



Coalition of Bar Associations of Color

RESOLUTION OPPOSING VOTER SUPPRESSION EFFORTS

Endorsed March 2016

WHEREAS, the Coalition of Bar Associations of Color (CBAC), organized in 1992, is a coalition created to act as a collective voice for issues of common concern to its member organizations; and

WHEREAS, the member organizations of the CBAC are the Hispanic National Bar Association (HNBA), the National Asian Pacific American Bar Association (NAPABA), the National Bar Association (NBA), and the National Native American Bar Association (NNABA); and

WHEREAS, the member organizations of CBAC are the national voices of their respective legal communities in the United States and its territories and possessions; and

WHEREAS, the right to vote is a cornerstone of America's democracy, yet this fundamental right is threatened by numerous voter suppression efforts including limitations on access to voter registration; restrictions against early voting; election day restrictions; deceptive practices; and obstacles for minority voters, including those who are limited English proficient (LEP); and

WHEREAS, although efforts to limit voter registration through proof-of-citizenship requirements – which have a particularly burdensome impact on minority voters due to racial disparities in access to citizenship documents because of socioeconomic disparities that correlate with race – were set back by the U.S. Supreme Court's June 2013 ruling in *Arizona v. Inter Tribal Council of Arizona*,¹ alternative measures or efforts to circumvent the Court's ruling to require proof of citizenship of eligible voters still remain a threat; and

WHEREAS, restrictions against early voting or absentee voting negatively impact many voters who have difficulty getting to the polls on election day, including working individuals who cannot afford to take time off from work or whose job schedules lack flexibility, the elderly and disabled (both of whom have difficulty traveling to the polls), and low-income individuals who do not have easy transportation to the polls; and

WHEREAS, laws that require voters to present valid government-issued photo identification have proliferated in recent years, amounting to a modern day poll tax that disproportionately burdens persons of color, the elderly, the disabled, people in rural areas, Native American

¹ The U.S. Supreme Court struck down Arizona's Taxpayer and Citizen Protection Act (Proposition 200), a state law that required additional documentary proof of citizenship beyond the proof already required by federal law. The Court held that the National Voter Registration Act (NVRA), which was specifically enacted to increase voter registration and participation, preempts Proposition 200 for purposes of federal elections. NAPABA joined an amicus brief opposing Proposition 200.

voters, low-income people, and homeless people, all of whom are less likely to carry photo identification because many members of these groups cannot afford the time and expense required to obtain these documents; and

WHEREAS, naturalized Americans, will incur the steep costs of obtaining certificates of naturalization; and

WHEREAS, such photo identification requirements open the door to discrimination at the polls against racial, ethnic, and language minority voters by giving poll workers an unacceptable level of discretion in determining which voters from whom they will ask for identification and whose identification they will accept; and

WHEREAS, supposedly racially neutral voter identification requirements disparately impact minority voters and others with “foreign-sounding” names or those who “look foreign;” and

WHEREAS, eligible voters from communities of color have in recent years been targeted by voter suppression efforts on election day that include the use of deceptive practices whereby eligible voters have been intentionally provided with false or misleading information about the voting process or voting requirements in order to prevent them from casting their votes; and

WHEREAS, more than one-third of Asian Americans are LEP² and almost two-thirds of the Latino community are LEP³ and, thus, face language barriers when attempting to vote; and

WHEREAS, Congress, recognizing that certain minority language citizens experienced historical discrimination and disenfranchisement due to limited English speaking abilities,⁴ added Section 203 of the Voting Rights Act in 1975 to require jurisdictions that met a certain threshold to provide language assistance throughout the voting process; and

WHEREAS, Congress, finding that citizens who either do not have written language ability or who are unable to read or write English proficiently were more susceptible to having their votes unduly influenced or manipulated, and thus were more likely to be discriminated against at the polls, added Section 208 to the Voting Rights Act in 1982, providing that voters have the right to have anyone assist them in the voting process so long as that person is not the voter’s employer or union representative; and

² See Asian American Legal Defense and Education Fund, *The Asian American Vote 2012*, 2 (2013) and Asian Americans Advancing Justice, *Voices of Democracy: Asian Americans and Language Access During the 2012 Elections*, 2 (2013).

³ See Jie Zong and Jeanne Batalova, “The Limited English Proficient Population in the United States”, Migration Policy Institute (2015), at <http://www.migrationpolicy.org/article/limited-english-proficient-population-united-states>. Last accessed January 22, 2016

⁴ See U.S. Department of Justice, *About Language Minority Voting Rights*, at <http://www.justice.gov/crt/about-language-minority-voting-rights#provisions>. Last accessed January 4, 2016.

WHEREAS, Section 208 protections are crucial for LEP voters across the country, particularly in areas with low concentrations of LEP populations;⁵ and

WHEREAS, poll monitoring efforts by community organizations have documented ongoing problems with compliance with Section 203, including a lack of translated materials and lack of bilingual poll workers, and with Section 208, including refusal to allow someone to assist the voter, and general hostility and discrimination against LEP voters,⁶ and

WHEREAS, many LEP voters rely upon their minor children—who cannot be registered voters—as 208 interpreters, and Texas has a state law⁷ requiring all interpreters to be “registered voter[s] in the county in which the voter needing the interpreter resides” that is inconsistent with Section 208 and disproportionately prevents LEP voters from receiving interpreter assistance; and

WHEREAS, the U.S. Supreme Court’s ruling in *Shelby County v. Holder* in June 2013 struck at the heart of the Voting Rights Act, Section 5,⁸ by invalidating the coverage formula used for determining which jurisdictions would be required to have changes to their voting procedures pre-approved.

