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# **Interim Report for Governor**

**Mark R. Warner**

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Virginia Latino Advisory Commission  
(VLAC)

December 15, 2003

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## I. Identification Issues

**Matricula Consular** – the Consular Offices of Mexico and Guatemala issue identification on behalf of the Mexican and Guatemalan Governments to Mexican and Guatemalan nationals registered at a Consulate. For more than 131 years, since 1871, Mexico has been carrying out the practice of consular registration around the world, based on international law, consular practice, and in accordance to the Vienna Convention on Consular Relations.

Consular Registration is the official record for individuals living abroad. Consular Offices from every country in the world have the responsibility to have a registry of their nationals living abroad. This registration facilitates access to protection and consular services.

- A. The issuance of the Matricula Consular does not intend or seek any kind of change in the migratory status of Mexican or Guatemalan nationals in the United States or any other country;
- B. The Matricula Consular serves to prove the identity of Mexican and Guatemalan nationals to authorities and other local entities such as banks and companies that provide utility services;
- C. The Matricula Consular is an I.D. to re-enter Mexico and Guatemala and to present for customs and immigration procedures;
- D. The Matricula Consular uses the same security standards used by the United States Government in its own official documents;
- E. The Matricula Consular is currently accepted as a valid I.D. in 66 banks, 801 Police Agencies and 13 States: Michigan, North Carolina, New Mexico, Oregon, Pennsylvania, Tennessee, Utah, Washington, Wisconsin, Delaware, Idaho, Indiana, and Iowa;
- F. 119 cities and 36 counties, throughout 32 states, have acknowledged the MC as a proper form of identification.

- G. United States consular offices around the world provide these same registration services for their nationals who live in another country.
- H. On May 10, 2003, The Treasury Department ruled on the acceptance of the MC as a valid ID card for banking and financial services.

**Legal Presence** - Virginia's 2003 General Assembly passed legislation that requires applicants to present a photo ID card or an original driver's license to show proof that they are legally in the United States. The provisions of this Act shall become effective on January 1, 2004.

- A. Legal Presence will apply to all applicants applying for an original Virginia driver's license, all applicants applying for a DMV-issued photo ID card, all drivers reinstating their driver's license because of a license suspension, revocation or cancellation, all driver's who have allowed their driver's license to expire;
- B. Legal Presence adds complexity to driver licensing and ID card issuance transactions; and
- C. Legal Presence lengthens wait and service times.

Given the fact that the Legal Presence law becomes effective on January 1, 2004, the VLAC's Identification Issues Committee (IIC) contends that we can best serve our community and the state at this crucial time by becoming pro-active rather than reactive. Therefore, this segment of the Interim Report is respectfully submitted to the Governor's special attention in order to address in particular identification issues pertaining to driver's licenses and consular identification cards. The IIC can provide detailed background to explain the context of this issue in the Commonwealth of Virginia, and to highlight examples of other experiences in the U.S. and internationally. Most important, we provide below specific recommendations for prompt consideration and support. The Identification Issues Committee and other Commission members look forward to meeting with the Governor soon to discuss these pressing topics. In addition, given the intense effort of this Commission to thoroughly study the issues, the IIC is prepared to give presentations, hold statewide and regional discussions, and also provide testimony on identification issues to our state and local government officials as needed.

### **Identification Issues Recommendations:**

1. Virginia should accept the Matricula Consular as a form of identification. It is a fundamental right to have a name, to have an identity and to prove that you are who you say you are. The Matricula Consular does not constitute a form of “immigration status regulation,” and it does contribute to homeland security. The Matricula Consular assists law enforcement officials’ communication with migrant communities by ensuring that people are not afraid to come out of the shadows and report crimes to which they may be victims and or bear witness. Acceptance of the Matricula Consular provides U.S. authorities with an instrument to comply with section 312 of USA PATRIOT ACT, according to which banking institutions shall “...ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, such account as needed to guard against money laundering and report any suspicious transactions under subsection (g)...” In addition, Virginia’s acceptance of the Matricula Consular will allow individuals to open bank accounts previously unattainable to them. Those individuals will not have to carry a large amount of cash, which is another important benefit in the fight against crime.
2. The implementation of the Legal Presence law must be applied equally, and an avenue created in which individuals can report any forms of abuse and discrimination.
3. Much more education for the public and immigrant communities must be done on Legal Presence legislation and its implementation.
4. Oppose any future legislation that will have and adverse unfair impact in the Latino Community.

