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NiLP Guest Commentary

Puerto Ricans and the 50th Anniversary of the Voting Rights Act of 1965

By Juan Cartagena (July 28, 2015)

Fifty years ago the Puerto Rican community in New York City achieved a major milestone, the culmination of efforts since 1899 to open the vote to Puerto Rican voters on equal terms.

Fifty years ago in August of 1965, the Voting Rights Act of 1965 was signed into law. This month's celebrations will clearly and rightfully focus on the need for legislative action to fix the gutting of the Voting Rights Act by the Supreme Court two years ago - "Don't just commemorate, legislate!" But we should nonetheless pause and reflect on the work of Puerto Ricans to open the franchise for them and all other Latino voters, and celebrate.

Admittedly much of the national debate on the Voting Rights Act, and its future viability continues to be dominated by a focus on the Deep South in a black and white binary. The truth is that the Voting Rights Act ("VRA") was initially and deservedly aimed at restoring the dignity of African-American voters, but it was never just black and white. Even in 1965. This essay will help to elucidate why. And in doing so it will highlight the pioneering work that the Puerto Ricans led to eliminating successfully English-only election systems.

Puerto Ricans and the Expansion of the Right to Vote

The migration of Puerto Ricans to the United States and their impact on the political framework of local politics in this country is not of recent vintage. New York City has been considered the epicenter of Puerto Rican life in this country at least through the late 1990s, and it enjoys a long history of Puerto Rican progressive electoral activism starting in the first half of the 20th Century. However, the efforts to expand the franchise to Puerto Ricans reaching the United States go back to the end of the 19th Century.

In 1899 a lawsuit was filed by a Puerto Rican national seeking the right to vote in New York entitled People ex rel. *Juarbe v. Board of Inspectors of the 24th Election District*, 25th Assembly District of Manhattan. Mr. Juarbe served with the U.S. Army of Occupation in Puerto Rico and asserted that he never declared his allegiance to Spain and instead "adopted" the nationality of the United States upon moving to New York in 1899. He was never naturalized under the citizenship protocols at the

time. The court noted that the Treaty of Paris of 1898 established that Congress had the authority to define the civil rights and political status of the inhabitants of the territory and hence had the power to establish collective naturalization. However, since Congress had failed to so, Juarbe could not prove U.S. citizenship and was thus denied the right to vote.

By 1917 with the passage of the Jones Act, that matter was settled leading eventually to a period of intense political activism in the Puerto Rican community especially between the two World Wars where 36 vibrant political and social organizations existed in the community and voter registration reached a rate of fifty percent. (Melendez). The Puerto Rican population in the city increased by 50% from 1930 to 1940 and then quadrupled from 1940 to 1950. (Torres 1995). In this era Puerto Rican voters easily gravitated to Vito Marcantonio an Italian Congressman from East Harlem who became a tireless advocate for the working poor and the oppressed and a champion of Puerto Rican independence. Recognized as the "de facto Congressman for Puerto Rico," (Myer; Andreau Iglesias) and initially elected on the Republican line and subsequently on the American Labor Party ticket, Mr. Marcantonio not only proposed legislation in 1936 to establish Puerto Rico's independence from the United States but also sought legislation to compensate Puerto Ricans for the colonial domination of their country. (Ojeda Reyes 1978). Marcantonio's radicalism and his constant attacks upon the country's colonial dominance of the island, even after the so-called Commonwealth solution, proved too much for the entrenched power elite of the city and led to concerted efforts to defeat him and in turn destabilize the burgeoning Puerto Rican voting bloc in the city. (Sánchez 1996). This newfound political strength which began with Marcantonio spilled over into the subsequent election of the first Puerto Rican official in the United States in 1937, Oscar García Rivera to the New York State Assembly on the Republican and American Labor Party line. Eventually, the Liberal Party, which as the political arm of the garment workers union (I.L.G.W.U.) was already a magnet for Puerto Rican unionists in New York, stifled this rising tide of political agitation deliberately. The Liberal Party was a force in local politics but made it a point to block Puerto Ricans from leadership positions and stem the activism of Puerto Rican voters. (Sánchez 1996).

It is within this New York-centric political context that Puerto Ricans began targeting the discriminatory nature of New York's English literacy law. This constitutional voting prerequisite impeded the full participation of Puerto Rican migrants who used the courts to challenge its discriminatory nature. In 1961 in *Camacho v. Rogers*, Puerto Rican voters tested the limits of the State's literacy test when applied to citizens from Puerto Rico. Mr. José Camacho was schooled in Puerto Rico in Spanish - itself a feat of decades of Puerto Rican nationalistic struggle against the failed attempts by the United States to Americanize the public schools of the island. (Negrón de Montilla 1975). He voted in Puerto Rico before migrating to New York but was unable to demonstrate literacy in English under New York law. Mr. Camacho was eventually unsuccessful in his Fourteenth and Fifteenth Amendment court challenge. But it never stopped his activism.

