No. 12-96

IN THE

Supreme Court of the United States

SHELBY COUNTY, ALABAMA,
Petitioner,

v.

ERIC H. HOLDER, JR. ATTORNEY GENERAL, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF NATIONAL LATINO ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF THE *AMICI CURIAE*[1]

Amici are organizations committed to eliminating racial discrimination against Latinos in the areas of education, employment, immigrant rights, and political access. *Amici* promote equal rights for Latinos through advocacy, communications, community education, and litigation. *Amici* include organizations that advocated in the 1970s and 1980s to expand the Voting Rights Act to address racial discrimination against Latino voters, and supported the Act's 2006 reauthorization given the persistence of this discrimination. A list and description of all *amici* appear in an Appendix, attached hereto.

INTRODUCTION AND SUMMARY OF ARGUMENT

Section 5 of the Voting Rights Act of 1965 (the "VRA" or the "Act")[2] remains vital to protecting Latino citizens' right to participate on an "equal basis in the government under which they live." *South Carolina v. Katzenbach*, 383 U.S. 301, 337 (1966).

The journey for Latinos toward equal voting rights has been beset by persistent and intentional racial discrimination. This Court previously has recognized this history of discrimination against Latino voters. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 439 (2006) ("*LULAC*") (""Texas has a long, well-documented history of discrimination that has

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[1] Counsel for amici authored this brief in its entirety. No person or entity other than amici and their counsel made monetary contributions to the preparation of this brief. Letters of consent from all parties have been filed with the Clerk of the Court.

[2] 42 U.S.C. § 1973c.

touched upon the rights of African-Americans and Hispanics to register, to vote, or to participate otherwise in the electoral process'"); *White v. Regester*, 412 U.S. 755, 767-70 (1973) ("'[a] cultural incompatibility ... conjoined with the poll tax and the most restrictive voter registration procedures in the nation have operated to effectively deny Mexican-Americans access to the political processes in Texas'") (omission in original); *Katzenbach v. Morgan*, 384 U.S. 641, 644 (1966) (due to English literacy tests, "many of the several hundred thousand New York City residents who have migrated from the Commonwealth of Puerto Rico had previously been denied the right to vote").

Latino voters continued to suffer racial discrimination in voting even after the VRA's passage, particularly in the Southwest and Northeast. Congress responded by gradually expanding Section 5's preclearance protections to areas with significant Latino populations subject to such discrimination. Congress did so by modifying the Section 4(b) coverage formula, most notably in 1975 when it expanded the list of proscribed "tests and devices" triggering Section 5 coverage to include English-only balloting in jurisdictions with over five percent Latino, Asian-American, Native American, or Native Alaskan voting-age populations.[3] These modifications to the coverage formula extended preclearance protections to Latino voters in Texas, Arizona, and parts of California, Florida, and New York.[4]

Section 5's preclearance requirements have blocked many changes that would have further impeded the

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[3] *See* 42 U.S.C. § 1973b(f)(3).

[4] *See Section 5 Covered Jurisdictions*, http://www.justice.gov/crt/about/vot/sec_5/covered.php (last accessed Jan. 30, 2013).

ability of Latinos to exercise their right to vote and have contributed to incremental improvements in Latino political participation. When evaluating the need for reauthorization of these protections in 2006, however, Congress received evidence showing, as this Court found in *LULAC* (also in 2006), that "[i]t is exactly at the point at which Latino voters can exercise political power by electing their preferred candidate that many jurisdictions respond with discriminatory measures." *Voting Rights Act: The Judicial Evolution of the Retrogression Standard: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 133 (2005) (letter from MALDEF, *et al.*);[5] *see LULAC*, 548 U.S. at 440 ("In essence the State took away [their] opportunity because [they] were about to exercise it."). Accordingly, the detailed Congressional record is replete with examples of State and local governments deliberately precluding and diluting Latino voting.

Much of this discrimination occurred in the jurisdictions covered by Section 5 following the 1975 amendments. In 1975, 1982, and 2006, the record in Texas of purposeful racial discrimination was among the worst of any jurisdiction. There, "the history of discrimination against Latino voters since the 1982 extension has been a case history for the continued need for Section 5 protections." S. Rep. No. 109-295, at 115 (2006). Indeed, just last year, a federal court rejected three of Texas's statewide redistricting plans as variously retrogressive and "enacted with discriminatory purpose." *Texas v. United States*, No. 11-CV-1303, 2012 WL 3671924, at *18 (D.D.C.

[5] After the initial citation, legislative hearings are referred to by date and topic.

Aug. 28, 2012). This finding is all the more shocking given that it came merely six years after this Court found that Texas's prior redistricting plan bore "the mark of intentional discrimination." *LULAC*, 548 U.S. at 440.

Given that voting discrimination continued to occur against Latino voters most prominently and perniciously in the covered jurisdictions, Congress's decision to reauthorize the coverage formula in 2006 was far from "throwing a dart backwards over [its] shoulder." Pet. App. 70a (Williams, J., dissenting). Rather, it confirmed Congress's adherence to a measured approach, respectful both of federalism principles and the need to enforce the Fourteenth and Fifteenth Amendments. Congress has limited burdens on federalism by adding and keeping covered those jurisdictions with the most egregious records of discrimination against Latino voters, while allowing the Act's bail-in and bailout mechanisms to continue to serve their historic and important purpose of tailoring Section 5 coverage to jurisdictions where it is most needed.[6]

This measured approach is well within Congress's power to implement the Fourteenth and Fifteenth Amendments. It provides Latino voters in the covered jurisdictions with critical protection against these jurisdictions' continuing and intentional efforts to undo Latinos' progress toward equal electoral participation.

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[6] *See* 42 U.S.C. §§ 1973a(c), 1973b(a).

ARGUMENT

I. THE VRA HAS EVOLVED AND BEEN EXTENDED BY CONGRESS TO PROTECT LATINO VOTERS.

A. Limited Protection For Latinos In The Original VRA.

Throughout the 20th Century, Latino citizens faced pernicious racial discrimination impinging on all aspects of their lives.

The discrimination against Mexican-Americans in the Southwest was particularly severe. In Texas, the period "around the turn of the century also saw an attack on the Tejano's socio-economic status, as Anglo-American commercial farmers from Mid-western states swept into South Texas."[7] There were numerous accounts of vigilante groups inflicting indiscriminate violence and murder on Mexican-Americans under the guise of law enforcement.[8] Economically, "state officials condoned minimal education of 'the lower element' [Mexican Americans] specifically to control them in the labor force" under the view that "'[w]e don't need skilled or white-collared Mexicans.'"[9] In larger cities, Mexican-Americans were "[s]egregated into barrios" and "commonly denied access to business, to neighbor-

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[7] *See* Expert Report of Dr. Andres Tijerina at 7, *Texas v. United States*, No. 11-CV-01303-RMC, (D.D.C. Aug. 8, 2011) (Dkt. No. 67-9) ("*Tijerina Report*") (attached hereto as Exhibit 1); David Montejano, *Anglos and Mexicans in the Making of Texas, 1836-1986*, at 104 (1987).

[8] *See Tijerina Report* at 7-8.

[9] *Id*. at 14 (alteration in original).

hoods, to education, and to city services."[10] A mere decade before the VRA's passage, this Court recognized the continued pervasiveness of intentional segregation in Texas:

> Until very recent times, children of Mexican descent were required to attend a segregated school for the first four grades. At least one restaurant in town prominently displayed a sign announcing "No Mexicans Served." On the courthouse grounds at the time of the hearing, there were two men's toilets, one unmarked, and the other marked "Colored Men" and "Hombres Aqui" ("Men Here").

Hernandez v. Texas, 347 U.S. 475, 479-80 (1954) (footnote omitted).[11]

Likewise, in Arizona, racial discrimination against Mexican-Americans has persisted since before its statehood.[12] There was an early record "of Mexicans hung by Anglo lynch mobs without the benefit of a trial or representation."[13] After Arizona attained statehood in 1912, "Anglos waged an anti-immigrant campaign which 'was characterized by increasingly

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[10] *Id*. at 18; *see also* Montejano, *supra*, at 160 ("The modern order framed Mexican-Anglo relations in stark 'Jim Crow' segregation.").

[11] In *Hernandez*, the Court also made clear for the first time that the Equal Protection Clause protects Latinos from racial discrimination, emphasizing that "[t]he Fourteenth Amendment is not directed solely against discrimination due to a 'two class theory'—that is, based upon differences between 'white' and Negro." 347 U.S. at 478.

[12] *See* Expert Report of Dr. F. Arturo Rosales at 32, *Gonzalez v. Arizona*, 06-CV-01268-ROS (D. Ariz. Dec. 5, 2007) ("*Rosales Report*") (attached hereto as Exhibit 2).

[13] *Id*. at 14.

racist rhetoric and a series of proposals that would restrict Mexican immigrants' political rights and the right to work.'"[14] *De jure* employment discrimination against Latinos was common.[15] Meanwhile, public schools and services remained segregated through much of the century. *See Gonzales v. Sheely*, 96 F. Supp. 1004, 1008 (D. Ariz. 1951) (finding Tolleson, Arizona's "conduct of segregating public school children of Mexican descent or extraction is discriminatory and is illegal").

Puerto Ricans in New York City also faced egregious racial discrimination following a wave of migration in the early- to mid-1900s:

> "As the numbers grew in the 1950s, [Puerto Ricans] were increasingly portrayed as unwilling to work, welfare leeches, drug addicts and juvenile delinquents. As a consequence of this public view, business and government leaders were able to get away with policies and practices that exploited and demeaned Puerto Ricans in jobs, housing, and education."[16]

The racial discrimination against Latinos was not limited to such areas as employment, housing, education, or public accommodations; it also manifested itself in deliberate efforts to exclude Latinos from political participation. In the early 1900s, Texas's Democratic Party adopted a "'White Man's Primary,'" "which in a one-party state, pre-empted the general election," and achieved the party leaders' design of "'absolutely eliminat[ing] the Mexican vote as a factor

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[14] *Id.* at 9 (internal citation omitted).

[15] *Id.*

[16] Katherine Culliton-Gonzalez, *Time to Revive Puerto Rican Voting Rights*, 19 Berkeley La Raza L.J. 27, 32 (2008).

in nominating county candidates.'"[17] Officials also sanctioned intimidation to deter Latino voters from the ballot box. In 1928, during the "'Hidalgo County [Texas] Rebellion,'" several thousand Whites led by the "'Good Government League'" assailed a polling place "shout[ing] 'Don't let those Mexicans in to vote. Throw them out' while men with shotguns protected the crowd."[18] In 1964, Arizona adopted "Operation 'Eagle Eye,'" a program under which officials made citizenship challenges at polling sites to intimidate Latino voters.[19]

Some methods of voting discrimination employed by these jurisdictions exploited socio-economic disadvantages suffered by Latinos resulting from the racial discrimination in other aspects of society. "One of the main devices created specifically to disfranchise Mexican Americans in Texas was the poll tax," which "'curtail[ed] the voting of impoverished, illiterate blacks and Mexican Americans.'"[20] After successful court actions, Texas immediately "replaced the poll tax with what was considered to be [the] most restrictive voter registration system in the country, requiring annual voter registration months in advance of Election Day."[21]

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[17] *Tijerina Report* at 12.

[18] *Id*. at 13; Montejano, *supra*, at 147.

[19] *Rosales Report* at 12.

[20] *Tijerina Report* at 12.

[21] Juan Cartagena, *Latinos and Section 5 of the Voting Rights Act: Beyond Black and White*, 18 Nat'l Black L.J. 201, 213 (2005) (footnote omitted).

Similarly, jurisdictions relied on literacy tests to prevent Latinos from voting.[22] Educational segregation had resulted in high illiteracy rates and limited-English proficiency even among native-born Latino citizens, thus rendering the use of literacy tests against Latinos "one of America's most successful disenfranchisement schemes."[23]

Later in the 20th Century, "[g]errymandering became a method used by Texas policy makers at the highest levels to segregate Mexican American voter groups." *Tijerina Report* at 11; *see also Klahr v. Goddard*, 250 F. Supp. 537, 541 (D. Ariz. 1966) (redistricting plan "accomplishes an unconstitutional and invidious discrimination in the apportionment of the seats in the State Senate," and "bears evidence of having been thrown together as a result of considerations wholly apart from those laid down as compulsory by the decisions of the Supreme Court").

In 1965, Congress largely failed to address the widespread voting discrimination against Latinos. An exception was Section 4(e), which prohibited jurisdictions from denying the right to vote on the basis of English literacy tests for persons educated in American-flag schools where the predominant language was not English, and responded to the concerted and nationally visible racial discrimination against Puerto Rican voters in New York City.[24] In

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[22] *See, e.g.*, *Rosales Report* at 10 (describing 1909 Arizona law requiring "'every citizen of Mexico who shall have elected to become a citizen of the United States,'" to be "'able to read the Constitution of the United States in the English language'").

[23] James Thomas Tucker, *The Battle Over Bilingual Ballots: Language Minorities and Political Access Under the Voting Rights Act* 4 (2009).

[24] Pub. L. No. 89-110, 79 Stat. 437, 439 (1965); Tucker, *supra*, at 31 (1959 U.S. Commission on Civil Rights found that, due to

Morgan, 384 U.S. at 651-52, the Court held Section 4(e) was a valid enforcement of the Fourteenth Amendment because "[t]he practical effect of § 4(e) is to prohibit New York from denying the right to vote to large segments of its Puerto Rican community." *Id*. at 652-53.

The original Section 5, however, did little to help Latino voters fight back against persistent racial discrimination because Congress did not extend preclearance requirements to the jurisdictions that otherwise discriminated against their large Latino populations.

B. Expansion Of Section 5 To Protect Latinos in the Southwest.

By 1975, Congress recognized that Section 5, including modest incremental changes in the intervening years, had failed to address persistent voting discrimination against Latinos in the Southwest.[25] In 1975, Congress fortified its efforts to redress *racial* discrimination against Latinos,[26] which was recognized as equivalent to the

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literacy tests, "'Puerto Rican American citizens are being denied the right to vote, and that these denials exist in substantial numbers in the State of New York'"); Cartagena, *supra*, at 203-04.

[25] The incremental steps included modifications to the coverage formula in 1970, which extended preclearance requirements to subdivisions of New York, California, and Arizona. *See Section 5 Covered Jurisdictions*, *supra*. Moreover, courts began declaring that English-only election requirements were prohibited "tests or devices." *See Garza v. Smith*, 320 F. Supp. 131 (W.D. Tex. 1970); *Torres v. Sachs*, 381 F. Supp. 309, 312-13 (S.D.N.Y. 1974).

[26] Congress referred to Latinos and other racial minorities, including Asian-Americans, Native Americans, and Native Alaskans, as "language minorities."

discrimination against African-Americans targeted by the original VRA:

> Across the American Southwest in recent months a complaint has been made that is striking in familiarity. The complaint is that American citizens are being systematically denied the right to vote *because of their ethnic background*....
>
> The reason all this has a familiar ring is that the complaints of the Mexican-Americans of the Southwest sound remarkably like the complaints of the black people of Alabama and Mississippi only 10 years ago, when after much national anguish, the remedy for the Deep South situation was found.[27]

Nationally, the statistical evidence in 1975 "clearly document[ed] the extent of the discrimination and the need for Federal standards."[28] In the 1972 general election "only 44 percent of eligible Spanish-surnamed citizens were registered to vote. That compared with 73 [percent] for Anglos."[29] And "[o]f those registered, only 38 [percent] of the Spanish surnamed actually voted, compared with 68 [percent] for Anglos."[30] In 1974, "only 22.9 percent of the total

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[27] 121 Cong. Rec. 9110, 9114 (1975) (emphasis added) (quoting Washington Post, *Expanding the Right to Vote*); *see also* Culliton-Gonzalez, *supra*, at 46.

[28] 121 Cong. Rec. at 9110 (statement of Sen. Bayh).

[29] *Id.* at 9113 (quoting Washington Post, *Mexican Americans Charge Subtle Vote Discrimination*).

[30] *Id.*

voting age population of Americans of Spanish descent were registered."[31]

The absence of Latino elected officials, particularly in the Southwest, further attested to the need for a remedy. In Texas, "Mexican Americans comprise[d] over 18% of the total population and over 16% of the voting age, but only [held] 2.5% of the elected offices."[32] Statewide, there were *no* Mexican-American mayors.[33] In Arizona, "Mexican Americans still represent[ed] only 4.4% of the elected officials, even though they comprise[d] 18% of the total population and 15% of the voting age."[34] In several rural California counties, "Mexican Americans had a combined total of 1.2% of the government officials although their population in these counties ranged from 16.7% to 44.9%."[35]

The root cause of these starkly unequal rates of voter participation and representation was the continued use of tactics to discourage and impede Latinos from voting. The 1975 record made this clear, detailing reports of:

> uncooperative registrars, inadequate or non-existent bilingual materials relating to elections, fear of economic reprisal for political activity, inadequate and inconvenient polling facilities,

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[31] 121 Cong. Rec. 16241, 16291 (1975) (statement of Rep. Anderson).

[32] 121 Cong. Rec. at 9115 (statement of Sen. Roybal).

[33] *Extension of the Voting Rights Act of 1965: Hearings Before the Subcomm. on Constitutional Rights of the S. Comm. on the Judiciary*, 94th Cong. 467 (1975) ("*1975 Hearings*") (testimony of George Korbel).

[34] 121 Cong. Rec. at 9115 (statement of Sen. Roybal).

[35] *Id.* at 9114 (statement of Sen. Roybal).

> location of polling places where Chicanos are not usually welcomed, the presence of police at the polls, the lack of adequate bilingual assistance, and the difficulty in obtaining lists of registered voters.[36]

The record showed that Latino voters in certain regions faced particularly egregious misconduct. In Texas, "law-enforcement officials patrol Mexican American, but not Anglo, precincts on election days: sheriffs reportedly walk around polling places brandishing guns and billy clubs."[37] The U.S. Civil Rights Commission "uncovered widespread economic threats and coercion directed at citizens who become involved with insurgent political forces" in that State.[38] Likewise in California, "[o]f particular concern is the rural experience" where there was evidence of "voting obstacles, including intimidation."[39]

Congress also relied on evidence of these jurisdictions' intentional efforts to dilute Latino votes. Shortly before the 1975 reauthorization, this Court affirmed an order striking down Bexar County, Texas's multimember districting plan as having "invidiously excluded Mexican-Americans from effective participation in political life." *White*, 412 U.S. at 769. The 1975 legislative record demonstrated that the problems identified in *White* were systemic. "Election law changes which dilute minority political power in Texas are widespread in the wake of recent emergence of minority attempts to exercise the right

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[36] *See 1975 Hearings* at 97 (statement of Arthur Fleming).

[37] 121 Cong. Rec. at 16243 (statement of Rep. Young).

[38] 121 Cong. Rec. at 9117 (testimony of Vilma Martinez).

[39] *Id.* at 9114 (statement of Sen. Roybal).

to vote."[40] Such dilution schemes were identified in other heavily-Latino areas, such as rural California.[41]

Petitioner's argument that Congress did not focus on "second generation" discrimination such as vote dilution until 2006 is therefore factually incorrect. By 1975, Congress already recognized that "[t]he *central problem* documented is that of dilution of vote—arrangements by which the votes of minority electors are made to count less than the votes of the majority."[42]

Equally important, Congress learned that it would be futile for Latinos to battle discrimination piecemeal through after-the-fact lawsuits under Section 2, rather than with Section 5's prophylactic protection:

> We have all of these cases, but we are in the same situation in Texas that we were in the other States prior to 1965.... [W]e cannot continue to rely on the case-by-case approach. We have to include the State of Texas fully within the coverage of the act so that the burden of proof shifts to the State of Texas when it tries to

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[40] H.R. Rep. No. 94-196, at 19 (1975); *see also 1975 Hearings* at 758 (testimony of Vilma Martinez) ("One of the most severe problems we have faced ... is the at-large election or the multimember district election."); 121 Cong. Rec. at 9115 (statement of Sen. Roybal) ("[s]ome of the worse [sic] practices affecting Chicano participation have been statewide gerrymandering schemes"); 121 Cong. Rec. at 16246 (statement of Rep. Edwards) (describing "annexations which add only white or Anglo voters to the city rolls").

[41] *See* 121 Cong. Rec. at 9114-15.

[42] 121 Cong. Rec. at 16251 (statement of Rep. Edwards) (emphasis added).

> carry out the kind of gerrymandering procedure that it has been carrying out ….[43]

Congress therefore revised the coverage formula to extend preclearance protection to Latino voters in Texas, Arizona, rural California and other jurisdictions. Congress did so by following judicial opinions protecting Mexican-American and Puerto Rican voters in Texas and New York,[44] designating English-only balloting in jurisdictions with significant Latino, Asian-American, Native American, or Native Alaskan populations as a proscribed "test or device" triggering Section 5 coverage.[45]

Following the 1975 amendments, this Court found that Section 5 remained a valid exercise of Congress's Fifteenth Amendment authority, *City of Rome v. United States*, 446 U.S. 156, 182 (1980), and reached the same conclusion after the 1982 reauthorization, which continued Section 5's protections for 25 years. *Lopez v. Monterey Cnty.*, 525 U.S. 266, 283-84 (1999).[46]

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[43] *See* 121 Cong. Rec. 16880, 16881 (1975) (statement of Rep. Badillo).

[44] *See, supra*, Footnote 26.

[45] *See* 42 U.S.C. § 1973b(f)(3).

[46] In *Lopez*, in the context of a challenge by Latino voters to at-large elections in Monterey County, the Court rejected the county's claim that it need not submit changes for preclearance because it was within a non-covered State. The Court reaffirmed that "Congress has the constitutional authority to designate covered jurisdictions and to guard against changes that give rise to a discriminatory effect in those jurisdictions." *Lopez*, 525 U.S. at 283. Petitioner notably fails to cite *Lopez*.

II. THE 2006 REAUTHORIZATION WAS A LEGITIMATE RESPONSE TO CONTINUED INTENTIONAL DISCRIMINATION AGAINST LATINO VOTERS IN THE COVERED JURISDICTIONS.

The voluminous 2006 Congressional record regarding reauthorization included detailed state-by-state analyses of the continued voting discrimination in the jurisdictions covered after the 1975 amendments.[47] These reports overwhelmingly demonstrated the persistence of such discrimination against Latinos, despite Section 5's intended deterrent effects. This evidence, examples of which are discussed below, confirmed that the prophylactic remedy of Section 5 preclearance remained congruent and proportional to continued purposeful discrimination against Latino voters in the covered jurisdictions. *Cf. City of Boerne v. Flores*, 521 U.S. 507, 533 (1997).

A. Disparities In Voting And Elected Officials.

In 2006, Congress heard that "Latino voters have not yet closed the gap in voter registration and turnout in the Southwest"[48]—concerns similar to those that justified the VRA's initial passage and the subsequent 1975 amendments. *See South Carolina*, 383 U.S. at 313. In the 2004 election, Latino voter turnout lagged behind White voter turnout by

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[47] *See Voting Rights Act: Evidence of Continued Need, Volume I: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 45 (2006) ("*2006 (Continued Need) Hearing*").

[48] *Voting Rights Act: Section 5 of the Act—History, Scope, and Purpose, Volume I: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 87 (2005) ("*2005 (History) Hearing*") (testimony of Nina Perales).

30.3 percent in Arizona and 21.3 percent in Texas. *See* S. Rep. No. 109-295, at 11. Similar disparities were evident in the other heavily-Latino jurisdictions covered by Section 5. *See Volume II 2005 (History) Hearing* at 3113 (Florida Report) ("Florida Latinos vote at lower rates than do either African-Americans or Anglos," with only 34 percent turnout in the 2004 general election); *Voting Rights Act: Section 203–Bilingual Election Requirements (Part II): Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 146 (2005) (statement of Juan Cartagena) ("A million and a half voting age Latinos live in New York City, but only about 700,000 Latinos are registered to vote and only about 455,000 regularly participate in elections") (internal citation omitted).

Congress heard similarly troubling data about how in Texas, "Latinos and African Americans continue to be vastly underrepresented at every level of federal, state, and local government."[49] In Arizona, *no* Latino served in any statewide office between 1985 and 2005.[50] Likewise, *no* Latino had ever served on Los Banos's City Council in Merced County, California despite a 50.4% Latino population.[51]

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[49] Nina Perales, Luis Figuero, & Criselda Rivas, *Voting Rights in Texas, 1982-2006*, at 6 (2006) ("*Texas Report*"), *available at* http://www.protectcivilrights.org/pdf/voting/TexasVRA.pdf. The Texas Report was submitted into the 2006 Congressional record. *See Renewing the Temporary Provisions of the Voting Rights Act: Legislative Options After LULAC v. Perry: Hearing Before the Subcomm. on the Constitution, Civil Rights and Property Rights of the S. Comm. on the Judiciary*, 109th Cong. 446 (2006) ("*2006 (LULAC) Hearing*").

[50] *Volume I 2006 (Continued Need) Hearing*, at 1443 fig.103 (Arizona Report).

