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# **LATINX HERITAGE PRESERVATION: Challenges, Successes, and Solutions**

ALÁN DÍAZ-SANTANA

## **ABSTRACT**

Texas' Mexican heritage is an integral yet often overlooked part of its history. Despite the state's origins as part of México, the preservation of Latinx historical sites remains inadequate, as many sites are neglected, destroyed, or forgotten. This Comment explores the challenges and opportunities in preserving Latinx heritage in Texas, focusing on the legal and policy frameworks at both federal and state levels. Through a comparative case study of two segregated "Mexican Schools"—the Roosevelt School in Mission, Texas, which was demolished, and the Blackwell School in Marfa, Texas, now a national historic site—this Comment highlights the disparities in preservation efforts and the factors that contribute to its success or failure.

This Comment begins by examining federal Latinx heritage initiatives, such as early National Park Service designations misconstruing Spanish heritage sites as Latinx sites and imposing the Spanish Black Legend onto Latinx people. It also examines the Park Service's Latino Heritage Theme Study, which has made strides in its recognition of Latinx contributions but remains limited by narrow eligibility criteria for historic designation. At the state level, the Texas Historical Commission has focused predominantly on Spanish colonial narratives, often overshadowing the broader Latinx experience. The Comment identifies key barriers to preservation, including legal challenges, insufficient funding, and a lack of public awareness about available resources. For instance, the Roosevelt School's demolition underscores the consequences of inadequate local preservation ordinances and community engagement, while the Blackwell School's success demonstrates the power of organized advocacy and federal recognition.

This Comment proposes several solutions to advance Latinx heritage preservation. These include amending federal and state laws to broaden eligibility criteria for historic designation, expanding tax incentives to include public entities like school districts, and increasing outreach and education to empower communities to protect their heritage. By addressing these issues, Texas and the nation can better preserve Latinx heritage, ensuring that the stories and contributions of Latinx communities are recognized and celebrated as part of the broader United States narrative. Such efforts are not only vital for historical accuracy, but also for fostering a more inclusive understanding of the identities of Texas and the nation as a whole.

ABOUT THE AUTHOR

Alán Díaz-Santana, B.A. 2018, Yale University; J.D. Candidate, Tulane University Law School Class of 2025; Diversity & Articles Editor, *Tulane Law Review*, Vol. 99. Quiero darle las gracias a mi esposa, Karina Varela, por su apoyo incondicional en mis ocurrencias, incluso cuando implican viajar horas para visitar museos y sitios históricos. También a mis papás por inculcarme un amor por mis raíces y nuestra cultura. Thank you to Gabriel Ozuna, Professor Sonny Shields, my classmates in our Historic Preservation Law Seminar, and to the editors of the *Chicanx-Latinx Law Review*, Alyssa Archuleta Stoltmack, Mia Stone, Nancy Gomez, and Katherine Gulick, for their attentive editing.

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INTRODUCTION

Texas’ open secret is that before Texas was Texas, it was México. Yet, when you look around, the state’s Mexican history is hard to find. Mexican history in Texas is usually ignored, torn down, and eventually forgotten. Often, the history of Latinx people in the state writ large is glossed over and left out of the historical memory. The preservation of historic Latinx sites may serve to preserve historical memory and further Texans’ understanding of themselves. While there are significant challenges limiting the preservation of Latinx sites across the state, there also exist major opportunities for change. The author recognizes that the term Latinx encompasses multiple definitions. For purposes of this Comment, Latinx refers to people, or the descendants of people, who migrated from Latin America and are not Spanish.<sup>1</sup>

This Comment is a case study that compares the destruction of one segregated “Mexican School,” the Roosevelt School, in Mission, Texas with the designation of another segregated “Mexican School,” the Blackwell School in Marfa, Texas, as a national historic site. It begins by exploring the federal and state legal underpinnings for historical preservation as well as government efforts to advance Latinx heritage preservation. Next, the Comment compares the unsuccessful campaign to stop the destruction of the Roosevelt School with the successful movement to preserve the Blackwell School. The Comment concludes by

<sup>1</sup> See generally LAURA E. GÓMEZ, *INVENTING LATINOS* 9 (2020); Cristobal Salinas Jr. & Adele Lozano, *The History and Evolution of the Term Latinx*, in *HANDBOOK OF LATINOS AND EDUCATION* (Enrique G. Murillo Jr. et al. eds., 2d ed. 2021).

presenting federal and state legal and policy solutions to advance Latinx heritage preservation moving forward.