José Camacho was instrumental in exposing the hypocrisy and discriminatory nature of New York voting requirements in multiple venues. In a complaint filed before the U.S. Commission on Civil Rights Mr. Camacho continued his quest to overturn the English literacy requirement. His complaint noted the proliferation of Spanish-language media outlets in New York City - three Spanish daily newspapers with a circulation of 82,000 - as further evidence that Puerto Ricans in the City were literate, even if not in English. In its 1959 Report, the Commission deferred on

interpreting the legal issues raised in the complaint by noting the pending litigation. However, it nonetheless found that "Puerto Rican-American citizens are being denied the right to vote and that those denials exist in substantial numbers in the State of New York." Undeterred by the results of his lawsuit, Mr. Camacho reinstituted his complaint of voter discrimination before the U.S. Commission on Civil Rights again in 1961.

That Commission noted that of the 382 sworn complaints alleging violations of voting rights all but three were lodged by African-Americans subject to abuse in Southern states. The three exceptions were Puerto Ricans from the Bronx who could not satisfy New York's literacy requirement including Mr. Camacho. The Commission's 1961 Report recognized the unsuccessful court challenge but still noted that the case failed to resolve the larger constitutional question that emanates from the 1917 Jones Act. Indeed, the Commission reaffirmed its position of 1959 and went on to note that since 1954 the U.S. Supreme Court ruled that the Constitution's 14th Amendment is not limited to a two-class theory of only white and Negro. That case, *Hernandez v. Texas*, outlawed juror exclusions aimed at Mexican-Americans and is a seminal case in the development of Latino civil rights.

The national attention devoted to discriminatory and exclusionary voting laws in New York against Puerto Rican voters attracted the attention of Robert Kennedy who eventually played an enormous role in protecting the Puerto Rican vote.

Robert Kennedy's knowledge of Latino civil rights issues likely coalesced when he served at campaign manager for John F. Kennedy successful presidential bid in 1960. The Kennedys' interest in Latino issues was a clear consequence of the need to motivate voter registration and turnout in a tight race against Richard Nixon. This led to numerous trips to California and Texas and the establishment of "Viva Kennedy" clubs all spearheaded strategically by Robert Kennedy (Grisby Bates 1970) and eventually to Robert Kennedy's long lasting relationship with Cesar Chavez. (Rodríguez 2015).

In New York, Robert Kennedy became an early supporter in the effort to eliminate the State´s English literacy requirement for voting. As early as 1962 in his role as U.S. Attorney General he testified in Congress in an attempt to promote legislation to eliminate illiteracy tests especially for Puerto Rican voters and declared that they had the necessary educational background in Spanish to vote: "to penalize them by excluding their educational achievement would be plain discrimination." He emphasized that various Spanish news outlets kept Puerto Rican voters politically well informed and that this would fully allow them to be intelligent voters and political participants. (CQ Almanac) The bill, introduced by President Kennedy, however, died in a 1962 Senate filibuster.

As noted below Robert Kennedy was eventually successful in outlawing English literacy requirements for Puerto Rican voters in 1965 with the passage of the historic Voting Rights Act.

Puerto Ricans and the VRA of 1965

In 1965 the VRA had a little-known provision that was directed exclusively to benefit the Puerto Rican community: Section 4(e). At the time one of the biggest obstacles to the full enfranchisement of African Americans and a clear target of the VRA were literacy tests. Despite the Supreme Court's pronouncement that literacy

tests were facially constitutional in 1959 in *Lassiter v. Northampton County Bd. Of Election*, the danger of the tests in the Deep South was also in their discriminatory application. In 1965, however, the discriminatory use of literacy tests as a prerequisite for voting was not within the exclusive domain of Southern states. New York was a prime example.

New York's literacy test requirement was the ultimate target of Section 4(e) of the VRA and it already had a history of discriminatory use against vulnerable populations of the state. In general, historians have identified Southern and Eastern European immigrants as the target in New York for literacy tests' exclusionary function in the area of immigration. (Higham 1985). The 1921 New York state constitutional provision mandating literacy tests for voting was equally exclusionary.

