

MAJORITY-LATINO DISTRICTS AND LATINO POLITICAL POWER

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The Voting Rights Act of 1965 (VRA)¹ was aimed at ensuring that all citizens, and in particular African Americans, have equal opportunity to participate in the political process. Initial enforcement focused on eliminating tools of Black disenfranchisement that had developed over the previous century: grandfather clauses, literacy tests, poll taxes, and discriminatory administration of “understanding clause” rules that disenfranchised literate Blacks. In 1970, provisions were added to the VRA to protect against Black vote dilution, whereby individuals were physically allowed to vote but those votes were manipulated so as to deny Blacks a meaningful voice.² Although not specifically mentioned in the VRA, majority-minority districts have often been used to satisfy the law’s mandate to ensure that all citizens are able “to elect representatives of their choice.”³ Majority-minority districts are those where a majority of residents are members of a historically underrepresented group, such as Blacks or Latinos. Scholars have consistently found that these majority-minority districts increase Black representation in Congress as well as in state and local legislatures,⁴ and that these districts further benefit African Americans by contributing to increased trust in government and increased civic engagement.⁵ African Americans continue to rely on

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1. Voting Rights Act of 1965, 42 U.S.C.A. §§ 1973–1973bb (West 2010).

2. See generally DAVID MICHAEL HUDSON, *ALONG RACIAL LINES: CONSEQUENCES OF THE 1965 VOTING RIGHTS ACT* (1998) (documenting the history of the VRA).

3. 42 U.S.C.A. § 1973(b).

4. Charles Cameron, David Epstein & Sharyn O’Halloran, *Do Majority-Minority Districts Maximize Substantive Black Representation in Congress?* 90 AM. POL. SCI. REV. 794–812 (1996); David Lublin, *Racial Redistricting and African-American Representation: A Critique of ‘Do Majority-Minority Districts Maximize Substantive Black Representation in Congress?’* 93 AM. POL. SCI. REV. 183, 183–86 (1999); Susan Welch, *The Impact of At-Large Elections on the Representation of Blacks and Hispanics*, 52 J. POL., 1050, 1056–65 (1990).

5. See, e.g., Lawrence Bobo & Franklin D. Gilliam, Jr., *Race, Sociopolitical Participation,*

majority-minority districts for their electoral success and equitable representation, particularly in the South.

The VRA has also been used to ensure that Latinos are adequately represented. Although some aspects of the original VRA—Section 4(e), for example—were meant to benefit Puerto Ricans in New York, its relevance for Latinos increased markedly with the 1975 extension to cover language minorities.⁶ Results from the 1980 Census were used to create majority-Latino districts that later led to increased Latino representation, often including areas where lines had previously been drawn so as to dilute Latino vote strength.⁷ Particularly during the post-1990 Census round of redistricting, lines were drawn to maximize the election of both Black and Latino members of Congress. As a consequence, most Latino members of Congress today owe their seats to the creation of majority-Latino districts. As is the case for African Americans, the Latino community has reaped benefits from majority-Latino districts beyond descriptive representation, including increased substantive representation, increased civic engagement, and increased feelings of political trust and efficacy.⁸

Discussions about the current and continued value of these districts are complicated by the fact that most analyses do not distinguish between Black and Latino majority-minority districts and populations. Those who argue that majority-minority districts are crucial for the election of Black and Latino representatives make several assumptions: 1) racial polarization remains strong enough to otherwise deny Blacks and Latinos the opportunity to elect candidates of their choice; 2) Blacks and Latinos are monolithic groups that vote as a bloc; and 3) there is value in having elected officials who descriptively represent their constituents. In other words, both communities are often lumped together as treated as “minority”

and Black Empowerment, 84 AM. POL. SCI. REV. 377, 383-84, 387-88 (1990) (concluding political empowerment of blacks leads to increased civic engagement, trust, and political efficacy).

6. Juan Cartagena, *Latinos and Section 5 of the Voting Rights Act: Beyond Black and White*, 18 NAT'L BLACK L.J. 201, 204-05, 211-15 (2004).

7. Luis Ricardo Fraga, *Prototype from the Midwest: Latinos in Illinois*, in FROM RHETORIC TO REALITY: LATINO POLITICS IN THE 1988 ELECTIONS 111, 117-25 (Rodolfo O. de la Garza & Louis DeSipio eds., 1992).

8. Matt A. Barreto, Gary M. Segura & Nathan D. Woods, *The Mobilizing Effect of Majority-Minority Districts on Latino Turnout*, 98 AM. POL. SCI. REV. 65, 74 (2004); Adrian D. Pantoja & Gary M. Segura, *Does Ethnicity Matter? Descriptive Representation in Legislatures and Political Alienation Among Latinos*, 84 SOC. SCI. Q. 441, 443-44, 455-57 (2003).

voters and many observers fail to note the distinctive political contexts and realities of each. In fact, the level of racial polarization against Black and Latino candidates differs, and the two groups display dissimilar levels of political unity. In addition, Black and Latino communities have unique demographic and geographic histories. Thus, any discussion of the future of majority-minority districts must analyze separately how best to ensure compliance with the VRA and the full extension of rights of citizenship to Blacks and Latinos. This article examines the history and political realities of Latinos in the United States, including their experiences with majority-Latino districts, and concludes that the Latino community continues to need these districts for reasons distinct from those of the Black community.