## **I. LATINX HISTORIC PRESERVATION TO DATE**

### ***A. Federal Efforts to Preserve National Latinx Heritage***

Through the National Park Service of the Department of the Interior, the United States Government has taken initial steps to recognize and preserve Latinx heritage. Tracing those steps from the establishment of national monuments only tangentially related to Latinx heritage to the 2013 Latino Heritage Theme Study, the federal government's interest in Latinx heritage preservation has grown. This interest has led to a recognition of Latinx history and contributions to the United States' cultural fabric, but represents an incomplete solution to Latinx heritage preservation that should be bolstered through tax incentives, education, and municipal coordination.

#### ***1. Questionable Beginnings***

The federal government has done little to preserve Latinx heritage in the United States, but gradual developments and initiatives like the National Park Service's Latino Theme Study and the National Park Foundation's Latino Heritage Fund are changing the status quo. Until 2011, federal efforts to preserve Latinx heritage in the United States predominantly encompassed Spanish colonial "exploration" and settlement of the Southwest.<sup>2</sup> The first National Park Service area to earnestly approach Latinx heritage, El Morro National Monument in New Mexico, opened in 1906.<sup>3</sup> This monument highlights the colonization of Native Americans by Spanish Catholic missionaries.<sup>4</sup> Following the unveiling of that monument, a few other parks across the Southwest begun to spring up, similarly centering the colonization of native communities by Catholic missionaries.<sup>5</sup> Despite the focus of these areas on intrinsically Latinx topics, the site's Latinx heritage was secondary to the site's presentation of the Spanish colonial endeavor. Another park, the Salinas Pueblo Culture National Monument, opened around the same

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<sup>2</sup> Joseph P. Sánchez, COMPARATIVE COLONIALISM, THE SPANISH BLACK LEGEND, AND SPAIN'S LEGACY IN THE UNITED STATES: PERSPECTIVES ON AMERICAN LATINO HERITAGE AND OUR NATIONAL STORY, SPANISH COLONIAL RSCH. CTR. NAT'L PARK SERV. 27 (2013).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

time, likewise focusing on the colonization and missionization of Native American Pueblos.<sup>6</sup>

Early efforts to preserve Spanish history and heritage in the United States projected the “Spanish Black Legend” onto Latinx people.<sup>7</sup> This legend portrays the Spanish colonization of the Americas as particularly brutal and focused on exterminating Native Americans.<sup>8</sup> It also perpetuated negative stereotypes of the Spanish and their Latinx descendants, undergirding the narrative of early Latinx heritage.<sup>9</sup> While the Black Legend highlighted Spanish atrocities, the truth is that Spanish colonization was not meaningfully different in its violence and oppression from colonization by other European empires.<sup>10</sup> C Mexican archeologist Laurette Séjourné said it best: “systematic condemnation of the Spaniards . . . takes the occupation of Latin America out of its world context. Colonialism is the mortal sin of the whole of Europe.”<sup>11</sup> The Spanish Black Legend and its effects are far-reaching. Beyond influencing perceptions of the Spanish in the Americas, its downstream reach also affects perceptions of Latinx people. Historical events like the Battle of the Alamo<sup>12</sup> and the Mexican-American War of 1846<sup>13</sup> have been understood through this lens. Rather than viewing Mexicans to the south as a sovereign nation, the Spanish Black Legend otherized México and its inhabitants as “the antithesis of U.S. institutional development and social progress” just enough to justify invasion and exploitation.<sup>14</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 28.

<sup>8</sup> Sánchez, *supra* note 2, at 28.

<sup>9</sup> *Id.*; see generally Roberto Fernández Retamar, *Debunking the ‘Black Legend’*, UNESCO COURIER, <https://en.unesco.org/courier/aout-septembre-1977/debunking-black-legend> (last updated July 14, 2020) [<https://perma.cc/6G9D-7CYG>]; Felipe de Ortego y Gasca, *La Leyenda Negra/The Black Legend: Historical Distortion, Defamation, Slander, Libel, and Stereotyping of Hispanics*, LATINO STORIES (July 14, 2020), <https://latinostories.com/the-black-legend-stereotyping-of-hispanics/> [<https://perma.cc/38KX-TGBR>].

<sup>10</sup> De Ortego y Gasca, *supra* note 9.

<sup>11</sup> Fernández Retamar, *supra* note 9.

<sup>12</sup> Raúl Ramos, *The Alamo is a Rupture*, GUERNICA (Feb. 19, 2019), <https://www.guernicamag.com/the-alamo-is-a-rupture-texas-mexico-imperialism-history/> [<https://perma.cc/9QZ8-TEHE>].

<sup>13</sup> Benjamin J. Swenson, *History of the Conquest of Mexico: The Black Legend, Prescott’s Paradigm, Tlaxcalans, and US-Mexican War*, HIST. AVENUE (June 11, 2023), <https://the-history-avenue.eu/2023/06/11/history-of-the-conquest-of-mexico-the-black-legend-prescotts-paradigm-tlaxcalans-and-us-mexican-war/> [<https://perma.cc/6QUF-78J9>].