### **Additional Supporting Data:**

The recognition of consular certificates has precedents in U.S. law:

- A New York Federal Court stated “consular certificates carry greater weight than those of a notary public in determination of nationality” (114NYS (2d) 280 (1952), cited in 47 AJIL 152 (1953). Additionally, the United States District Court in New York, SDNY, in accepting as a sufficient proof a certificate from a foreign Consul-General in New York, said: “Each country

has the undoubted right to determine who are its nationals and it seems to be general international usage that such a determination will be accepted other nations. Since regularity of the procedure of foreign agencies is to be presumed ... the certificate of the Consul-General is sufficient proof of the facts stated there-in". (133 F.Supp.496 1955, cited in 50 AJIL 139 (1956))

- According to testimony by James Walter, on behalf of Bank of America, a pilot program was launched in December 2001, to accept MCAS as a primary form of identification for opening new accounts. Since June 2002, more than four thousand Bank of America Centers accept the ID card, resulting in more than 15,000 new accounts in the second half of 2002 alone.
- Today, 150 financial Institutions accept the MC card. Wells Fargo has opened 60,000 new accounts since November 2001.
- The Matricula Consular helps prevent the use of fraudulent documents of identification
- Improved ability to trace a sizable amount of resources brought about by the acceptance of the Matricula Consular card by key financial institutions. This has helped to shrink informal channels associated with the potentially dangerous existence of a financial "black market"
- Although estimates vary, several studies indicate that as many as 10 million American households (65 million people) do not have bank accounts (Statement of Chairman Spencer Bachus' Subcommittee on Financial Institutions and Consumer Credit)
- Only in the Chicago area, the FDIC's office recently began surveying banks accepting the MC Card. Of the eight banks surveyed so far, 12,978 new bank accounts had been opened, representing \$ 50 million in deposits. (Statement of Sheila Blair, University of Massachusetts, before the Subcommittee on Financial Institutions and Consumer Credit "Serving the Underserved")

We conclude our recommendation to accept Matriculas Consulares in the Commonwealth of Virginia with a statement of Robert S. Jacobson, Acting Deputy Assistant Secretary of State for the Bureau of Western Hemisphere Affairs, who declared on June 26, 2003, before the US Subcommittee on Immigration, Border Security and Claims:

“The U.S. Government must also carefully avoid taking action against Consular identification cards that foreclose our options to document or assist American citizens abroad. The Department itself issues documentation other than a passport for U.S. citizens abroad and at times occasionally issues similar identity cards or travel documents”.

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## **II. Issues of Language Access (interpreting and translation services) for Limited English Speakers**

The VLAC’s Committee on Language Access—Interpreting and Translation for Limited-English Speakers (hereinafter “Language Access Committee” for short) submits the following as part of the Governor’s Interim Report:

### **1. Introduction and Statement of Need**

Limited-English speakers’ need for—and difficulties in obtaining—linguistic access to crucial services, consistently ranks as one of the two or three most important issues for the Hispanic/Latino community, particularly to persons not born in the United States. No services are more crucial than those related to health and safety, on the one hand, and legal matters, on the other. In no way do we underestimate the importance of education; we simply feel that the issues there are of a different order. Education is fundamental, and the demonstrated desire of immigrants of all ages to obtain it, and to learn English, deserves all possible encouragement and support. It’s important to recognize, at the same time, that language learning takes place over a protracted span of time, while the need for emergency medical services or responsiveness from law enforcement when a victim of crime is immediate. People’s health, safety, and basic dignity—the meeting of basic human needs—must not be compromised because of language difficulties. This is where interpreting and translation, the tools that help provide language access or language assistance, come in.