LATINOS AND THE VRA

Two sections of the VRA, combined with subsequent judicial interpretations and amendments, have led to the creation and proliferation of majority-minority districts. Section 2 prohibits policies or practices that give minorities “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice,” and applies to the entire country.⁹ Section 5 requires state and local jurisdictions with a history of discrimination to acquire federal preclearance for changes to their voting laws and practices in order to confirm that any proposed changes do “not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color” or membership in a language minority group.¹⁰ In 1969, the Supreme Court interpreted the VRA to also protect against the dilution of minority votes.¹¹ Additionally, the 1970 reauthorization of a ban on literacy tests led in 1975 to the extension of the VRA to cover language minorities, as Congress determined that failing to provide in-language materials to citizens not proficient in English constituted illegal literacy tests.¹²

Interpretation of section 5 was significantly changed by the Supreme Court’s decision in *Georgia v. Ashcroft*.¹³ Writing for the

9. 42 U.S.C.A. § 1973(b) (West 2010).

10. 42 U.S.C.A. § 1973(c).

11. *Allen v. State Board of Elections*, 393 U.S. 544 (1969).

12. HUDSON, *supra* note 2, at 109–11.

13. *Georgia v. Ashcroft*, 539 U.S. 461 (2003).

majority, Justice O'Connor expanded the definition of the right of voters to "elect representatives of their choice" to include both districts where it is "highly likely" that this right will be protected as well as districts where it is "perhaps not quite as likely."¹⁴ As Alvaro Bedoya notes,

After *Georgia v. Ashcroft* covered jurisdictions could secure preclearance even if they had "unpacked" majority-minority districts to create "coalitional districts," where minority groups depend on coalitions with other voters to elect their candidates of choice, or "influence districts," where minority voters are not able to elect their candidates of choice, but could be swing voters in an election. Prior to *Georgia v. Ashcroft*, preclearance for those jurisdictions would have been highly unlikely.¹⁵

In reaching this decision, *Georgia v. Ashcroft* cited five political science studies that showed both decreased racial polarization and that influence and coalitional districts were the best way to maximize minority voting strength.¹⁶ Yet, all five studies noted by *Georgia v. Ashcroft* focused on Black voting power.¹⁷

Conclusions based on studies of Black political power do not necessarily speak to the political realities of other communities. Blacks and Latinos are both historically underrepresented minority groups in the United States and share a history of racism and discrimination, but a number of questions should be considered before assuming that they benefit equally from majority-minority districts. Are the political realities faced by Latinos similar to those faced by Blacks?¹⁸ How willing are White voters to vote for Latino candidates? Are Latinos a cohesive voting bloc, or are they divided along partisan lines? To what degree are Latinos currently able to

14. *Id.* at 480.

15. Alvaro Bedoya, Note, *The Unforeseen Effects of Georgia v. Ashcroft on the Latino Community*, 115 YALE L.J. 2112, 2116–17 (2006) (footnote omitted).

16. *Georgia v. Ashcroft*, 539 U.S. at 482–83.

17. CAROL M. SWAIN, BLACK FACES, BLACK INTERESTS: THE REPRESENTATION OF AFRICAN-AMERICANS IN CONGRESS 193–234 (1995); Cameron et al., *supra* note 4, at 808; Bernard Grofman, Lisa Handley & David Lublin, *Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence*, 79 N.C. L. REV. 1383 (2001); Lublin, *supra* note 4, at 185; Richard H. Pildes, *Is Voting-Rights Law Now at War With Itself? Social Science and Voting Rights in the 2000s*, 80 N.C. L. REV. 1517, 1517 (2002).

18. This discussion generally follows previous research in considering Black and Latino politics as distinct; however, as noted by Tony Affigne, there has always been an Afro-Latino component to the Latino community, particularly in the Northeast, and their presence is increasing due to patterns of internal migration and increased immigration from nations with large African-descent populations such as the Dominican Republic, Colombia, and Ecuador.

elect Latino representatives, and how are they limited in this ability due to low turnout? Can Latinos elect a Latino candidate in a district where they do not constitute a majority or supermajority of the population, or are majority-minority districts key to the continued protection and growth of Latino political power? The following sections of this article address these questions in order to better understand the continuing role of majority-minority districts in providing equal opportunity to Latinos in the United States.

RACIAL POLARIZATION

Notwithstanding Barack Obama's historic victories in the majority-White Democratic Party caucus in Iowa and the general election of November 2008, there is considerable evidence that racial animosity towards Black candidates by White voters persists to this day, particularly in the South.¹⁹ Latino candidates, however, have a very different relationship with White voters. Their presence does not provoke the same "racial threat" response among Whites as does the presence of African Americans.²⁰ According to Luis Fraga and Ricardo Ramírez, in the California State Assembly elections of 1992, 1994, 1996 and 1998, Latinos were elected in every district where Latinos were at least 40% of the electorate.²¹ Expanding this research with a national dataset and updated election results, Jason Casellas finds that "it takes more African Americans in a district to increase the probability of electing African American legislators than it does for Latinos."²²

The research in this area is limited, yet several studies find that White voters are generally willing to vote for Latino candidates. As noted by Marylee Taylor in her examination of the 1990 General

19. Michael S. Lewis-Beck, Charles Tien & Richard Nadeau, *Obama's Missed Landslide: A Racial Cost?* 43 PS: POL. SCI. & POL. 69, 72-75 (2010); D. Stephen Voss & David Lublin, *Black Incumbents, White Districts: An Appraisal of the 1996 Congressional Elections*, 29 AM. POL. RES. 141, 172-74 (2001).