[51] *2006 (LULAC) Hearing* at 113.

B. Intentional Efforts To Exclude Latinos From Voting.

The 2006 record evidenced the myriad discriminatory causes of these disparities. For one, the record reflected continued deliberate efforts to preclude Latinos from voting altogether in the covered jurisdictions.

Congress received evidence of continued intimidation and harassment of Latino voters in the covered jurisdictions. Federal observers reported "instances in which language minority voters fell victim to the harassment and intimidation of polling officials" in covered jurisdictions including Texas, Georgia, and Alabama. *See* H.R. Rep. No. 109-478, at 45 (2006). In 2004, San Antonio used the historically prevalent intimidation tactic of stationing police officers outside polling sites in a largely Latino area of the city.[52] There were also numerous examples of intimidation by non-governmental actors, which, although not within Section 5's purview, nevertheless attest to the persistence of unchecked anti-Latino animus in the covered jurisdictions.[53]

Congress also heard of continued efforts to deprive Latinos equal access to polling places. For example, in 2003, MALDEF filed a successful Section 5 action to prevent Bexar County, Texas—the same county at issue in *White*—from shutting down all early voting

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[52] *Texas Report* at 30.

[53] *See, e.g.*, *Volume III 2006 (Continued Need) Hearing* at 3976 (Arizona Report) ("in Pima County [Arizona], men wearing black t-shirts that said 'U.S. Constitutional Enforcement' and military or tool belts and carrying a variety of equipment harassed Latinos waiting in line to vote. These men would approach potential voters with video and photo cameras and harass them for proof of citizenship") (footnote omitted).

polling places in Latino neighborhoods of San Antonio.[54] Similarly, the record described obstacles Latinos in Texas confronted even if they found their polling places, including admonishments not to speak Spanish at the polling site,[55] understaffing of poll workers in Latino precincts,[56] and denying Latinos provisional ballots.[57]

The record also reflected that the covered jurisdictions increasingly relied on discriminatory citizenship inquiries to exclude or otherwise harass Latino voters. There were many accounts of officials imposing heightened identification burdens on Latino voters compared to White voters.[58] Moreover, there were several incidents in Georgia where officials deterred validly-registered Latinos from voting

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[54] *To Examine the Impact and Effectiveness of the Voting Rights Act: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 245 (2005) ("*2005 (Impact) Hearing*"); *see also 2006 (LULAC) Hearing* at 12 (testimony of Professor Joaquin Avila) (describing DOJ objection to Monterey County, California's planned reduction of polling places, where all of the "newly consolidated voting precincts [were] in the non-minority area, where you had the least number of Latinos," and a fraction of the total population).

[55] *See Voting Rights Act: Sections 6 and 8—The Federal Examiner and Observer Program: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 34 (2005).

[56] *See Texas Report* at 30.

[57] *See id.*

[58] *See*, *e.g.*, *Volume III 2006 (Continued Need) Hearing* at 3040-41 (Houston); *id.* at 3979 (Maricopa County, Arizona); *2005 (Impact) Hearing* at 331 (Brooklyn).

through discriminatory mass challenges of Spanish-surnamed voters.[59]

Such discriminatory requests for additional documentation appear to be a tactic of the future, not just the past.[60] A court recently rejected Texas's 2011 photo identification law, SB 14, calling it "the most stringent in the country," and concluding it would "likely" render many Latinos "unable to vote in the next election." *Texas v. Holder*, No. 12-CV-128, 2012 WL 3743676, at *29, 33 (D.D.C. Aug. 30, 2012). Contrary to *amicus curiae* Texas's arguments, the D.D.C. found Texas contributed to a protracted preclearance process, and ruled that *Crawford v. Marion County Election Board*, 553 U.S. 181, 194 (2008) (plurality), did not save Texas's law. *Texas*, 2012 WL 3743676, at *6-7, 11-13. The court also rejected Texas's "burden" argument, concluding "Texas's lawyers have only their client to blame." *Id.* at *33.

Discriminatory efforts to purge voter rolls have created yet further electoral obstacles for Latinos. In 2000, Florida purged registration lists of thousands of voters based on a flawed list of alleged felons, with the errors disproportionately affecting minorities, including Latinos.[61] More recently, a federal court permitted a Section 5 action to proceed based on allegations that Florida planned to implement a flawed "database-matching program to develop lists

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[59] *See 2005 (Impact) Hearing* at 200-01, 474-75 (Long County); *see also id.* at 476-77 (Atkinson County).

[60] *See, e.g.*, *The State of the Right to Vote After the 2012 Election: Hearing Before the S. Comm. on the Judiciary*, 112th Cong. (2012), http://www.judiciary.senate.gov/pdf/12-12-19PeralesTestimoney.pdf (testimony of Nina Perales).

[61] *See Volume II 2005 (History) Hearing* at 3279.

of registered voters that it classified as suspected non-citizens," and potentially "remove them from the voter rolls." *Mi Familia Vota Educ. Fund v. Detzner*, No. 8:12-CV-1294-T-27MAP, 2012 WL 4086509, at *2 (M.D. Fla. Sep. 18, 2012). In another case brought on behalf of Latino and Haitian voters, Florida agreed to restore voters to the rolls if the sole reason for their purge was the presence of their names on a flawed database matching list. Stipulation at 3-4, *Arcia v. Detzner*, 12-CV-22282(WJZ) (S.D. Fla. Sep. 12, 2012) (Dkt. No. 83-1).

Finally, the covered jurisdictions continued to erect language-based barriers by targeting discrimination against Latino citizens who are limited-English proficient.[62] Congress heard evidence of "strategic efforts" in Texas to exclude Spanish-speaking citizens from registering in 2004 by refusing to deputize Spanish-speaking registrars.[63] Similarly, there was evidence that officials knowingly gave Latino voters flawed Spanish-language balloting materials.[64]

C. Intentional Efforts To Dilute Latino Voting Strength.

In addition to the substantial evidence of jurisdictions implementing outright voting barriers, the 2006 legislative record was replete with examples of jurisdictions purposefully diluting Latinos' votes. As

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[62] *Cf. Modern Enforcement of the Voting Rights Act: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 16 (2006) (statement of Juan Cartagena) (among Latino citizens, "75 percent, compared to 18 percent nationwide, speak a language other than English at home").

[63] *2005 (Impact) Hearing* at 181-82.

[64] *See id.* at 244 (testimony of Nina Perales) (discussing Tarrant County, Texas's unwillingness to correct "utterly incoherent" translated materials).

noted, since at least 1975, Section 5 has targeted vote dilution, evidence of which further supports the constitutionality of Section 5. *See* Pet. App. 28a ("Consideration of this evidence is especially important given that so-called 'second generation' tactics like intentional vote dilution are in fact decades-old forms of gamesmanship"); *White*, 412 U.S. at 769 (describing how multimember-districting plan "invidiously excluded Mexican-Americans from effective participation in political life").

Congress received significant evidence that the covered jurisdictions continued to manipulate redistricting plans with "calculations that are actually made in ways that are intended to keep Latino voters from electing their preferred candidates."[65]

In 2006, Texas had—and, as discussed in Section IV, *infra*, continues to build—an egregious record of purposefully discriminatory redistricting, with many of the redistricting plans enacted by the State or its subdivisions barred by DOJ objections or litigation. *See*, *e.g.*, *Texas Report* at 18, 20-21. Texas's redistricting abuses were highlighted during a hearing regarding this Court's *LULAC* opinion, which the Senate called "strong evidence in favor of reauthorization." *2006 (LULAC) Hearing* at 1 (statement of Sen. Kennedy). The hearing underscored that the statewide 2003 congressional redistricting plan at issue in *LULAC* "shifted 100,000 Latino voters from a district where they were on the verge of electing a candidate of their choice to another district

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[65] *Voting Rights Act: An Examination of the Scope and Criteria for Coverage Under the Special Provisions of the Act: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 103 (2005) ("*2005 (Scope and Criteria) Hearing*") (response of J. Gerald Hebert).

in which Latinos already controlled election outcomes." *Id.* at 2. As testimony explained, "Latinos were divided by the State, pulled out of this district, just at the point at which they were going to unseat the disfavored candidate." *Id.* at 9 (testimony of Nina Perales); *see also LULAC*, 548 U.S. at 440 ("The State not only made fruitless the Latinos' mobilization efforts but also acted against those Latinos who were becoming most politically active, dividing them with a district line through the middle of Laredo").

Texas was not alone in its discriminatory use of redistricting plans. In 2002, DOJ objected to Arizona's State House redistricting plan, because it would have "diminished the districts where Hispanics could elect their candidate of choice from eight districts to five districts," and would have "made it so the Hispanic population, which constituted over 25 percent of the state's population, would only have been able to elect 16 percent of the state's congressional delegation." *The Continuing Need for Section 5 Pre-Clearance: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 61 (2006) (response of Professor Anita Earls). Likewise, in 1992, DOJ objected to a New York State Assembly redistricting plan because it "knowingly fractured the Latino community with the intent and effect of reducing the community's ability to elect candidates of choice." *Volume I 2006 (Continued Need) Hearing* at 67 (statement of Wade Henderson).

The covered jurisdictions continued to use a variety of other election changes to consciously dilute Latino votes. In 2000, DOJ rejected Monterey County, California's plan to return an elementary-school district to an at-large election system, finding the county's petition "'was motivated, at least in part, by a discriminatory animus.'" *Volume II 2005 (History)*

Hearing at 3326 (testimony of Robert Rubin). In 2002, once "the growing Latino population in Seguin [Texas] comprised the majority of five of the eight city council seats," the city "responded by dismantling the fifth Latino majority district in its new redistricting plan." *Volume I 2005 (History) Hearing* at 86 (testimony of Nina Perales). After DOJ expressed a likely objection, Seguin restored the fifth district, but "promptly closed the candidate filing period so no Latino could run." *Id.* Only after MALDEF enjoined the election timetable under Section 5, and DOJ precleared the restored district plan, did Latinos "elect[ ] their candidate of choice to a majority of seats on the Seguin city council." *Id.*[66]

D. Racially Polarized Voting By Non-Latinos.

Congress heard that the foregoing devices for precluding and diluting Latino voting were exacerbated by the persistence of "racially polarized voting" by non-Latinos. *Volume I 2006 (Continued Need) Hearing* at 209 (report by The National Commission on the Voting Rights Act ("NCVRA")). "Latino elected representation may not keep pace with growth of Latino voters in the presence of racially polarized voting by non-Latinos." *Volume II 2005 (Continued Need) Hearing* at 2416 (study by Professor Yishaiya Absoch).

Racially polarized voting was observed in the covered jurisdictions with large Latino populations.

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[66] There were also examples of purposefully discriminatory annexations and de-annexations in the record. *See 2005 (Impact) Hearing* at 880 (testimony of Professor Rick Valelly) (describing "evidence of a discriminatory purpose" against Latinos associated with Lamesa, Texas's planned de-annexation in the late 1990s).

See 2005 (Scope and Criteria) *Hearing* at 13 (testimony of Jose Garza) ("Racial bloc voting ... is still alive and well in Texas."); *Volume II 2006 (Continued Need) Hearing* at 1489-90 (Florida Report) (in central Florida, "'[r]acially polarized voting patterns prevail in elections for the Board of Commissioners, and white voters have voted sufficiently as a bloc to enable them usually to defeat the Hispanic voters' preferred candidates'"); *Volume II 2006 (Continued Need) Hearing* at 1863 (New York Report) (New York City "has a long road ahead to overcome the episodic, but still critically important and debilitating, episodes of polarized voting today"); *id.* at 2416 (study by Professor Yishaiya Absoch) (describing racially polarized voting in rural California).

Indeed, "Anglo voters and Anglo elected officials acknowledged they were apprehensive about supporting a Latino candidate purely based upon their ethnicity or surname." *2006 LULAC Hearing* at 288 (report by National Association of Latino Elected and Appointed Officials).

III. THE COVERAGE FORMULA RATIONALLY AND FLEXIBLY IDENTIFIES JURISDICTIONS WITH THE WORST RECORDS OF DISCRIMINATION AGAINST LATINO VOTERS.

Even with Section 5's prophylactic remedy in place, the foregoing evidence shows that in 2006, purposeful racial discrimination against Latino voters in the covered jurisdictions remained widespread and systematic. For Latino voters, the 2006 reauthorization preserved a coverage map well-tailored to areas of persistent abuse—at a minimum, the "disparate geographic coverage is sufficiently related to the problem" of intentional abridgment of Latinos'

voting rights. *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 203 (2009).

The comparative record of successful Section 2 litigation involving Latino plaintiffs in the covered jurisdictions versus non-covered jurisdictions further illustrates why the coverage formula rationally identifies jurisdictions with the most egregious records of abuse against Latino voters. *See 2005 (Impact) Hearing* at 986 (report by Professor Ellen Katz) (analyzing Section 2 data); Pet. App. 49a (describing Professor Katz's data as "[t]he most concrete evidence comparing covered and non-covered jurisdictions in the legislative record"). Most notably, Texas accounted for seven of 23 published decisions in successful Section 2 lawsuits involving Latino plaintiffs between 1982 and 2005.[67] That total more than doubled the next highest number of successful Section 2 actions by Latino plaintiffs in any other jurisdiction—indeed, the State had 30% of all successful Section 2 litigation involving Latinos.[68] These percentages are significant because Texas had only 7.4% of the nation's total voting-age population and 18.8% of the Latino population in 2004.[69]

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[67] *See* Ellen Katz, *VRI Database Master List* (2006), http://sitemaker.umich.edu/votingrights/files/masterlist.xls (sorting by columns titled "Success" and "Minority Group").

[68] *See id.*; *see also*, *infra*, Addendum.

[69] U.S. Census Bureau, *Population Estimates*, http://www.census.gov/popest/data/historical/2000s/vintage_2004/state.html (last accessed Jan. 30, 2013) (*Annual Estimates of the Population by Race Alone and Hispanic or Latino Origin for the United States and States: July 1, 2004* and *Estimates of the Resident Population by Selected Age Groups for the United States and States and for Puerto Rico: July 1, 2004*); *see also, infra*, Addendum. *Amicus curiae* Texas points to a "declin[e]" in its Section 2 losses, but overlooks that this Court made an adverse ruling in *LULAC* on the eve of Section 5's

As Professor Katz explained, the Section 2 findings bear on the effectiveness of Section 5 because the two provisions "are not wholly distinct, and a large number of electoral practices run afoul of both provisions. Where they do, preclearance should block such practices as retrogressive."[70] That is, there should be "fewer successful Section 2 cases in covered jurisdictions than in non-covered" since Section 5 deters many discriminatory laws in the covered jurisdictions "before they can ever take effect and become the target of Section 2 litigation." Pet. App. 55a. Accordingly, "[t]his comparison shows that distinct vestiges of discrimination persist in covered jurisdictions such that the elimination of Section 5 would hardly be inconsequential," or supported by the Congressional record. [71]

Professor Katz's study merely scratched the surface of actual discrimination, because it included only Section 2 cases resulting in published adverse decisions. *Id.* at 58a-59a. The record before Congress, which included unpublished decisions, showed that since 1982, plaintiffs in Texas prevailed outright or successfully settled more than *200* Section 2 cases—more than in any other state—altering discriminatory voting procedures in 274 of the State's political subdivisions. *See Volume I 2006 (Continued Need) Hearing* at 251 tbl.5 (NCVRA Report). The

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reauthorization. *Amicus* Br. of Texas at 23; *LULAC*, 548 U.S. at 440-41 (finding indicia of "intentional discrimination that could give rise to an equal protection violation").

[70] Ellen Katz, *Not Like the South? Regional Variation and Political Participation Through the Lens of Section 2*, *in Voting Rights Act Reauthorization of 2006: Perspectives on Democracy, Participation and Power* 183, 211 (Anna Henderson ed., 2007).

[71] *Id.* at 210-11.

legislative record revealed similarly significant numbers of successful Section 2 lawsuits in other covered jurisdictions with large Latino populations. *See Volume II 2006 (Continued Need) Hearing* at 1875, 1878 (New York Report) (describing successful Section 2 litigation involving Latino plaintiffs in New York City).

The covered jurisdictions with high Latino populations also had abysmal records of Section 5 violations and compliance, confirming that even Section 5's deterrent effect has not curtailed abuses against Latino voters in these jurisdictions. Texas had the "second highest number of Section 5 objections interposed by the DOJ," the majority of which were filed in counties "where 71.8 percent of the State's non-white voting age population resides."[72] The State's "repeated Section 5 violations are not limited to local jurisdictions," with ten post-1982 objections involving statewide changes. *Texas Report* at 16. Forty percent of the 72 Texas counties cited by DOJ were "repeat offenders." *Id.*[73] Arizona and rural California had similarly poor records. *See Volume I 2006 (Continued Need) Hearing* at 1416 (Arizona Report) (80% of objections to Arizona's election changes occurred after 1982, and three of them concerned statewide redistricting plans after 1990 where there were findings of purposeful discrimin-

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[72] *Reauthorizing the Voting Rights Act's Temporary Provisions: Policy Perspectives and Views from the Field: Hearing Before the Subcomm. on the Constitution, Civil Rights and Property Rights of the S. Comm. on the Judiciary*, 109th Cong. 149-50 (2006) ("*2006 (Views From the Field) Hearing*") (testimony of Debo Adegbile).

[73] *See also 2005 (Scope and Criteria*) *Hearing* at 15-78 (statement of Jose Garza) (cataloguing 20 years of Section 5 litigation and objections in Texas).

ation); *2005 (Impact) Hearing* at 748 (testimony of Professor Joaquin Avila) ("In California we have documented many instances where covered jurisdictions ... have not submitted voting changes for decades.").

To be sure, discrimination against Latino voters exists in non-covered jurisdictions. *See Amicus* Br. of Arizona, at 8.[74] But that has never been proof of the formula's irrationality. *See South Carolina*, 383 U.S at 330-31 ("It is irrelevant that the coverage formula excludes certain localities which do not employ voting tests and devices but for which there is evidence of voting discrimination by other means."). Partly on the basis of the bail-in mechanism, this Court has rejected claims that "underinclusiveness" renders the formula constitutionally infirm. *Id.* at 331 (noting bail-in as part of complementary efforts to "strengthen[ ] existing remedies for voting discrimination in other areas of the country"). Under the current bail-in provision, a court may require preclearance of a jurisdiction after a finding of constitutional violations.[75] This allows for a dynamic coverage regime, extending the preclearance remedy to jurisdictions not covered by Section 5 but that "nonetheless have serious, recent records of voting discrimination." Pet. App. 49a.

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[74] Indeed, as the Senate Report highlighted, nationally, "in the 2000 election, 45 percent of Hispanic voting age citizens ... participated, as compared to 62 percent of non-Hispanic white voting age citizens." S. Rep. No. 109-295, at 96; *see also id.* at 97. The statistics were similar in the 2004 election, when "nationwide, Latinos registered and turned out at rates significantly lower than white voters ... roughly 30 percentage points lower." *Id.* at 11.

[75] 42 U.S.C. § 1973a(c).

Recent use of the bail-in mechanism to target abuses against Latinos further undercuts *amicus curiae* Arizona's underinclusiveness argument. In 2009, a federal court imposed preclearance requirements on the Village of Port Chester, New York, after finding the village's at-large method of election barred Latinos from equal participation in the electoral process.[76] The bail-in mechanism thus works not just in theory, but in practice, to extend preclearance obligations to jurisdictions whose discriminatory conduct warrants federal supervision. The claim that Congress transgressed principles of federalism in reauthorizing Section 5 without altering its coverage formula is unfounded. American federalism is less offended when coverage expands incrementally and where deemed necessary, either by the courts as with Port Chester in 2009, or by Congress as with Arizona and Texas in 1975.

Likewise, the bailout provision has "always been the lynchpin of the Act's tailoring."[77] A covered jurisdiction may terminate preclearance requirements upon a showing of non-discriminatory voting practices over the preceding ten years and "constructive efforts" to prevent harassment and increase minority participation in the electoral process.[78] Congress heard that "[f]or the vast majority of jurisdictions," the bailout process is "relatively straightforward," "easy" and "cost-effective." *Volume III 2006 (Continued Need) Hearing* at 2684 (testimony of J. Gerald Hebert).

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[76] *See United States v. Vill. of Port Chester*, No. 1:06-CV-15173 (SCR), slip op. at 1, 3-6 (S.D.N.Y. Dec. 22, 2009) (Consent Decree) (Dkt. No. 119).

[77] J. Gerald Hebert, *The Future of the Voting Rights Act*, 64 Rutgers L. Rev. 953, 965 (2012).

[78] 42 U.S.C. § 1973b(a)(1)(A-F).

"Obviously, many jurisdictions are not and should not be eligible for bailout based upon their track records in the last ten years." *2006 (Views from the Field) Hearing* at 115 (response of Don Wright). But where bailout is warranted, jurisdictions have successfully done so. Indeed, political subdivisions have bailed-out with increasing frequency since the *Northwest Austin* decision, including subdivisions with significant Latino populations. *See Nw. Austin*, 557 U.S. at 211.[79] DOJ recently consented to the bailout of Alta Irrigation District in California, parts of which fall within Kings County, a jurisdiction covered after the 1975 amendments.[80] Alta had submitted most electoral changes for preclearance (those changes did not result in DOJ objection), and had a good-faith belief of non-coverage for several other changes. DOJ stipulated to the presence of efforts towards increasing minority participation, including Spanish-language outreach and registration drives in the Latino community. *See also Amicus* Br. of Merced County, California at 2-3, 34-35 (describing successful bailout of county covered following 1975 amendments).[81]

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[79] *See also* Dep't of Justice, *Section 4 of the Voting Rights Act*, http://www.justice.gov/crt/about/vot/misc/sec_4.php (last accessed Jan. 30, 2013) (listing 20 bailouts since November 2009).

[80] *See Alta Irrigation Dist. v. Holder*, 11-CV-758-RJL-DAG-PLF, slip op. at 1, 8-9 (D.D.C. July 15, 2011) (Consent Decree) (Dkt. No. 9).

[81] Merced County's protracted process for bailout reflects the county's previously flawed compliance record, not deficiencies in the mechanism. In June 2006, Merced was "[a] [m]odel of Section 5 [n]on-[c]ompliance," having failed to submit 226 voting changes for Section 5 review. *See 2006 (LULAC) Hearing* at 123-25, 134 (report by Professor Joaquin Avila).

Thus, the coverage formula, in tandem with the bail-in and bailout mechanisms, continues to focus on the jurisdictions with the worst records of purposeful discrimination against Latinos.

IV. A CASE STUDY IN THE CONTINUED NEED FOR SECTION 5's PROTECTIONS: THE 2011 TEXAS REDISTRICTING.

"In the last four decades, Texas has found itself in court every redistricting cycle, and each time it has lost." *Texas v. United States*, 2012 WL 3671924, at *20. On the eve of the 2006 reauthorization, this Court found the State's 2003 congressional redistricting plan bore "the mark of intentional discrimination." *LULAC*, 548 U.S. at 440, 442. Despite this history, in 2011, Texas enacted yet another series of intentionally discriminatory redistricting plans. These actions underscore the critical importance that Section 5 continues to play today.

Between 2000 and 2010, the population of Texas increased by over four million people, 65% of whom were Latinos. *See Perez v. Perry*, No. SA-11-CV-360, 2012 U.S. Dist. LEXIS 92479, at *15, 16 n.2 (W.D. Tex. Mar. 19, 2012). This growth required Texas to redraw its electoral districts for the U.S. Congress, State Senate, and State House of Representatives. *See Perry v. Perez*, 132 S. Ct. 934, 939 (2012) (per curiam). On July 19, 2011, Texas filed suit in the D.D.C. to preclear its enacted plans pursuant to Section 5 of the VRA. *See Texas v. United States*, No. 11-CV-1303 (D.D.C.).

Following a trial in Texas's preclearance action, the D.D.C. found overwhelming evidence of intentional race-based discrimination, a finding in keeping with "Texas's history of failures to comply with the VRA." *Texas*, 2012 WL 3671924, at *20. First,

discriminatory purpose lay behind irregularities in the plans' drafting processes. With respect to the congressional plan, African-American and Latino members of Congress "were excluded completely from the process of drafting new maps, while the preferences of Anglo members were frequently solicited and honored." *Id.* at *21. The plan was then hurriedly enacted after being made public, "severely circumscrib[ing] the opportunity for meaningful public scrutiny and comment, including by minority citizens and their elected officials." *Id.* at *53. Similarly, the drafts of the state senate plan were kept in a secretive "anteroom" off the Senate floor, to which senators representing minority-ability districts were refused entry. *Id.* at *24.