The protections of Title VI of the Civil Rights Act of 1964 against discrimination by race, color, or national origin in any federally funded program or activity also extend to persons of limited English proficiency (often known by the abbreviation LEP). Persons of limited proficiency in this language must have meaningful and equal access to services and benefits. [Office of Civil

Rights, US Department of Health and Human Services;  
<http://www.hhs.gov/ocr/lep/fact.html>]

Awareness of and compliance with Title VI obligations are uneven and in some cases nonexistent on the part of providers. When compliance is attempted, the quality ranges widely, even wildly. Agencies often depend on bilingual employees to provide language-access services to LEP clients, even when those employees' primary job responsibilities are not related to language assistance and they have no training in that field. [Joint Legislative Audit and Review Commission, Virginia General Assembly, Acclimation of Virginia's Foreign-Born Population, Commission Draft Not for Public Release, Nov. 10, 2003, p. 43, subject to additional verification and editorial review] Other difficulties include the unevenness and quality-control challenges where institutions make substantial use of volunteer interpreters and translators; the fragmented approach and frequent duplication of translation work, sometimes even within various offices of the same agency; the widely varying spatial setting of Latino residents of Virginia (ranging from big cities and smaller cities and towns to isolated rural areas); the awkwardness, confidentiality problems, and detrimental psychological effects of depending on children of foreign-language speakers to translate for their parents in legal or medical settings; exploitive pricing and uneven quality on the part of some non-professional providers of interpreting and translation services.

Attention often focuses on the cost to providers of providing appropriate language assistance services; it is also important to examine the cost of not providing such services, or of inadequate provision. These can include not only deleterious effects on health care for limited English speakers, but also economic costs and foregone business opportunities for providers in environments where there are significant numbers of such speakers. [Maricel Quintana-Baker, Ph.D., Health Care Language Services: An Environmental Scan, Prepared for Office of Minority Health, US Department of Health and Human Services, Dec. 2003]

## **2. Helping Meet the Need: Exploring Possible Creation of a Statewide Entity**

In light of the needs, problems, and opportunities outlined above, the Language Access Committee is beginning to explore the possibility and feasibility of various measures to improve language access for limited-English speakers in the Commonwealth. The measures under exploration include, but are not

limited to, the possible future creation of a statewide entity whose mission would be to serve as advocate for limited-English speakers as to their rights and the resources available to them; as resource for providers of services (government agencies, municipalities, law enforcement, businesses, hospitals and clinics, etc.), helping educate them as to their Title VI responsibilities and assisting them in meeting those responsibilities effectively and efficiently; and as network for professionals in the interpreting and translation fields, fostering their collaboration and community involvement on language-access issues. Such an entity could be a powerful tool to help the Commonwealth meet the needs of all its residents insofar as language access is concerned, especially in light of the large area and in many cases scattered limited-English population, with uneven access to language assistance services. This body might conceivably be thought of, and provisionally named, a Virginia Clearinghouse and Advisory Committee on Language Access.

The Language Access Committee looks forward not only to continuing our work, but also to working collaboratively with other VLAC committees whose areas of concern are intimately connected with Language Access. The committees on Business, Education, and Health Care, among others, are natural partners on these intersecting issues.

These are preliminary ideas and an exploratory recommendation, all of which will be expanded upon in the final report. The Language Access Committee intends to continue its inquiry into the needs, opportunities, resources, and possible action steps over the next eight to nine months. Among the steps it foresees taking are the further gathering of existing data; conducting such surveys or other research as needed and feasible; holding public forums; and interviewing appropriate persons. These and other steps, as needed, will be taken in order to submit final recommendations in September 2004 addressing these and possibly other concerns that may arise in the course of the Committee's work.

### **III. Business Issues -**

VLAC's Business Committee respectfully submits the following recommendations for inclusion in the Interim Report of the Virginia Latino Advisory Commission to Governor Warner:

1. Explore ways to ensure that Latino vendors are getting the support they need to meet the qualifications required to enter the bidding process for state contracts and develop ways to allow the state greater and easier access to Latino vendors.
2. Explore ways the state can provide more business resources (both public and private), assistance and support to Virginia's Latino businesses to help them be successful and competitive in today's market.
3. Explore import and export opportunities between Virginia's government and its business community, including Latino businesses with Latin American countries, and to seek ways to motivate the state and its agencies to push forward in this area.

