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Testimony of Nina Perales, Southwest Regional Counsel of MALDEF, on Proposed
Rule 183-1-6-.06 before the Georgia State Election Board
December 10, 2009

Good morning, Chairwoman Handel, Vice Chairperson McIver and Members of the State Election Board. My name is Nina Perales and I am the Southwest Regional Counsel of the Mexican American Legal Defense and Educational Fund (MALDEF). I am pleased to testify today on Proposed Rule 183-1-6-.06, which is intended to implement § 21-2-216(g) of the Georgia Code, otherwise known as SB 86. This testimony outlines a number of issues raised by the proposed Rule and offers some suggestions for improving the Rule. This testimony should not be understood to be an endorsement of any portion of either SB 86 or the proposed Rule, even if the recommendations set out below are adopted by the Board.

The proposed Rule contains a number of problems that flow from the flawed text of SB 86. For example:

- The proposed Rule lacks a statement that the board of registrars must accept and use the federal mail voter registration form notwithstanding contrary language in SB 86. The National Voter Registration Act requires Georgia and all other states to accept and process properly-completed federal mail registration forms for registration in federal elections, regardless of additional state registration requirements. The Rule should include a statement that registrars must accept and use federal mail registration forms.
- Section 2(a) 2 of the proposed Rule is inoperable because there is no state driver's license or identification card that indicates on its face "that the applicant has provided satisfactory evidence of United States citizenship."
- Section 2(e) of the proposed Rule is inoperable because there are no "documents or methods of proof that are established pursuant to the federal Immigration Reform and Control Act of 1986."
- The proposed Rule incorporates from SB 86 differential treatment of U.S. citizens who rely on naturalization certificates to prove their eligibility to vote. Although other U.S. citizens are permitted to mail in copies of their U.S. birth certificates or U.S. Passports, those who rely on naturalization certificates must travel to the board of registrars to "provide" their citizenship documents in person. The Rule should be changed to add that a legible photocopy of a naturalization certificate shall serve as satisfactory evidence of citizenship.
- The proposed Rule makes no accommodation for the fact that some U.S. citizens are improperly reported as non-citizens in the DDS database. For example, in Georgia, legal permanent residents and other immigrants hold properly-issued drivers licenses and identification cards. When these individuals become citizens, the information in the DDS database is not automatically updated. As a result, voter registration applicants can be erroneously flagged as non-citizens. The proposed Rule should be modified to delete the requirement that the Secretary of State verify the U.S. citizenship of voter registration applicants by reference to the DDS database.

- Section 2(d)1 of the proposed Rule wrongly limits the definition of United States Certificate of Naturalization to those “issued by the United States Citizenship and Immigration Services.” However, prior to the Department of Homeland Security’s absorption of the Immigration and Naturalization Service (INS) in 2003, certificates of naturalization were issued by the INS. Before that, naturalization certificates were issued by the federal courts. Because the naturalization certificates of citizens show a range of issuing agencies, the Rule should be amended to delete the language limiting “satisfactory” naturalization certificates to those issued by CIS.

The fact that several provisions of the proposed Rule are inoperable or discriminatory reinforces the need for the remaining sections of the Rule to provide fairness and opportunity in the system of voter registration. However, the proposed Rule introduces a number of additional problems for voter registrants that are not drawn from the language of the statute.

- Section 2 (g)(2)(iii) provides insufficient guidance to boards of registrars by asking them to make eligibility determinations based on a list of documents and the instruction to consider the “totality of the evidence presented.” The proposed Rule should be amended to state that the enumerated documents that show citizenship should be presumed authentic unless there is clear evidence of fraud.

- Section 2(g)(2)(iv) allows the consideration of a number of documents in order to determine citizenship if the documents have been created at least 5 years before the application for voter registration. The 5-year provision may not be workable if voter applicant is a citizen but has not previously obtained a citizenship document. The provision requiring a 5-year waiting period for the acceptability of a citizenship document will certainly preclude eligible U.S. citizens who have recently obtained their proof of citizenship for the purpose of registering to vote and should be removed.

Thank you for the opportunity to testify today and I remain available to the Board for any questions regarding my testimony.