

July 18, 2017

VIA ELECTRONIC MAIL

Attn: Ms. Lynn Ledford, Division Director  
Gwinnett County Board of Elections and Voter Registration  
75 Langley Drive  
Lawrenceville, GA 300461

RE: Ensuring Availability of Bilingual Voting Materials for Gwinnett County's Spanish Speaking Voters and Open Records Request

Dear Ms. Ledford:

LatinoJustice PRLDEF is a national nonprofit, nonpartisan civil legal defense and education fund established in 1972, advancing Latinx<sup>1</sup> civil and constitutional rights through litigation, legal advocacy and education. The Georgia Association of Latino Elected Officials (GALEO) is a nonprofit, nonpartisan organization established in 2003 to increase civic engagement and leadership development for Latinos across Georgia. This Letter should serve as a follow up to our Letter dated October 27, 2015, directed to the Gwinnett County Board of Elections and Voter Registration, where we asked Gwinnett County to provide bilingual voting materials for Limited-English Proficient (LEP) Spanish Speaking voters prior to Gwinnett County's designation as a covered jurisdiction under Section 203 of the Voting Rights Act (VRA) on December 5, 2016.<sup>2</sup> A copy of this Letter is enclosed for reference, along with a current Records Request under the Georgia Open Records Act.

We write on behalf of our organizations to remind Gwinnett County to adhere to the mandates required under Section 203 of the Voting Rights Act (VRA), as determined by the U.S. Department of Commerce, Bureau of the Census.<sup>3</sup> Gwinnett County, which has been designated as a VRA Section 203 Jurisdiction, now has a legal obligation to provide all voting materials in

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<sup>1</sup> The gender-neutral term "Latinx", along with the terms "Latina", "Latino" and "Hispanic" are used interchangeably throughout this Letter to refer to the group designated by the Census as "Hispanic." Specifically, a report on the 2010 Census states that "Hispanic or Latino" refers to a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race." Karen R. Humes, Nicholas A. Jones, & Roberto R. Ramirez, *Overview of Race and Hispanic Origin: 2010, 2010 Census Briefs*, 1, 2 (March, 2011) <http://www.census.gov/prod/cen2010/briefs/c2010br 02.pdf> (last visited May 10, 2017). See also generally, Sarah Hayley Barrett & Oscar Nñ, *Latinx: The Ungendering of the Spanish Language*, NPR (Jan. 29, 2016), <http://www.npr.org/2016/01/29/464886588/latinx-the-ungendering-of-the-spanish-language>.

<sup>2</sup> Letter from Juan Cartagena, LatinoJustice PRLDEF, to Lynn Ledford, Division Director, Gwinnett County Board of Elections and Voter Registration (October 27, 2015) (on file with LatinoJustice PRLDEF).

<sup>3</sup> Voting Rights Act Amendments of 2006, 81 Fed. Reg. 87,532, 87,533 (Nov. 22, 2016).

both English and Spanish, and can no longer, as it had in previous years, refuse to provide the same assistance and materials that it provides in English for its Spanish speaking voters.<sup>4</sup>

Section 203 of the VRA mandates that election officials and staff in the covered jurisdiction must provide language assistance including, “any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots.”<sup>5</sup> With regard to implementation of this mandate, the VRA requires that the county implement these changes on the effective date of publication in the Federal Register: “The requirements of Section 203(c) take effect upon publication in the Federal Register of the requisite determinations of the Director of the Census. Such determinations are not reviewable in any court.”<sup>6</sup> On December 5, 2016, Gwinnett County was designated under Section 203 of the VRA, and this designation, under law, includes all of its political subdivisions.<sup>7</sup>

Currently, the Gwinnett County Board of Elections website states:

Gwinnett County has recently been designated as a section 203 jurisdiction. For County voters, beginning with the regularly scheduled elections in 2018, there will be Spanish language assistance available as well as Spanish language materials, including ballots.<sup>8</sup>