20. See J. Eric Oliver & Janelle Wong, *Intergroup Prejudice in Multiethnic Settings*, 47 AM. J. OF POL. SCI. 567, 568-69, 579-81 (2003) (reviewing ethnic populations' attitudes towards other ethnic populations); Marylee C. Taylor, *How White Attitudes Vary with the Racial Composition of Local Populations: Numbers Count*, 63 AM. SOC. REV., 512, 531-33 (1998) (examining white attitudes towards minority populations).

21. Luis Fraga & Ricardo Ramírez, *Continuity and Change: Latino Political Incorporation in California Since 1990*, in 3 RACIAL AND ETHNIC POLITICS IN CALIFORNIA (Bruce Cain & Sandra Bass eds., 2008).

22. Jason Casellas, *Coalitions in the House? The Election of Minorities to State Legislatures and Congress*, 62 POL. RES. Q. 1, 6 (2008).

Social Survey, where she finds much less racial animosity among Whites towards Latinos than towards Blacks, those who lump minority groups together should be sensitive to the “unique position of blacks in U.S. society.”²³ Exploiting a natural experiment in the 2001 municipal elections in Los Angeles, Marisa Abrajano, Jonathan Nagler and R. Michael Alvarez find that White (and Latino) voters used issues and ideology, and not just ethnic identity, to make vote choices between White and Latino candidates.²⁴

Casellas looks at the election of Latinos to the California state legislature both before and after the post-2000 Census round of redistricting.²⁵ In 1990, Latinos constituted 25% of the state’s population but held only 5% of seats in the state Assembly and Senate. Just ten years later, Latino representation had grown to more than 20% of the state legislature, while their share of the population had grown to about a third. More interesting are the conclusions that can be reached by closer examination of just which seats are held by Latinos, and the degree to which these reflect the creation of majority-Latino districts. Before the post-2000 Census round of redistricting, Latinos held twenty-five seats in the California state legislature but only three of those seats belonged to majority-Latino districts. After the redistricting, the total number of Latino legislators grew to twenty-nine, but now twenty were from majority-Latino districts. Casellas notes: “Latino candidates are more likely to run in districts with higher percentages of Latinos because their chances of winning increase.”²⁶ Still, he concludes that while Latinos are most likely to win in majority-Latino districts, they are also increasingly viable candidates in non-majority Latino districts. While African Americans in California continue to have difficulty winning in mixed-race districts, Latinos in mixed Latino-White districts often form coalitions with White voters to elect Latino representatives, paralleling multi-city findings from research several decades ago by Rufus Browning, Dale Marshall and David Tabb.²⁷

23. Taylor, *supra* note 20, at 531.

24. Marisa A. Abrajano, Jonathan Nagler & R. Michael Alvarez, *A Natural Experiment of Race-Based and Issue Voting: The 2001 City of Los Angeles Elections*, 58 POL. RES. Q. 203, 215–16 (2005).

25. Jason P. Casellas, *The Elections of Latinos to the California Legislature Pre- and Post-2000 Redistricting*, 11 CAL. POL. & POL’Y 21–37 (2007).

26. *Id.* at 23.

27. RUFUS P. BROWNING, DALE R. MARSHALL & DAVID H. TABB, *PROTEST IS NOT ENOUGH: THE STRUGGLE OF BLACKS AND HISPANICS FOR EQUALITY IN URBAN POLITICS* 17–135 (1984).

In subsequent research expanding his scope to include other states, Casellas finds that Latinos are better able to win election in states with citizen legislators and legislatures with high turnover rates.²⁸ Examining data from 1992 to 2004, including state legislatures and Congress, he finds that while “percentage Latino” is a strong predictor of the election of a Latino candidate, institutions with low levels of turnover (e.g. high incumbency rates) are less likely to elect Latinos. In other words, because of California’s high turnover rates (due in part to strict term limits), there are increased opportunities for Latinos to win elections even when they do not constitute a majority of a particular district.²⁹ Casellas notes that

when Latinos are represented in large numbers in a state legislature, even white voters become more willing to support Latino candidates for statewide offices. For example, Bill Richardson (D-NM) was elected governor in a state with a large Latino population (43%) precisely because of his ability to appeal to both Latino and white voters in the state.³⁰

One complication to studies evaluating the ability of Latinos to win in mixed race/ethnicity districts is the issue of self-selection. The tendency for Latinos to represent majority-Latino districts may be a reflection of their lack of competitiveness in majority-White districts, or it may be a reflection of the lack of attempts to win election in majority-White districts. How can we accurately measure the ability of Latinos to win votes from non-Latino neighborhoods if they don’t usually even try? Casellas finds that when Latinos try to win in these districts, they are less successful than Latino candidates in majority-Latino districts but still often win elections. This parallels studies of gender in politics, in that women are less likely to win elected office but also less likely to compete; thus, the underrepresentation of women in elected office reflects a combination of the reluctance of voters to support women but also the absence of women on the

28. Jason P. Casellas, *The Institutional and Demographic Determinants of Latino Representation*, 34 LEGIS. STUD. Q. 399, 418 (2009).