Second, the D.D.C. found overwhelming evidence of discriminatory intent in the plans' details. *Id.* at *21 n.32. The court noted Texas's numerous attempts in its congressional plan "to draw a district that would look Hispanic, but perform for Anglos." *Id.* at *31. Perhaps most brazenly, emails to and from counsel for the Texas House Speaker showed how officials sought race-based demographic data from the Texas Legislative Council, including Spanish-surname voter registration data, for use as a "metric" in redrawing district boundaries. *Id.* at *16, 59. The goal, according to the emails, was to "'help pull the district's Total Hispanic Population and Hispanic [Citizen Voting Age Population] up to majority status, but leave the Spanish Surname Registered Voter and turnout numbers the lowest.'"[82]

[82] *Texas*, 2012 WL 3671924, at *16 (alterations in original omitted) (quoting Defendants' Exh. 304). Texas's race-based gerrymandering of Congressional District 23 in particular, *see id.*, is appalling in light of this Court's determination that

In this way, Texas "suppress[ed] the minority vote" by substituting "low-voting minorities" for "politically-active minorities" while retaining the same overall level of voting-age Latinos, thereby "maintain[ing] the semblance of Hispanic voting power in the district while decreasing its effectiveness." *Id.* at *16, 82; *see also id.* at *37 (expressing concern about State's use of "a deliberate, race-conscious method to manipulate not simply the Democratic vote but, more specifically, the *Hispanic* vote").[83]

The D.D.C. found an invidious racial purpose behind other district boundary changes as well. Texas performed "substantial surgery" on minority districts in the congressional plan, excising economic generators like convention centers or stadiums, and even cutting out the district office of a Latino Representative. *Id.* at *19, 68 (revisions to Congressional District 20 removed Congressman Gonzalez's district office and a convention center named after his father). "No such surgery was performed on the districts of Anglo incumbents." *Id.* at *20 (affirming that boundary revisions disparately impacted minority districts, a fact Texas did not even dispute). Indeed, "Anglo district boundaries were redrawn to include particular country clubs and, in one case, the

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Texas's 2003 changes to this *same* district bore "the mark of intentional discrimination." *LULAC*, 548 U.S. at 439-40.

[83] The Western District of Texas, in crafting interim maps for the 2012 elections while the D.D.C. litigation was pending, presaged the D.D.C.'s findings, concluding that Texas likely engaged in racial gerrymandering. *See Perez*, 2012 U.S. Dist. LEXIS 92479, at *65 (plan for U.S. House); *Perez v. Texas*, No. 11-CV-360, slip op. at 11 (W.D. Tex. Mar. 19, 2012) (Dkt. 690) (plan for Texas House).

school belonging to the incumbent's grandchildren." *Id.*

The D.D.C. refused to preclear Texas's redistricting plans, and as a result those plans were never allowed to shape the 2012 election results. The elections proceeded instead using the Western District of Texas's interim plans. This would not have been possible without Section 5. Absent preclearance requirements, Texas's discriminatory plans likely would have been used in the 2012 elections. That is true even though plaintiff groups also challenged the redistricting plans in separate litigation under Section 2 and the Constitution. *See Perez v. Texas*, No. 11-CV-360 (W.D. Tex. filed May 9, 2011). Given the protracted nature of Section 2 lawsuits and the scarce resources available to prosecute them, the *Perez* suit could not be counted upon to provide Latino voters with relief prior to the 2012 election. *See Volume I 2005 (History) Hearing* at 92 (testimony of Nina Perales) ("Section 2 requires costly and time-consuming litigation. It also requires the bad change to go into effect and even be implemented for several election cycles before challengers can gather enough evidence to mount a successful court challenge, which is also incredibly costly …."); *Boerne*, 521 U.S at 526 (noting "slow, costly character of case-by-case litigation" under Section 2). Had Section 5 not been available to block the implementation of Texas's intentionally discriminatory redistricting, the discriminatory results of an election designed to disenfranchise Latino voters would have embedded incumbents and locked in that discrimination for years.[84]

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[84] *See Voting Rights Act: Section 5—Preclearance Standards: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 4 (2005) (statement of

In short, Texas's most recent purposefully discriminatory redistricting plans provide a painful reminder of precisely the type of racial discrimination that Section 5 was designed to prevent—and of the continued need for Section 5 to "shift the advantage of time and inertia from the perpetrators of the evil to its victims." *South Carolina*, 383 U.S. at 328.[85]

* * *

Even as the Nation elected its first African-American President, Latino voters continue to face intentional efforts to deny them equal electoral participation. In the covered jurisdictions in particular, as was the case in 1975, "a fair and accurate reading of the evidence leaves us no choice but to conclude that too much rejoicing at this juncture would be none other than premature."[86] Latino voters in the covered jurisdictions still require the protections of Section 5 to fulfill the Fifteenth Amendment's directive that "[t]he 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."

Rep. Scott) ("incumbency is a huge and, more often than not, dispositive advantage in an election").

[85] Notably, *amicus curiae* Texas's brief fails altogether to discuss the findings regarding these redistricting plans.

[86] 121 Cong. Rec. 44, 47 (1975) (statement of Rep. Rodino).

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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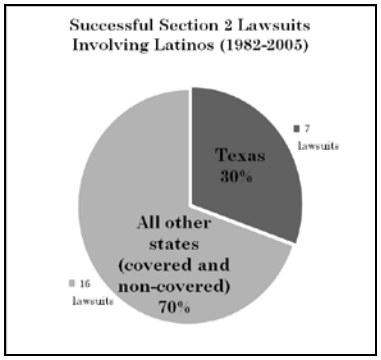
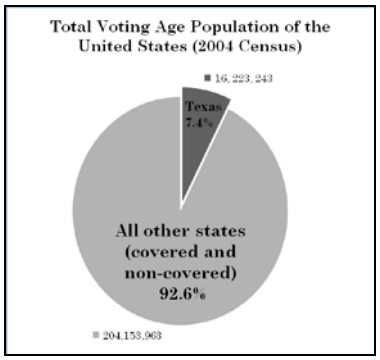
ADDENDUM



Ellen Katz, *VRI Database Master List* (2006), http://sitemaker.umich.edu/votingrights/files/masterlist.xls



U.S. Census Bureau, *Population Estimates*, http://www.census.gov/popest/data/historical/2000s/vintage_2004/state.html
Estimates of the Resident Population by Selected Age Groups for the United States and States and for Puerto Rico: July 1, 2004

APPENDIX

LIST AND DESCRIPTION OF *AMICI CURIAE*

ASPIRA

ASPIRA is the only national organization dedicated exclusively to the education of Latino youth. Its mission is to promote the development of the Latino community through advocacy and the education and leadership development of its youth. ASPIRA has ASPIRA Associates and Affiliates in eight states (DE, IL, FL, MA, NC, NJ, NY, PA) and Puerto Rico, as well as formal partnerships with over 30 regional and local organizations across the country.

Dominican American National Roundtable (DANR)/National Dominican American Council (NDAC)

The Dominican American National Roundtable (DANR) is a nonprofit, charitable, members organization which brings together the different voices of all people of Dominican origin in the United States. DANR is a national forum for analysis, planning, and action to advance the educational, economic, legal, social, cultural, and political interests of Dominican Americans. It aims to ensure for U.S. Dominicans the full exercise of the rights and freedoms guaranteed in the Constitution of the United States of America. The National Dominican American Council (NDAC) is the national civic-engagement-community relations organ of the Dominican American National Roundtable. It oversees 120 local councils in 85 cities across the United States with significant Dominican population. With a membership, which includes local councils, grassroots community organizations, educational, legal, health and civic organizations, DANR has evolved into a

powerful research and advocacy organization on issues affecting the immigrant community.

Hispanic Federation

The Hispanic Federation provides grants to a broad network of Latino nonprofit agencies serving the most vulnerable members of the Hispanic community and advocates nationally with respect to the vital issues of education, health, immigration, economic empowerment, civic engagement, and the environment.

Hispanic National Bar Association (HNBA)

The Hispanic National Bar Association (HNBA) is a nonprofit, nonpartisan, national professional association that represents the interests of over 100,000 attorneys, judges, law professors, and other legal professionals of Hispanic descent in the United States. The HNBA has thirty-eight affiliated bars in various states across the country. The continuing mission of the HNBA is to improve the study, practice, and administration of justice for all Americans by ensuring the meaningful participation of Hispanics in the legal profession. Since its inception 40 years ago, the HNBA has served as the national voice for Hispanics in the legal profession and has promoted justice, equity, and opportunity for Hispanics.

Labor Council for Latin American Advancement (LCLAA)

The Labor Council for Latin American Advancement (LCLAA) is a national organization representing the interests of approximately 2.2 million Latino trade unionists in the United States and Puerto Rico. Founded in 1973, LCLAA builds coalitions between the Latino community and Unions in order to

advance the civil, economic and human rights of all Latinos.

LatinoJustice PRLDEF

LatinoJustice PRLDEF (formerly known as the Puerto Rican Legal Defense and Education Fund) was founded in New York City in 1972. Its continuing mission is to protect the civil rights of all Latinos and to promote justice for the pan-Latino community especially across the Eastern United States. It has worked to secure the voting rights and political participation of Latino voters since 1972 when it initiated a series of suits to create bilingual voting systems throughout the United States.

MANA

MANA, a National Latina Organization, is a nonprofit, advocacy organization established in 1974 whose mission is to empower Latinas through leadership development, community service, and advocacy. MANA fulfills its mission through programs designed to develop the leadership skills of Latinas, promote community service by Latinas, and provide Latinas with advocacy opportunities.

Mexican American Legal Defense and Educational Fund (MALDEF)

The Mexican American Legal Defense and Educational Fund (MALDEF) is a national civil rights organization established in 1968. Its principal objective is to secure the civil rights of Latinos living in the United States through litigation, advocacy, and education. MALDEF advocated in Congress for the 1975 and 1982 expansions of section 5 of the Voting Rights Act and MALDEF supported the 2006 reauthorization of the Voting Rights Act, testifying to the continuing, persistent purposeful discrimination

against Latino voters before the U.S. Senate and House of Representatives. MALDEF has also successfully litigated landmark cases on behalf of Latino voters, including *White v. Regester*, 412 U.S. 755 (1973), and *LULAC v. Perry*, 548 U.S. 399 (2006).

National Association of Hispanic Federal Executives (NAHFE)

The National Association of Hispanic Federal Executives (NAHFE) helps to identify, encourage, prepare and promote the advancement of Hispanics into the SES (Career Senior Executive Service) ranks within the Federal Government.

National Association of Hispanic Publications (NAHP)

The National Association of Hispanic Publications, Inc. (NAHP) is a non-partisan trade advocacy organization, founded in 1982, representing the leading Spanish language publications serving 41 markets in 39 states, the District of Columbia and Puerto Rico, with a combined circulation of over 23 million readers.

National Association of Latino Elected and Appointed Officials (NALEO) Education Fund

The National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund is the leading nonprofit organization that facilitates full Latino participation in the American political process, from citizenship to public service. Our constituents include the more than 6,000 Latino elected and appointed officials nationwide who serve on bodies including local and state school boards, municipal councils, state legislatures, and the U.S. Congress. For several decades, the NALEO

Educational Fund has actively supported the reauthorization and strong enforcement of the Voting Rights Act as a whole, and Section 5 in particular. Section 5's preclearance procedures have played a key role in safeguarding Latino voters' ability to elect the candidates of their choice in jurisdictions in states including Arizona, Texas, California, Florida, and New York.

National Conference of Puerto Rican Women (NACOPRW)

NACOPRW was founded in Washington, D.C., in 1972, as a nonprofit, non-partisan organization to promote the full participation of Puerto Rican and other Hispanic women in their economic, social and political life in the United States and Puerto Rico. NACOPRW provides training, mentorship and leadership development at the local and national level through workshops and institutes during the annual convention, and through chapter programs. We preserve our Puerto Rican and Latino heritage through cultural activities and events. We seek justice and give voice to the preservation of civil, health, educational and other rights through the dissemination of information, networking, collaboration and advocacy with other national and local groups, and through education, celebration, community and civil involvement.

National Council of La Raza (NCLR)

The National Council of La Raza (NCLR)—the largest national Hispanic civil rights and advocacy organization in the United States—works to improve opportunities for Hispanic Americans. Through its network of nearly 300 affiliated community-based organizations (CBOs), NCLR reaches millions of Hispanics each year in 41 states, Puerto Rico, and the

District of Columbia. NCLR works through two primary, complementary approaches: (1) Capacity building assistance to support and strengthen Hispanic CBOs—especially those that serve low-income and disadvantaged Latinos; and (2) applied research, policy analysis, and advocacy to encourage adoption of programs and policies that equitably serve Hispanics.

National Hispanic Media Coalition (NHMC)

The National Hispanic Media Coalition (NHMC) is a nonpartisan, nonprofit, media advocacy and civil rights organization established in 1986 in Los Angeles, California. NHMC educates and influences media corporations on the importance of including U.S. Latinos at all levels of employment. It augments the pool of Latino talent with its professional development programs. It challenges media that carelessly exploit negative Latino stereotypes. It scrutinizes and opines on media and telecommunications policy issues.

National Hispanic Medical Association (NHMA)

Established in 1994 in Washington, DC, the National Hispanic Medical Association is a nonprofit association representing the interests of 45,000 licensed Hispanic physicians in the United States. NHMA is dedicated to empowering Hispanic physicians to be leaders who will help eliminate health disparities and improve the health of Hispanics. NHMA's vision is to be the national leader to improve the health of Hispanic populations.

National Institute for Latino Policy

National Institute for Latino Policy is a nonpartisan policy center established in 1982 that focuses on Latino policy issues. Among our concerns

are the rights of immigrants in the United States and the promotion of full civic participation by the Latino community. The Voting Rights Act is essential in combating continuing obstacles being placed to deter Latinos ability to vote that results in the disenfranchisement of a significant percentage of our community. We vehemently oppose any efforts to curtail or eliminate the protections provided by the VRA.

National Latina Institute for Reproductive Health (NLIRH)

The National Latina Institute for Reproductive Health (NLIRH) is a reproductive justice and human rights organization based in New York City, with a policy office in Washington, D.C. and grassroots Latina Advocacy Networks (LANs) in various states. NLIRH is the only national organization working to advance the reproductive health and justice of the 24 million Latinas, their families, and communities in the United States through public education, community mobilization, and policy advocacy. As an organization that encourages and fosters Latina leadership and civic engagement, the issue addressed in this case is a central concern to NLIRH.

National Organization for Mexican American Rights (NOMAR), Inc.

NOMAR, Inc., a national nonprofit organization with the mission to protect the civil rights of Hispanic Americans and to promote equal opportunity for Hispanic Americans in employment and education, supports the respondents in the above mentioned case before the Supreme Court of the United States. A critical mission of NOMAR, Inc. is to protect the civil rights of Hispanic Americans, which include the fundamental right of all United States citizens to

vote. We believe that this right extends to all citizens whether born in the United States, or naturalized after migrating to the United States.

National Puerto Rican Coalition, Inc. (NPRC)

NPRC is a national nonprofit organization representing the interests of over 8 million Puerto Rican U.S. citizens on the mainland and in Puerto Rico. NPRC's mission is to systematically strengthen and enhance the social, political, and economic wellbeing of Puerto Ricans throughout the United States and in Puerto Rico, with a special focus on the most vulnerable.

Service, Employment, and Redevelopment (SER)

Service, Employment, and Redevelopment (SER) is a national network of Community Based Organizations (CBOs) that formulates and advocates initiatives resulting in the increased development and utilization of America's human resources, with special emphasis on the needs of Hispanics, in the areas of education, training, employment, business and economic opportunity. SER National aims to develop the capacity of the SER network through the provision of technical assistance, research and planning, program and policy development, and fundraising.

United States Hispanic Chamber of Commerce (USHCC)

The United States Hispanic Chamber of Commerce (USHCC) advocates, promotes, and facilitates the success of Hispanic businesses throughout the United States and Puerto Rico.

United States Hispanic Leadership Institute (USHLI)

The United States Hispanic Leadership Institute (USHLI) is a national, nonprofit organization that promotes education, civic participation, and leadership development for Latinos and other similarly disenfranchised groups. USHLI was honored at the White House by then-President Bill Clinton for "the performance of exemplary deeds of service for the nation in promoting leadership and civic participation." USHLI's mission is to fulfill the promises and principles of democracy by empowering minorities and similarly disenfranchised groups and by maximizing civic awareness and participation in the electoral process.

EXHIBIT ONE

Expert Report of Dr. Andres Tijerina
Texas v. United States,
No. 11-CV-01303 (D.C.C. Aug. 8, 2011)

[1] REPORT OF DR. ANDRES TIJERINA

(Aug. 8, 2011)

1. I submit this report on the history of the violation of civil rights of Latinos in Texas with emphasis on the electoral process and voting. In writing this report, I have relied on my extensive knowledge and readings of archives and bibliography. As a member and fellow of the Texas State Historical Association and a member of the American Historical Association, I regularly attend professional conferences where I present formal papers for peer review and where I exchange the latest information on historical sources, methods, and data. I draw my conclusions in the present report based on my extensive knowledge of Texas History and Mexican American History from the readings and archival research that I have conducted for the better part of four decades. From my broad professional experience, I have been able to use accepted methods of analysis to compare the Mexican American experience in Texas with other groups in history. My conclusion is that they have a legacy of exploitation and abuse by Anglo-Americans who have used government, financial, and technological advantages to appropriate Mexican American lands, labor, and resources, and that Mexican Americans in Texas today bear the effects of this discrimination which hinders their ability to participate effectively in the democratic process.

2. I have utilized my research and writing skills to produce new information and interpretations to

critical areas of Texas history. My Ph.D. is in U.S. history. Indeed, I was the first Mexican American to receive a Ph.D. in U.S. History from the University of Texas at Austin in 1977. My specialty is Tejano or Latino history in Texas. I have written four books on Mexican American history, two of them published by a major university press. One of my books won the three most prestigious awards in Texas History, and two national awards. I am a Professor of history at Austin Community College, and I have taught at the University of Texas at Austin, the University of Texas at San Antonio, and Texas Tech University. I have edited and published four books by other writers in order to spread knowledge of Tejano history. My most widely read work is the publication of my combat memoirs as a USAF pilot with over 100 combat missions in the Time/Life Books series on the Vietnam War. I have practical experience as a former military commander, a former corporate executive with Motorola, Inc., and as a former state agency executive director with the Texas state [2] government. As the only Mexican American state agency director at the time, the position gave me a rare glimpse into the workings of state agency administration.

3. I conduct research regularly at the archives of the University of Texas at Austin to support my publication schedule. There, I have conducted years of research in the Spanish and Mexican archives, as well as in newspaper collections, personal collections, and government depositories. I frequent the Briscoe American History Center and the Benson Latin American Collection, which also houses one of the most extensive Mexican-American collections in the United States. I have also conducted extensive research in numerous county land records across

Texas, as well as at the University of California at San Diego, the U.S. National Archives, the Library of Congress, the State Archives of Coahuila, and the National Archives of Mexico.

4. I have been a consultant to historical museums across Texas, writing the text, and reviewing the accuracy of their displays. I also once consulted a major federal archeological project in Texas. I am a regular speaker and curriculum consultant to civic groups, universities, and independent school districts. I have delivered keynote addresses to federal agencies in Washington, D.C. and in every major city in Texas, the largest of which was at Texas A&M University to over 3,000 in a special events center and a worldwide satellite TV audience.

5. My expertise as a U.S. historian is in the social, cultural, economic, and political interaction of various groups in Texas history. My specialty historical period is the nineteenth century and early 20th century. I have used traditional historical archival documents like period newspapers, court records, city council minutes, state legislative committee proceedings, government documents, 18th century Spanish documents, 19th century Mexican archives, and personal collections. I have also been a trailblazer in developing new historical methods to access the unwritten historical transcripts of non-literate societies by referring to inter-disciplinary methods in archeology and anthropology. Likewise, I have been named as Series Editor for the Spencer Series of Texas A&M University Press for their history books on Texas and the Southwest.

6. The summary of my findings of discrimination against Latinos in Texas is that discrimination has been a pervasive and constant phenomenon since 1836, when Anglo-Americans took control of Texas

government. Anglo-American government control was expanded by the defeat of Mexico in [3] the U.S.-Mexico War of 1846-1848, which ended in the taking of present-day South Texas as well. The traumatic manner in which those Mexicans became U.S. citizens through defeat placed them at a great disadvantage in knowledge and access to the laws, economic power, and government. Another theme in my conclusion is that racist and discriminatory treatment has been a major characteristic and a consistent thread in the relationship between Latinos and Anglo-Americans especially in Texas. Another theme is that Anglo-Americans have consistently used Texas government agencies, police agencies, and laws to appropriate lands, labor, and cultural heritage from Latinos. This phenomenon of domination has manifested itself since 1836 after which the bulk of the Mexican American lands throughout Texas were taken along with government control. It was reinforced in South Texas when Anglo-Americans established large commercial farming estates which have used violence and labor controls to appropriate Mexican American labor until the mid-20th ceutury. During the period between 1900 and 1920 the state government established Anglo-controlled legislative districts and a statewide subtractive school system as major obstacles to Latino education and equal access to the democratic process. Although Latinos have challenged the political, economic, and educational subordination, they have done so at tremendous disadvantage, which is manifested in the persistent racism and their current subordinate status.

Historical Background

The Spanish and Mexican pioneer ancestors of modern Mexican Americans were the founders of

Texas under a European type of government. These original Latino settlers are called Tejanos, which is simply the Spanish word for Texan. Tejanos had come initially under the flag of Spain, as Mexicans after Mexican independence, and they continued to settle in Texas under the Republic of Texas. They claimed lands under the various land grant programs of the succeessive governments of Texas, and they were citizens of the successive republics. They established large ranches, and several towns such as San Antonio, Victoria, Laredo, Nacogdoches, and Corpus Christi. Over 2,000 Tejanos claimed headrights or land grants in Texas along with Sam Houston and Mirabeau B. Lamar as a reward for defending Texas from the Mexican government of President Santa Anna. Even though thousands fought for Texas, incoming Anglo-Americans made no distinction between the Tejanos who were citizens of the Republic of Texas, and the Mexicans who fought against the Republic. As an example, Juan N. Seguin of San Antonio, had fought for Texas Independence. He is the only Texan who fought against Mexican General Santa Anna at the Alamo and at the Battle of San Jacinto. Seguin [4] was the victim of several assassination attempts in San Antonio by Anglo Americans because they made no distinction except their concept of the Mexican "race." (Williams and Barker 1943, IV, pp. 63, 64; Friend 1969, pp. 66, 73) Tejanos had established the legitimate government of Texas under Spain and Mexico, but they quickly found themselves isolated by the Anglo-American wave of settlers who greatly outnumbered them. As Anglo-Americans entered Texas, they took a dominant position, isolating the Tejanos from any viable role in government and the economy.

As prominent Tejano leaders like Juan N. Seguin, Carlos de la Garza, and Vicente Cordova were eventually forced to defend themselves against raids and attacks by Anglo Texans,

Tejano families began an evacuation of Texas. Hundreds of Tejano families fled to Tamaulipas and Nuevo Leon, Mexico while others fled into Louisiana. During these years, the Texas government played a direct role in dispossessing Tejanos from their lands. In many cases, the Texas Army had actually ordered loyal Tejanos off their lands, ostensibly to preclude collusion with the enemy. In 1842, Col. Clark L. Owen declared martial law in the Goliad-Victoria area, and ordered "all Mexicans" to move south of the Nueces. Prominent and loyal Tejano families lost their ranches and lands as they left many of their settlements in what was called a "virtual state of abandonment." (O'Connor 1966, pp. 10, 126, 253; Huson 1953, I, 471)

As the 1840s progressed, Anglo and European immigrants flooded in and took many of the ranches, the livestock, and indeed the livelihood of many of the old Tejanos around Bexar, Goliad, and Nacogdoches. By 1845, for example, 40 of the 45 Goliad Tejano ranches had passed into Anglo hands for a pittance of their value. Many of these emigree Tejanos returned years later to reclaim their lands after the revolution—some successfully, and some not. (Goliad County, Records) After the U.S.-Mexico War, the Treaty of Guadalupe Hidalgo in 1848 incorporated the land south of the Nueces into Texas, and guaranteed full citizenship to the Tejanos as Mexican Americans. Historians like David Montejano and Walter Prescott Webb have suggested that South Texas counties like Nueces, Kleberg, Cameron, and Hidalgo experienced an economically driven pattern

of Tejano land dispossession, which characterized the transfer of lands as one-way and irreversible. These basic books of Texas history state that Tejanos lost their lands through "ficticious suits," sheriff's auctions, and dubious transfers of title. Anglo newcomers like Stephen Powers, Charles Stillman, Richard King, and Mifflin Kenedy remained after the U.S.-Mexico War, and, to use Webb's expression, "bamboozled" or deceived the Mexicans in South Texas. Webb added that "The old landholding Mexican families [5] found their titles in jeopardy and if they did not lose in the courts they lost to their American lawyers." (Montejano 1987, 72; Webb 1991)

Many historians have indicated the major role played by the racism of the incoming Anglo Texans during and after the Texas Revolution. Anglo-Texans often cited a distorted version of Texas history to rationalize their economic claims against Tejanos. For example, during the Texas Revolution, Edward Dwyer, an Irish merchant in San Antonio encouraged Texas Army Gen. Thomas Jefferson Green to expedite the army into Bexar. ". . .the people [of San Antonio de Bexar] . . . are not sufficiently scared to make an advantigius [sic] sale of their Lands. In case two or three hundred of our troops should be stationed there, I have no doubt but a man could make some good speculations with Gold and Silver. Bank notes will not do to purchase Land from Mexicans," he added. And in Victoria , John Linn described a similar situation during that same period in which "Fernando de Leon was subsequently persecuted by the presentation of unjust claims against him, and, owing to the prejudice then existing against the Mexicans, many illegal and unfair judgements were rendered against him." De Leon, the largest landowner in Victoria County, lost about half

of his lands to those judgements. And during the U.S.-Mexico War, a U.S. Army officer, General William North boasted "our Anglo-Saxon race [have] been land stealers from time immemorial, and why shouldn't they [be]?" (Crisp 1976, 343; Foley 1997, 21; Crimm 1998, 170) Thus racism was an openly avowed motive and a justification for land theft.