The above language does not comply with the effective date of December 5, 2016, as published in the Federal Register, and as required under Section 203 of the VRA. At the very latest, Gwinnett County had a maximum of up to thirty (30) days after the date of publication in the Federal Register on Dec. 5, 2016, to come into compliance with the requirements under Section 203 of the VRA, including providing voter registration and information regarding elections in a way that LEP Spanish-speakers in Gwinnett County could understand on the Board of Elections website.<sup>9</sup>

Further, the current Gwinnett County Board of Elections website does not appear to be professionally translated; in fact, it is quite difficult for the average English speaking voter, let alone any potential Spanish speaking LEP voter, to find any information in Spanish regarding language access on the main webpage other than a small subsection on “Language Access” asking for community input, unfortunately, in English only. Staff at GALEO actually had to initiate direct contact with the Gwinnett County Board of Elections in English, via email, in order to seek guidance on where to find Spanish language or bilingual translations of the website. Ultimately, the Gwinnett County Board of Elections instructed staff at GALEO that they could locate a “Bing” automated webpage translation tool, which appears at the very bottom of the Gwinnett County Board Elections main page. Automated translation tools such as those

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<sup>4</sup> See David Wickert, *Gwinnett Rejects Call for Spanish Ballot*, ATLANTA-JOURNAL CONSTITUTION, (January 19, 2016), <http://www.ajc.com/news/local-govt--politics/gwinnett-rejects-call-for-spanish-ballots/5WqvUFwDnbbxWa9Mcx1fK/>

<sup>5</sup> 28 CFR §55.15.

<sup>6</sup> 28 CFR §55.4(a)(2), (2012) [Order No. 655-76, [41 FR 29998](#), July 20, 1976, as amended by Order No. 1246-87, [53 FR 736](#), Jan. 12, 1988; Order No. 3291-2011, [76 FR 54111](#), Aug. 31, 2011] (“(2) The requirements of section 203(c) take effect upon publication in the FEDERAL REGISTER of the requisite determinations of the Director of the Census. Such determinations are not reviewable in any court. See section 203(b)(4).”).

<sup>7</sup> *Id.*

<sup>8</sup> See “Elections and Voting: Frequently Asked Questions, Elections & Voting” (2017), Gwinnett County Government website, <https://www.gwinnettcountry.com/portal/gwinnett/Departments/Elections/FrequentlyAskedQuestions/ElectionsandVoting> (last visited Jul 7, 2017).

<sup>9</sup> 5 U.S.C.S. § 553(d).

developed by Google and Bing, and as currently used by Gwinnett County, are not always accurate, can cause confusion and place additional burdens on access to voting for LEP voters.<sup>10</sup>

Municipalities within Gwinnett County, most of which have elections scheduled for 2017, are also subject to the requirements of Section 203. The language concerning the implementation of the VRA regarding language minority groups specifically states:

Where a political subdivision (e.g., a county) is determined to be subject to . . . section 203(c), all political units that hold elections within that political subdivision (e.g., cities, school districts) are subject to the same requirements as the political subdivision.<sup>11</sup>

In plain language, this means that any and all political units within the county must comply with Section 203 of the VRA. As of now, the municipalities of Auburn,<sup>12</sup> Berkeley Lake,<sup>13</sup> Braselton,<sup>14</sup> Loganville,<sup>15</sup> and Lilburn,<sup>16</sup> Georgia, within Gwinnett County, may not be in compliance. These municipal websites are failing to provide an option to translate their elections webpages, which contain valuable information on upcoming municipal elections this year, or in some cases, to even offer voter registration forms in Spanish. The municipality of Lawrenceville offers a voter registration PDF in Spanish, but does not offer translation services for the rest of the election information on their website.<sup>17</sup>

The municipalities of Duluth,<sup>18</sup> Norcross,<sup>19</sup> Peachtree Corners,<sup>20</sup> and Sugar Hill<sup>21</sup> attempt to use a Google Translate automated machine option of all the election information available on their website, yet automated machine translations are not universal or adequate translations of this information, and, as noted above, can actually frustrate access to voter information among LEP voters.<sup>22</sup> Conversely, the municipalities of Dacula,<sup>23</sup> Suwanee,<sup>24</sup> and Snellville<sup>25</sup> kindly provide