29. *Id.* See also Susan J. Carroll & Krista Jenkins, *Increasing Diversity or More of the Same? Term Limits and the Representation of Minorities, Women, and Minority Women in State Legislatures*, 10 NAT’L POL. SCI. REV. 71, 81–82 (2005). Carroll and Jenkins note that the pattern is very different for African Americans and Latinos, in that African Americans are better able to capture seats in majority-Black districts once long-term White incumbents are termed out, while for Latinos the open seats created via term limits allow them to also win seats in majority-White districts where Latinos may constitute only a small minority of the population.

30. Casellas, *supra* note 28, at 404.

ballot.³¹ More Latinos would be elected if they were more often recruited and supported by political parties and interest groups.³²

The relative lack of racial animosity towards Latinos should not be overstated; considerable discrimination against Latinos and attempts to limit Latino voting power persist to this day. As recently as 2006, intervention by the Supreme Court was needed to prevent Texas elected officials from unconstitutionally diluting Latino vote strength.³³ Until the 1950s, there were virtually no Latino elected officials in the United States. The Voting Rights Act of 1965, the 1975 extension to language minorities, and subsequent litigation to protect those rights by Latino civil rights organizations have been crucial to the expansion of Latino political power and representation. While thousands of Latinos have since won elected office, the number of Latino elected officials today is still “woefully discrepant” with the size of the population.³⁴ At 15.4% of the population (as of 2008), Latinos would need to hold sixty-seven seats in the U.S. House of Representatives to achieve proportional representation. They currently hold twenty-five, most of which are in districts where Latinos are at least 50% of the population, as shown in Table 1. In contrast, Blacks are 12.1% of the population and hold forty-two seats (10%) in the House.³⁵

31. Richard L. Fox & Jennifer L. Lawless, *Entering the Arena? Gender and the Decision to Run for Office*, 48 AM. J. POL. SCI. 264, 274–75 (2004); Jennifer L. Lawless & Richard L. Fox, *If Only They'd Ask: Gender, Recruitment, and Political Ambition*, 72 J. POL. (forthcoming 2010); Jennifer L. Lawless & Kathryn Pearson, *The Primary Reason for Women's Underrepresentation? Reevaluating the Conventional Wisdom*, 70 J. POL. 67, 76–78 (2008).

32. See Henry E. Brady, Kay Lehman Schlozman & Sidney Verba, *Prospecting for Participants: Rational Expectations and the Recruitment of Political Activists*, 93 AM. POL. SCI. REV. 153 (1999) (noting that recruitment of candidates is often biased so that the people recruited have traits similar to the recruiters); Gary F. Moncrief, *Recruitment and Retention in U. S. Legislatures*, 24 LEGIS. STUD. Q. 173, 174–84 (1999) (surveying studies that show the importance of recruiting candidates).

33. League of United Latin Am. Citizens (LULAC) v. Perry, 548 U.S. 399 (2006); see also Ellen D. Katz, *Reviving the Right to Vote*, 68 OHIO ST. L.J. 1163, 1163 (2007) (arguing that “the application of distinct doctrines to invalidate or diminish what are indisputably partisan gerrymanders . . . may well have salutary effects”).

34. KIM GERON, *LATINO POLITICAL POWER* 7 (2005).

35. Three hundred thirty-two members are White (76%) and five are Asian (1%).

Table 1Latino Members of the 111th U.S. House of Representatives³⁶

Representative	District	% Latino	Representative	District	% Latino
John Salazar	CO-3	22.5	Mario Diaz-Balart	FL-25	67.9
Lucille Roybal-Allard	CA-34	36.1	Loretta Sanchez	CA-47	68.7
Ben Ray Luján	NM-3	38.2	Xavier Becerra	CA-31	69.0
Nydia Velázquez	NY-12	46.2	Charles Gonzalez	TX-20	69.8
Devin Nunes	CA-21	48.5	Solomon Ortiz	TX-27	71.6
Albio Sires	NJ-13	49.3	Luis Gutierrez	IL-4	72.4
Dennis Cardoza	CA-18	50.1	Lincoln Diaz-Balart	FL-21	73.5
Raúl Grijalva	AZ-7	54.6	Grace F. Napolitano	CA-38	75.2
Ileana Ros-Lehtinen	FL-18	64.8	Henry Cuellar	TX-28	78.8
Linda Sanchez	CA-39	65.0	Rubén Hinojosa	TX-15	79.8
Ciro Rodriguez	TX-23	65.5	Joe Baca	CA-43	80.2
Ed Pastor	AZ-4	66.3	Silvestre Reyes	TX-16	80.9
José Serrano	NY-16	66.4			

Of the twenty-five House seats currently held by Latinos, over half are in California (eight) and Texas (six). This parallels the geographic concentration of Latinos in those states, but also illustrates the difficulties faced by Latino candidates who may choose to run in districts where there is not a majority-Latino population. Of the twenty-five current Latino House members, only six represent non-majority-Latino districts.