NOW THEREFORE BE IT RESOLVED that CBAC opposes voter suppression efforts including but not limited to limitations on access to voter registration, restrictions against early voting, election-day restrictions, and deceptive practices for the reasons set forth above, and supports measures to combat such activity; and

NOW THEREFORE BE IT FURTHER RESOLVED that CBAC supports efforts to protect the rights of limited English proficient voters, including having the U.S. Department of Justice send attorney monitors to observe elections in jurisdictions covered under Section 203 of the Voting Rights Act, as well as encouraging members to assist with NGO poll monitoring projects or serve as poll workers on Election Day; and

NOW THEREFORE BE IT FURTHER RESOLVED that CBAC supports efforts to litigate against or otherwise oppose efforts by jurisdictions, including but not limited to Alabama,

⁵ See Asian Americans Advancing Justice, *The Right to Assistance of Your Choice at the Polls: How Section 208 of the Voting Rights Act Should Work to Protect Our Vote and Our Democracy* (2014). See also Leadership Conference on Civil and Human Rights, *The Persistent Challenge of Voting Discrimination: A Study of Recent Voting Rights Violations by State* (2014), available at <http://www.civilrights.org/press/2014/Racial-Discrimination-in-Voting-Whitepaper.pdf>. Last accessed January 22, 2016.

⁶ See *The Asian American Vote*, *supra* note 2. See also *The Persistent Challenge of Voting Discrimination*, *supra* note 5.

⁷ Texas Election Code § 61.033.

⁸ Section 5 requires jurisdictions with histories and ongoing practices of discrimination in voting practices and laws to “preclear” their voting changes with the U.S. Department of Justice or a three-judge panel of the U.S. District Court for the District of Columbia for determination that the proposed change was not motivated by a discriminatory purpose or will not worsen the position of minority voters in their jurisdictions. Prior to *Shelby*, these were the jurisdictions covered by Section 5: http://www.justice.gov/crt/about/vot/sec_5/covered.php.

Arizona, Kansas, Mississippi, North Carolina, North Dakota, Ohio, Texas, Virginia and Wisconsin to restrict or deny the protections of Section 208 of the Voting Rights Act; and

NOW THEREFORE BE IT FURTHER RESOLVED that CBAC supports the Voting Rights Advancement Act (H.R. 2867 and S. 1659, 2015), which would restore Section 5 coverage to the Voting Rights Act in response to the Supreme Court's decision in *Shelby County v. Holder* by altering the coverage formula in Section 4(b), expanding the ability of courts to bring jurisdictions under coverage, and including other mechanisms to protect against voter discrimination, recognizing that additional strengthening to the current bill language would be welcome; and

NOW THEREFORE BE IT FURTHER RESOLVED that CBAC supports the Voter Access Protection Act, which would prohibit election officials from requiring individuals to provide photo identification in order to vote in an election for federal office or register to vote in an election for federal office; and

NOW THEREFORE BE IT FURTHER RESOLVED that CBAC supports the Voter Empowerment Act, which will modernize the voter registration system to expand access to the polls and decrease barriers to voting, prohibit voter caging and deceptive practices, and increase accountability and integrity among election officials and poll workers; and

NOW THEREFORE BE IT FURTHER RESOLVED that CBAC supports the Cardin-Schumer Deceptive Practices and Voter Intimidation Prevention Act, which:

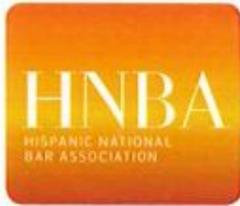
- Prohibits deceptive practices in federal elections, including communication of false election and voting information to voters;
- Creates a private right of action and a criminal penalty for deceptive practices;
- Allows the Attorney General to promptly correct false information to affected communities; and
- Requires regular and public reporting by the Attorney General to Congress to detail all allegations compiled and the investigations and prosecutions undertaken.

NOW THEREFORE BE IT FINALLY RESOLVED that this resolution shall be the policy of CBAC until it is withdrawn or modified by subsequent resolution.

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CERTIFICATION

WE, the duly-elected Presidents of the Hispanic National Bar Association (HNBA), the National Asian Pacific American Bar Association (NAPABA), the National Bar Association (NBA), and the National Native American Bar Association (NNABA), hereby certify that the foregoing Resolution was duly enacted by a duly noticed meeting of the Board of Directors.



Robert T. Maldonado

Roberto Maldonado
President, Hispanic National Bar Association

March 1, 2016

Date

Jim Y. Hwang

Jim Hwang
President, National Asian Pacific American Bar Association

March 1, 2016

Date

BCP

Benjamin Crump
President, National Bar Association

March 1, 2016

Date

Linda Benally

Linda Benally
President, National Native American Bar Association

March 1, 2016

Date