAC office for assistance.