Even in California, racial polarization in voting persists; “the legacy of prejudice and discrimination against Latinos still hangs heavy over the political process.”³⁷ Scholars looking at elections in Los Angeles County from 1998 to 2003 find persistent evidence of racially polarized voting against Latino candidates by White voters, and

36. This data was compiled from the United States House of Representatives and U.S. Census Bureau, American Community Survey, 2006-2008, available at <http://www.census.gov/acs/www/>. Florida Representatives are Republicans; others are Democrats.

37. GERON, *supra* note 34, at 206.

racially cohesive bloc voting in favor of those candidates by Latino voters.³⁸ Thus, while White animosity towards Latino candidates may be less than White animosity towards Black candidates, it is still widespread, with consequences for Latino candidates and Latino voting rights. Until White animosity towards Latinos is dramatically reduced, equal political rights for Latinos may be achievable only through continued use of majority-Latino districts.

THE LACK OF LATINO POLITICAL COHESIVENESS

Another crucial factor in the majority-minority district debate is the degree to which Black or Latino voters constitute a cohesive political group. Numerous studies have shown that Blacks are motivated by feelings of racial linked fate and that they are a relatively monolithic political group, regularly giving 80% or more of their support to the Democratic Party.³⁹ Latinos, however, are less unified. A 2000 survey of Latino likely voters found that 56.6% identified as Democrats, 24.5% identified as Republicans, and 13% identified as independent.⁴⁰ Data from the 2006 Latino National Survey shows that Latino citizens identify as Democrats as compared to Republicans by a ratio of 2.6 to 1, but there are significant variations by national origin and location. Mexican Americans prefer the Democratic Party by a ratio of 2.9 to 1, Puerto Ricans prefer the Democratic Party by 3.2 to 1, and Cuban Americans prefer the Republican Party by a ratio of 1.5 to 1.⁴¹ To speak of Latinos as a cohesive voting bloc is therefore somewhat misleading; yet, the clear trend is a preference for the Democratic Party. Cubans are the exception, but they represent only 3.5% of the Latino population.

As the Cuban-descent population in the United States ages and becomes less prominent—Cubans are about to be replaced by Dominicans as the third-largest Latino national-origin subgroup

38. Yishaiya Abosch, Matt A. Barreto & Nathan D. Woods, *An Assessment of Racially Polarized Voting For and Against Latino Candidates*, in VOTING RIGHTS ACT REAUTHORIZATION OF 2006: PERSPECTIVES ON DEMOCRACY, PARTICIPATION, AND POWER 107, 127–29 (Ana Henderson ed., 2007).

39. MICHAEL C. DAWSON, BEHIND THE MULE: RACE AND CLASS IN AFRICAN-AMERICAN POLITICS 77–88, 107 (1994); *see generally* PAUL FRYMER, UNEASY ALLIANCES (1999) (exploring the ramifications of the Democratic Party's "capture" of black votes).

40. R. Michael Alvarez & Lisa García Bedolla, *The Foundations of Latino Voter Partisanship: Evidence from the 2000 Election*, 65 J. POL. 31, 31–49 (2003).

41. Luis Ricardo Fraga, et al., *Patterns of Latino Partisanship: Foundations and the Prospects for Change*, at 8, presented at the annual meeting of the Western Political Science Association (Mar. 19–21, 2009).

(after Mexicans and Puerto Ricans)—the cohesiveness of the Latino community will increase. While Cuban Americans as a whole continue to prefer the Republican Party, younger Cuban Americans (those not socialized by the Castro revolution) are more likely to prefer the Democratic Party. At the same time, increasing numbers of non-Cuban Latinos in Florida, generally Puerto Ricans, are turning the state blue. In the November 2008 election, 57% of Latino voters in Florida preferred the Democratic nominee, a result driven by Puerto Ricans in central Florida. Overall, 67% of Latinos voted for Obama, compared to 31% for John McCain. Although this does not approach the 95% rate of support for Obama among Black voters, it is still a stronger Democratic tendency than exists among White voters, who were split 43% to 55% in favor of McCain.⁴²

Also important is the degree to which Latinos display ethnic cohesiveness, and how partisanship and ethnicity play into their vote choices. The tendency for Latino voters to prefer coethnic candidates is dependent on individual levels of ethnic identification and whether or not the candidates are copartisans.⁴³ Spatial models of voting predict that voters will choose the candidate who is closest to them on issues and characteristics, but which arena is more salient to Latino voters: ethnicity or partisanship? The evidence here is mixed. To examine the pathways by which ethnicity influences vote choice, Scott Graves and Jongho Lee conducted a survey just before a 1996 U.S. Senate race in Texas between a Democratic Mexican American challenger and an Anglo Republican incumbent.⁴⁴ They found that ethnicity plays a key role in vote choice, but it does so indirectly through partisanship, ethnic-related issue positions, and candidate evaluations. This suggests that partisanship is more important than ethnicity, a conclusion supported by a natural experiment from California's 20th Congressional District in 2000, when an Anglo Democrat incumbent was challenged by a Mexican American Republican in a heavily Latino district (55%) in the Central Valley.⁴⁵

42. Mark Hugo Lopez, *How Hispanics Voted in the 2008 Election*, Pew Research Center, Nov. 7, 2008, <http://pewresearch.org/pubs/1024/exit-poll-analysis-hispanics>; Julia Preston, *In Big Shift, Latino Vote was Heavily for Obama*, N.Y. TIMES, Nov. 7, 2008, at A24, available at <http://www.nytimes.com/2008/11/07/us/politics/07latino.html>.