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### **IV. Law Enforcement Issues**

#### **Recommendations**

1. VLAC's Law Enforcement Committee recommends that the Governor of Virginia explore ways to increase outreach and education in the Latino community and the law enforcement agencies in the State to reduce crime and increase partnerships between law enforcement and the community.
2. The Law Enforcement committee recommends that the Governor of Virginia evaluate the impact of immigration enforcement being given by the federal government to local or state police. The evaluation should include an analysis of whether any increase in such duties would hamper the ability of law enforcement to obtain the trust of the Latino community that is necessary to effective law enforcement.

Issues:

1. The committee recognizes a need to increase law enforcement outreach to the Latino community and will evaluate the following:
  - a. Development of programs to provide education about criminal standards in the United States. This is necessary to reduce unintended criminal activity by Latino citizens who are unaware of the legal standards that apply in the United States.
  - b. Evaluating whether the current emergency response resources provide an adequate number of interpreters to translate for the Latino community.
  - c. Evaluating whether law enforcement officials have adequate training and/or assistance regarding the cultural and linguistic needs of the Latino community to adequately interact with citizens on the street.
2. The committee recognizes a need to increase Latino community trust of law enforcement in order to facilitate the reporting of crime, and will evaluate the following:
  - a. Development of a statewide Spanish language hotline to report crime.
  - b. Development of community Forums/Dialogs between the Latino community and law enforcement officials to establish positive relationships and develop sensitivity from law enforcement about different perceptions about crime that may exist in the Latino community.
  - c. Development of community review board protocols to monitor and respond to allegations of racial profiling.
3. The committee recognizes a need to address emerging issues of youth, specifically the following:
  - a. Gangs
  - b. Truancy
  - c. Abuse and Neglect

4. The committee recognizes a need to evaluate whether local or state police have the ability and/or resources to undertake additional functions and obligations such as immigration enforcement, that have traditionally belonged to the Federal government.

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## **V. Health Care Issues**

Although the statement can be made that many communities in Virginia have the health care issues and concerns of access and affordability, in the case of Latinos, especially for Latino immigrants, issues such as availability and competency of medical interpreters and identification concerns additionally compound the obstacles in accessing adequate health care. Inadequate dental care and mental health care accessibility are also areas of concern, as well as inadequate health benefits available in the service industries. In the state of Virginia, there are currently approximately 265,000 uninsured Latinos.

Additional areas of concern that specifically affect Latino immigrants include the insufficient number of bilingual and bicultural professionals in the Virginia health care industry to meet the needs of the Spanish speaking population. Furthermore, many of Virginia's health care industry professionals possess a minimal knowledge and understanding of culturally based health care practices and perceptions, and, in some cases, a lack of respect for these different belief systems.

Interim Recommendations of the Health Care Issues Committee include but are not limited to:

1. Compile bilingual services information about Primary Care Providers. This information is available through certain insurance directories that currently publish these details with each physician listing. Encourage other insurance companies to include bilingual services available in their Primary Care Providers' directories.
2. Conduct an outreach awareness and education campaign in the Hispanic immigrant community regarding available health related services and resources. Include overall education about the United States' health system and health insurance structure and procedures.

These are preliminary recommendations that will be expounded upon in the final report due September 2004. The Health Care Issues Committee will explore possible action steps, research data, conduct public forums, and interview the appropriate parties during the next nine months in order to submit final recommendations that address these and possibly other newly identified concerns.

**Preliminary Resources Identified:**

- Immigrant Health Needs Assessment for the Richmond Virginia Area, Bon Secours Health System
- Acclimation of Virginia's Foreign-Born Population, Joint Legislative Audit and Review Commission
- 2003 Chartpack "Insurance, Access, and Quality of Care among Hispanic Populations- The Commonwealth Fund" for the National Alliance for Hispanic Health Meeting
- National Hispanic Medical Association
- Congressional Hispanic Caucus
- U.S. Department of Health and Human Services
- National Council of La Raza

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## **VI. Education Issues**

Education issues are central to the overall goals of the Latino community in Virginia. It is our desire to work together with the State Department of Education to afford the highest quality education to the Latino community delivered in the most relevant formats and settings. The issues addressed by this Committee will not only impact the Latino population in Virginia but also the school districts and other educational institutions at large. With the understanding that education impacts all people, regardless of ethnicity, race, age, or gender, we submit the following interim report.