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<sup>10</sup> See Morgan E. Saunders, *Digital-Age Discrimination: The Voting Rights Act, Language-Minorities, and Online Voter Registration*, 50:3 COLUM. J.L. & SOC. PROBS. 450, 471, n. 152 (2017) (“For something as important as voter registration or a ballot, using online translators should not be viewed as VRA-compliant. For example, in a recent section 203 case, the court required the state to hire and train bilingual poll workers who could provide complete and accurate translations. See Order Re Interim Remedies at 8, *Toyukak v. Treadwell*, No. 13-cv-137 (D. Alaska Sept. 22, 2014). It does not seem possible for online translation systems to satisfy the requirement that translations be ‘complete and accurate.’ *Id.*”).

<sup>11</sup> 28 CFR §55.9.

<sup>12</sup> See “Municipal Elections”, City of Auburn, Georgia website, <http://www.cityofauburn-ga.org/MunicipalElections.aspx> (last visited Jul 11, 2017).

<sup>13</sup> See “Elections”, City of Berkeley Lake, Georgia website, <http://www.berkeley-lake.com/index.aspx?NID=68> (last visited Jul 11, 2017).

<sup>14</sup> See “Elections”, Braselton, Georgia website, <http://www.braselton.net/elections.html> (last visited Jul 11, 2017).

<sup>15</sup> See “Loganville Election Information”, City of Loganville, Georgia website, <http://loganville-ga.gov/elections.html> (last visited Jul 11, 2017).

<sup>16</sup> See “Municipal Elections”, Lilburn, Georgia website, <http://www.cityoflilburn.com/index.aspx?NID=178> (last visited Jul 11, 2017).

<sup>17</sup> See “Registering to Vote”, Lawrenceville, Georgia website, <http://www.lawrencevillega.org/444/Registering-to-Vote> (last visited Jul 11, 2017).

<sup>18</sup> See “City Elections”, Duluth, Georgia website, [http://duluthga.net/about\\_duluth/city\\_elections/index.php](http://duluthga.net/about_duluth/city_elections/index.php) (last visited Jul 11, 2017).

<sup>19</sup> See “Elections”, City of Norcross, Georgia website, <http://www.norcrossga.net/index.aspx?NID=276> (last visited Jul 11, 2017).

<sup>20</sup> See “City Elections”, City of Peachtree Corners, Georgia website, <http://www.peachtreecornersga.gov/government/city-clerk/city-elections> (last visited Jul 11, 2017).

<sup>21</sup> See “Elections”, City of Sugar Hill, Georgia website, <https://cityofsugarhill.com/government/mayor-and-city-council/elections/> (last visited Jul 11, 2017).

<sup>22</sup> See Saunders, *Digital-Age Discrimination*, *supra* note 10. (“For something as important as voter registration or a ballot, using online translators should not be viewed as VRA-compliant. For example, in a recent section 203 case, the court required the state to hire and train bilingual poll workers who could provide complete and accurate translations. See Order Re Interim Remedies at 8, *Toyukak v. Treadwell*, No. 13-cv-137 (D. Alaska Sept. 22, 2014). It does not seem possible for online translation systems to satisfy the requirement that translations be ‘complete and accurate.’ *Id.*”).

all municipal election information already translated on their website in the same location as their English language information.

The disparate impact of a failure to provide adequately translated materials may also have a discriminatory effect on protected classes of language minority voters who may also be members of racial minority groups. Latina/o Spanish-speaking U.S. citizens are voters who fall within protected classes of voters under Section 2 of the VRA.<sup>26</sup> The risk of harm in placing this clearly unequal burden in terms of voting access prevents equal opportunity to the fundamental right to vote on both members of language and racial minority groups. This is a risk which Gwinnett County and the municipalities of Auburn, Berkeley Lake, Braselton, Loganville, Lilburn, Duluth, Norcross, Peachtree Corners, and Sugar Hill continue to take by failing to provide adequate professional language assistance and materials to Spanish speaking voters on an equal basis with all that is provided to English speaking voters, and a failure to do so may also rise to the level of a Section 2 VRA violation.<sup>27</sup>