In the mid- to late-1840s, however, incoming Anglo squatters openly began to use brutal atrocities against many Tejano families. One specific case in 1843, was recorded in Karnes County, where according to the *The Kennedy Times*, the Carlos Martinez ranches were raided by "companies of white people, who came to the rancho from the Guadalupe and Colorado rivers, and killed the people at the rancho and stole their stock." The newspaper added that no arrests were made as the murderers moved into the ranches. Another murder on the nearby Becerra land grant also drove the Tejano families off their lands. The Tejano families fled to Goliad after their livestock were killed and their barns burned by mounted Anglo marauders. Tejanos lost many relatives in the killings, and they lost their legitimate claims to the lands. (Crimm 1998, 141; Kenedy, Texas 1963, Sect. 1; Rubio 1986, 136)

To the north of Karnes County, Anglo city officials began a coordinated campaign to drive Mexican American citizen and Mexican immigrant settlers out of the cities between Austin and San Antonio. The campaign took the form of vigilante raids incited by newspaper rhetoric [6] and conducted by the town's most "excellent citizens." In 1850, the Austin City Council established "city watch" authorizing a Vigilante Committee "to inflict punishments without resorting to trials. . ." on Negro slaves for violating the curfew or for associating with Mexican

immigrants and Mexican American citizen residents. Blaming the Mexican Americans for inciting runaway slaves by associating on an equal basis with them, local newspapers developed a rationale for not only persecuting the recalcitrant slaves, but also for punishing the Mexican American citizens in Austin. The *State Gazette* referred to "the local Mexican residents who were permanent citizens" of Austin as "half-negro, half Indian greasers" and called for "exertion in clearing our country of rascally peons." The newspaper rationalized that this "clearing" of the city was justified because Mexicans were peons "incapable of acquiring the rights of citizenship." The City Council and the newspapers agreed that the Vigilante Committee should be comprised of Anglo-Saxon "excellent citizens" in order to legitimize the "clearing" campaign as had been done in Seguin County and eight other neighboring counties. As a result, the Austin committee included elected officials, Democratic Party officials, veterans of the Texas Revolution, and members of the nativist Knownothing Party. The Austin Vigilante Committee was led by the well-known Texas Ranger and Mayor of Austin, John S. "Rip" Ford, a Chief Justice, a city alderman, the city marshall, and the county sheriff. After a few years of persecution, Austin had burned out all settlements of Mexican immigrants and local Mexican American citizens. By the 1860 census, only 20 Spanish-surnamed residents were left in Travis County, and *State Gazette* rationalized the raids because Mexicans were "a bad element of society . . . [that] sooner or later would be extinguished." The newspaper boasted that Mexicans had also been driven out by vigilante raids in Uvalde, Bexar, Austin, Colorado, Matagorda, and Guadalupe Counties. (Lack 1981, pp. 2 – 19)

According to historian David Montejano, native Tejanos eventually established a "Peace Structure" with incoming Anglo-Texans in order to escape the violence. In the "Peace Structure," Anglos were allowed to dominate the government and economy, while Tejanos collaborated with them in exchange for protection from land theft and violence. In many cases, these incoming Anglo-Texans nevertheless used their dominant position to acquire Tejano lands. Following the 1850s, in Hidalgo County, Judge Thaddeus Rhodes, Sheriff John Closner, and land lawyer Jim Wells began to press sheriff's auctions on Tejano land grants. The judge targeted the fertile lands of Spanish Porcion 69 land grant, owned by descendants of Juan Jose Hinojosa along the Rio Grande. In June of 1877, the sheriff sold over 7,000 acres of the grant [7] for $17.75 to Anglo-Texans. Also in 1878, Judge Rhodes personally bought 30 acres of Porcion 69, and then held a sheriff's auction on an additional 668 acres of the land grant. (Hidalgo County, A:149; Crimm1998, 175; Mexico 1874, h; Rubel 1966, 36)

The period after Reconstruction and around the turn of the century also saw an attack on the Tejano's socio-economic status, as Anglo-American commercial farmers from Midwestern states swept into South Texas. The incoming Anglo-American squatters launched large-scale vigilante raids against legitimate and prominent Tejano land grantees during the Reconstruction period after the Civil War. One raid in 1874 swept from Victoria down to Refugio and another in the next year, the Peñascal Raid, swept from Corpus Christi down to present-day Raymondville. The Victoria-Refugio region had also been the scene of racial and economic conflict between Anglo ranchers and Tejano landholders for

years. The conflict culminated in a vigilante raid in 1874 after a heinous crime against an Anglo rancher and his wife. According to land lawyer and historian Hobart Huson, "Several hundred ranchmen and cowboys from Refugio and Goliad Counties met on Rosilla Prairie with the view of exterminating all Mexicans in the section, commencing at Goliad." To begin with, they shot prominent Tejanos Marcelo and Antonio Moya, and slit the throat of their father, the Moya family patriarch. In the dispossession, Huson reported a mass exodus of the surviving Tejano widows and children to Mexico after the incident, saying "The roads were lined with ox-carts and wagons headed west." Goliad County Sheriff Phil Fulcrod, judges, and other militia and government officials were directly involved in the above mentioned raids. The perpetrator of the initial murder was later identified and hanged, but the vigilantes admitted that they still "were desperate for revenge." When they later heard another rumor that Mexicans had committed a murder a few miles south on the Nueces River, they rode overnight the sixty miles to Corpus Christi to enroll in that posse. (Dobie 1929**,** pp. 73 – 80, 125; Huson 1953, I p. 471, II p. 214; U.S. Congress 1876, p. xviii)

In Corpus Christi a vigilante committee of about one hundred Anglos set out ostensibly to drive off the "Mexicans" on large land grants south of Corpus Christi. For several months prior to the raids, famous rancher Richard King had stirred passions against several large neighboring Tejano ranches around the Peñascal Ranch, located about sixty miles south of Corpus Christi. These ranches were home to about five hundred Tejano men, women, and children described by Texas Ranger N.A. Jennings, as "peaceful Mexican farmers and stockmen who had

lived all their lives in Texas." King instructed the vigilante posse to elect leaders—about twenty men—who should go first to Brownsville to be deputized. With their instructions, [8] and acting under color of law, the vigilantes then masked and painted themselves, and systematically killed all of the Tejano patriarchs and "every adult male that was present." As the raiders burned one ranch after another, the women and children fled into the chaparral and hid throughout the night. Many of the men's bodies were never found, and were presumed to have been "dumped in the bay." When Texas Ranger Captain L. H. McNelly arrived to investigate the raids, he wrote back to Austin, "The acts committed by Americans are horrible to relate; many ranches have been plundered and burned, and the people murdered or driven away; one of these parties confessed to me in Corpus Christi as having killed eleven men on their last raid."

Many of the Tejano lands involved in the Peñascal Raid were incorporated into the King and Kenedy ranch empires, as the women and children and other Tejano rancheros fled across the border to Mexico. According to one account: "They departed taking their money and personal possessions with them, and often they were found dead along the way with their money missing." (Taylor 1934, 57; Cheeseman 1998, 88; Mexico 1874, pp. 18, 19, 68, 106; Hidalgo County, A, 149; Dunn 1932, pp. 9, 63; Villareal 1972, pp. 16-19) In the Refugio raid and in the Corpus Christi raid, the Anglo vigilantes included law officers, and were acting under color of law. The marauders were deputized before conducting the Peñascal raid, and some even claimed to be Texas Rangers. In neither case, however, were there any arrests of the perpetrators. (Cheeseman 1998, 88) In his book, *The*

Texas Rangers, Walter Prescott Webb stated that the "reign of terror" reached its peak at the turn of the century, when between 500 and 5,000 Tejanos died, "many of them innocent, at the hands of the local posses , peace officers, and Texas Rangers." (Webb 1991, 176n.)

After the Revolution and even after the U.S.-Mexico War, the state government continued to undermine Tejano land title claims. The legislature passed Texas Land Relinquishment Law of 1852, for example, requiring that all unarchived lands granted before 1835 be surveyed and filed with the Texas General Land Office by 1853 or be declared null and void. Later, the Texas Constitutions of 1869 and 1876 included the same requirements, placing the burden of proof on the Tejano title holders. The state legislature imposed restrictions on Tejano rights to testify. When Tejano appelants came to Austin to plead their land cases, they were told that a committee rule required that in order for Tejanos or other non-whites to testify, "their character for truth and veracity had to be established by the testimony of two white men." (Rubio 1986, 114; Texas, *State Gazette,* Vol. II, No. 6.)

[9] One of the most questionable government actions in the administering of Tejano lands was known as the Bourland-Miller Commission of 1850. As Anglo-American capitalists and land speculators stimulated a growing demand for Tejano lands, the state legislature sent two commissioners across the Tejano ranching frontier to verify and record the titles to as many Tejano lands as possible. The state's interest was clearly to facilitate land transfers from the old Tejano land-holding fmailies into Anglo hands. After the commissioners collected the titles, and loaded them for sea transport from Brownsville

to Austin through the Gulf of Mexico, the Steamship *Anson* caught fire and sank off the coast of Matagorda, destroying all the Tejano land titles. (Greaser and de la Teja 1992, pp. 455, 457n.) The most questionable role of the state government was not so much in the coincidental fire, but in actively promoting the sale of the lands of a targeted class of citizens through legislation and a special commission.

The end of the 19th century would find the Tejanos inundated not only by continuing Anglo-American immigration from the United States, but by a wave of emigrant Mexicans fleeing the violence of the Mexican Revolution. Incoming Anglo-Americans continued to acquire Tejano lands in South Texas, which they called "The Rio Grande Valley." As immigrants themselves, the Anglo Americans ironically made little distinction between the native Tejano citizens of Texas and the flood of immigrant Mexican nationals. By taking control of the county government, Midwestern Anglo-American commercial farmers re-structured the county taxes, budgets, road and bridge construction, and education to suit the farmer at the expense of ranchers and the Mexican-American population. Landless Tejanos and Mexican immigrants were all categorized by Anglo-Americans as "Mexicans" and seen as cheap labor with no distinction as to social status, education, or citizenship. Just as they re-structured the county government to suit themselves, Anglo Americans re-structured Texas history and culture to rationalize their disfranchisement of the Mexican American as a laboring class with limited educational or political freedom. In the period of 1900 to 1920, the Anglo-American commercial farmers began to claim economic and political power from Anglo ranchers

and Mexican Americans alike. This period was called Progressivism.

20th Century

Throughout the 20th century, the racialization of politics and the economy had continued to the point that Texas had what amounted to a caste stratification with Anglo-Americans in dominant positions and Mexican Americans generally in subordinate positions. One 1965 study [10] of Texas racial relations stated that "Anglos have always been on top . . and the Mexican Americans isolated on the bottom." (Civil Rts. Educ. Study, 11) A distorted historical transcript had been developed by 1900 that depicted the Anglo-American as the liberator of Texas from a heathen Mexican population. The historical transcript was articulated by policy leaders and the public in order to rationalize the political and economic subordination of Mexican Americans. As an example, in a 1911 state vote on prohibition, state leader Thomas Ball in Brownsville said he opposed ". . . the Mexican vote, which Texas in 1836 declared unfit to govern this country." (Anders 1982,, 101) Even a poor Anglo cotton picker used history to elevate himself above Mexican Americans, saying "The study of the Alamo helps to make more hatred toward the Mexicans. . . if a man . . slaughters your kinsman. . . I am in favor of not letting Mexicans come over and take a white man's labor." (Montejano 1987, 224)

The Progressive Era

During the 1900 and the 1920s Progressive Era, Anglo-Americans began to refine their political control over the Mexican Americans. In Texas, "Progressive" meant anti-Mexican. By the turn of the century, Mexican Americans had found refuge under

the protection of political bosses. The political bosses protected them from Texas Ranger violence and Anglo-American raids, and then controlled their voting for state and federal politicians, who gave tacit consent. The Progressives were middle-class Anglos. As one authority said, "Most came from the ranks of the Anglo, Protestant majority and looked with contempt upon the social standing, life-styles, religion, and moral values of the Hispanic population. . ." In order to strip the political bosses of their power, then, middle-class Anglo-American professionals blamed the Mexican American victims of the system, and made a concerted effort to disfranchise the Mexican Americans. One of the most powerful political bosses was Archie Parr. In 1908, Parr took a seat on Duval Co. Commissioner's Court. He used the County Treasury as "slush fund" and gave his constituents short-term work on road and bridge projects. Then, he simply deducted their poll tax fees from their wages, and directed their voting. Parr and other bosses like Jim Wells used a device called "Corraling voters" to amass enough votes to elect state and federal officials. The political machines under Parr, Jim Wells, and Robert Kleberg worked in close cooperation with state and federal officials who benefitted from their control of the South Texas votes such as Col. Edward M. House, Lyndon B. Johnson, and John Nance Garner. As presidential advisor to Woodrow Wilson, Col. House gave Jim Wells "a near monopoly over the distribution of state patronage" in [11] the Valley, according to one historian. (Anders 1982, pp. 13, 103, 176) These slating and corralling devices were used by political bosses in many other cities of Texas as well. As an example, San Antonio had the Callaghan political machine which reportedly paid the poll tax for Mexican Americans, and instructed them on

voting. More blatantly, the Good Government League of post-World War II San Antonio regularly slated the city council candidates. Although it slated a middle-class Mexican American as a token, it limited the Mexican American representation to that one token position, which was far below their percentage of the electorate. (Garcia 1981, 157; Rosales, 2000, 5 & 13.)

Gerrymandering became a method used by Texas policy makers at the highest levels to segregate Mexican American voter groups. This method was later used to segregate Mexican-American laborers and public school students. In order to secure their Mexican American voting blocks, political bosses used gerrymandering of electoral districts and created whole counties. Indeed, 13 of South Texas counties were created by these bosses for that purpose. Some counties were created by Progressive politicians to counter the political bosses. As an example, Ed C. Lasater took Brooks County from "Mexican" Starr County in order to secure Brooks for his "thrifty and idustrious farmers from Iowa, Kansas, Texas, Nebraska, Indiana, . ." Likewise, D.W. Glasscock broke Jim Hogg County from Zapata County in order "to get out from under the domination of the Mexican vote." Meanwhile, Parr and other bosses made other efforts to carve Duval, Nueces, Jim Wells, Kleberg counties to concentrate their Mexican American voting blocs. Within a few years, the South Texas counties doubled from 7 to 13. As an example, at the turn of the century, U.S. Congressman John N. Garner was a member of the House Committee on Congressional Districts and "the subcommittee that drafted the initial version of the reappointment bill. . . the House measure confirmed exactly to Garner's and Wells' specifications . . created a district that included Uvalde and the Trans-Nueces but

excluded San Antonio." (Anders, Boss, 110; Montejano 1987, 131) By the end of the century, gerrymandering of Mexican Americans had proven to be an effective and accepted practice by Anglo American policy makers at all levels of Texas government.

Throughout the Progressive Era, Anglo idealogues and politicians explicitly articulated their rationale of disfranchising what University of Texas professor called the "dangerous" Mexican vote. And during the 1914 gubernatorial race, the *San Antonio Daily Express* quoted prohibitionist candidate Thomas Ball as supporting reforms to disfranchise Mexican Americans. He said that "liquor and Mexicans" would both "rest together forever in death." And in the [12] 1918 general election for Texas Senator, candidate D.W. Glasscock stated that his campaign was "to get the Anglo Saxon on top." (Anders, Boss, 241; Montejano 1987, pp.131, 145-7)

One of the main devices created specifically to disfranchise Mexican Americans in Texas was the poll tax. The 1903 Terrell Election Law required payment of the poll tax between October and February on the assumption that Mexican Americans were too poor or forgetful to comply. The state reformer, Terrell, himself said the law was intended to close "the flood gates for illegal voting as one person could buy up the Mexican and Negro votes." His proponents said Mexican Americans could not afford the poll tax, would lose receipts, or not pay so far in advance. Using community organizations called the "Good Government League," the Progressive reformers articulated their intent. In 1913, for example, State Rep. Joseph O. Boehmer of Eagle Pass established the Ballot Purification League, and submitted a bill admitting his intent was "to

disqualify the Mexicans of the Western and Lower Rio Grande Counties." Historian Evan Anders has argued that "The practical effect of most of these proposals would be to curtail the voting of impoverished, illiterate blacks and Mexican Americans." (Anders 1982,, 102 (Montejano, Anglos , 143)

The Progressives also used restrictive laws, such as the 1918 state law to eliminate interpreters at the polls. They used the "White Man's Primary" to exclude Mexican American voting in the Democratic Primary elections, which in a one-party state, pre-empted the general election. In establishing the White Man's Primary Association (WMPA) in 1904, the State Democratic Executive Committee required an oath, declaring "I am a white person and a Democrat." The Dimmit Co. WMPA was so effective that *Carrizo Springs Javelin* in June 12, 1914 said it "absolutely eliminates the Mexican vote as a factor in nominating county candidates, though we graciously grant the Mexican the privilege of voting for them afterwards." The newspaper added that it was for labor and "race control" to protect the "purity of Anglo women." (Montejano, Anglos , 143-4)

In many cases, violence was used by Anglo-American mobs and state and local officials against Mexican American voters. The Texas Rangers had traditionally intimidated Mexican Americans, and were used specifically to discourage their voting after 1900. As an example, Progressive Gov. Wm. Hobby in 1918 created the "Loyalty Ranger Force" of 1,000 special rangers, and 3 rangers in each county to supplement Texas Rangers. The Rangers gave "armed support" to Democrat machines in "partisan" conflicts. In the senatorial race that year, Texas Ranger William Hanson (former U.S. Marshall, and

organizer of Loyalty Rangers) and several [13] rangers discouraged Mexican American voters in Corpus Christi, telling them that they would "go to prison if they were illiterate and still tried to vote." Hanson then sent several rangers to Duval County for "management of the primary election." One official reported that "only about sixtyodd Mexicans" voted in Nueces County elections as a result. A South Texas lawyer, Marshall Hicks, testified in *Glasscock v. Parr* (1919) in the minutes of the *Texas Senate Journal* that his opponent, D.W. Glasscock had the Texas Rangers selectively "investigate" Mexican American voters, and spread "a spirit of terrorism among those Mexican people." Or as Evan Anders said in his study, "the mere presence of armed Rangers at the polling stations had an intimidating effect on the Hispanic population" in Cameron, Duval, Nueces, Hidalgo, and Starr Counties. (Montejano 1987, 145-7; Anders, Boss, pp. 252, 257, 263)

In 1916, during the turmoil of the Mexican Revolution immigration, Anglo political leaders in the Valley held meetings, and stirred Anglo fears of Mexican American uprisings. But, according to Anders, "the Anglos' suffering and hardships paled beside the horrors that they inflicted upon the Hispanic population." Anglos used vigilante action, and "a bloodbath that claimed from two hundred to three hundred Hispanic lives ensued." In widespread lynchings, Anglo gangs burning Mexican American houses, ranches, and hanged 15 in San Benito. Local officials participated in lynchings. "The most blatant abusers of police power were the Texas Rangers." according to a legislative committee report in 1919. The Texas Rangers "confiscated the arms of Hispanic residents" in Cameron County, violating their Bill of

Rights, and leaving them defenseless. In one small town, the Rangers dragged 15 Mexican Americans from their homes, and executed them in front of their families. They reportedly killed 102 Mexican Americans in "cold-blooded murder."

A few years later, a momentous incident occurred called the "Hidalgo County Rebellion." In this incident, crowds of Anglo reformers demonstrated and rioted against Mexican American voters at elections to supplement the Texas Ranger brutality. In 1928, the Weslaco barrio election box was assailed by the Republican "Good Government League" which led the "Rebellion" cited in a U.S. Congressional investigation. According to the federal report, a crowd of 3,000 to 4,000 Anglos at the polling place shouted "Don't let those Mexicans in to vote. Throw them out" while men with shotguns protected the crowd. An estimated 200 to 300 regular Mexican American voters "did not show up at all." One former Texas Ranger, Hidalgo County Sheriff A.Y. Baker, became the Democrat boss of the county, and was reputed to have committed election fraud and large-scale graft. When State Rep. J.T. Canales protested [14] the violence and the use of Loyalty Rangers in the 1919 legislature, he was given a death threat by Ranger Frank Hamer as he walked up to the capitol building in Austin. In the legislature, Rep. Canales pressed his demands, accusing the Rangers of covering up their atrocities. (Anders, Boss, pp. 224-6, 239, 269; Montejano 1987, 147)

Years later, scholars and organization leaders would blame these widespread events for a disaffected Mexican American electorate. Many years after the Progressive Era, Mexican Americans continued to live under the systematic discrimination established in Texas by the Progressive politicians.

The segregated schools, the poll tax and voting intimidation, and the job discrimination continued as the status quo in Texas from the 1920s through the 1960s. The only major changes during the Depression Era were the federal programs of President Franklin D. Roosevelt's New Deal. Ironically, even though the New Deal provided for jobs, farm price restabilization, and old-age pensions, the New Deal programs tended to exclude the Mexican Americans. For example, the Civilian Conservation Corps often neglected Mexican American young men, the Agricultural Adjustment Act displaced the Mexican American sharecroppers by making it more profitable for land owners to leave their land fallow rather than employing sharecroppers, and the Social Security Act gave a guaranteed retirement to all Americans except agricultual labor and domestic workers, most of whom, in Texas, were Mexican Americans. Scholar Juan Gomez-Quinones has stated that the absence of Mexican Americans at all levels of appointed positions before 1970 is major indicator of their exclusion from the democratic process in Texas. And even though Mexican American voting had increased, Willie Velasquez of San Antonio, the founder of the Southwest Voter Registration Education Project (SVREP) stated that "Clearly, past discriminatory practices have hindered voting." Velasquez began in 1974 to register Mexican American voters. He found that he had to file several law suits in order to seek enforcement of the Voting Rights Act, and to re-structure local voting districts which had been Gerrymandered. (Gomez-Quinones 1994, pp. 155, 166, 172).

Labor Controls

Early in the 20th century, Texas state and local officials began to relate labor control over the

Mexican American population to social and political control. One South Texas superintendent explicitly stated that the state officials condoned minimal education of "the lower element" [Mexican Americans] specifically to control them in the labor force. "We don't need skilled or white-collared Mexicans. . . There isn't a concerted effort against them but the white- [15] collar man is not a common laborer." Another school official said he complied with local growers to keep the Mexican American population out of school, saying ". . it is up to the white population to keep the Mexican on his knees. . . This does not mix very well with education." (Montejano 1987, 192-3)

As Anglo-American businessmen and government officials sought to maximize their profits in using the Mexican Americans as a labor force, they developed a systematic web of formal and informal labor control devices. Recruitment of foreign nationals and domestic workers helped to build a labor surplus to drive wages downward and to displace the risk factor of production onto the labor force itself. As an example 6 major labor recruiting agencies working on the Texas-Mexico border in 1907-8 recruited 16,479 Mexicans for railroad construction alone. Other agencies recruited Mexican and Mexican American workers for the cotton industry and mining in West Texas. The railroads and agribusinesses made no distinction between citizen and foreign national. Both classes of Mexican American were subjected to the same state and local labor controls. (Foley 1997, 44; Daniel, FEPC, 128)

Other labor controls included vagrancy laws, indebtedness, and county passes. By 1927, Willacy County was implementing Vagrancy Laws enforced by the county sheriff, the Justice of the Peace, and

the County Attorney. They systematically arrested Mexican American laborers traveling in search of higher wages for not having the approved "county passes" signed by an Anglo employer or county official. The Mexican American workers were convicted, and paroled as "convict labor" to Anglo-American growers. When asked about the legality of these controls, a U.S. Dept. of Justice agent rationalized it, saying it was necessary at harvest time. To support the growers, the state government co-ordinated the labor control devices with them and the South Texas chambers of commerce. In 1927, the state legislators pressed the Texas State Employment Division to assist the growers. The legislature passed the Emigrant Labor Agency Laws to keep the Mexican American labor force from being recruited by out-of-state recruiters. The state controls included requirements that out-of-state recruiters pay prohibitive bonds, fees, and taxes. And in 1934, the Texas Farm Placement Service began to maintain check points on highways in order to direct Mexican American labor to farmers. In so doing, the state government helped to create local labor surpluses to drive wages down, and ostensibly to prevent migrants from "aimless wandering" in search of higher wages. (Montejano 1987, pp. 205, 210- 12)

[16] South Texas agribusinessmen began to use Taylorism and professional management in their control of labor. In South Texas, Taylorism meant control of the Mexican American labor force. By 1930, Corpus Christi led the nation in cotton production and profits mainly through the complete control of the large Mexican American labor force. These commercial farmers established a system of controls that included racial stratification of labor, company towns and armed guards. In 1929, for example the

Chapman Ranch had 18,000 acres in Nueces County. It gave Anglo-American farmers 160-acre plots to be worked by Mexican American workers, who comprised 97% of the labor force, but received no land plots. Chapman divided his workers by race, providing one Anglo school and one "Mexican School" for his Mexican American workers, separate churches, a hardware store, a grocery store, and a dry goods store where workers were required to pay with his company scrip as a condition of the oral employment agreement. Mexican American laborers were issued coupons which they had to use in ranch store, ostensibly for "salary advance," but in reality to keep them in debt as a further control device.