43. Victoria M. De Francesco Soto, *Do Latinos Party All the Time? The Role of Shared Ethnic Group Identity on Political Choice* (2007) (unpublished Ph.D. dissertation, Duke University), available at <http://hdl.handle.net/10161/191>.

44. Scott Graves & Jongho Lee, *Ethnic Underpinnings of Voting Preference: Latinos and the 1996 U.S. Senate Election in Texas*, 81 SOC. SCI. Q. 226, 226–36 (2000).

45. Melissa R. Michelson, *Does Ethnicity Trump Party? Competing Vote Cues and Latino*

In this case, Latino voters chose to vote for their copartisan rather than for their coethnic. Not only did the incumbent, Cal Dooley, easily beat Richard Rodriguez in his bid for a sixth term, taking 52.4% of the vote to Rodriguez's 45.5%, but a poll of Latino voters just before the election showed that 60% of respondents planned to vote for the Anglo Democrat.

Other research indicates that ethnicity can be more important than partisanship. For example, the Dade County, Florida mayoral election of September 1996 included four major candidates: a Black Republican, a Puerto Rican Democrat, a Cuban American Democrat, and a Cuban American Independent.⁴⁶ Over 80% of Black voters in the county were registered as Democrats, whereas over 60% of registered Latinos were Republicans. In other words, ethnicity and partisanship were not aligned; yet, ethnicity was an overwhelmingly more powerful predictor of vote choice than was partisanship. In a poll conducted a week before the election, 97.4% of Latino respondents supported one of the three Latino candidates and 82% of African American respondents supported Arthur Teele, the Black Republican, indicating a very strong correlation between race/ethnicity and vote choice.⁴⁷ By contrast, there was little congruence between partisanship and vote choice: most Democrats supported the Republican, while 79% of Republicans supported one of the Democrats. Another example comes from a majority-Latino district in California. In 1982, Anglo Republican John Rousselot challenged the Latino Democrat incumbent, Marty Martinez, in California's heavily Latino 30th Congressional District. Martinez won support from 86% of Latino Democrats, and won the race by a comfortable margin. Two-thirds of Latino Republicans crossed party lines to support their coethnic, even when voting for White Republicans in other races (for governor and U.S. Senate) that did not include Latino candidates.⁴⁸

In addition to the dominant influences of partisanship and ethnicity, other factors such as issue positions and symbolic cues also

Voting Behavior, 4 J. POL. MARKETING 1, 1–25 (2005).

46. Kevin A. Hill, Dario V. Moreno & Lourdes Cue, *Racial and Partisan Voting in a Tri-Ethnic City: The 1996 Dade County Mayoral Election*, 23 J. URB. AFF. 291, 297 (2001).

47. *Id.* at 302.

48. Bruce E. Cain & D. Roderick Kiewiet, *Ethnicity and Electoral Choice: Mexican American Voting Behavior in the California 30th Congressional District*, 65 SOC. SCI. Q. 315 (1984).

play a role. The nonpartisan Los Angeles city elections of 2001 included two competitive races for open seats in which one candidate in each race was Latino and one was Anglo.⁴⁹ In the mayoral race, the Latino candidate (Antonio Villaraigosa) was more liberal than the White candidate (Jim Hahn). In the race for city attorney, the Latino candidate (Rocky Delgadillo) was more moderate than the White candidate (Mike Feuer). While 82% of Latinos voted for Villaraigosa and 79% for Delgadillo, only 66.2% voted for both Latino candidates. In other words, a third of Latino voters chose one Anglo candidate over a coethnic. Ethnicity was not solely responsible for vote choice; ideology, issues, evaluation of the L.A. economy, personal economic security, and education were also important determinants. Conservatives were more likely to choose Hahn and Delgadillo. More educated Latinos were more likely to vote for a White candidate.⁵⁰

Other research indicates that low-education Latinos are more likely than high-education Latinos to use non-policy cues when evaluating a candidate.⁵¹ For example, if a candidate speaks Spanish, is Latino, promises to appoint Latino officials, uses Spanish-language advertisements, or campaigns in Latino neighborhoods, then low-income Latinos are more likely to evaluate the candidate favorably. High-education Latinos are more likely to use policy and ideology cues, as predicted by the classic spatial model.

In sum, while Latinos prefer to vote for coethnic candidates, they do not constitute as cohesive a voting bloc as do African Americans, particularly when faced with competing vote cues of partisanship or issue positions. Yet, the tendency for Latinos to be willing to vote against a coethnic due to competing vote cues should not be overstated. Generally speaking, Latinos prefer to support Latino

49. Marisa A. Abrajano et al., *A Natural Experiment of Race-Based and Issue Voting: The 2001 City of Los Angeles Elections*, 58 POL. RES. Q. 203, 203 (2005).