As the VRA was winding its way through Congress after the events of Bloody Sunday, (NAACP Legal Defense Fund) the Puerto Rican community in New York was intent in finding a federal legislative solution to the issues raised by José Camacho and Robert Kennedy. The ultimate result of this effort was VRA Section 4(e), which states in pertinent part:

1. Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

2. No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language . . .

The legislative history of this provision of the VRA yields a fascinating picture of the North - South dynamics of discriminatory treatment in the area of voting. With the VRA's emphasis on curing the blatantly discriminatory exclusion of blacks from the political process, the testimony before Congress on how a Northern state, and New York at that, also discriminated against its citizens was welcome news to many as seen in this example from Senator Holland of Florida in the legislative record:

> [I]n the State of Florida, there are tens of thousands of citizens of Latin American lineage, many of them not yet able to speak in the English language but yet amply educated to know what they are doing. For years, we have permitted them to vote, and we are very happy in the fact that the great State of New York now turns to us for some guidance in democracy, which we believe the State of New York has needed for a long time.

With bipartisan support from Senators Robert Kennedy and Jacob Javits, Section 4(e) was touted as an important remedy to the exclusion of Puerto Rican voters. Indeed, Senator Javits made it a point to grant his full support for the amendment despite his political observation that his party may not stand to benefit from an electorate that is likely to vote for Democrats. His support of the measure within the Republican Party was not an isolated act as then Congressman (and later Mayor) John Lindsay also endorsed the Puerto Rican amendment.

Puerto Rican activists also participated in this debate through the participation of three community leaders who testified before Congress in support of Section 4(e): Herman Badillo, Irma Vidal Santaella and Gilberto Gerena Valentín. Mr. Badillo became the first Puerto Rican elected to Congress and represented the Legion of Voters before Congress in 1965. Ms. Vidal Santaella became a judge in New York County Supreme Court. She also represented the Legion of Voters in 1965 before Congress. Mr. Gerena-Valentín was a renowned community activist who organized the massive Puerto Rican mobilization for the Rev. Martin Luther King, Jr.'s Poor People Campaign in 1968 (Torres 1998), became a New York City Councilman from the Bronx in the 1970s and 1980s. In the 1965 testimony he represented the National Association of Puerto Rican Civil Rights.

Their testimony was clear: New York's English only literacy test requirement was discriminatory as applied to Puerto Ricans in the city. (Hearings on H.R. 6400). Estimates were offered that of 730,000 Puerto Ricans in the city of all ages, 150,000 registered to vote but close to 330,000 were prevented from registering. Accounts were given about how literacy test certificates would "suddenly disappear" causing delays of hours, if not the entire day, to replace them, or how basic supplies like pencils would be missing whenever Puerto Ricans sought to take the test. (Hearings on H.R. 6400). Herman Badillo´s leadership was critical here as he sought to defuse the "myth in our State of New York that a citizen can be an intelligent, well-informed voter only if he is literate in English."

That myth, however, was well ensconced within New York's elite as the Editorial Board of the New York Times made clear. In April 1965 the Times vociferously opposed any attempt to change the English requirement and attacked then Mayor Robert Wagner's support for Section 4(e) as political pandering. It also sought to sever any reference to voter discrimination in New York and any discrimination against black voters in the South:

It is inaccurate to argue ... that an English literacy test for voting is inherently discriminatory against Puerto Ricans and naturalized citizens. The qualified voter ought to be able to understand discussion of public issues, and since English is the language in which public business is conducted, it is reasonable to require voters to be literate in English ... Since New York's test is fairly administered and since no citizens of this state are victimized by the kind of discrimination to which Southern Negroes are subjected, Mayor Wagner has done a disservice in tying these two issues together.

Apparently, the Times gave no credence to the plight of José Camacho who sought for years to participate in elections in New York on equal terms.

New York State followed this perspective and refused to retreat, challenging the constitutionality of Section 4(e) all the way to the U.S. Supreme Court. The Court in *Katzenbach v. Morgan* in 1966 upheld Section 4(e) and unequivocally recognized the purpose of Section 4(e) as an exclusive protection for Puerto Rican voters:

> [Section] 4(e) may be viewed as a measure to secure for the Puerto Rican community residing in New York nondiscriminatory treatment by government - both in the imposition of voting qualifications and the provision or administration of governmental services, such as public schools, public housing and law enforcement.

Thus, the 1965 version of the VRA that we celebrate today contained powerful limitations on state power embodied especially in the Deep South, nationwide prohibitions on voting discrimination under a broader provision known as Section 2, and discrete protections against discrimination against Puerto Rican voters because of their unique language minority status under Section 4(e). Unfortunately, Section 4(e) is often overlooked in the analysis of the VRA's impact on Latino voting strength by many who erroneously conclude that the Act's 1975 amendments establishing Section 203 bilingual assistance are the Act's first targeted provisions to assist Latino voters.