Guidance from the U.S. Department of Justice makes very clear that Section 203 is construed broadly to encompass all stages of the voting process, and Section 203 applies to all voter registration within Gwinnett County,<sup>28</sup> whether such voter registration is managed by Gwinnett County itself or its municipalities, “*regardless of what level of government is facilitating the process.*”<sup>29</sup> Litigation defense of alleged violations of the Federal VRA can become incredibly costly for state, counties, and municipalities. For example, Texas so far has spent close to \$3.5 million in litigation costs after accusations of alleged violations of the VRA arose.<sup>30</sup> Charleston County, South Carolina recently spent \$2 million dollars in an unsuccessful attempt to defend itself from a Section two claim.<sup>31</sup> Cities in both Washington State<sup>32</sup> and California have paid millions in litigation costs as parts of settlements after their alleged violations of the VRA.<sup>33</sup>

Given all of the above concerns, we recommend that Gwinnett County and all municipalities within Gwinnett County avoid costly litigation by scheduling a meeting together with LatinoJustice PRLDEF, GALEO, community members and leaders immediately to ensure

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<sup>23</sup> See “2017 Municipal Election Information”, Dacula, Georgia website, <http://daculaga.gov/2017-municipal-election-information/> (last visited Jul 11, 2017).

<sup>24</sup> See “Voting”, City of Suwanee, Georgia website, <http://www.suwanee.com/cityhall.voting.php> (last visited Jul 11, 2017).

<sup>25</sup> See “City of Snellville Election Information”, Snellville, Georgia website, <http://www.snellville.org/elections> (last visited Jul 11, 2017).

<sup>26</sup> 52 U.S.C. § 10301(a) (2006) (“No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).”).

<sup>27</sup> Section 2 of the federal Voting Rights Act of 1965 (“VRA”) provides that no “standard, practice, or procedure shall be imposed or applied by any state or political subdivision in a manner which results in a denial or abridgement of the right of any citizen to vote on account of race or color”, or membership in a language minority group, including citizens of Spanish heritage. 42 U.S.C. § 1973(a) (West 2013).

<sup>28</sup> 28 CFR §55.9.

<sup>29</sup> Saunders, *Digital-Age Discrimination*, *supra* note 10 at 481.

<sup>30</sup> Jim Malewitz, *Texas’ Voter ID Defense Has Cost \$3.5 million*, THE TEXAS TRIBUNE (Jun. 17, 2016), <https://www.texastribune.org/2016/06/17/texas-tab-voter-id-lawsuits-more-35-million/>

<sup>31</sup> *Moultrie v. Charleston County*, (316 F.Supp.2d 268) (D.S.C. 2005).

<sup>32</sup> Mike Faulk, *Yakima City Council abandons appeal of ACLU voting rights suit*, YAKIMA HERALD (Apr. 5, 2016), [http://www.yakimaherald.com/news/elections/yakima-city-council-abandons-appeal-of-aclu-voting-rights-suit/article\\_5d1aba80-fbb0-11e5-b985-c3ce457c2bf1.html](http://www.yakimaherald.com/news/elections/yakima-city-council-abandons-appeal-of-aclu-voting-rights-suit/article_5d1aba80-fbb0-11e5-b985-c3ce457c2bf1.html).

<sup>33</sup> Adam Ashton, *Settlement in Latino voting case will set Modesto back \$3 million*, THE MODESTO BEE (Jun. 6, 2008), <http://www.modbee.com/news/local/article3108787.html>.

adequate translation assistance and translation of all materials to come into compliance with Section 203 now, well before any municipal election takes place in 2017. The County and all municipalities within the County must provide language assistance to Spanish-speaking citizens seeking to register to vote, today.

We welcome the opportunity to meet with you or a member of your staff to discuss best implementation practices and ways that we can possibly assist as you provide the requested materials to Gwinnett County voters. Should you have any questions, please feel free to contact us by phone or email as provided below.

Sincerely,



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