50. *Id.* at 212–13. Cf. Matt A. Barreto et al., *Metropolitan Latino Political Behavior: Voter Turnout and Candidate Preference in Los Angeles* 27 J. URB. AFF. 71 (2005) (examining the 2001 Los Angeles elections). *Metropolitan Latino Political Behavior* notes that several factors were present in the L.A. context that make ethnic-based voting more likely: enhanced Latino cohesiveness and politicization in the wake of a series of anti-immigrant and anti-Latino initiatives and rhetoric in the 1990s, the presence of a viable Latino candidate, and mobilization drives conducted by Latino organizations. *Id.* at 73–78. Registered Latinos voted at higher rates than non-Latinos and tended to support their coethnic (over 80% chose Villaraigosa). *Id.* at 76. In contrast to turnout in the November 2000 presidential election, turnout in 2001 was linked to the percentage of Latinos registered in a precinct. *Id.* at 83. In addition, precincts with higher percentages of Latinos greatly favored Villaraigosa. *Id.* at 85–86.

51. Marisa Abrajano, *Who Evaluates a Presidential Candidate by Using Non-Policy Campaign Messages?*, 58 POL. RES. Q. 55, 66 (2005).

candidates, particularly if they hold a panethnic identity or have feelings of Latino linked fate, both conditions that are increasingly the case. Most Latinos are of Mexican or Puerto Rican descent, with shared preferences for the Democratic Party and relatively consistent issue positions, and can form cohesive voting blocs in favor of Democratic Latino candidates. Cuban Americans, while distinctive in their preference for the Republican Party, are geographically concentrated in South Florida, and thus can form cohesive voting blocs for local Republican Latino candidates. In either context, Latino candidates running in majority-Latino districts can count on considerable support from Latino voters.

THE LATINO ELECTORATE

The size of the Latino electorate does not accurately reflect the size of the Latino population in the U.S. and is failing to keep pace with the community's rapid growth. From 2000 to 2008, the size of the Latino population grew from 35.2 million to 46.8 million, increasing from 12.5% of the population to 15.4%.⁵² Unlike Black populations—which are generally concentrated in the South, generally concentrated in segregated communities, and holding steady in comparison to non-Black populations—Latino populations are moving in increasing numbers to “new destinations,” generally integrating into communities rather than creating new segregated communities, and growing quickly in comparison to other populations.⁵³ Latinos are the fastest growing racial/ethnic group in the country, and are predicted by the U.S. Census to make up a third of the national population by 2050.⁵⁴

Yet, Latinos only constituted 7% of the electorate in November 2008, continuing a longstanding pattern of low voter turnout.⁵⁵ This is generally due to a variety of factors: lower levels of citizenship; lower

52. PEW HISPANIC CENTER, STATISTICAL PORTRAIT OF HISPANICS IN THE UNITED STATES, 2008 (2010) <http://pewhispanic.org/factsheets/factsheet.php?FactsheetID=58>. In comparison, Blacks grew from 12.0% of the population to 12.1%, while White non-Latinos shrank from 69.1% to 65.4%. *Id.*

53. John R. Logan, Brian J. Stults & Reynolds Farley, *Segregation of Minorities in the Metropolis: Two Decades of Change*, 41 DEMOGRAPHY 1, 1 (2004).

54. Press Release, U.S. Census Bureau, An Older and More Diverse Nation by Midcentury (Aug. 14, 2008), available at <http://www.census.gov/Press-Release/www/releases/archives/population/012496.html>.

55. Douglas R. Hess & Jody Herman, *Representational Bias in the 2009 Electorate*, PROJECT VOTE REPORT, <http://projectvote.org/reports-on-the-electorate-/440.html>. In comparison, Blacks constituted 12% of the electorate in November 2008, Whites 76%. *Id.*

levels of English-language proficiency; and the demographic nature of the Latino community, including lower median levels of age, income, and education—all of which are strong predictors of turnout.⁵⁶ Even among Latinos eligible to vote, participation lags behind that of Whites and Blacks. In other words, part of the reason Latinos are underrepresented is because they do not vote. Black citizens, in contrast, generally vote more than would be predicted by their socioeconomic characteristics and in levels approaching those of Whites. The historic 2008 Presidential election was unusual, in that Black turnout almost matched White turnout (65.2% and 66.1%, respectively),⁵⁷ but even in previous elections Black turnout was much closer to White turnout than it was to Latino turnout. In 2006, 51.6% of White individuals of voting age claimed to have participated in the midterm elections, compared to 41% of Blacks and only 32.3% of Latinos.⁵⁸ In 2004, 67.2% of Whites and 60% of Blacks reported voting, but only 47.2% of Latinos reported voting.⁵⁹ And in contrast to the spike in Black turnout in November 2008, only 49.9% of Latino citizens made it to the polls (and only 31.6% of the voting-age population).⁶⁰ In California, the population has shifted over the past three decades from 69% White to only 43% White, while the size of the Latino population has more than doubled from 18% to 37%. Yet, Whites are still 65% of the electorate, and Latinos only 21%.⁶¹

Low Latino turnout is also due to asymmetries and deficiencies in mobilization and outreach by political parties and candidates, which have been found in multiple studies to be crucial to participation.⁶²

56. LOUIS DESIPIO, COUNTING ON THE LATINO VOTE: LATINOS AS A NEW ELECTORATE (1996); Rodney E. Hero & Anne G. Campbell, *Understanding Latino Political Participation: Exploring the Evidence from the Latino National Political Survey*, 18 HISP. J. BEHAV. SCI. 129, 129–32 (1996).