<sup>14</sup> *Id.*

Until recently, the few attempts to memorialize the contributions of Latinx people in the United States have perpetuated this legend as well.

In 1990, at the 500-year anniversary of Christopher Columbus's voyage to the Americas, the National Park Service established the Spanish Colonial Research Center at the University of New Mexico to examine Spain's colonial legacy and to translate material for other parks into Spanish.<sup>15</sup> The success of the Spanish Colonial Research Center advanced our understanding of colonial Spain and fostered greater inclusion of Latinx history across U.S. parks and heritage sites.<sup>16</sup> This movement and success prompted the National Park Service to commission a Latino Theme Study.<sup>17</sup> The purpose of this study was to "enhance current approaches taken to tell about the Latino experience in America."<sup>18</sup> Additionally, it served as a plan for new topics related to the United States' Latinx heritage and to assist and "encourage[] the identification and recognition of historic places that explain the breadth of the Latino heritage story."<sup>19</sup>

## 2. *Latinx American Heritage Initiative and Theme Study*

Recalling the long history of Latinx Americans who built the United States into what it is today, Secretary of the Interior Ken Salazar announced the creation of the American Latino Heritage Initiative at the National Chavez Center in Keene, California in 2011.<sup>20</sup> This initiative was part of President Barack Obama's "America's Great Outdoors" initiative and brought together business leaders, cultural leaders, and scholars from the Latinx community to discuss how the National Park Service can help tell the American Latinx story in a complete, concise way.<sup>21</sup> The result of this initiative was the American Latino Heritage Fund, which was designed to serve as a conduit for Latinx-themed parks

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<sup>15</sup> Sánchez, *supra* note 2, at 28–29.

<sup>16</sup> Joseph P. Sánchez & Angélica Sánchez-Clark, *An Enlightened Beginning: The National Park Service and the American Latino Heritage*, 30 GEORGE WRIGHT FORUM 215, 217, 222 (2013).

<sup>17</sup> Sánchez, *supra* note 2, at 29.

<sup>18</sup> *Id.* at 29–30.

<sup>19</sup> *Id.* at 30.

<sup>20</sup> Press Release, United States Department of Interior, Secretary Salazar to Host Forum to Explore Ways Nation can Honor Contributions of the American Latino (June 14, 2011); Press Release, United States Department of Interior, Secretary Salazar Announces Latino Heritage Theme Study as Part of Important Initiative to "Tell America's Story," (June 16, 2011).

<sup>21</sup> *Id.*

within the National Park Service.<sup>22</sup> The initiative also led to the establishment of the American Latino Heritage Theme Study to “investigate the stories, places, and people of Latino heritage that are worthy of preservation and interpretation.”<sup>23</sup> The Theme Study aimed to provide a framework for supporting National Park Service partners and communities across the United States in “identifying buildings, site, landscapes, and objects associated with [Latinx American] stories for designation and preservation.”<sup>24</sup> Other goals included engagement with the American Latinx community to document Latinx stories through the National Historic Landmarks and National Register of Historic Places programs and “enhance the interpretation and educational programs at [existing] national park units.”<sup>25</sup>

The American Latino Heritage Theme Study, released in 2013, brought together the American Latinx Scholars Expert Panel to craft a document that would help the Department of the Interior and the National Park Service tell the American Latinx story as an “integral part of the history, culture, and politics of the United States.”<sup>26</sup> The Study consisted of a core essay by Professor Stephen J. Pitti entitled “The American Latino Heritage” and four sections: Making the Nation, Making a Life, Making a Living, and Making a Democracy.<sup>27</sup> The core essay provides a broad overview of the Latinx experience by profiling five historical Latinx figures.<sup>28</sup> Each section focused on how Latinos came to live in the United States and their contributions to the development of the nation and its culture. The study also explored Latinos’ impact on business, labor, the military, science, and medicine as well as Latinx achievements in the expansion of “democratic rights through legal battles and political organizing.”<sup>29</sup> Each section consisted of several essays by expert scholars,

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Letter from Tony Knowles, Chair, National Park System Advisory Board; Ronald James, Chair National Historic Landmarks Committee; Belinda Faustinos, Co-Chair, American Latino Scholars Expert Panel, to Jonathan B. Jarvis, Director, National Park Service (Feb. 28, 2013).

<sup>25</sup> *Id.*

<sup>26</sup> Frances Negrón-Muntaner & Virginia Sánchez-Korrol, *American Latino Theme Study Introduction*, NAT’L PARK SERV., <https://www.nps.gov/articles/latinothemestudyintroduction.html> [<https://perma.cc/93JR-MCKM>].