The committee will cover the following issues:

- A. How No Child Left Behind (NCLB) affects Latino children
- B. Migrant education at the state level vs. local level
- C. Disparities in the English as a Second Language instruction
- D. Improving access to Higher Education

**NCLB** - No Child Left Behind legislation requires individual school divisions to set in place plans for the adequate yearly progress of all students in terms of annual standardized testing, and holds school divisions accountable to increase the number of students passing said tests each year. The following specific issues will be researched and explored as part of the final report.

1. There are grants available to improve education programs provided under NCLB. However, many times the necessary data is not gathered at the state or local level. We will study the possibility of improving the collection and access to data regarding the education of Hispanic children and youth in order to improve our state's eligibility for federal grants. We would like to see Virginia taking advantage of the initiatives to improve education among Latino students. Many times grants for English Language Acquisition involve health or family literacy programs combined. The burden of collecting and classifying this data does not necessarily have to be on DOE. It may just require more cooperation between the Department of Planning and Budget, DOE, and other agencies.
2. At the Second Office of English Language Acquisition Summit in Washington DC, the "Ten Key Benefits for Parents of English Language Learners" were listed as follows:
  1. To have their child receive a quality education and be taught by a highly qualified teacher.
  2. To have their child learn English and other subjects such as reading—language arts and math at the same academic level as all other students.
  3. To know if their child has been identified and recommended for placement in an English language acquisition program, and to accept or refuse such placement.

4. To choose a different English language acquisition program for their child.
5. To transfer their child to another school if his or her school is identified as "in need of improvement."
6. To apply for supplemental services for their child, such as tutoring, if the child's school is identified as "in need of improvement" for two years.
7. To have their child tested annually to assess his or her progress in English language acquisition.
8. To receive information regarding their child's performance on academic tests.
9. To have their child taught with programs that are scientifically proven to work.
10. To have the opportunity for their child to reach his or her greatest academic potential. (From press release <http://www.ed.gov/news/pressreleases/2003/12/12022003.html>)

According to the Virginia Limited English Proficiency report of fall 2002, the percentage of LEP student that listed Spanish as their primary language is 60%. The fall 2003 figures are not available yet. This commission is very aware that **not all of the Latino students in Virginia have limited English Proficiency**. However, there is a general concern with the benefits listed and especially those highlighted above, reaching the Latino youth who are English language learners.

3. We will also explore the parental involvement component and how it is affecting the Latino students.

### **Issues Identified Specific to ESL Instruction/LEP:**

1. For FY 2003, 129 school divisions report enrollment of students with LEP. However, in an email sent on December 9, 2003, Roberta Schlicher confirmed that DOE does not collect data on the ratio of ESL teachers per LEP students in each school division. The director of licensure can provide us with the total number of ESL licensed teachers working in Virginia public schools in just a matter of weeks. This will help us determine how many of

the 49,840 LEP students (as of Sept. 2002) are receiving instruction from an ESL licensed teacher.

2. It is usually generalized that three fourths of the ESL students live and receive services in Northern Virginia. As this population continues to emerge in other parts of the Commonwealth, there is a serious concern with the funding formula for the ESL program. The state funding is allocated with the ratio of ten teachers for one thousand students. However, the state does not pay for the full cost but only the proportion base on a composite index. For example, Nelson County reported 39 students during last fiscal year. The funding formula determines the cost of providing services for these students at \$17,398. But as Kent Dickey, Director of Budget, explained member Veronica Donahue in a telephone conversation on December 10, 2003, the state provides 48% of the cost (\$9,047) and the other 52% should be provided at local level. **The schools are not required to match these funds.** At the time of this report, it appears that DOE does not collect data on which school divisions provide the additional funds needed to operate their ESL programs. This commission is very interested in finding out how many of the school systems in Virginia provide local funds to educate their students with LEP, especially in the rural areas.
3. Participation in the SOL tests for students with LEP depends on their results on the English proficiency testing. There are four assessment tools that can be chosen for this purpose. Currently the state does not provide assistance for ESL teachers who will be administering these tests for the first time. DOE is currently working on a plan for training teachers that will be using the ELDA assessment. Our commission will find out how these assessments are conducted in the seventy-five school divisions with less than one hundred ESL students.
4. Initial identification was also brought up as a serious concern. The *Virginia ESL Teachers and Administration Handbook* recommends that each school division provide a home/language survey upon enrollment to all students. School divisions do not report to DOE how they identify students with LEP. This Commission has received negative comments on programs pulling out all students with Spanish surnames for LEP testing.