57. Press Release, U.S. Census Bureau, Voter Turnout Increases by 5 Million in 2008 Presidential Election, U.S. Census Bureau Reports: Data Shows Significant Increases Among Hispanic, Black, and Young Voters (July 20, 2009), available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/index.html>.

58. U.S. Census Bureau, *Voting and Registration in the Election of November 2006*, June 2008, <http://www.census.gov/prod/2008pubs/p20-557.pdf>.

59. U.S. Census Bureau, *Voting and Registration in the Election of November 2004*, March 2006, <http://www.census.gov/prod/2006pubs/p20-556.pdf>.

60. Voter Turnout Increases by 5 Million in 2008 Presidential Election, *supra* note 57.

61. Press Release, Field Research Corporation, The Changing California Electorate (Part 1): Large-Scale Demographic Changes in California's Electorate From What it Was Thirty Years Ago (Aug. 4, 2009), available at <http://field.com/fieldpollonline/subscribers/Rls2309.pdf>.

62. STEVEN J. ROSENSTONE & JOHN M. HANSEN, MOBILIZATION, PARTICIPATION, AND DEMOCRACY IN AMERICA 36–37 (1993); SIDNEY VERBA ET AL., VOICE AND EQUALITY: CIVIC VOLUNTARISM IN AMERICAN POLITICS, (1995); LATINOS IN THE 2008 ELECTION (Rodolfo O.

While non-partisan community organizations such as the National Association of Latino Elected and Appointed Officials and the Southwest Voter Registration Education Project expend considerable resources every election season to mobilize Latino voters, their efforts cannot compensate for the general lack of outreach by Democrats and Republicans, who tend to focus their efforts on likely voters. In July 2008, then-candidate Barack Obama made headlines with his pledge to spend \$20 million to reach out to Latino voters. This was double what the GOP had spent on similar efforts in 2000, but less than 3% of the candidate's overall campaign budget of \$744.9 million.

The bottom line is that despite the Latino community's growing size and geographic scope, various demographic characteristics and chronic neglect by major party candidates and organizations combine to keep Latino turnout low. This limits the ability of Latinos to win elections in districts where they do not constitute a majority (or sometimes a supermajority) of the population, and severely limits their ability to "elect representatives of their choice" in coalitional or influence districts. The growth of the Latino share of the electorate continues to lag behind the growth of the Latino population. Until this disconnect between population size and share of the electorate changes, either as a result of partisan realignment or gradual population shifts, Latino representation will continue to rely heavily on the existence of majority-Latino districts.

THE FUTURE OF THE MAJORITY-MINORITY DISTRICT

Majority-minority districts are not without their own problems. Districts that are drawn to support the ability of a politically cohesive Latino (or Black) community should not be so safe as to allow an incumbent to serve without accountability. As noted by Ellen Katz, "the right to vote must encompass something more than the ability to cast a ballot for a preordained victor."⁶³ Yet, majority-minority districts remain important to the Latino community for several major reasons. The size and political participation of the Latino population is growing, but it still lags far behind that of Whites, and thus so does Latino representation. Latino political power is limited due to the community's youth and large proportion of non-citizens, both of which contribute to low Latino voter turnout. A general lack of

de la Garza et al., eds., forthcoming 2010).

63. Katz, *supra* note 33, at 1166.

outreach by major political parties and organizations, including deficiencies in candidate recruitment and voter mobilization, further contribute to low Latino voter turnout. In addition, while racially polarized voting by Whites is less problematic for Latinos than for Blacks, it still exists, and is less compensated for by bloc voting in the Latino community because of the Latino community's political and ideological diversity. Thus, even when Latinos constitute a majority or even a plurality of a district, their ability to elect a representative of their choice is limited. Given that representatives are expected to serve all members of their geographic constituencies and not just those with the franchise, majority-minority Latino districts remain crucial. In addition, descriptive representation of Latinos has numerous benefits to the community and to society as a whole, including increased substantive representation, trust in government, and participation.

Georgia v. Ashcroft's conclusion that coalition and influence districts are sufficient to ensure minority voting rights⁶⁴ may be true for Blacks, but it is not true for Latinos. Support for proportional Latino representation thus requires the continued use of majority-Latino districts and the protection of the right of Latino citizens to elect coethnic representatives, at least for the time being. In the "color-blind" future, majority-minority districts may no longer be necessary to guarantee equal representation and power to historically underrepresented groups in the United States, but we have not yet arrived at the end of the rainbow.

64. *Georgia v. Ashcroft*, 539 U.S. 461, 479–83 (2003).