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

each making the case for the recognition and preservation of American Latinx heritage. The American Latino Theme Study has spurred positive, tangible gains in Latinx heritage preservation, evidenced by annual increases in applications to underrepresented community grants.<sup>30</sup> By providing research tools for preservation, the federal government has positively impacted Latinx heritage conservation at the national level.

## **B. State-Level Efforts by Texas to Preserve Latinx Heritage**

In contrast to the United States' recent developments, Texas has done little to preserve its Latinx heritage sites and culture. The National Historic Preservation Act of 1966 created State Historic Preservation Officers (SHPO) to administer each state's historic preservation program.<sup>31</sup> Their responsibilities include *inter alia* conducting statewide surveys of historic properties, preparing statewide historic preservation plans, and providing the public with information, training, and education about historic preservation.<sup>32</sup> Texas' SHPO, the Texas Historical Commission (THC), has taken few discrete steps to recognize and preserve Latinx heritage.

### *1. Initial Work*

Like the federal government's approach to Latinx heritage sites, Texas has focused on preserving sites tied to the Spanish Black Legend. Among THC-governed historic sites, the few that feature any Latinx heritage are Spanish Missions,<sup>33</sup> the most prominent of which is the Alamo, or as it was originally named, Misión San Antonio de Valero. Although not governed by THC, it has recently been transferred from the Daughters of the Texas Revolution to the Texas General Land Office.<sup>34</sup> Originally a Spanish mission built to convert Coahuiltecos to Catholicism, the

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<sup>30</sup> See *Underrepresented Communities Funded Projects*, NAT'L PARK SERV., <https://www.nps.gov/subjects/historicpreservationfund/urc-funded-projects.htm> (last updated May 15, 2024) [<https://perma.cc/2Q4P-J3AU>].

<sup>31</sup> 54 U.S.C. § 302303 *et seq.*; All fifty states, the District of Columbia, 3 Territories, and 3 Freely Associated States have designated a SHPO. *What is a SHPO?* THE NAT'L CONF. OF STATE HIST. PRES. OFFICERS, <https://ncshpo.org/about-us/what-is-shpo/> [<https://perma.cc/RR8H-5GYN>].

<sup>32</sup> 54 U.S.C. §302303 (b).

<sup>33</sup> See, e.g., *Explore State Historic Sites*, TEX. HIST. COMM'N, <https://thc.texas.gov/historic-sites> [<https://perma.cc/W4QM-UHG4>].

<sup>34</sup> Patrick Svitek, *Land Office Cuts Ties with Alamo Managers*, TEX. TRIB. (Mar. 12, 2015, 8:00 PM), <https://www.texastribune.org/2015/03/12/land-office-parts-ways-longtime-alamo-managers/> [<https://perma.cc/LVB8-ULBM>].

Alamo is now a key site in Texas' creation mythology.<sup>35</sup> In addition to being a Spanish Mission, it features prominently in Texas history after playing a minor role in the Texas independence, pro-slavery movement.<sup>36</sup> Mission Dolores in East Texas is another THC-run historic site preserving the history of Spanish colonization and conversion of local Native Americans to Catholicism.<sup>37</sup> Interestingly, no visible signs of the mission remain, and instead the site is a museum that explains and contextualizes the Spanish missions and their environs in 1721.<sup>38</sup> Another mission governed by THC that highlights colonial Spanish history is the Old Socorro Mission, which houses a Franciscan mission named Nuestra Señora de La Limpia Concepción de los Piro del Socorro del Sur.<sup>39</sup> The original mission was meant to serve the Pueblo communities displaced after the 1860 Pueblo Revolt in New Mexico.<sup>40</sup> However, the original structure burned down twice and, once rebuilt, was flooded by the nearby Rio Grande.<sup>41</sup> Consequently, the contemporary mission and the Ysleta del Sur Pueblo are located near the original site.<sup>42</sup> These three missions feature prominently in THC's communications and scant publications on Latinx Texan heritage.<sup>43</sup> These sites, like the federally protected sites, cover the same topics and perpetuate the same flawed narrative springing from the Spanish Black Legend. Rather than preserving the heritage of Latinx Texans, these sites and other Texas-centered sites continue to impose this myth onto Latinx Texans. By branding Latinx Texans according to the Spanish Black Legend, the purportedly extraordinary evil of the Spanish remains available as a justification to exclude and marginalize Latinx Texans.

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<sup>35</sup> See Elaine Ayala, *Before Battle, a Mission Era*, MY SAN ANTONIO (Mar. 3, 2011, 11:36 PM), <https://www.mysanantonio.com/alamo/article/Before-battle-a-mission-era-1041499.php> [<https://perma.cc/DSW7-TCXK>].