Even larger was the Taft Ranch near Corpus Christi. Around 1900, near Corpus, the 200,000-acre Taft Ranch comprised 39% of the San Patricio County population. Like the Chapman Ranch, owner Charles Phelps Taft kept his Mexican American laborers separate from Anglos, who were also given 160-acre farms. His workers were also kept in company towns, provided housing, grocery stores, dry good stores, separate schools, and separate churches. The Taft Ranch hired only Mexican Americans with a wife and children in order to maintain more stable workers. The Mexican American workers lived on the Taft Ranch under a shadow of armed intimidation. The Ranch sponsored "rifle clubs" consisting of its Anglo-American farmers and overseers. It also admittedly had a machine gun, and issued the Anglos .30-.30s and .38 caliber pistols. The Anglo overseers held target practice on the ranch ostensibly to preclude any possibility of an "an uprising of some sort" among Mexican American workers. Charles Phelps Taft, the owner, was Pres. William Howard Taft's brother. He kept his Mexican American workers in debt. He

periodically "rounded up" his Mexican American and black workers and voted them for President Wm. Howard Taft, and other selected candidates. (Foley 1997, pp. 81, 119, 121-7, 132-3) The Chapman Ranch and Taft Ranch developed models of labor control that were replicated in varying forms across the state. In 1916, for example, the Commission on Industrial Relations reported that Mexican American agricultural workers were chained and guarded by armed men with shotguns. One grower told the commission that Mexican Americans were better labor because "you can treat them in any manner and not be [17] bothered with lawsuits. . ." Other industries also implemented a dual wage system for its Anglo and Mexican American workers as late as 1942 when the War Production Board reported that "the differentials between Mexican and American white workers is as high as $1 per shift." (Foley 1997, 49; Daniel, FEPC, 77)

In labor controls as in political control, the Texas Rangers played a prominent role by intimidating the Mexican American workers to preclude organization or protest. In 1913, for example, Texas Rangers broke a strike in El Paso where Mexican Americans made up 60% of the work force. The 650 smelter workers went on a strike, which was broken by Texas Rangers using violence and hired company henchmen. Likewise, in 1966, when national civil rights leader Cesar Chavez came to the Rio Grande Valley to support a Mexican American farmworker strike, the Texas Rangers used intimidation, arrests, and violence to harass the strikers. (Gomez-Quinonez 1994, 79, 255; Daniel, FEPC, 128) Throughout this period, government investigations continually reported discriminatory practices against Mexican American workers. Even in World War II, the Fair

Employment Practices Commission found a dual wage system in the Texas oil industry. Some Texas companies, like Humble, Sinclair, and Shell refused to hire Mexican Americans. And unions like the CIO and other unions collaborated with the companies to establish the dual wage systems, segregated work areas, separate occupational categories, and restrictions of Mexican Americans in skilled work. The Dallas office Director, Dr. Carlos Castaneda, found that Texas mining and oil companies used token Mexican American workers "to avoid an open charge of discrimination." His conclusion, however, was that "Discrimination against the Latin-American worker has not been eliminated." (Zamora 1992, 327; Daniel, FEPC, 150)

Even after the war, as Mexican Americans took 10,000 of the 35,000 jobs at Kelly A.F.B. in San Antonio, the U.S. Commission of Civil Rights reported that they "continued to be concentrated in the lower pay scales. . ." through a network of discriminatory devices. Typically, an Anglo manager would "Pass-Over" a Mexican American worker for an Anglo on hiring and promotions. The personnel evaluation system was found to use a "Dummy Profile" for promoting and hiring pre-selected Anglos. Many of the Mexican American workers were performing skilled jobs at lower rate of pay. (U.S. Com. Civ Rts, Employment, 3; Montejano 1987, 269) In agriculture, the farm ownership patterns had seen a replacement of the family farm by corporate agribusiness. Likewise the Mexican American agricultural force changed to a migrant force. The Mexican American farm labor force became an interstate migrant labor force [18] which increased "from 95,000 in 1963 to 129,000 in 1966." One study of the migrant force of 350,000 in the Lubbock area in

1939 was 85% Mexican American. And according to a recent study, conditions for Mexcican American migrant workers have not improved significantly. The Texas Office of Rural Health reported recently that their work is still "the highest of all industries in work-related deaths, with a rate of 52 deaths per 1,000,000 workers." (Montejano 1987, 273; Tijerina 1979, 38; Richardson 1999, 33)

Mexican Towns/ Barrios

Another device promoted by business and local governments to keep Mexican American workers separate was the formation of an exclusively Mexican American town or neighborhood. As Anglo-American farmers migrated into the Rio Grande Valley from midwestern states in the 1890s, they used race as a device to segregate not only their workers but whole towns. They were attracted by land promoters with promises of low labor wages and cheap agricultural lands, but they rejected the local Mexican American culture and population. According to a study of the Valley counties, "Racially segregated schools and residential patterns emerged" at the turn of the century. Many of these segregated or exclusively Mexican American towns were planned and developed by powerful growers specifically to isolate their labor force. In 1910, for example, the Taft Ranch built Taft and Sinton on ranch land specifically to separate its Mexican American workers from its Anglos. Likewise, other South Texas towns were developed by growers. Asherton was built as a "Mexican Town" by a banker named Richardson. Kingsville was segregated by the Kleberg Town & Improvement Company. Weslaco was built as a segregatd town in 1921 by municipal ordinance using the Missouri Pacific Railroad tracks. McAllen was segregated by the formal policies of the Real Estate

Board and the Delta Development Company. (Anders 1982, 142; Montejano 1987, 167)

In the larger cities of the state, Mexican immigrnts and native Mexican American citizens alike were simply not allowed to settle within the city limits. Segregated into barrios, they were commonly denied access to business, to neighborhoods, to education, and to city services. As the new Texas cities grew, they took the shape of a segregated community. When Mexican Americans returned to Austin after the vigilante raids, for example, they were allowed to remain primarily as a disfranchised labor force living in the county dump. Those in Dallas, Lubbock, and Houston settled across the railroad tracks near the railroad depots or stockyards. In this racially and politically segregated barrio, the Mexican American citizenry of Texas developed an [19] unequal status which lingers to the present day as a result of the decades of denial. In general, the Texas barrios were described as deplorable, isolated from city services, and lacking political representation.

The Dallas barrio, for example, developed along Mill Creek across the Trinity River from downtown Dallas after the Civil War. Mexican immigrants were housed near the railroad depot and Mexican American citizens moved into the barrio called "Cement City" because of the cement works. It was described as having dilapidated houses with "No sewage—no sanitation. . . worse conditions." A newspaper report said in 1944 that "Every such congested, overcrowded, unhealthful center is like a canker or eating sore on our fair city." It added that the substandard housing was "little improved" through the decades of the 20th century, and were "hardly fit for housing livestock on a farm." Indeed "Little Mexico," as the Dallas barrio was later called,

ranked first in tuberculosis deaths, pellagra deaths, and overall death rate for the city. As stated above, these conditions would leave a lingering effect on the Mexican American community. A report, U.S. Census Tract X of Dallas in 1970 showed that the barrio had the lowest education and income levels, and the highest infant mortality rate in Dallas as late as 1970. (Achor 1978, pp. 34, 35, & 63)

Through the decades, Dallas continued to develop a "sharp division between the Anglo and non-White population," the highest of thirty-five southwestern U.S. cities according to a report in 1960. After urban renewal and school desegregation in the 1970s, statistics revealed that "Dallas has still maintained separate patterns of settlement." As a result of the economic and racial segregation, one study reported in 1972 that "Minority access to political power is severely limited—in fact, it was almost nonexistent for many years." The study indicated that from 1931 to the early 1970s, an informal council of Anglo political leaders called the Dallas Citizens Council used its political arm, the Citizens Charter Association (CCA) to influence local elections. In so doing, the CCA denied Mexican American access to equitable representation in local elections, and virtually prohibited broader representation in state and federal legislation. The CCA typically slated pro-business Anglo candidates for all elections and never had a single Hispanic in any of the eighteen Texas legislative districts, three state senatorial districts, or six U.S. congressional districts in Dallas County.

The Mexican American community of Dallas began to organize for democratic activities, and was "radicalized" by a singularly revealing incident in 1972. Barrio residents had long complained of police brutality, but little evidence could be found to verify

it until a Dallas [20] policeman shot a Mexican American child in an interrogation. The police officer, Darrel Cain, used his .357 magnum revolver to force a confession from 12-year-old Santos Rodriguez (later found to be innocent) in a deadly game of Russian roulette. The gruesome incident agitated Mexican Americans across the state, although it had no impact on the segregation or political representation for the Dallas barrio. (*Ibid.*, pp. 50, 59. 60, 148) Indeed, Mexican American children were still attending segregated schools in Dallas in the 1950s. Not only were they restricted to four segregated elementary schools, their only high school until 1960 was Crozier Tech, a vocational school. A turbulent desegregation of schools in the 1960s seemed to exacerbate matters by leading to a massive "White Flight" out of the inner city schools. The Dallas Planning Department reported that100,000 whites had fled Dallas to the suburbs between 1968 and 1973, leaving Dallas Independent School District about 50% African American and 20% Mexican American. With the "White Flight" went the tax base as businesses followed the Anglos to Arlington, Plano, and Irving. Later developments have tended to transform the inner city area through gentrification, but none of the newer trends substantially increased Mexican American representation. (Phillips 2006, pp. 127 & 167)

Like Dallas, the first Mexican immigrants and Mexican American citizens in Houston moved in with the railroads in a segregated neighborhood called "El Crisol." By 1910 another barrio emerged near the railroad depot of the Southern Pacific called El Segundo Barrio. The Houston barrio, like other Texas barrios, was described as late as World War II as having "dismally poor housing conditions" with most

residents living in "two, three room houses, very cheaply constructed of unpainted lumber." The barrio reportedly had little running water or heat, and many of its residents living in boxcars with no bedding. The Houston school district established Rusk Elementary School as the single segregated elementary school for Mexican Americans. Rusk was known as the "Mexican School." By the late 1920s and 1930s, new barrios grew up in Houston's Second Ward with the largest barrio, Magnolia, near the Houston ship channel. All of these barrios had segregated schools, that although lacking in physical and curriculum advantages, stressed American-ization and corporeal punishment for speaking Spanish. (Rosales 1981, pp. 224 – 248)

By 1875 when the Mexican American population of Austin began to recover from the vigilante raids, they were allowed to settle only at the edge of town. The Aursin barrio was in the city dump where the city garbage was dumped over the bluff into the Colorado River, presently located at the Congress Avenue bridge downtown. As the Mexican American [21] population increased, only a few lived outside of the city dump grounds, some along the upper reaches of Waller Creek at present-day 25th Street. An analysis of segregation in Austin between 1875 and 1910 indicated that although other ethnic groups—even the Irish—had integrated into the city, "Not so the Mexicans who continued to live . . in other physically and socially marginal pockets." (Manaster 1986, 99) Nor were they allowed burial in the city cemetery, but outside the cemetery instead, in the pauper's burial ground labeled as the "Strangers' Ground." (Austin Oakwood Cemetery, Book I) Conditions in the city dump were described in a complaint by former city Alderman A.J. Zilker in 1899. Zilker reported

that city dump had collected 10,000 loads of trash in the last 15 months alone, including dead animals and vegegable matter that created an "unbearable" stench for "a large number of people live near the dump. . ." (*Austin Daily Tribune* 1899, p. 4) A university sociologist, William B. Hamilton, conducted a social survey of Austin in 1913, in which he described the Mexican-American neighborhood in the city dump as living "in the 'Dark Ages' of civic sanitation." The Mexican-American residents lived in "small huts, one and two families in a one-room shanty, and little children are forced to play out in the dusty street on the filthy, dirty creek or river bank where their homes are located." (Hamilton 1913, 9)

By the late 1920s, Austin policy makers had begun to realize that they had inadverdently forced the Mexican Americans to settle an area that became prime real estate on Congress Avenue at the river. Their response was to conduct a model of urban planning that not only created the first city-planned Texas barrio, but to invent the modern American model of a housing project. They hired a consulting agency which proposed to move the Mexican Americans and African Americans out of the city dump and out of the Clarksville neighborhood, both along the north bank of the river. Specifically, it proposed moving them out of the now "desireable" area for construction of a proposed Waller Creek Driveway and a broad new Congress Avenue. The report recognized that the property was "at present occupied by very unsightly and unsanitary shacks inhabited by negroes. With these buildings removed for the trafficway, most of the remaining property will be of substantial and more desireable type." Stating that the property "will increase its value many times. . ." the report used coded language to

indicate that the Mexican-American "blighted district" was the reason for current low value, but "if the reason is removed, the value will increase." The consultants advised the city planners to avoid "unconstitutional" attempts like the vigilante raids previously used. It suggested that they simply create "a negro district, as an incentive to draw the negro population to this area" in [22] East Austin to avoid duplication of segregated parks, schools, and facilities. It also included a suggested removal of the Mexican American neighborhood along with the Negro population. (Austin 1928, pp. 46 - 57)

The City of Austin adopted the consultant report as a "Master Plan" in 1929 "as official city policy the goal of concentrating Blacks in East Austin." It segregated municipal services, and in coordination with the city planners, "the school system promoted the City policy by building all segregated schools." To provide for tacit enforcement of the removal, property restrictions in the private sector "prohibited Blacks, and in some cases Mexican-Americans from buying or renting . . outside East Austin." (Austin Human Relations Commission 1979) Meanwhile, in order to entice the minorities to move into the East Austin barrio, Honorable U.S. Congressman Lyndon B. Johnson introduced a bill authorizing the U.S. Housing Authority to fund housing projects "enhance the value not only of the surrounding property but of all property in Austin." (U.S. Congress 1933) With the federal funds appropriated by Congressman Johnson, Austin boasted the "Nation's First Completed [Housing] Project" with three sites selected for "separate projects for white families, Mexican families, and negro families." By 1940 and 1950, Austin had become the most segregated major city in Texas based on Index of Dissimilarity. (Austin

1979, pp. 1-15; Austin Housing Authority 1948, p. 12) As the 20th century progressed, Austin segregation became even more pronounced. Even after WWII, when the returning veterans, Mexican American veterans included, the city continued forced segregation. Texas Land Commissioner Bascom Giles developed two housing sub-divisions in north Austin which he promoted as the Duplex Nation and the Wilshire Historic District near the Austin Mueller Airport. Giles developed the sub-divisions specifically for the returning WWII veterans, but he included "restrictive covenant which prohibited non-whites from owning or residing in the neighborhood." Thus, even returning Mexican American veterans were restricted to the same barrio and excluded from the modern housing provided for Anglo American residents of Austin. (Texas 2006, pp. 15 & 16)

Although segregated from the earliest days of the barrio, Austin's Mexican Americans apparently always voted, though in significantly smaller percentages than Anglo Americans or even European immigrants. The 1867 voter registration records of Travis County indicate the 128 Mexican Americans registered among the total 4,838 other voters, mostly Anglo American, but many listed as immigrants from Germany, Prussia, England, Bavaria, Africa, Ireland, some of these listed as "Naturalized." Mexican Americans voted in small numbers, but perhaps the [23] most deleterious effect was caused by the implementation of the poll tax. A case study of voting in 1933 Austin election illustrates the negative impact of the poll tax on Mexican American voting. Mexican Americans show significant decline in registration and even more decline in voting. Charts and tables in this study show less than 3% Mexican Americans voted after implementation of the poll tax.

Analysis also shows that at the same time, according to the report that "whites augment their strength . . solely at the expense of the Mexican element." (Martin 1933, p. 929) After the poll tax was repealed, Austin eligible voter numbers went up from 42,300 to 71,300. The 1967 election was first election since the repeal, and according to the newspaper reports, "The turnout was the biggest ever for a city election—32,892. . ," although it still reflected a low percentage of eligible voters of only 46%. (*Austin American-Statesman* 1967, p. A-15) Mexican Americans had begun to actively campaign for only-Anglo candidates with a Mexican American advertising in the newspaper promoting their Anglo candidate, but after repeal of the poll tax they began to run their own candidates like S.J. "Buddy" Ruiz, the first local Mexican American candidate for an Austin elected post. (*Austin American-Statesman* 1969)

In order to achieve the residential segregation, many other Texas cities used restrictive covenants and deed restrictions, specifically directed at the Mexican American population. In 1977, one study reported that "real estate covenants along racial and ethnic lines continue to have substantial effect on housing patterns" in Corpus Christi and San Antonio. In 1947, later Congressman Henry B. Gonzalez organized the Pan American Progressive Association (PAPA) to document restrictive housing in San Antonio. He reported restrictive covenants in home mortgages which effectively prohibited Mexican American moving into the more affluent neighborhoods of the city. Many other cities created a segregated Mexican American section or "barrio" using subtle tactics like smaller lot sizes, lower home costs, and square footage covenants. These patterns quickly established a pattern that racist practices

would later enforce. In 1920, for example, the Lockhart school superintendent said "If a Mexican bought a lot among the whites they would burn him out." Many towns openly posted signs that read "No lots sold to Mexicans" and "No Mexicans admitted." The practice of segregation led to congestion and social problems such as infant mortality and disease. As an example, San Antonio, had the highest rate of tuberculosis in the U.S. in the 1930s. The denigration of the Mexican American as a second-class citizen in Texas eventually led to social practices and attitudes that were articulated and implemented socially. As an example, the distinguished lawyer and State Rep. [24] J.T. Canales was publicly refered to as the "greaser from Brownsville" in 1910 legislative session. Across the state, Mexican Americans were denied service in restaurants, swimming pools, barber shops, and in public. Even after World War II in 1946 two Mexican American veterans were refused service in Helotes, near San Antonio. The Anglo merchant stated that their veteran status had no effect on the discriminatory practice. Contemporary newspapers indicated that such treatment against Mexican American was common "throughout the entire state." (US Comsn. Civ. Rts., Unfinished, 185; San Miguel 1987, pp. 15, 68 115; Foley 1997, 42; Rosales 2000, 16)

Official Education Policy

Education is one of the most vulnerable areas of democratic life to racial discrimination not only because it is subject to local prejudices, but also because it tends to perpetuate the racial polarization. The political, economic, and social segregation in Texas during the 20th century had strong ramifications in education as well. Indeed, education was to a great extent the primary racial advantage in

those other spheres of life. The destructive restrictions against Mexican Americans in Texas began shortly after the government was taken over by Anglo-American power. In 1841, the Republic of Texas Legislature passed a Joint Resolution that suspended printing laws in Spanish. Ironically, only three years later, it chartered a foreign-language German university. In 1856, a law was passed allowing Spanish in the courts of Texas only if the J.P. and the primary party could not speak English.

In an 1858 amendment to an 1856 school law, the state legislature made English the "Principle language" of instruction. It strengthened this in 1870 by requiring English for instruction in all public schools. In this racially divided social environment, Texas public education developed as an exclusive and segregated system at the state and local level. The principle of racial segregation was formally established in the Texas, Constitution of 1876, which stated in Article 7 § 7 that "Separate schools shall be provided . ." Many schools interpreted this to apply to the Mexican American as well as the Negro. Throughout the state, schools excluded Mexican Americans until the 1890s. (Taylor 1934, p. 192) When they did provide education for Mexican American students, many cities across Texas began to segregate their Mexican American students into separate schools called "Mexican Schools." Houston, San Antonio, and El Paso had "Mexican Schools" by the turn of the century. Mexican American attendance at these segregated schools became mandatory. By 1921, the school board in Alice [25] ordered that "all Latin Americans attend Nayer . . Anglo Saxons attend Hobbs-Strickland School." By the turn of century, Mexican American students were forced by school board policies to bypass neighboring

Anglo schools to attend Mexican American segregated schools. And many of these "Mexican Schools," offered schooling only to the 6th grade. (Garcia 1981, 110; Rangel 1972, pp. 315, 367)

By the 1920s, state officials began to issue statements of policy that singled out the Mexican American culture and students for special restrictions. One of these officials was Annie Webb Blanton, the state superintendent of public instruction. In the 1920s, she promoted a policy to make Texas schools teach "Americanization," which was a euphemism for Angloconformity. In opposition to the Mexican American culture, she proclaimed "if you wish to preserve, in our state, the language and the custom of another land, you have no right to this." In response to her policy, E.E. Davis and C.T. Gray conducted "A Study of Rural Schools in Karnes County," which they published in the University of Texas Bulletin #2246 in December, 1922. In the report they stated "In general, it should be stated that separate schools are preferable for both the Mexican and the Americans." Their reason was that Americans "do not like to go to school with the dirty 'greaser' type of Mexican child." (Davis 1916, pp. 9, 10, 41-43 pp. 9, 10, 41-43) This was followed by a report by George A. Works, Texas Education Survey Reports, under the auspices of the Texas Educational Survey Commission in 1925. In this statewide survey, Works stated that "it is time to segregate, if it is done on educational grounds. . ." (Works 1925, p. 213.) Thus segregation received endorsement not only from the Superintendent of Public Instruction and the state, but from University of Texas scholars as well.

School boards then began to follow a widespread practice of neglecting Mexican American student enrollment almost completely, condoned by

Superintendent Blanton. By 1920, 70% of Mexican American school-age children in Texas were not enrolled as opposed to only 22% of the Anglo non-enrolled students, although mandatory school attendance had been required by law since the 1880s in Texas. In a classic study of education in Texas, University of Texas Professor H.T. Manuel in 1928 found that 40% of the Mexican American students were not enrolled at state level as compared to 9% of the Anglo students. Manuel found only 4% of the Mexican American students were attending junior high and high school as opposed to 60% of the Anglo students. During this time period, many South Texas school officials and principals in Nueces County and Dimmit County reported that they simply did not enforce Mexican American student enrollment or attendance. (San Miguel 1987, pp. 6-7; 24, 32, 49; Garcia 1981, [26] 110; Rangel 1972, 315) Much of the educational neglect was due to excluding the Mexican American students, but much was due to segregation in the school district boundaries.