### **Issues Identified Specific to Higher Education:**

1. What are the implications of the DREAM Act on local Latino students?
2. Explore the possibility of more higher education institutions becoming Hispanic Serving Institutions
3. Explore the impact of documentation status on the ability of high school students to apply to higher education institutions.
4. Explore opportunities for scholarships for individuals over the “average” age at which an individual typically enters college.

### **Issues Identified Specific to Migrant Students:**

Migrant students are identified by specific employment and mobility criteria. Their educational needs are very unique and require unique support on several levels. An evaluation of the resources and programs available to these students at a state and local level is needed. This is due to the fact that migrant workers are usually only 1-2% of the population. In the Biennial Report for 2002, DOE reported services provided to “approximately 3,500 migrant students” in Virginia. As of this fall, the migrant center reported only 2,750. The decrease in identified students may not be due to smaller presence but rather to the number of recruiter and teachers who are no longer identifying and helping these students due to the state’s reduction of \$299,914 as of FY 2003 for Migrant Education.

Even if these students are not identified as migrant (and hence providing Virginia with additional federal funds) their scores will affect our state’s performance as part of three, or even four, subgroups when data is disaggregated:

1. Students who are economically disadvantaged (A migrant household receives approximately \$10,000 per year)
2. Students in major racial/ethnic group (98% are Hispanic as of this FY)
3. Students with Limited English Proficiency (DOE will have this percentage in FY 03-04) and possibly,
4. Students with disabilities.

The state funds allocated since 1986 for Migrant Education represents only 0.004% of Virginia’s Education budget. In the NCLB Toolkit recently released by USDOE it is noted that “*teacher quality is one of the most critical components of how well students achieve.*” This Commission will explore the quality of education that children of migrant farm workers are receiving in Virginia. Renee Abney, Data Entry Specialist for the Regional Migrant Center emailed Member Veronica Donahue in October 2003 that migrant children were identified in 54 school divisions. Currently the Migrant Education Program provides services in only 29 counties and 5 cities.

### **Issues Identified Specific to Adult ESL:**

1. Explore the possibilities to increase awareness of and accountability to community colleges programs.
2. Explore creative approaches to English instruction that address other needs like transportation to classes.

### **Recommendations:**

1. An adequate number of teachers are needed to help students reach their AYP.
  2. There is a need for data at the state and local level.
  3. The State Department of Education needs to gather and disseminate better data and resources on Latino students and ESL programs for K-16 and adults. This will:
    - A. Improve eligibility for federal grants
    - B. Discern how many school divisions allocate local funds for ESL programs
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## **VII. Hispanic Representation**

Concerned that the lack of Latino representation in the General Assembly and at the local level creates additional barriers to solving Hispanic issues facing Virginia, the commission believes that increasing such representation is of vital importance. Further study is called for in establishing a benchmark for Virginia as compared with other states with increasing Latino populations.

To investigate this issue the Hispanic Representation Committee would like to research the following:

1. Analysis of the top 20 states with the highest Latino populations in regards to Hispanic representation in government (elected and appointed officials). Resources will include NALEO (National Association of Latino Elected & Appointed Officials), The National Council of La Raza and the Congressional Hispanic Caucus Institute (CHCI). Special attention will be paid to determining if, proportionately, Virginia lags behind other states in the area of Hispanic representation.

2. Review (interviewing) of Hispanic elected officials throughout Virginia; establishing a “best practices” guideline as well as the obstacles/challenges they faced. A bi-partisan approach will be paramount, seeking cooperation from both state parties. This analysis will provide the Governor with a systemic/holistic overview with regards to fostering greater Latino participation in the political process.

Respectfully submitted by the Virginia Latino Advisory Commission members:

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