<sup>36</sup> Dave Davies, 'Forget the Alamo' Author Says We Have the Texas Origin Story All Wrong, NAT'L PUB. RADIO (June 16, 2021, 12:30 PM), <https://www.npr.org/2021/06/16/1006907140/forget-the-alamo-texas-history-bryan-burrough>. [<https://perma.cc/RW6E-DA6C>].

<sup>37</sup> *Mission Dolores State Historic Site*, TEX. HIST. COMM'N, <https://www.thc.texas.gov/historic-sites/mission-dolores-state-historic-site>. [<https://perma.cc/R7RP-7NEZ>].

<sup>38</sup> *Id.*

<sup>39</sup> *Old Socorro Mission State Historic Site*, TEX. HIST. COMM'N, <https://www.thc.texas.gov/historic-sites/old-socorro-mission-state-historic-site> [<https://perma.cc/3WXH-HD2B>].

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> See TEX. HIST. COMM'N, *Hispanic Texans: Journey from Empire to Democracy* (2015) (a THC sponsored travel guide for travelers interested in historic Latinx Texan sites).

## 2. *Recent Efforts to Preserve Latinx Texan Heritage*

Despite the original focus on Spanish colonial narratives, the THC's official mandate offers a broader vision to protect and preserve "the state's historic and prehistoric resources for the use, education, enjoyment, and economic benefit of present and future generations."<sup>44</sup> Given Texas' long, complicated history, this is no easy task. Among its values, THC lists "Cultural Diversity: We preserve the places and stories of Texas' rich cultural heritage and communities."<sup>45</sup> Yet the Statewide Historic Preservation Plan does not mention Latinx or Hispanic Americans as comprising an explicit heritage category to be preserved.<sup>46</sup> Instead, the plan addresses them broadly under the Historic Preservation Plan's Theme #6: "Telling the Diverse Stories of Texas."<sup>47</sup> Throughout the other themes, Latinx people are mentioned sporadically among other "under-represented communities."<sup>48</sup> Ironically, the most recent THC Biennial Report for 2021–2022 affirmatively claims that "THC is also dedicated to telling the Spanish, Tejano, and Mexican American stories of Texas."<sup>49</sup> The report goes on to note that this history is preserved throughout Texas' Spanish Missions, family homes, and battlegrounds from the Mexican-American War.<sup>50</sup>

THC's 2023–2027 Strategic Plan outlines that "[f]or the THC to engage and appeal to Hispanics, African Americans, and youth, the agency's workforce demographics must reflect these populations."<sup>51</sup> It goes on to note that while the agency has made some headway in diversifying its workforce, there is much work left to be done.<sup>52</sup> Implied in its own strategic plan is an awareness that if THC does not capture the demographics of the state, it will struggle to reach out to all Texans and fulfill its mission. Aside from references to underrepresented communities that lump together all minority groups and passing references throughout the statewide plan, Texas lacks any document or plan approaching

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<sup>44</sup> *About Us*, TEX. HIST. COMM'N, <https://www.thc.texas.gov/landing/about> [<https://perma.cc/8GQZ-PDU8>].

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> TEX. HIST. COMM'N, OUR RESILIENT HERITAGE: 2022–2032 TEXAS STATEWIDE HISTORIC PRESERVATION PLAN (2023).

<sup>49</sup> TEX. HIST. COMM'N, 2021–2022 BIENNIAL REPORT 8 (2022).

<sup>50</sup> *Id.*

<sup>51</sup> TEX. HIST. COMM'N, 2023–2027 STRATEGIC PLAN 61 (2022).

<sup>52</sup> *Id.*

the role of the federal Latinx Theme Study or a context statement for Latinx Texans. This obfuscation is not an organic result. In 2002, Texas' Statewide Historic Preservation Plan listed proper representation of the state's diversity as a struggle for THC to tackle.<sup>53</sup> It states that Texas was crafted by "[t]he hands of Native Americans, Texians, Mexicans, African Americans, Europeans and countless others ... This diversity must be represented and respected in the historic and cultural landscape and within the community that preserves Texas' built legacy."<sup>54</sup> The 2011–2020 Statewide Historic Preservation Plan goes further, noting that, while Texas was built by a variety of Texans, "this diversity is not evident in the state's preservation constituency, nor in most of the places and stories we focus our preservation efforts."<sup>55</sup> These changes in language and attitude have structural and legal barriers that will be addressed in turn.