Segregated Districts

The "Mexican School" became a widespread phenomenon in Texas education. The various school districts segregated their Mexican American students, but they provided significantly poorer facilities for them. The "Mexican School" segregation spread rapidly across the state. In 1930, for example over 40 school districts had Mexican schools. A 1942 study by Wilson Little found 50% of the Mexican American students segregated through the 6th grade in 122 districts in "widely distributed and representative counties" of the state. Few Mexican American students went beyond the 6th grade. A typical example of the racial stratification in housing, labor, and education was seen in Cotulla, where

future President Lyndon B. Johnson taught at the "Mexican School." In 1928, he taught in Welhausen Elementary School for Latin Americans. Across town, Amanda Burks Elementary was "limited to Anglo-Americans." In a typical stratification, 80% of the population was Mexican American, and barrio segregated. LBJ wrote about the racial situation, noting that his girlfriend in the neighboring town was in the Ku Klux Klan. By the 1940s, whole sections of the state had segregated "Mexican School" belts of towns, many of these developed specifically by the growers to isolate the Mexican Americans. In the Lower Valley, Edinburg, Harlingen, and San Benito school systems were segregated, while on Hwy. 83, Mercedes, McAllen, Mission, Pharr, San Juan, Alamo, and Weslaco districts were completely segregated. On the Gulf Coast in South Texas, Raymondville, Kingsville, Robstown, Kenedy, and Taft schools districts were segregated, while in the Winter Garden, Crystal City, Carrizo Springs, Asherton, and Frio Town were segregated towns with segregated schools. (Montejano 1987, 168; Pycior 1997, 14; San Miguel 1987, 56; Civil Rts. Study, 13)

In the larger cities, the school board policy was to segregate whole school districts, or to segregate the Mexican American students into predominantly Mexican American schools. In 1900 Rusk Elementary was established as Houston's first Mexican school. Later, the Houston school board built Lorenzo de Zavala, Hawthorne, Dow, Elysian Street, Jones, and Lubbock exclusively for Mexican Americans. These students were rarely encouraged to go beyond the 6th grade. By 1940, however, Mexican Americans began to enter high schools, when about 3% of the high school students were Mexican American. (San Miguel 2001, pp. 12, 32) A report for the school year 1942-43

reported that there were 260,759 "Latin" or Mexican American students [27] in Texas or 20% of the white. Much of the segregation was, of course, due to the initial segregation of the housing and "Mexican Towns," but much of it was due to outright gerrymandering of the district boundaries within a city. A survey of superintendents revealed that "While many claimed that there was no segregation in their schools, some admitted that the drawing-up of district boundary lines was deliberately made to enclose areas predominantly Latin." (Kuhr 1971, 73) In the study by Wilson Little, he stated that many superintendents surveyed were asked why they segregated their Latin students. He reported that, "In laying out the attendance areas within a given school district, therefore, it is not at all uncommon to find that one school is attended only by Spanish-speaking children and that another school in the same district is attended only by Anglo-American students." As a result, he found that "Separate housing for Spanish-speaking children is a fixed practice in many school systems in Texas." (Little 1994, 59)

After the 1920s, Mexican American students were put into "developmental" classes and vocational classes, ostensibly because they needed special attention. Unfortunately, students were mixed with a variety of other students who were blind, spoke Spanish-only, were delinquents, or were bright students who simply did not like school. The San Antonio schools were reported in 1934 to have similar segregation. In that year, Alonso Perales and Eleuterio Escobar founded the Liga Pro-Defensa Escolar or School Improvement League in San Antonio. In their study of Mexican American schools, they reported statistics comparing West Side Mexican schools to the Anglo schools. The Mexican American

schools had 12,334 students compared to 12,224 Anglo students. But the Mexican American students were in only 11 schools compared to 28 Anglo schools. The Mexican American schools had 23 acres of space compared to 82 acres for the Anglo school grounds. The Mexican American schools had 48 students per room compared to 23 Anglo students per room. The school funding revealed similar contrast, as the school board spent $24.50 for each Mexican American student compared to $35.96 average spending per Anglo pupil. Similar discriminatory funding was revealed in Nueces and Dimmit Counties. In 1934, noted historian Paul S. Taylor interviewed a Nueces Co. superintendent, who openly admitted that 100% of the $18,000 property tax revenue "goes on the white school." (San Miguel 2001, pp. 12, 32; San Miguel 1987, 54; Garcia 1989, 66)

Gerrymandering of attendance zones within a district became widespread by the late 1940s. Charles Ray Akin wrote his Master's thesis at the University of Texas at Austin in 1955 on "A Study of School Boundaries in East Austin, Texas" under the distinguished education scholar George I. Sanchez. Aiken compared the "Mexican School" Zavala and the Anglo school [28] Metz in attendance. He stated that "there exists the possible basis for a charge of segregation, especially since Zavala is 100 per cent composed of Latins, although some Anglos live nearer here than to Metz where they attend; [and] 4) since Metz and Zavala are located within three blocks of each other. . ." (Aikin 1951, 28)

Later, in 1954, famed lawyer Gus Garcia led a group of Mexican American parents in a petition to Dr. J.W. Edgar, State Commissioner of Education on whether a "zone line" for the new Gillet Jr. High in Kingsville, Texas was legal. The line made the school

100% Mexican American in attendance. Although the Kingsville I.S.D. Supt. George W. Wier said "that the zoning boundaries were set up on the basis of student load and other factors" and that there was "no intention to segregate," Garcia argued otherwise. In a newspaper article, he stated that the line was "more crooked than a sick snake." ["*está mas chueca que una vívora enferma*"] In another article to the *Corpus Christi Caller*, Garcia accused the school of making the school "predominantly 'Mexican' either by virtue of gerrymandering or geographical location." (Garcia Papers, Mexican American Library, University of Texas at Austin)

One of the most salient characteristics in discrimination of Mexican Americans in Texas is the formal role played by government and school officials. There is ample evidence that the state "embraced" segregation as a formal concept in education of its Mexican American citizens. A Texas Education Agency survey in 1921 reported overcrowded Mexican American schools and half-day sessions for Mexican American students. The state agency made no comment or suggestion that the practice was inadequate. And throughout the first half of the 20th century, the state Attorney General systematically approved construction bonds submitted as required by the various independent school districts for his approval. The bond packages frequently called for construction of segregated "Mexican" Schools, but received customary approval with no mention or state sanctions for the segregated facilities. In 1920, Gov. Wm. P. Hobby called a special session to pass education laws, including a 1922 law to make English the "medium of instruction" in public schools. Following the lead of the governor and attorney general, the Texas State Teachers Association (TSTA)

at their 1922 convention, passed a resolution opposing any but the English language in school. The state's teachers proclaimed that "Respect for our Flag should carry with respect for our Language and loyalty to it." And in 1925, the legislature passed a law specifying that schools "shall use the English language exclusively" in public education. With the formal policy equating English with loyalty, Texas schools began exclusively to teach Mexican American students hygiene, English, drawing, and music with the [29] assumption that they needed to be clean and divest themselves of their Spanish accent and "all things Mexican." (Rangel 1972, pp. 318-19; San Miguel, 1987 pp. 25, 35, 45)

Mexican American Challenge

As Mexican American parents and civic leaders began to pereive the official nature of discrimination in the mid-20th century, they initiated formal protests and legal challenges to the agencies and government. Limited in resources, the Mexican American challengers were also limited in their success to end discrimination, but they established a legal foundation for many advancements. The "first challenge" to segregated schools in Texas was in 1928 in Charlotte, Atascosa County. The parents of Amanda Vela protested to the school superintendent that she did not live in the predominantly Mexican American district, and she did not speak any Spanish; therefore, they wanted her to attend the Anglo school. The school board trustees resisted it, but the superintendent conceded that the Mexican Americans should not be segregated. The State School Board upheld the superintendent's decision to let her into the Anglo school, notwithstanding the trustee's resistance. The case revealed early on the consistent pattern of recalcitrance that local school

officials would show toward integrated schools. This was evident in the school districts of Beeville, Sinton, Elgin, Bastrop, and Cotulla when attorney Gus Garcia told Atty. Gen. Price Daniel that Texas schools were using "a subterfuge to practice segregation" after the 1947 *Mendez v. Westminster* case. Gen. Daniel denied the subterfuge.

Then in 1948, Garcia filed a case against the Bastrop I.S.D., and the judge found that the district was illegally segregating the Mexican American students. In its decision, the court added a proviso, however, that segregation was acceptable in 1st grade "solely for instruction purposes." The Delgado "proviso" led to evasive tactics by many other school districts to segregate Mexican American students who had dubious need of segregation for instructional purposes. In 1957, the League of United Latin American Citizens (LULAC) sued Driscoll I.S.D., which was using the Delgado proviso to evade the court's ruling. In Driscoll, one little girl who was segregated for "instructional purposes" on the basis of language was found to be proficient only in English. Moreover, the school system had failed to provide any "instructional" programs for the segregated students. By the mid-1950s, other schools across the state used freedom of choice plans, selected student transfer and transportation plans, and classification systems based on language or scholastic ability to maintain segregation. These programs did not [30] enhance the education of Mexican Americans in any way, and served only to perpetuate and justify the segregation.

After the frustrating legal challenges met only with evasion and subterfuge, Mexican American civic leaders began a different approach to improving their schools. One classic example was the development of an early school program called the "Little School of

400." This pre-school program was funded personally by a Houston restauranteur, and president of LULAC, Felix Tijerina in 1955. The Texas legislature later adopted Little School of 400 as Texas Pre-School Program, but by 1967, only 12% of eligible schools were offering it to their students. In 1967 through 1970, Mexican American students took the initiative from their parents and civic leaders to conduct their own walk-outs and demonstrations to protest insensitive curriculum and discriminatory practices in high schools and colleges. Mexican American students conducted school boycotts in Crystal City, Kingsville, and Edcouch-Elsa. In Kingsville, the police arrested 110 Mexican American students, and the boycotts yielded minor concessions from the school boards, but the actions brought public attention to the segregation and discrimination. Also, the boycotts spurred the federal government's Department of Health, Education, and Welfare (HEW) to take legal action against offending school districts. By 1972, HEW gained compliance in many South Texas towns like Bishop, Lyford, Los Fresnos, Beeville, and Weslaco, and it put Del Rio under court order for compliance. (San Miguel 1987, pp. 76, 120, 123, 134; Rangel 1972, 369)

Legacy

The legacy of 150 years of multi-faceted government-condoned discrimination against Mexican Americans in Texas is a state educational system that maintains a high drop out rate and is still characterized by widespread segregation. One of the vestiges of the years of "Mexican Schools" is the continued formation, construction, and maintenance of schools and school districts that are imbalanced compared to the number of Mexican American students in the community or district. Many Texas

cities now have whole segregated districts that have replaced the old "Mexican Schools." In Nueces County, for example, a 1968 federal agency study found racially separated contiguous districts. The predominantly Mexican American school district in Robstown, which was established by Robert Kleberg as a segregated town for his Mexican American agricultural labor force, is adjoining the Callalen I.S.D., which is predominantly Anglo. In Val Verde County, the predominantly Mexican American San Felipe [31] I.S.D. adjoins the all-white Del Rio I.S.D., and in Bexar County, the predominantly Mexican American districts of Edgewood and Harlandale are adjoining Anglo districts in San Antonio. By the 1960s, 50% or more of Mexican American students in Texas were segregated. Worse, not only students but even Mexican American teachers were also segregated or neglected. In 1968, the Anglo/Mexican American teacher ratio was reported to be 17:1. Mexican American teachers comprised only 4.9% of the teachers in Texas. And in the Rio Grande Valley, where Mexican Americans comprised 64% of the student enrollment, only 7% of the teachers were Mexican American. Likewise, Mexican American principals comprised only 3.4% of Texas principals. These low statistics were found to be similar for Mexican American school board members and school administrative staff, with Mexican Americans overrepresented in the custodial staff numbers. The latest studies reveal that even in the 1990s, the percentage of Mexican American high school administrators was only 65% for schools that were over 90% Mexican American in enrollment. (Civil Rts. Study, pp. 21, 23, 30, 42; Richardson 1999, 132)

The social and academic vestiges of systematic discrimination and segregation of Mexican Americans

also continue to yield statistics that place Texas in an unenviable position among other states. A 1977 report issued by the U.S. Commission on Civil Rights reported that 19% of the Mexican Americans over age 25 in Texas were illiterate. Mexican Americans had twice the Anglo unemployment rate, and 15% of them still lived in overcrowded housing with inadequate plumbing as compared to the Anglo 1.7%. A clear holdover to the Texas "Mexican town" was the 70% of Mexican Americans in Texas who still lived in barrios. In San Antonio, for example, a 1980 study concluded that the limited residential access of middle-class Mexican Americans to the three affluent northern census tracts tended also to limit their educational access. (US Comsn. Civ. Rts., Unfinished, 184; Rosales 2001, 12) In 1981, Judge William Wayne Justice found the state bilingual plan inadequate, and that measures had not been taken to fully "remove the disabling vestiges of past *de jure* discrimination." He ordered corrections to train teachers, identify students in Limited English Proficiency (LEP), and to expand the program. And in 1980, the Southwest Voter Registration and Education Project (SVREP) found that Mexican Americans were underrepresented on school boards in 92% of the 361 Texas school districts where Mexican Americans make up over 20% of the school population. In many other comparisons, Texas educational statistics show evidence of past discrimination. A nationally publicized report in 1984 by the National Commission on Secondary Schooling reported that in Texas, the majority of Mexican American students are still in "inferior and [32] highly segregated schools." They are "extremely overage" and "disproportionally enrolled in remedial English classes." Texas Mexican American students still have an unacceptably "high dropout" rate, and

receive poor preparation for college. Reduced Mexican American voter participation has also reflected the past discriminatory devices in Texas. Until the 1980s, 179 of the 214 large cities in Texas had at-large electoral systems, or 83%. In general, the at-large nonpartisan electoral system combined with the poll tax and other obstacles to hinder voter participation of Mexican Americans throughout most the twentieth century. (San Miguel 1987, pp. xv, 201; Montejano 1987, 292; Rosales, 2000, 13; U.S. Commission on Civil Rights, Texas, 47)

As a result of the historical discrimination against Mexican Americans in Texas, they still bear the effects of this discrimination which hinders their ability to participate effectively in the political process. It is clear that the lower rates of voter registration, voting, [33] and running for elective office are directly related to this discrimination.

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EXHIBIT TWO

Expert Report of Dr. F. Arturo Rosales
Gonzalez v. Arizona,
No. 06-CV-01268-ROS (D. Ariz. Dec. 5, 2007)

[1] Report of Dr. F. Arturo Rosales

This report outlines the history of Mexican origin people in the State of Arizona, one which has been characterized by racial and ethnic repression. My academic background provides me with the expertise to conduct the research for this project and to write the following report. I should add that while much of my experience which qualifies me to write this report has national and even international breadth, I have always included the experience of Mexican people in Arizona in my studies.

My present academic position is professor of history at Arizona State University (ASU). I received a Ph.D. from Indiana University in 1978, an M.A. from Stanford University in 1972 and in 1969, I earned a B.A. at Arizona State University. Before returning to ASU in 1980, I was an assistant professor at the University of Houston. My publications and research experience on the experience of Mexicans and Mexican Americans in the United States has been extensive ever since writing a dissertation in 1977 on Mexican immigration to the Chicago area and the emergence of Mexican *colonias* in that city. Since then I have published seven books. While at the University of Houston, I co-edited with Barry J. Kaplan *Houston: A Twentieth Century Urban Frontier* (Port Washington: Associated Faculty Press, 1983), a book which contains a large section on the experience of the city's Mexican population. During 1981-82, as executive director of the NEH funded Association of Southwestern Humanities Councils, I

co-edited with David Foster and contributed to *Hispanics and the Humanities and the Southwest* (Tempe: Center for Latin American Studies, Arizona State University, 1984) a directory of humanities resources dealing with Hispanics in the Southwest. In April of 1996, my book *Chicano! The History of the Mexican American Civil Rights Movement* (Houston: Arte Publico Press, 1996) a companion text to a Public Broadcasting System television series of the same name, was named in 1997 an Outstanding Book on Human Rights in North America by the Gustavus Myers Foundation. In addition, after seven years of researching Mexico City and Washington, D.C. archives and writing, I published *"Pobre_Raza!": Violence,* , *Justice and Mobilization Among Mexico Lindo Immigrants, 1890-1936* (Austin, University of Texas Press, 1999) a book that analyzes the justice system and Mexican immigrants at the beginning of this century. Since then Arte Publico Press has published two more of my works; *Testimonio: A Documentary History of the Mexican American Struggle for Civil Rights* in 2000, and [2] in 2006, *A Dictionary of Latino Civil Rights History*. I am now working on a new book, tentatively titled "Entering Mexico: Repatriates, Tourists, Unwanted Immigrants and Colonization Pipe Dreams, 1920-1940." My publication record also includes 30 journal articles and essays, 20 book reviews, 5 book chapters and over 20 entries in history encyclopedias and dictionaries.

My extensive public and academic service also equips me to provide this report. I have been director of many public programs funded by the Arizona Humanities Council and served as a participant or organizer in numerous others. I have presented in public fora throughout Arizona for ten years as a

speaker for the Humanities on the Road project, a program funded by the Arizona Humanities Council. I have also worked as a consultant for numerous National Endowment for the Humanities funded projects through their Public Programs Division, which deal with historical exhibitions in museums, libraries, and public schools. Presently I am on the advisory committees for the "Reality Works" radio project, called "Race and Reconciliation," and on the "American Lynching: A Documentary Feature" project. My curriculum vita is attached as Exhibit 1 to this report.

[3] **THE REPORT**

This report will view the discrimination history of United States residents of Mexican descent in Arizona. This includes native born citizens, naturalized citizens, legal resident immigrants and undocumented immigrants. The study delineates five areas of discrimination and violations of civil rights.

- **LAND AND PROPERTY RIGHTS**
- **POLITICAL DISENFRANCHISEMENT**
- **THE JUSTICE SYSTEM AND POLICE RELATIONS**
- **CIVILIAN MISTREATMENT OF MEXICANS**
- **GENERAL SEGREGATION**
- **SCHOOL SEGREGATION**
- **DISCRIMINATION IN THE WORKPLACE**
  - **AGRICULTURE**
  - **MINING**

HISTORICAL BACKGROUND

Today approximately 1,600,000 Hispanics live in the state of Arizona out of a total population of six million-over 90 percent of this Hispanic grouping is of Mexican descent. The population grew to this proportion because of vegetative demographic growth and in-migration during the late 20th century. The dramatic increase in the Hispanic population simply reflects the overall growth trend of the state, which in the beginning of the 20th century consisted of population of only 150,000 persons; of that, approximately 12 percent were ethnically Mexican.[87]

Arizona was part of the vast area ceded to the United States by Mexico after that nation lost the Mexican American War. The Treaty of Guadalupe Hidalgo, signed at the end of the war, granted [4] Mexicans who remained in United States territory the constitutional rights of citizens and ostensibly protected their property, culture and religion, and gave them the· right to vote. The territorial acquisition delineated in the Treaty of Guadalupe HidaJgo did not include the area that is now southern Arizona and southwestern New Mexico, a region extending from present-day Yuma along the Gila River (25 miles south of Phoenix) all the way to the Mesilla Valley, where Las Cruces, New Mexico is situated. Under pressure from the Americans, General Antonio L6pez de Santa Anna sold this region to the United States during his return to power in 1853. The Gadsden Treaty perimeters gave Mexicans in the purchased territory the same rights

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[87] US Census Bureau, "State & County QuickFacts," Available at http://quickfacts.census.gov/qfd/states/04000.html; "Population of Arizona," *New York Times,* October 19, 1900, p. 5.

provided by Treaty of Guadalupe Hidalgo.[88] The majority (1,000) of Mexicans lived in the section of the agreement which pertains geographically to Arizona in region in the valleys carved out by the Santa Cruz and the San Pedro Rivers.

LAND AND PROPERTY RIGHTS

While the Treaty of Guadalupe Hidalgo granted constitutional rights to Mexicans who remained in the new political jurisdiction of the United States, most of the guarantees were not upheld. As a result, the economic and political fortunes of Southwest Mexicans declined considerably during their experience with United States rule. Provisions in the Treaty of Guadalupe Hidalgo regarding land holdings safeguarded Hispanic properties, but Southwest land values rose as the Anglo population increased and as the area became more economically developed. Inevitably, intense land competition followed and Mexican property was coveted by developers and Anglo farmers. Thus, divesting Mexicans of their property assumed wholesale proportions throughout the 19th century.[89]

Even though all Mexican properties in the Gadsden Purchase were purportedly protected by the same promises made regarding the protection of Mexican properties in the Treaty of Guadalupe Hidalgo, the Gadsden Treaty made it more difficult to confirm

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[88] James E. Officer, *Hispanic Arizona,* 1536-1858, (Tucson: University of Arizona Press, 1989), p. 133.

[89] See Suzanne Forrest, *The Preservation o/the Village: New Mexico's Hispanics and the New Deal* (Albuquerque: University of New Mexico Press, 1989) and David J. Weber, *Foreigners in Their Native Land; Historical Roots o/the Mexican Americans* (Albuquerque: University of New Mexico Press, 1973) for an excellent description of the this process.

titles by stipulating that they would be [5] valid only if confirming evidence was found in Mexican archives.[90] M. Escalante, the Mexican consul in Tucson in 1878 wrote to the Mexican foreign minister accusing Arizona land speculators and squatters of defrauding Mexican landowners of their property in clear violation of land protection clauses of the Treaty of Guadalupe Hidalgo and the Gadsden Purchase Treaty. According to Escalante, in 1854 the u.s. Congress gave the General Surveyor ofthe Territory of New Mexico and Arizona the power to resolve land disputes involving Mexican titles, but in the twenty four years of the existence of that policy Mexicans in Arizona lost thousands of acres because titles which had been granted during the eras of Spanish or Mexican rule were not honored.[91]

The federal government also became in involved in the usurpation of Mexicans' land. In 1869, preparations were made to expand the Gila Indian Reservation and the federal government surveyed the properties of homesteaders so they could be compensated if their claims to the land were valid. United States Army surveyors believed that 2,500 acres belonging to twenty farmers and speculators were affected; seventeen of the claimants were Mexicans. The federal report described many of the Mexicans as interlopers whose bids were not

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[90] Ray H. Mattison, "Early Spanish and Mexican Settlements in Arizona," *New Mexico Historical Review* 21, no. 4 (October 1946): 290.

[91] M. Escalante, Mexican Consul in Tucson, Arizona, to Mexican Sectetary ofthe Foreign Ministry, August 6, 1878, Archivo Hist6rico de la Secteraria de Relaciones Exteriores (AHSRE) 11-2-106, in Angela Moyano Pahissa (ed.) *Proteccion Consular a Mexicanos en los Estados Unidos* (Mexico: Secretaria de Relaciones Exteriores, 1989), pp. 28-30.

legitimate because they were opportunistically claiming land for its compensation value. The Anglos and Europeans, however, were portrayed by the surveyors as more deserving.[92] As a result most of the Mexican claimants were disqualified from compensation.

The declining status of Arizona Mexicans was also signaled by rapid land loss among Valley of the Sun (Phoenix area) Mexican farmers. This was especially true during the depression caused by the Panic of 1873, a banking crisis which resulted in riots throughout the country and in which [6] Mexicans were forced to leave the Phoenix area after a rash of lynching of Mexicans took place.[93] Between 1870 and 1900 the number of Mexican farmers in Maricopa County declined from seventy-nine to about thirty, even though the Mexican population increased twelve-fold during the three decades.

The most dramatic example of Mexican land loss was the take-over of large tracts of irrigated properties in west Tempe by W. Wormser in the 1890s. Wormser, a merchant, obtained a 7,000 acre farm south of the Salt River by foreclosing on a number of farmers after they could not pay for seed, tools, and other supplies that were advanced at an earlier date. Many of these usurped farmers were the Mexicans who built the San Francisco Canal, a major

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[92] United States. House of Representatives, 41 st Congress, 3d Session, *Survey of Pima and Maricopa Reservation,* pp 1-17.

[93] Nancy Cohen, *Reconstruction of American Liberalism,* 1865-1914 (Chapel Hill: University of North Carolina Press, 2002), pp. 122-124; Bradford Luckingham, *Minorities in Phoenix: A Profile of Mexican American, Chinese American, and African American Communities, 1860-1992* (Tucson: University of Arizona Press, 1994), p. 18.

infrastructure improvement along the Salt River.[94] According to Douglas Kupel, the City of Phoenix water historian, Wormser purposely foreclosed so that he could take the title to Mexican lands.[95]

POLITICAL DISENFRANCHISEMENT

In Arizona, which was part of the New Mexican territory until 1863, Mexicans experienced a dilution of political and economic power as more Anglos moved into an industrializing Arizona.[96] This was especially true in the southern part of the territory, around Tucson, the area purchased with the Gadsden Treaty in 1853. Tucson became the territorial capital after Arizona separated from New Mexico in 1863, but Anglos soon moved it to Prescott because of the political power held by Mexicans in southern Arizona.[97] According to the study by the sociologist Martha Mencheca, [7] Arizona legislators adopted for their new territorial constitution codes taken from California's state charter which restricted citizenship and electoral eligibility requirements allowing only white males and white Mexican males, a vast minority, to vote. This measure disqualified

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[94] Charles Goldman v. Pedro Sotelo, *Arizona Reports,* Vol. 8 (1901- 1904),114;

[95] 9Interview by Author with Douglas Kupel, History Consultant, 1992.

[96] The effort for separation from the Mexico territory was itself motivated by the desire not to be dominated by New Mexico which had a very large Mexican population. See B. Sacks, "The Creation of Arizona Territory," *Arizona and the West* 5, no. I (Spring 1963): 48-49.

[97] Weber, David J. *Foreigners in Their Native Land; Historical Roots of the Mexican Americans,* (Albuquerque: University of New Mexico Press, 1973), p. 144.

American Indians, mestizos,[98] and Mexican Indians from the electoral process. In 1877, legislators passed additional laws in which non-whites were disqualified from voting on the basis of race, from serving as justices of the peace and from practicing law; only white males were allowed to enter those professions.[99]

Beginning in the 1880s, the building of railroad transportation to the American Southwest and northern Mexico drastically reduced the need for Southwest pre-industrial crafts and beast-powered merchant transportation, activities where Mexicans predominated. In addition, irrigation projects financed through the N ewlands Reclamation Act of 1903 expanded the acreage which could be put under cultivation. These innovations dramatically changed the economies of Arizona, greatly stimulating the immigration of Mexican laborers. At the same time, modernization brought in a new influx of Anglos, who did not need to cooperate with Mexicans.[100] As a consequence of this demographic change, the antipathy Anglo Americans felt toward Mexicans was exacerbated, increasing the incidence of discrimination and the resistance to provide them political influence and opportunity.