The Legacy of Section 4(e) of the VRA

The struggle to implement voting protections for Puerto Rican voters now moved from the legislative arena to the courts. Lawyers at the Puerto Rican Legal Defense and Education Fund led these efforts. In 1973 in *Lopez v. Dinkins*, Puerto Rican and Chinese voters used Section 4(e) to secure assistance in Spanish at the polls including the printing of ballots in Spanish and a panoply of assistance at the polls in both Spanish and Chines. In Coalition for Education in *District One v. Board of Elections*, a federal court was compelled to overturn a school board election because of the city's failure to provide adequate bilingual assistance to Puerto Rican voters, among other factors. Both of these cases paved the way for the wholesale provision of bilingual assistance in the case of *Torres v. Sach*s in 1974. The court made a critical finding by concluding that the right to vote requires meaningful access: "Plaintiffs cannot cast an effective vote without being able to comprehend fully the registration and election forms and the ballot itself." On this point the court also relied on *Garza v. Smith*, and indirectly tied the experience of Mexican American voters in the English-only election systems of Texas with the Puerto Rican voters in New York.

In a broader context the benefits gained from Section 4(e) litigation reached all language minority voters throughout the country as it demonstrated the viability of creating comprehensive, bilingual alternatives to English-only electoral systems, and on a large scale. With over 668,000 Puerto Ricans in New York City in 1960 and close to 812,000 in 1970, the electoral reforms generated by Section 4(e) litigation inured to the benefit of hundreds thousands of other Latinos in the city alone. (Haslip-Viera 1996). *Torres v. Sachs* and the other Section 4(e) cases outside of New York City created the template for full bilingual assistance above and beyond voter registration to reach language access to the ballots, and access to bilingual assistance at the polls.

In 1975 ten years after Congress addressed voter discrimination inherent in English-only election systems and their impact on Puerto Ricans, Congress passed the Bilingual Amendments to the VRA based on significant support in the legislative record on how the same systems operated to disenfranchise Mexican-American voters. Discrimination against Mexican-American voters because of their language minority status was commonplace. The Texas state legislature passed a bill to prohibit interpreters at the polls in 1918. "This law was clearly aimed at voters who had difficulty in English - a lack of proficiency that was undoubtedly encouraged by discrimination in the schools, including widespread segregation of Tejanos." And in 1970 *Garza v. Smith*, Mexican American voters challenged laws which prohibited their receiving assistance in casting their ballots, even if they were illiterate in English, because only the physically disabled were entitled to that assistance. The court ruled in favor of all illiterate voters in Texas, but as noted by the Mexican American Legal Defense & Educational Fund in its subsequent and important

testimony in favor of the 1975 VRA amendments, *Garza v. Smith* was brought specifically to address the need of English illiterate voters. (VRA 1975 House Hearings). Thus, while the relief obtained in Garza v. Smith for Spanish-speaking voters was not as comprehensive as that in *Torres v. Sachs*, both cases were important milestones in overcoming English only election structures in their respective states.

However, the legacy of VRA Section 4(e) did not stop with other Latino voters. The provisions actually went further and set the framework for bilingual access to Native American and Asian-American voters who had yet to master English. These electoral reforms, forged by the continuous struggle of Puerto Rican activists and lawyers going back to the 1950s with *Camacho v. Rogers* justified the full expansion of bilingual voting assistance to all language minorities in the 1975 VRA amendments that created bilingual access as noted by the House Committee on the Judiciary:

> There is no question, but that bilingual election materials would facilitate voting on the part of language (sic) minority citizens and would at last bring them into the electoral process on an equal footing with other citizens. The provision of bilingual materials is certainly not a radical step. . . Courts in New York have ordered complete bilingual election assistance, from dissemination of registration information through bilingual media to use of bilingual election inspectors.

Conclusion

Bilingual voting systems were not considered radical by Congress in 1975 precisely because of the unique Puerto Rican provision for bilingual access in a city as large as New York. Looking backward at the backlash that bilingual voting created in the 1980s with the English-only Movement in full swing this Congressional finding is nearly radical on its own terms.

This is a unique legacy in the development of civil rights protections for Latinos in the country. It is by far not the only success story that the VRA provided to Puerto Ricans and Mexican-Americans who championed these laws in the 1960s and 1970s. However, as we commemorate the 50th Anniversary of the VRA in 2015 we cannot forget to commemorate this chapter in civil rights law.

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