## II. BARRIERS TO PRESERVATION

While Latinx heritage preservation enjoys some support, evidenced by the Latinx theme study, there have only been a few sites preserved throughout Texas. There are several barriers to preserving Latinx American and Latinx Texan history. As originally envisioned in 1965, historic preservation laws and regulations were not designed to capture the full extent of American society.<sup>56</sup> At the time, there were various limitations on minority rights and thus also a lack of political power for minorities.<sup>57</sup> Obstacles for Latinx preservation encompass legal barriers, policy barriers like funding and incentives for Latinx heritage sites, and a resurgent, hostile political climate.<sup>58</sup>

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<sup>53</sup> TEX. HIST. COMM'N, PRESERVING OUR HERITAGE: A STATEWIDE PLAN FOR TEXAS, TEXAS STATEWIDE HISTORIC PRESERVATION PLAN 12 (2002).

<sup>54</sup> *Id.*

<sup>55</sup> TEX. HIST. COMM'N, PRESERVATION CONNECTION: 2011–2020 TEXAS STATEWIDE HISTORIC PRESERVATION PLAN 18 (2011).

<sup>56</sup> See Erica Avrami, Cherie-Nicole Leo, & Alberto Sanchez Sanchez, *Confronting Exclusion: Redefining the Intended Outcomes of Historic Preservation*, 8 CHANGE OVER TIME 102 (2018) (discussing exclusion in historic preservation and mechanisms to ensure inclusion during and post-historic designation).

<sup>57</sup> See generally U.S. COMM'N ON CIV. RTS., THE VOTING RIGHTS ACT: THE FIRST MONTHS 3-4 (1965) (detailing the challenges following the enacting of the 1964 Civil Rights Act); Armando Rendon, *La Raza — Today Not Mañana*, 1 CIV. RTS. DIGEST 7, 7–17 (1968) (explaining the political and socioeconomic condition of Mexican Americans in 1968).

<sup>58</sup> See Exec. Order No. 14151, 90 Fed. Reg. 8339 (Jan. 20, 2025) (Executive Order ending government funding for Diversity, Equity, and Inclusion Programs); Tex. Exec. Order GA-55, 50 Tex. Reg. 810 (Feb 14, 2025) (Texas State Executive order villainizing Equity, Diversity, and Inclusion programs and Critical Race Theory).

### A. *Legal Barriers*

Preservation laws require potential sites to meet standards of significance and integrity, which have historically served as a bar to protecting minority cultural heritage sites.<sup>59</sup> Generally, these sites must be over fifty years old and exhibit some historical, architectural, or archaeological worthiness.<sup>60</sup> These subjective standards, such as significance and integrity, create possible pitfalls for communities and places that might not meet the standards but are in fact important to a minority group. For example, the historical significance of a building might be confused with its architectural significance.<sup>61</sup> Paradoxically, some of the largest barriers to preserving Latinx heritage sites are the federal and state laws that created the current historic preservation landscape. By providing very narrow definitions of importance and strictly regulating the assessment of those sites, these laws hinder Latinx heritage preservation by default.

#### 1. *Limitations of Federal Law*

The current landscape of federal law and administrative agencies hinders the ability of Latinx heritage sites to meet the significance and integrity standards. Through the National Historic Preservation Act of 1966, Congress declared that “the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people.”<sup>62</sup> Understanding the United States’ aim to be a multicultural melting pot, Latinx American heritage should be preserved as part of our community life and development. Despite this, the federal government has yet to fully implement this decree into the regulations governing historic preservation.

The National Historic Preservation Act of 1966 authorized the National Park Service’s National Register of Historic Places.<sup>63</sup> The

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<sup>59</sup> Antoinette J. Lee, *Cultural Diversity and Historic Preservation*, 15 CULTURAL MGMT. RES. 1, 3 (1992).

<sup>60</sup> 36 C.F.R. § 60.4 (2024).

<sup>61</sup> For example, while researching and nominating significant women’s history sites as part of the Women’s History Landmark project, the Park Service staff would “hold properties nominated for historical significance to the same standard as those properties nominated for architectural significance.” Page Putnam Miller, *Women’s History Landmark Project: Policy and Research*, 15 PUB. HISTORIAN 82, 84 (1993).

<sup>62</sup> National Historic Preservation Act of 1966, Pub. L. No. 89-665, Preamble, 815, 815 (1966).

<sup>63</sup> *State Historic Preservation Offices*, NAT’L PARK SERV., <https://www.nps.gov/subjects/>

National Register is part of a federal program to “support public and private efforts to identify, evaluate, and protect America’s historic and archeological resources.”<sup>64</sup> The National Register of Historic Places has highly selective criteria for determining which properties can be listed. Significant American properties, structures, and sites must be over fifty years old and possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- (a) that are associated with events that have made a significant contribution to the broad patterns of our history; or
- (b) that are associated with the lives of persons significant in our past; or
- (c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (d) that have yielded, or may be likely to yield, information important in prehistory or history.