Prescott in northern Arizona became the territory's new capital, purposely away from Mexicans, and as Phoenix became more important, that city became

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[98] *mestizo* (mixed Indian and Spaniard)

[99] Martha Menchaca, "Chicano Indianism: A Historical Account of Racial Repression in the United States," *American Ethnologist,* Vol. 20, No.3. (Aug., 1993), pp. 583-603.

[100] Luckingham, *The Urban Southwest: A Profile History of Albuquerque-El PasoPhoenix- Tucson* (El Paso: Texas Western Press, 1982), p. 19.

the capital.[101] The historian Manuel Servin points out that:

> ... between 1865 and 1909 the Mexican-American population of the territory was represented by Francisco Le6n (1865 and 1871), Esteban Ochoa (1868, 1871, and 1877), Jesus Elias (1868 and 1875), Juan Elias (1871 and 1873), Ramón Romano (1871), Jose Maria Redondo (1873,1875, and 177), M. G. Samaniego (1877,1881,1891, and 1895), N. Gonzalez (1899 and 1903), and Alfred Ruiz (1905). Thus it is patent that as far as pre-state Arizona was [8] concerned Mexican-American representation and participation in the governmental administration of the territory greatly diminished after 1877."[102]

According to Eric V. Meeks, a historian at Northern Arizona University, by the latter 1870s Mexican political influence began to wane. In the first Legislative Assembly of Arizona after it became an Independent territory from New Mexico, two out of the nine council members were Mexican Americans. By 1885, only one Mexican had been elected to the State Legislature.[103]

As Arizona modernized, territorial leaders felt that statehood was necessary for continued growth and prosperity. The question of statehood dragged on in both the Arizona and New Mexico territories

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[101] Weber, *Foreigners in Their Native Land,* p. 144.

[102] Manuel Servin, "The Role of Mexican-Americans in the Development of Early Arizona," in *AnA wakened Minority: The Mexican-Americans,* 2nd ed., Manuel Servin. Editor (Beverly Hills: Glencoe Press, 1974), p. 30.

[103] Eric V. Meeks "Border Citizens: Race, Labor, and Identity in South-Central Arizona, 1910-1965," (Ph.D. Dissertation: The University of Texas, 2001), pp. 52-53.

throughout much of the late 19th century. The U.S. Congress for a number of reasons remained cool to the idea but in the early 20th century it considered accepting a bid in which both territories would enter the Union as one state. Arizona politicians resisted such an overture primarily because of the extensive Hispanic influence in New Mexico. One congressman who opposed joint statehood with New Mexico stated: "Can Arizona as a single state control it better by itself, or shall we join the Mexican greasers [of New Mexico] to Arizona and let them control it?"[104] According to the Arizona historian H.A. Hubbard, a form of anti-Hispanic sentiment formed in the territory during this period as rumors spread that:

> [9] .... jointure would mean that in Arizona no schools could be conducted in English. Groups of Anglo-Saxon school children in Arizona with appropriate placards paraded the streets in mute and pathetic appeal against the impending outrage. Then there were the courts. In New Mexico the courts were held in Spanish. To Arizonans jointure was interpreted to mean that, when their territory became a state joined with New Mexico, no case would be tried except before a Spanish-speaking judge.[105]

James H. McClintock, the journalist and high ranking Arizona government official, proudly proclaimed in a *Los Angeles Times* opinion piece in 1906 that one of the assets possessed by Arizona making it deserving of separate recognition was the relatively small Hispanic population As he put it

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[104] Weber, *Foreigners in Their Native Land,* p. 145.

[105] H. A. Hubbard, "Arizona's Struggle against Joint Statehood," *The Pacific Historical Review,* Vol. 11, No.4. (Dec., 1942), p. 421.

"…. only 12 percent of Arizona's population is Mexican or Spanish in surname."[106]

Dr. Eric Meeks notes that after Arizona attained statehood in 1912, Anglos waged an anti-immigrant campaign which "was characterized by increasingly racist rhetoric and a series of proposals that would restrict Mexican immigrants' political rights and the right to work in Arizona."[107] In 1912, the new state constitution restricted non-citizens from working on public projects. Then in 1914, the legislature enacted the "eighty per-cent law" in which eighty percent of the employees in businesses that had five or more employees had to be "native-born citizens of the United States." After a U.S. District Court declared the law unconstitutional, the Arizona legislature passed the Claypool-Kinney bill, an act which prohibited the employment of non-English speakers in the state's mining industry. According to Professor Meeks, this was a deliberate attempt to circumvent the court decision which declared the "eighty per-cent law" unlawful.[108]

In addition, after Arizona became a state, access to the ballot box for Mexican Americans became even more limited as antipathy to all people of Mexican origin grew and immigration increased during the first two decades of the 20th century. A coalition of craft unions, small farmers and merchants led by the governor of the state, George Hunt, launched an anti-immigrant [10] campaign characterized by a proposal that restricted Mexican Americans' political rights and the right to work in Arizona. Arizona voters

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[106] "Arizona,*" Los Angeles Times,* August 19, 1906, VII6.

[107] Meeks "Border Citizens: Race," p. 52.

[108] Ibid., p. 88.

passed a literacy law in 1909 that disqualified non-English speakers from voting in state elections.[109] The act specifically singled out Mexicans:

> .... every citizen of the United States and every citizen of Mexico who shall have elected to become a citizen of the United States ... who, not being prevented by physical disability from so doing, is able to read the Constitution of the United States in the English language in such a manner as to show he is neither prompted nor reciting from memory, and to write his name, shall be deemed to be an elector ofthe state of Arizona.[110]

Mexican Americans in Arizona recognized very early in the 20th century that obstacles to full participation in the political process remained and subsequently started community organizations, such as the Latin American Clubs of Arizona, Inc., as a response.[111]

Their campaigns ran into many obstacles, however. The limitations of voter registration as a strategy for political empowerment, for example, can be seen in a South Tucson campaign in the mid-1930s. There, the majority of the residents were Mexican or Mexican American, yet local property-holders and entrepreneurs were mainly non-Mexicans. The latter group led a campaign to incorporate South Tucson as an independent municipality to avoid annexation by the City of Tucson, which would have meant higher property taxes and licensing fees. Once incorporated,

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[109] Ibid., p. 87.

[110] Quoted in Luckingham, *Minorities in Phoenix,* pp. 48-49.

[111] F. Arturo Rosales, *A Dictionary of Latino Civil Rights History* (Houston: Arte Publico Press, 2006), p. 179.

the Pima County Board of Supervisors appointed five white property-holders to serve as the new town's city council, but Mexican residents, with help from the Latin American Club, organized a voter registration campaign with the goal of electing a majority Mexican Americans city council in South Tucson's first election, held in April of 1937. Despite these efforts, only one Mexican American was elected to the council. As Eric Meeks points out, "... the literacy test requirement, combined with a local requirement of property ownership, excluded many Mexican Americans from voting in the [11] e1ection."[112]

Voting restrictions against Mexican Americans in Arizona continued throughout the 20th century. Literacy requirements and a sixth grade education were still preconditions to voter registration in Arizona as late as 1966 and remained on the books until 1972.[113] Also in 1966, elaborate residency requirements for voter registration—such as having to live one year in the state, six months in the same city, and thirty days in the same precinct and county—confused many potential voters, including Mexican Americans.[114] In addition, potential voters were required to register at the county recorder's office, which was only open during business hours, limiting access for many working people.[115]

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[112] Meeks "Border Citizens," pp. 267-268

[113] "Secretary of State," Aizona Election Code, 1966," *Constitution of the State of Arizona,* (Compiled and Issued By Secretary of Sate, 1977), p. 29.

[114] United States Commission on Civil Rights, *Rights Act, Unfulfilled Goal* Washington, DC. September, 1981. Available at *http://www*.law.umaryland.edulmarshall/usccri*documentsl*cr12 v944a. pdf

[115] Susan Lennox, "Blame It on the Whether: Whether or Not Arizona Residents Registered and Voted in the 1960s, Arizona

Also, many Arizona voters were prevented from casting ballots to vote because they were purged from the rolls. This occurred when the voter failed to cast a ballot in a primary and a general election or if the voter did not vote in two consecutive elections. Voters were not subsequently informed of the purge or of the need to re-register. Research has shown these practices can have a disproportionate effect on Hispanics and Native Americans voters.[116]

In 1970, Arizona Congressman Morris K. Udall, writing in the publication *Congressman's Report,* addressed discriminatory practices in the Arizona election system and acknowledged "the unfortunate emphasis on 'reading the constitution in English,' which has often been used to intimidate our Spanish-speaking and Indian minorities."[117]

[12] Intimidation of Mexican American voters can also be seen in Operation "Eagle Eye," a project in 1964 designed to challenge the legality of a voter's registration at the polling site. One method used by the operation was to mail letters to all registered voters in South Phoenix, a majority Hispanic and African American area, using the addresses from voter registration records. Returned letters were then taken to the corresponding polling place on the date of the election; as voters stood in line waiting to vote they were challenged on the grounds that they did not live at the address listed in the voter rolls,

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and the Voting Rights Act of 1965," paper given at the Arizona History Convention, Safford, Arizona, April 23, 2004.

[116] Ibid.

[117] Morris K. Udall, "Our Really Silent Majority," *Congressman:S Report* July 23, 1970 Vol. IX, No.2. Available at http://www.library.arizona.edulexhibits/udall/congrept/91st1700n3.html

voiding their registration.[118] The challengers would also approach Mexican Americans to determine if they could competently read the U.S. Constitution. One poll watcher remembers that these tactics caused lines at polling places to back up, prompting many waiting in line to leave.[119]

In a study on Arizona politics, the political historian David Berman indicates that "Anglos sometimes challenged minorities at the polls and asked them to read and explain "literacy" cards. Intimidators hoped to discourage minorities from standing in line to vote."[120] Many of these abuses were curtailed when the United States Congress extended the special remedies of the Voting Rights Act of 1965 to Arizona in 1975.[121]

Arizona's slow progress to accommodate Spanish speaking voters continued to create [13] problems for potential Mexican American voters in Arizona. The

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[118] Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression-or Both? A Report to the Center for Voting Rights & Protection," (September 2004), pp. 17, 21. Available at http://www.votelaw.comlblog/blogdocs/ GOP_Ballot_Security _Programs. pdf

[119] Brian Bork, "Perspective," *Calvin College Chimes*. Available at http://www-stu.calvin.edulchimesI2001.04.27Iperspectives/ story02.shtml; Dennis Rodd, "Just Our Bill," *Pittsburgh Post-Gazette* December 2, 2000.

[120] David R. Berman, *Arizona Politics & Government: The Quest for Autonomy, Democracy, and Development* (Lincoln: University of Nebraska Press, 1998), pp. 48-49.

[121] Mexican American Legal Defense and Education Fund, *A Voting Rights Act Handbook For Chicanos,* (San Francisco: Mexican American Legal Defense and Educational Fund, 1977) pp. 5, 8-9.

U.S. Commission on Civil Rights noted that in November 1974, south Phoenix polling sites revealed few, if any, bilingual workers at polls and only one bilingual election for eight heavily Mexican American precincts.[122] In the same election year a poll worker refused a Tucson voter a ballot because he could not find her name on the rolls. Determined to cast her ballot, the rejected voter went to the court house to get proof of her registration. The Commission explained that the poll worker's inability to understand Spanish or even the ability to find Spanish surnames was not an uncommon in the Mexican American precincts.[123] For example, many Mexican American women use the surname of both parents and then their married surname.[124] Hispanic voters whose names could not be found on rolls were often not informed of how to remedy the situation to successfully cast their ballots.[125]

Arizona voting practices affecting Mexican Americans were not limited to registration and the polling place. For example, in the 1960's the State Legislature's reapportionment of districts worked to dilute the Mexican American vote. As discussed in

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[122] *The Voting Rights Act Ten Years After, A Report to the United States Commission of Civil Rights* (January 1975), pp.116-117, 110-111, 85, 93-94. Available at .http://www.law.umaryland.edu/marshall/usccr/documents/cr12v943a.pdf.

[123] Ibid. P 103.

[124] Elaine Baca-Rodriquez, "The Impact of the National Voter Registration Act of 1993 in Arizona," (Ph.D. Dissertation, Northern Arizona University, 2002), p. 126

[125] *The Voting Right Act: Unfilled Goals: A Report of the United States Commission on Civil Rights* (September 1981). Available at http://www.law.umaryland.edu/marshallusccr/documents/cr12v944a.pdf

the federal court case *Klahr* vs *Goddard and Bolin,* rural districts had far more representatives and senators than the two major metropolitan areas of Tucson and Phoenix, which had 71 percent of the state's population. However, as new districts were created to correct this imbalance, the voting strength of Mexican American districts was curtailed, especially in the Phoenix area. Most Mexican Americans resided in south Phoenix, but through gerrymandering the strength of the community's votes was [14] weakened or diluted.[126] An additional example of dilution is the 1970 Phoenix Union High School District Board election where Joe Eddie Lopez was a candidate from south Phoenix. He did not win a seat and felt the district's white majority made it impossible for a Mexican American to win in the at-large election.[127]

THE JUSTICE SYSTEM AND POLICE RELATIONS

Almost as soon as Mexicans encountered Anglos in Arizona during the 19th century their experience with the American justice system was marked by discrimination. Few Mexicans, for instance, served on juries but they were disproportionately sentenced to jail and given longer sentences than their Anglo counterparts. There is record of Mexicans hung by Anglo lynch mobs without the benefit of a trial or representation.[128] A particularly vicious episode

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[126] J. L. Polinard, "Arizona," in Leroy Hardy, Alan Heslop, Stuart Anderson, editors, *Reapportionment Politics,' the History of Redistricting in the 50 States* (Beverly Hills, Calif. : Sage Publications, 1981), pp. 36-44.

[127] Ibid.

[128] See Menchaca, "Chicano Indianism" for a discussion of how Mestizo Mexicans in Arizona were classified as non-white and

occurred in 1859 when Santa Cruz Valley rancher John Ware was murdered and the constabulary arrested one of his Mexican "peons." Local cowboy Sam Rogers and his gang, known for their cruel treatment Mexicans, kidnapped the imprisoned Mexican and hung him from a tree.[129]

One newspaper writer in 1872 declared, "The Indian is now a nuisance and the Sonoran[130] a decided annoyance, but both of these are sure to disappear before civilization as sure as the noonday sun." In the Phoenix area, the slightest hint of Mexican wrongdoing was met with [15] severe reprisals.[131] At a mass meeting in Phoenix on April 19, 1872, citizens organized for protection against "Sonorans" and elected County SheriffT.C. Warden as Captain of the Safety Committee. Members of the group decided that all suspicious Mexicans deemed not to have legitimate business in the Valley were to be run out of town.[132] While on the surface it seemed

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not allowed to participate in such public activities as voting or jury duty, pp. 588-589; Rosales, *jPobre Raza!,* p. 140; Antonio Rios Bustamante,. "Guilty as Hell, Copper Mines, Mexican Miners and Community, 1920-1950: The Spatial and Social Consequences of Mining Town Industry in Arizona." (Chicano Collection, Hayden Library, Arizona State University, n.d.), 44-45.

[129] Rosales *Chicano! A History of the Mexican American Civil Rights Movement* (Houston: Arte Publico Press, 1996), 11-12.

[130] A Sonoran is the name given to Mexicans born in the Mexican state of Sonora which were the majority of immigrants in Arizona during the second half of the 19th century,

[131] Cohen, *Reconstruction of American Liberalism,* 1865-1914 pp. 122-124; Luckingham, *Minorities in Phoenix,* p. 18.

[132] *Arizona Weekly Miner,* November 16, 1872; Arizona newspapers are replete with stories of this warfare which was interpreted as simple banditry by Mexicans from Sonora; See

that a distinction was made between "good" and "bad" Mexicans, according to Pedro Perez an immigrant interviewed in the the 1930s, the vigilantes were indiscriminate in deciding which ones were unwelcome strangers:

> From 1875 to 1880 a lot of people were hanged for small steals [sic] of any kind and a lot of them were framed in horse stealing, cattle .... When this was happening most of the early Mexican families besides ours, that were residing here left town and for awhile [sic] it looked like the future of the town was done for, but after quite a while the people began to come back.[133]

If a Mexican American committed a crime against Anglo Americans in Arizona, the response was predicable. When, during a drunken melee in Phoenix, amid the *Dia de San Juan* festival on June 24, 1900, Mexicans killed two Anglos, Governor Murphy condemned the Mexican celebration and the *Arizona Republican* announced that Sheriff D.L. Murray offered an eight hundred-dollar reward for the "Mexican greaser" killers. Publishers of the local Spanish language newspaper called for a meeting of all Mexicans in the area to protest the reaction of the government officials. Later that year, the state legislature banned future celebrations of the Mexican holiday.[134]

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also Rosales, "Lost Land" Origins of Mexicans in the Salt River Valley Of Arizona, 1865-1910," p.20.

[133] "Related Story of Pedro Perez, 1933," Federal Writers Project File, Arizona Department of Library, Archives and Public Records.

[134] L. A. Navarro, Phoenix consul to Secretaria de Relacionies Exterriores (SRE), June 30, 1900, AHSRE, 12-7-238.

[16] Tensions between Mexicans and law enforcement ran high when encounters with police resulted in death. In 1920 the Mexican Consul sent in a report of Mexicans killed in altercations with the police. According to this study between 1910 and 1920 at least twelve Mexicans were killed in arrest attempts and according to the Consul, most ofthese police homicides could have been averted.[135] John Welch, a half Mexican, and longtime police chief in the archetypical mining town of Miami, had an especially fearsome reputation. In December 1931, Mexican Consul Luis Castro lamented that a Cochise County grand jury acquitted the officer after he shot to death Martin Lopez y de la Torre.

The disproportionate application of capital punishment to Mexicans was a great concern at the beginning of the 19th century. In the 1910s, every person executed at the new state prison at Florence was Hispanic, even though several Anglo Americans had received death sentences. During a two-year capital punishment respite, seventy-nine killings took place in contrast to forty-seven in 1915-16. Arizona voters, motivated by this dramatic rise in murders, reinstated capital punishment in November 1918. Of nineteen killers convicted during the grace period, only four were Mexicans. Nonetheless, with the reinstatement of the death penalty the first person executed was a Mexican.[136]

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[135] Report of Mexicans Killed Between 1911-1919, Compiled by the EI Paso Consulate, Juan Jose Duarte, May 19, 1919, Archivo Historico de la Secretaria de Relaciones Exteriores (AHSRE)11119/24, hereafter known as "Report" (with victim's name and date incident took place).

[136] Thomas E. Sheridan, *Los Tucsonenses: The Mexican Community in Tucson, 1854-1941.* Tucson: University of Arizona Press, 1986), p. 174.

[17] Mexicans often complained about interrogation tactics employed by the police with Mexican detainees. Questionable interrogation tactics of Mexicans occurred in the mining town of Greaterville, Arizona, during April 1915. Pima County Deputies Fenter and Moore visited the Leon family home to interrogate three brothers—Jose Maria, Francisco, and Hilario—whom they suspected had killed a Mrs. Loreta Yanez and stolen her cattle. The brothers vehemently denied the accusations so the deputies tried to coerce a confession—by hanging them until the brothers passed out. Hilario died immediately. Jose Maria was left out in the desert for twenty-one hours and when found was taken to his Greaterville home until a doctor could be summoned. Francisco, not as incapacitated, managed to find his way home. Sheriff Thomas Forbes in Tucson assured incensed Mexican community leaders he would conduct a full investigation. The area newspaper reported that Jose Maria died a week later :from meningitis caused by oxygen starvation.[137]

Widespread publicity of the brutality resulted in a trial in which the deputies were found guilty of second degree murder and sentenced to prison. The swift action which at first pleased the Arizona Mexican community, ended in bitter disappointment. On February 13, 1917, the Arizona governor and the Board of Pardons and Paroles pardoned and released the former deputies.[138]

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[137] This story is detailed in a series of articles *in EI Tucsonense* April 9, 28, 30,1915, May 1,1915. See also *Los Angeles Times* April 23, 1915.

[138] Rosales, *¡Pobre Raza!, Violence,: Justice and Mobilization Among Mexico Lindo Immigrants, 1890-1936* (Austin, University of Texas Press, 1999), pp. 85-86.

CIVILIAN MISTREATMENT OF MEXICANS

Civilian mistreatment of Mexicans was a constant source of despair for Mexicans and their leaders. Sometimes it took place through mob violence as happened in May of 1912 when Anglo miners invaded a *Cinco de Mayo* festival in Twin Buttes, about 40 miles :from Tucson, and attacked the Mexican workers. They then tore down and destroyed the Mexican flags on display for the holiday. In a similar episode during September of the same year a group of Phoenix, Arizona Anglos invaded a Mexican independence celebration, which [18] sparked a riot in which both ethnic groups suffered injuries. The following year, during the July 4th celebration, Anglo revelers tore down the Mexican flags at the consulates' offices in Tucson and Douglas, Arizona.[139]

In a Mexican government study of American civilian attacks on Mexicans during the 1910s, Arizona carne in a close second to Texas. Out of 150 incidents documented by the Consul, 36 took place in Arizona. For example, W. H. Heltrip murdered Jesus Arias during January 1913 in Yuma, claimed self-defense, and authorities did not charge him. A bartender of "Austrian descent" on November 12, 1912, beat a drunken Tomas Soto when he created a disturbance at a bar in the mining town of Miami. The next morning Soto's body was found a few yards from the saloon, but the bartender fled and could not be found, according to local authorities.[140]

Common also was for Anglos not to be subjected to charges of negligence in spite of supporting evidence. According to the Mexican consul in Phoenix, Thomas

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[139] Ibid., pp. 110-111.

[140] "Report," Tomas Soto, November 12, 1912.

Walker, of the Arizona Cotton Growers Association ran over Juan Jose Duarte on May 19, 1919 with his automobile killing the Mexican pedestrian. He was not cited by Phoenix police. The Mexican community was incensed as witnesses stated Walker was speeding down the avenue Duarte was crossing and did not bother to slow down. The community believed it was Walker's influence that kept the police from investigating.[141]

Also, a military build-up along the border during the Mexican revolution led to many altercations between Mexicans and army personnel. In Arizona, American soldiers killed Jose Perez and M. Ortiz on November 21, 1913 during a Miami riot between Mexicans and Army personnel. The local Sheriff was informed but he arrested no one, according to a Mexican protest letter. Also in Miami, a U.S. army truck ran over David Herrera, killing him on October 15th, 1917. The soldiers were stationed in the area to quell strikes in which hundreds of miners had been arrested. The Mexican community, skeptical of any [19] explanations offered by authorities, felt the driver deliberately hurled the vehicle at Herrera.[142]

Such violations of the civil rights of Mexicans have continued into recent years. In the late 1970's, two brothers and their father, all members of the wealthy Hannigan family were accused of robbing and torturing three Mexican farm workers who had entered the United States illegally. The Hannigans who owned extensive ranching land and a bevy of Dairy Queens were tried for intercepting three undocumented Mexicans crossing their property in

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[141] "Report," Juan Jose Duarte on May 19, 1919

[142] "Report," Jose Perez and M. Ortiz, November 21, 1913 and David Herrera, Jr., October 15, 1917.

southern Arizona near the Mexican border. The Hannigans stripped and tortured the Mexicans with hot pokers, burning cigarettes, knives, and a shotgun filled with bird seed. Hours later, the immigrants were set free to return to Mexico naked and bleeding. An all-Anglo jury acquitted the two Hannigan brothers of charges of kidnapping, assault, and robbery; father George died before trial. Following strident protest, federal authorities ultimately charged the Hannigans with obstructing interstate commerce. Patrick Hannigan, but not his brother Thomas, was convicted and sentenced to three year's imprisonment.[143] Law Professor Steve Bender has documented similar cases along the border. Most have taken place in Arizona.[144]

GENERAL SEGREGATION

Racial segregation was prevalent in the railroad and mining towns of Arizona as railroads spurred modernization after the 1880s. At this time segregation in schools, public facilities, and housing increased for a number of reasons. The threat posed by Apaches ended in the late 19th century and the need for a cooperative self-defense no longer bound Mexicans and Anglo Americans. Secondly, the economic livelihood of the region's Mexican elite based in freighting and open-range ranching eroded with the influx of American capital and [20] technology. Concurrently, new industries imported their own skilled workers and management personnel while Mexican Americans and Mexican immigrants were relegated to semi-skilled and unskilled positions

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[143] Steve Bender, *Greasers and Gringos: Latinos, Law, and the American Imagination,* (New York: New York University Press, 2003), p 131.