Latinx sites and history do not always fit neatly into these criteria set forth by the National Park Service. National Park Service guidance for understanding “significance” includes areas such as architecture, art, Hispanic ethnic heritage, and “Politics/Government,” among others.<sup>65</sup> Moreover, in analyzing properties with “traditional cultural significance,” National Park Service guidance indicates that this is meant to include historic properties that play a role in “a community’s historically rooted beliefs, customs, and practices.”<sup>66</sup> However, Latinx history and contributions are often overlooked or ignored.<sup>67</sup> Even though Latinx people and their contributions predate the formation of the United States, Latinx contributions

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[nationalregister/state-historic-preservation-offices.htm](https://www.nationalregister.gov/state-historic-preservation-offices.htm) (last updated Dec. 10, 2024), [<https://perma.cc/9C25-7NNS>].

<sup>64</sup> *Id.*

<sup>65</sup> DEP’T OF INTERIOR, NATIONAL PARK SERVICES CULTURAL RESOURCES, HOW TO APPLY THE NATIONAL REGISTER CRITERIA FOR EVALUATION 8 (1995).

<sup>66</sup> DEP’T OF INTERIOR, NATIONAL PARK SERVICES CULTURAL RESOURCES, GUIDELINES FOR EVALUATING AND DOCUMENTING TRADITIONAL CULTURAL PROPERTIES 1 (1998).

<sup>67</sup> Viviana López Green & Emelynn Arroyave, *Latino History is American History: Teaching the Untold Stories of Latino Contributions in U.S. History*, UNIDOSUS BLOG (May 31, 2023), <https://unidosus.org/blog/2023/05/31/latino-history-is-american-history-teaching-the-untold-stories-of-latino-contributions-in-u-s-history/> [<https://perma.cc/4E5U-2P47>].

are rarely top of mind when it comes to significant events in United States history. Latinx figures are likewise often omitted from public history, but for a few exceptions like Cesar Chávez and Sonia Sotomayor. A recent report by UnidosUS and the Johns Hopkins Institute for Education Policy found that 87 percent of key topics in Latinx history were not covered in U.S. history textbooks.<sup>68</sup> Yet, “[f]rom carving out a community in St. Augustine in 1565 to reflecting on colonialism and liberty during the 1890s to fighting for civil rights through the courts in the 1940s, [Latinx people] made history within and beyond” the United States.<sup>69</sup> However, given the public’s limited knowledge of Latinx American history, many significant sites are prone to fall through the cracks. These broad, subjective Park Service categories thus tend to limit Latinx heritage preservation.

National Park Service guidance further notes that “[a] traditional cultural property, then, can be defined generally as one that is eligible for including in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community’s history, and (b) are important in maintaining the continuing cultural identity of the community.”<sup>70</sup> These criteria present some challenges for Latinx American heritage preservation. Latinx culture is not monolithic and encompasses a plethora of opinions, languages, national origins, traditions, and cultures, making a singular Latinx American identity hard to pinpoint.<sup>71</sup> On the other hand, the diversity that exists among the Latinx American population could be thought to more readily support a finding that a property meets both criteria for listing on the National Register by broadening the scope of the community’s history and cultural identity.

Requiring traditional cultural properties be tied to a living community further risks limiting preservation. If communities are physically forced to move, the potential listing of a relocated property on the National Register is usually barred because the physical relocation is thought to undermine the property’s significance.<sup>72</sup> This is especially

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<sup>68</sup> UNIDOSUS & JOHNS HOPKINS INST. FOR EDUC. POL’Y, ANALYZING INCLUSION OF LATINO CONTRIBUTIONS IN U.S. HISTORY CURRICULA FOR HIGH SCHOOL v (May 2023).

<sup>69</sup> Vicki L. Ruiz, *Nuestra América: Latino History as United States History*, 93 J. AM. HIST. 655, 656 (2006); Stephen J. Pitti, *The American Latino Heritage*, NAT’L PARK SERV., <https://www.nps.gov/articles/latinothemecoreessay.htm> [<https://perma.cc/X6L9-UHRP>].

<sup>70</sup> DEP’T OF INTERIOR, NATIONAL PARK SERVICES CULTURAL RESOURCES, *supra* note 65, at 1.

<sup>71</sup> Negrón-Muntaner & Sánchez-Korrol, *supra* note 22.