[144] Ibid., p. 130.

in the new Anglo American owned mines and railroads. By 1910 Mexicans became imbedded in racially-ordered class system.[145]

The existence of segregation is widely discussed in studies of mining in Arizona. As the mining companies established labor camps and company towns they designed them along strict segregated parameters.[146] For example, in 1916 the New Cornelia Copper Company resuscitated old copper mines in the mining town of Ajo and immediately laid out the plans to segregate its Native American, "Mexican," and "American" (Anglo) residents by establishing the Mexican settlement in the northwestern portion of town. For recreational purposes the company built two dance halls and sponsored dances for the non-Mexicans on several week-nights while only Sunday was reserved for the Mexican event. In a 1977 interview with Alberto Sotelo, a former Ajo resident, he remembered segregation permeating life for Mexicans. As a child he and the other "Mexican children attended separate schools, could only swim in the town pool on limited days after the 'American' families had used it and

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[145] Meeks "Border Citizens," p. 43; Joseph Park, "The History of Mexican Labor in Arizona during the Territorial Period," (M.A. thesis, University of Arizona, 1961), pp. 219-220.

[146] These studies are too numerous to put in this footnote but see for example, Linda Gordon, *The Great Arizona Orphan Abduction,* (Cambridge: Harvard University Press, 1999); James R. Kluger, *The Clifton-Morenci Strike: Labor Difficulty in Arizona, 1915-16* (Tucson: University of Arizona Press, 1970); Meeks "Border Citizens"; Philip J. Mellinger, *Race and Labor in Western Copper: The Fightfor Equality,* 1896-1918 (Tucson: University of Arizona Press, 1995); Joseph Park, "The History of Mexican Labor in Arizona during the Territorial Period.," (M.A. thesis, University of Arizona, 1961).

before the pool was cleaned, and were restricted to a certain section of the local movie theatre."[147]

A result of extensive modernization of the agriculture owing to railroads and federally financed irrigation projects was the massive immigration of Mexicans to the Salt River [21] Valley, where Phoenix is located. As a result of this influx Phoenix acquired the largest contiguous *barrios* in all of Arizona.[148] In 1930 almost 8,000 Mexicans were concentrated and segregated in a small area in the south side bounded by 11th Street to the east, 16th avenue to the west, the edge of the Salt River to the south, and Washington street to the north. There, barrios emerged with such names as Milpitas (small fields) or Cuatro Milpas (four fields).[149]

According to a study by the Phoenix Housing Authority and the WP A, as late as 1941, most Mexicans in south Phoenix were living in dire poverty. The average income of Mexican families (1,200 in survey) was $589 a year. The study disclosed that 70 percent of the homes were considered uninhabitable and lacked inside

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[147] Meeks "Border Citizens," p. 85. For a description of the similar conditions that existed in the Clifton-Morenci district, see Kluger, 20-23.

[148] *Barrio* simply means a neighborhood in Spanish-speaking countries, but in the United States urban areas, it is applied to Mexican American or other Hispanic neighborhoods which are distinguishable from other parts of the city. See Daniel D. Arreola, "Urban Ethnic Landscape Identity," *Geographical Review,* Vol. 85, No.4, (Oct., 1995), pp. 518-534.

[149] 63Pete Rey Dimas, "Progress And A Mexican American Community'S Struggle For Existence: Phoenix's Golden Gate Barrio" (Ph.D. Dissertation, Arizona State University, 1991), passim.

plumbing, electricity, and adequate doors or windows.[150]

Perhaps the most infamous case of segregation occurred in Tempe. This involved the segregation of Mexicans at Tempe Beach, in reality a swimming complex which was built by the influential Hayden family and other local investors in the 1920s. The developers picked a site in Tempe along the wide Salt River which began to dry up by the end of the decade because of upstream damming and built what became known as Tempe Beach, the "brilliant star in Tempe's crown." While city fathers and other boosters touted this achievement with pride they decided that its benefits would only be available to Mexicans on a separate and part-time basis; they could use the facility once a week. As a historian of Tempe, Scott [22] Solliday, said, "[t]he swimming pool was basically closed for Hispanics. There was one night a week, and it was the night before they drained the swimming pool and filled it with fresh water. And so obviously, aside from the fact that they were not allowed to use the swimming pool most of the time, just the implications that we have to drain the pool after you're done swimming was really such a vicious insult to the people here in Tempe."[151] In the 1940s, Mexican Americans in Tempe and Phoenix, along with the League of United Latin American Citizens

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[150] Dimas, "Progress And A Mexican American Community's Struggle For Existence," pp. 37 and 52; Bradford Luckingham, *Phoenix: The History of a Southwestern Metropolis* (Tucson: University of Arizona Press, 1989), p. 122; *Phoenix Gazette,* May 3, 1941.

[151] Quote from "Tempe's Hispanic Heritage." Available at EightiKAET broadcasts from the campus of Arizona State University http://www.azpbs.org/arizonastories/seasontwo/hispanicheritage.htm .

(LULAC) Council 110, and the American Legion Thunderbird Post 41, a Mexican American veteran's group, along with Tempe Mexican veterans led a campaign to pressure the Tempe Chamber of Commerce, which leased the site from the city, to desegregate the swimming complex. In 1946, Tempe Beach was desegregated.[152]

Another example of segregation in Arizona took place in Phoenix and concerned housing for veterans. Soldiers after World War II returned to Phoenix and to a housing shortage that forced the city to construct emergency housing. Officials selected three separate sites in order to build 150 family units near the downtown area; one for Anglo Americans, another one for Mexican Americans, and the third for African American veterans. The site chosen for Mexican Americans was located on what had been an old city dump but Anglo American families would be in a cleaner, more attractive part of the city. American Legion Thunderbird Post 41 protested this separation and demanded before the city council that housing for Mexican American veterans and their families be located in an integrated unit on the same ten acres of land where the Anglos' unit was planned. The Anglo veterans formed the Garfield Property Owners Protective Association in order to prevent integration. Such an arrangement, they protested, would lower property values and result in [23] an increase in the crime rate and incidents of rape would rise. A protracted debate ensued, and the Mexican Americans veterans ultimately took the matter to the Arizona Supreme Court. On December **11,** 1946 the

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[152] Christine Marin, "LULAC and Veterans Organize for Civil Rights in Tempe and Phoenix, 1940-1947." Available at http://www.cervantesvirtual.comlservlet/SirveObras/68016185989478386754491/p000000l.htm

Court ruled that the City of Phoenix must integrate the housing units.[153]

Segregation in Arizona was also facilitated through federal programs. In the 1930s young Mexican Americans were exposed to the larger Anglo society through such New Deal agencies as the Civilian Conservation Corps (CCC) and the National Youth Administration (NY A), both designed to enroll young people and keep them off the streets during this era of massive unemployment. Nonetheless, discrimination in these new deal programs was prevalent in Arizona.[154] CCC overseers only recruited a small portion of Mexican Americans to join the Corps and even though the program did not have an official segregation policy when it came to Mexicans, officials housed them in separate barracks because of complaints from white Arizonans.[155]

SCHOOL SEGREGATION

Segregation in Arizona public schools became more prevalent as immigration from Mexico increased in the early 20th century. For example, the Navajo County school superintendent purposefully segregated Mexican students from their Anglo peers from the turn of the century until the 1930s.[156]

Segregation was particularly pervasive in Arizona mining towns, not only in the public schools but in almost every aspect of community life as well. For the

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[153] Ibid; See also American Legion Post 41 Website, http://www.azpbs.orglarizonastories/seasontwo/americanlegionpost.htm

[154] Rosales, *Chicano!,* p. 99.

[155] Meeks "Border Citizens," pp. 210-211.

[156] Oordon, *The Great Arizona Orphan Abduction,* p. 194.

first decade of the 20th century, children in the mining community of Clifron-Morenci attended "four elementary schools segregated both internally and between schools: North Clifton, mixed but with separate classes for Mexicans and Anglos; South Clifton all Anglo; and two Chase Creek [24] schools, one Anglo and one Mexican," according to the historian Linda Gordon. She adds that when low attendance dictated the two Chase Creek schools merge to economize, the district continued to spend extra money to segregate the Mexican and Anglo students.[157] Similarly in another mining community, Ray-Sonora, Mexican and Anglo children attended separate schools- the Sonora School for the Mexicans and the Ray School for the Anglos—even though their parents worked for the same mining company.[158]

In a 1916 report that surveyed 427 rural school districts in Arizona, U.S. Bureau of Education researchers indicated "[i]n practically all Cities in Arizona and in [rural] graded schools large enough to make adjustments, the non-English children are segregated for the first two, three, or four grades." The Bureau study recommended that this practice continue because it would be in the best interest of both races and advocated a curriculum for the Mexican schools that featured English, practical problems in arithmetic and pre-vocational training.[159]

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[157] Ibid., p. 194.

[158] Laura K. Munoz, "Desert Dreams: Mexican American Education in Arizona" (Ph.D. Dissertation, Arizona State University, 2006), p. 103

[159] Educational Conditions in Arizona, "State Study" ATHJ, no 1 (February 1917: lIB, quoted in Munoz, "Desert Dreams," p. 105.

In the mining town of Douglas, Arizona, vocational training was emphasized in the Mexican schools, as Anglo housewives wanted Mexican girls to become better maids.[160] In the spring of 1916, Helen Roberts, professor at Tempe Normal School (now Arizona State University) and Grace Gainsley of Pirtleville School in Douglas introduced "special vocational work" for Mexican children. When Roberts became principal of Tempe's Eighth Street school for Mexicans, which was run by the Tempe Normal School, she instituted these vocational courses. While many Mexican parents did not want their children to attend these segregated facilities, officials strictly enforced truancy laws and the parents were arrested, [25] fined or threatened with jail.[161] In Bisbee during 1920, in order to segregate the Mexican from the Anglo students, a new school was built with 10 classrooms; the designers slated five for industrial education.[162]

The first successful desegregation court case involving Mexican Americans in Arizona, *Romo* v. *Laird,* occurred in Tempe, Arizona, in 1925. The suit was brought by Adolfo Romo on behalf of his four children, who were attending Eighth Street Elementary School, a training laboratory for Tempe Normal School. Anglo children had attended the Eighth Street facility since Tempe was settled in the late 19th century because it was the only school in the town. However, in the early 20th century agricultural sectors in central Arizona modernized and the population of both non-Mexicans and Mexicans increased. Trustees of the Tempe School

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[160] Ibid., pp. 112-113.

[161] Ibid.

[162] Ibid., p. 122

District # 3 then built the Tenth Street School in 1915 but did not allow Mexican children to attend, citing their lack of English proficiency. Romo, whose wife was half Anglo, felt that his English-speaking children did not belong in a segregated facility and attempted to enroll them in the new school, but was refused by school officials. He then sued the school district in Maricopa County Superior Court, and Judge Joseph S. Jenckes ordered that the Romo children be allowed to enroll and attend.[163]

Jenckes ruled against segregation because the district violated the 1913 Arizona Civil Code that required school districts to provide all school children in the state an equal education. Referencing the Eighth Street School's practice of having students serve as instructors, the judge found that "the defendants [had] failed in their duty to the plaintiff in not providing teachers of as high a standard of ability and qualifications to teach the children of the plaintiff in the said Eighth Street SchooL...." The Romo children and other Mexican Americans were allowed to enroll in the new school as a result, but Tempe school officials continued to segregate other Mexican American children whose parents did not complain.[164]

[26] In 1938 the Latin American Club became involved in an intensive campaigt;l to end segregation

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[163] Rosales, *A Dictionary of Latino Civil Rights History,* pp. 390-391.

[164] In the Superior Court of the State of Arizona in and for the County of Maricopa, Adolfo Romo, Plaintiff vs. William E. Laird, J .H. Daniel and LF. Waterhouse as members of and constituting the Board of Trustees of Tempe School District No.3 and G.W. Persons, Superintendent of Tempe School District No.3, Defendents. No. 21617, Judgement and Findings of Fact and Order, October 5, 1925

in the twin mining towns of Globe-Miami. The Conquistadores, an Arizona State Teacher's College Mexican American organization, joined them in this effort. The leadership ofthe two organizations continued their desegregation efforts in the 1952 *Sheely* v. *Gonzalez* case. In the *Sheely* v. *Gonzalez* decision, the court abolished segregation in Tolleson. Though the case served as a major legal victory and set a precedent for school desegregation throughout Arizona, most school districts failed to comply with similar court rulings. School officials resisted compliance with these judicial mandates, and the state neglected to enforce them, and Mexican American students continued to attend racially isolated schools.[165]

In 1978 Latino and black parents won a federal class-action lawsuit against Tucson Unified School District (TUSD). Their challenge was premised on the racial isolation that resulted from the migration of Anglos away from central Tucson to suburban areas ofthe city in the 1960s. The plaintiffs argued that the primarily minority inner city schools did not provide the same educational opportunities and were deteriorated compared to the newer, predominately Anglo schools. Thus, the plaintiffs argued TUSD had a duty to racially integrate its schools. In 1978 the plaintiffs prevailed and Judge William C. Frey issued a desegregation order in June of that year. As a remedy, the district chose to create magnet schools in the central city sites and to bus minority students to

[165] Munoz, "Desert Dreams," p. 266.

predominantly white schools.[166] The District remains under court supervision today.[167]

[27] **MODERN EDUCATION ISSUES**

Language and pedagogical issues have also been a source of concern in the Mexican American community. Until 1972, Guadalupe, Arizona, special educators administered IQ tests written solely in English to Yaqui Indian and Mexican American children who spoke little or no English, even though a case challenging similar practices toward Mexican-American children terminated that practice in California. The Guadalupe Organization, Inc learned through extensive publicity about the California effort and initiated a suit against the local school district which ended the practice after a court review was sought by the plaintiffs who filed a suit against the Tempe Elementary School District.[168]

The civil rights of English Language Learners (ELL) were strengthened in 1974 when Congress passed the Equal Educational Opportunity Act (EEOA), which stated that:

> no state shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin by ... the failure of an educational agency to take

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[166] [text of footnote missing in original]

[167] Chris Limberis, "Desegration Dispute: Has TUSD's Desegregation Efforts Driven Students to Charter Schools?" April 21, 2005, *Tucson Weekly*. Available at http://www.tucson weekly.comlgbase/Currents/Content?oid=oid%3A67993

[168] Richard A. Berk; William P. Bridges; Anthony Shih, "Segregation of Poor and Minority Children into Classes for the Mentally Retarded by the Use of IQ Tests," *Michigan Law Review,* Vol. 71, No.6. (May, 1973), pp. 1212-1250.

> appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.[169]

This measure requires educational institutions to provide the necessary resources to overcome linguistic and/or cultural barriers that prevent students from equal participation in instructional programs. Arizona established laws for ELL programs almost immediately but it was not until 1986 that the Arizona State Legislature required school districts to provide special instruction for ELLs. It also established ELL teacher qualifications and reporting requirements for school districts. The increasing number of ELLs coupled with increased student accountability made it [28] difficult for school districts, specifically the Nogales School District, to comply with the requirements. Initially, school districts received approximately $50 dollars per ELL beginning in the 1989-1990 school year to comply with the teaching English requirement.

In 1992, Southern Arizona Legal Aid filed the *Flores* case, a class action lawsuit in federal court on behalf of parents of ELLs. Seeking to force the state to improve programs for ELLs, the plaintiffs contended in part that "the state is in violation of federal law by failing to provide Arizona school districts with the revenues necessary to instruct LEP students." The plaintiffs also claimed that the Arizona Department of Education failed to ensure that schools were providing adequate programs for ELLs.[170] Charges of inadequate funding stemmed

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[169] Quoted in Angela Marie Randolph, "Advocating English for English Learners: Flores v. Arizona, a Case Study" (Ph.D. Dissertation, Arizona State University, 2005), pp. 4-5.

[170] Ibid., p. 9.

from the failure of the Arizona Department of Education to meet the level of funding necessary to maintain ELL programs, a cost per pupil which the Department had arrived at through its owns studies. Even though the complaint was filed in 1992 it was not until 1999 that it received a hearing. In January of 2000 the federal judge who presided over the case ruled that Arizona was in violation of the federal Equal Opportunity Act because its funding for ELL programs was "arbitrary and capricious." As late as 2006, the state had not yet complied with the mandate according to a number of federal court overviews.[171]

DISCRIMINATION IN THE WORKPLACE

Before the Second World War, mainstream unions did not accept many Mexican American workers because they had previously been successful in industries outside of Arizona where few Mexicans worked. They generally neglected Mexicans employees, and unions in the agricultural camps, which were often comprised of Mexican American and Mexican immigrant workers, were virtually non-existent or too weak to be effective. By World War II Mexican Americans in Arizona began to participate more fully in unionization, although some industries, such as agriculture, have not unionized at the same pace.

AGRICULTURE

As early as 1908 Mexicans were recruited to corne to Arizona to work in agriculture. The [29] main reason was the railroad became an economic boom to the agricultural output of the Valley and by 1907 Phoenix served as a rail hub with lines extending in

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[171] Ibid., pp. 63-70.

every direction. The Newlands Reclamation act of 1902 and the completion of the Roosevelt Dam in 1912 spurred agricultural production, creating an intense demand for Mexican labor.[172]

While employers fought strenuously for Mexican immigration, they and sympathetic politicians felt that Mexicans should only be tolerated for their physical labor and not afforded the rights of citizens. For example, u.s. Representative Carl Hayden testified on behalf of his cotton constituency and while supporting waiving the provisions of the 1917 Literacy Act (immigrant literacy requirement) for Mexicans, he admitted that Mexicans could be a threat to the American way:

> The proper thing to do in the United States is to populate our country with our own kind of people. Whenever there are permanently imported into this country, from any source a class of people who will not, after one or two generations, look the same, act the same, have the same ideals as good citizens as the native born American, that sort of people should be excluded from the United States.[173]

Mexicans tended to stay and work in Valley agriculture year- round by the end of the 1920s, since irrigated crops allowed for year-round work. Farmers in providing housing for Mexican seasonal workers gave preference to families that: ".. contained a

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[172] Dimas, "Progress And A Mexican American Community's Struggle For Existence," pp. 39-45.

[173] United States Congress, *Temporary Admissions of Illiterate Mexican Laborers. Hearings Before the Committee on Immigration and Naturalization. House of Representatives,* Sixty Sixth Congress, Second Session on H.J. Resolution 271. January 26,27,30 and February 2, p. 195.

reserve supply of seasonal workers in addition to the regular breadwinner. Children just beyond the school years furnished an ideal reserve supply from the farm operator's point of view, and they tipped the scale of economic advantage in favor of their home households."[174]

When W. H. Knox, president of the Arizona Cotton Growers Association and Congressman Carl Hayden testified to renew the immigration literacy waivers given to Mexicans at a 1920 congressional committee hearing they struck a delicate balance so as to convince committee [30] members that while Arizona employers wanted Mexicans, they were still interested in maintaining the dominant position of Anglos. He assured the committee that whites lived in Valley towns, while most Mexicans were confined to peripheral agricultural and mining camps and said, "The result of this industry [cotton] is building up a city .... Thousands and thousands of acres that have been desert, by pumping plants [have been] put under irrigation and are making homes for thousands of white people."[175]

Mexican agricultural workers were often unsuccessful in their unionizing efforts. At times they defended their interests through informal means, such as traveling in groups or families and insisting on being hired as a unit.[176] This provided some form of security, but as historian Pete Dimas has pointed

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[174] E. D. Tetreau, E. D. Tetreau, *Arizona s Farm Laborers.* Agricultural Experiment Station Bulletin 163.Tucson: University of Arizona, 1939. p.312.

[175] United States Congress, *Temporary Admissions of Illiterate Mexican Laborers. Hearings Before the Committee on Immigration and Naturalization.* p. 195.

[176] Rosales, *jPobre Razal,* p. 109.

out in his dissertation on Mexicans in Phoenix, the position of Mexicans in agriculture made abuses in the workplace harder to defend and often workers found themselves at the mercy of their employers.[177] For example, in Phoenix, Arizona on May 9, 1912, farm worker Jose Castro was beaten senseless by his boss, who knocked out most of his teeth. Justice of the Peace Parker, who heard the case ruled that no criminal charges could be filed.[178] Similarly on October 7, 1919, cotton farmer, C.B. Kunce was accused of beating employee Crispin Ruvalcaba with a tree branch after he had been handcuffed by local constable. The scars from the beating were still visible days after. Maricopa County Attorney R.A. Jarrot and Judge C.D. Wheeler characterized the assault as a "Brutal Job" according to the *Arizona Republican.* Kunce pleaded guilty and was tried by a justice of the peace and fined. The constable, Charles Beckham pleaded not guilty and was freed.[179]

MINING

[31] According to several historians, mistreatment of Mexican Americans in Arizona was widespread. One of the biggest abuses was wage segmentation. Eric Meeks' dissertation provides insight as to why Arizona Mexican Americans were not paid the same as their Anglo counterparts.

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[177] Dimas, "Progress And A Mexican American Community's Struggle For Existence," pp. 31-64.

[178] "Report," Jose Castro, May 9, 1912.

[179] Ygnacio Bonillas, Mexican Ambassador to Robert Lansing United States Secretary of State, October 28, 1919; Ibid., Lansing to Bonilla, January 18, 1920, National Archives, Record Group 59, File 311.1221 R94.

By the tum of the century, there was a clear, multi-tiered, racialized class structure in Arizona's mines. This racial hierarchy was readily apparent in the wage levels in the Clifton Morenci-Metcalf mining district of southeastern Arizona. In the Clifton mines in 1909, ninety-four percent of native-born workers who were identified as "white" earned three and a half dollars per hour or more. Immigrant groups identified by the Immigration Service as "white"—primarily from North America and Northern Europe—earned comparable amounts. In stark contrast, ninety three per cent of Mexican workers earned between one and a half and two and a half dollars, with less than one per cent earning more than three and half dollars.[180]

The Mexican consulate service often served as a broker for Mexicans and their employers. Consuls were supposed to maintain distance when labor conflicts involved compatriots, but they nonetheless monitored procedures to prevent legal violations. When Cochise County officials jailed four thousand Mexican participants in the 1917 Arizona copper mine strikes, the Mexican consul in Douglas, Ives Levelier, helped get hundreds of strikers released. Consuls also objected to dangerous and unhealthy working conditions. Miner's consumption, also known as "black lung," affected Mexican miners so disproportionately that the Mexican consul in Globe, Arizona, Gustavo G. Hernandez, wrote in May of 1918, to the Arizona State Federation of Labor and Governor George W. P. Hunt, asking that management be made to comply with state regulations requiring ventilation of mining shafts for an end to the conditions which caused this disease.

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[180] Meeks "Border Citizens," p 83.

"It strikes me that the number of Mexicans who are sick [more] than any other nationality ... ," the consul wrote. Mexicans were more susceptible to black lung because they operated "pluggers" where most of the deadly dust was inhaled.[181]

The most intensive institutional union efforts involving Mexicans took place in Arizona mines, with workplace danger and dual wages as the main concerns of Mexican miners. Owing to [32] these conditions, in 1903, a number of strikes in the mining regions of Clifton-Morenci were repressed by local police, the Arizona militia, and Arizona Rangers at the behest of the mine owners and local politicians.[182] The same methods were employed against striking Mexican miners in Globe-Miami and Bisbee as well.[183]

During extensive labor organizing activity in 1914 by the Western Federation of Miners, employers and local officials conducted harassment campaigns to intimidate workers. In August a posse of Americans fought a pitched battle with Mexican union organizers after they were accused of stealing a horse near Ray. In a battle that the *Los Angeles Times* called "Race War in Arizona," four Americans and two Mexicans were killed after the Mexican "bandits" took refuge in a canyon cabin and the Americans assaulted the building. "After the first brush between horse thieves and posse, Ray citizens drove all the Mexicans out of town," said the *New York Times*. The

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[181] Rosales, *Testimonio: A Documentary History of the Mexican American Struggle for Civil Rights* (Houston: Arte Publico Press, 2000), pp. 230-231.

[182] Weber, *Foreigners in Their Native Land,* 219; Mellinger, *Race and Labor in Western Copper, 42-48.*

[183] Rosales, *¡Pobre Raza!, 174-175.*

dead Americans were two law officers and two employees at the Ray Consolidated Company. The *Arizona Republican* identified the Mexicans as wood cutters and unionists who hauled wood for mining operations. Mining company officials considered Pedro Smith, one of the dead Mexicans, and Ramon Villalobos, the only survivor of the shootout, to be union agitators. The Mexican community suspected that the "horse stealing" charge was trumped-up in order to jail these alleged "troublemakers." Villalobos, who was hanged two years later for his part in this killing, became a *cause celebre* as compatriots tried to save him from the gallows.

CONCLUSION

Discrimination against Mexican Americans in Arizona has existed since the Treaty of Guadalupe Hidalgo absorbed the area north of the Gila River in 1848 and the Gadsden Treaty in 1853 acquired the rest of what is now Arizona from Mexico. After conducting this study I conclude that Mexican Americans in Arizona have experienced a history of discrimination in voting and registration. In addition persons of Mexican origin have had to endure discrimination in other areas such as property rights, employment and education. I believe that this discrimination has hindered and continues to hinder the ability of Mexican Americans to fully participate in the political process in Arizona.

[33] December 5, 2007

/s/ F. Arturo Rosales

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