<sup>72</sup> DEP’T OF INTERIOR, NATIONAL PARK SERVICES CULTURAL RESOURCES, *supra* note 54, at 2.

relevant to Latinx communities in Texas that have historically been physically pushed out or otherwise removed from their homes.<sup>73</sup>

The National Historic Landmarks program of the National Park Service offers some opportunities for Latinx heritage preservation. While the program is intended to illustrate the heritage of the United States, like the National Register of Historic Places,<sup>74</sup> it differs in a few significant ways. To be eligible for the National Historic Landmarks program, a site must be:

- (1) associated with events that have made a significant contribution to, and are identified with, or that outstandingly represent, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained; or
- (2) That are associated importantly with the lives of persons nationally significant in the history of the United States; or
- (3) That represent some great idea or ideal of the American people; or
- (4) That embody the distinguishing characteristics of an architectural type specimen exceptionally valuable for a study of a period, style or method of construction, or that represent a significant, distinctive and exceptional entity whose components may lack individual distinction; or
- (5) That are composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture; or
- (6) That have yielded or may be likely to yield information of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites are those which have yielded, or which may reasonably be expected to yield, data affecting theories, concepts and ideas to a major degree.<sup>75</sup>

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<sup>73</sup> *The History of Racial Violence on the Mexico-Texas Border*, REFUSING TO FORGET, <https://refusingtoforget.org/the-history> [<https://perma.cc/8T69-2LBL>].

<sup>74</sup> *National Historic Landmarks Program*, NAT'L PARK SERV., <https://www.nps.gov/orgs/1582/index.htm> (last updated Dec. 16, 2024), [<https://perma.cc/J24X-3Z7X>].

<sup>75</sup> 36 C.F.R. § 65.4 (2024).

Under Criterion 5, the Landmarks program allows for sites “not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compos[ing] an entity of exceptional historical or artistic significance, or outstandingly commemorat[ing] or illustrat[ing] a way of life or culture.”<sup>76</sup> While this sounds like a great opportunity for preserving Latinx heritage, the National Park Service itself acknowledges that this criterion alone is usually not enough. On its website, it notes that while many districts recognized by this Criterion are “nationally significant for their extraordinary historic importance in illustrating or commemorating a way of life or culture . . . [this criterion] is rarely used on its own; many of these historic districts also use Criterion 1 or 6.”<sup>77</sup> Fortunately, some of these shortcomings have been addressed.

In 2022, the National Park Service issued an addendum to the Latino Theme Study that addresses the potential shortcomings of the National Historical Landmark criteria in evaluating Latinx properties.<sup>78</sup> The addendum explains how to apply the Latino Theme Study to the National Historic Landmark guidelines, noting that properties highlighted by the study would probably not qualify under Criterion 4 due to a lack of focus on architecture.<sup>79</sup> Each criterion includes possible applications from the Theme Study and a non-exhaustive list of exemplars that local conservationists could use in their own research and applications.<sup>80</sup> It goes on to identify specific properties that do not meet the criteria according to the Theme Study but might become eligible if further research were to prove their significance.

## 2. *Limitations of Texas Law*

Texas law also presents some difficulties for Latinx heritage preservation. The State of Texas, through the THC, plays a huge role in maintaining the National Register of Historic Places. The Texas SHPO surveys, evaluates, and nominates significant historic “buildings, sites,

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<sup>76</sup> 36 C.F.R. § 65.4(a)(5) (2024).

<sup>77</sup> *Determining the Eligibility of a Property for National Historic Landmark Designation*, NAT'L PARK SERV., <https://www.nps.gov/subjects/nationalhistoriclandmarks/eligibility.htm> (last updated Oct. 4, 2023) [<https://perma.cc/FQ53-CRC8>].

<sup>78</sup> ADDENDUM - AMERICAN LATINO HERITAGE THEME STUDY NATIONAL HISTORIC LANDMARK REGISTRATION GUIDELINES, NAT'L PARK SERV. (2024).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 3.

structures, districts and objects to National Register.”<sup>81</sup> While Texas’ facilitation of the National Register does not stand out as a unique state-level endeavor, Texas does have a few state-specific programs that present both opportunities and challenges for Latinx heritage conservation.

Texas’ “State Historical Markers” program features the most prominent, Texas-specific historic preservation sites. Texas Government Code § 442.006 creates the State Historical Marker program and calls, among other things, for THC to “install markers recognizing districts, sites, individuals, events, structures, and objects significant in Texas or American history, architecture, archeology, or culture.”<sup>82</sup> THC traces this program’s origins back over a hundred years to 1856 when Texas first commemorated a historical site by marking graves at the San Jacinto Battleground.<sup>83</sup> Notably, the first official state historical marker recognizing a Latinx person was not unveiled until the early 1930s, when the state commemorated Lorenzo de Zavala, a Tejano<sup>84</sup> and the Texas Republic’s first Vice-President.<sup>85</sup> The historical marker program also includes programs specifically for Historic Texas Cemeteries, Recorded Texas Historic Landmarks, and for “Undertold Stories.”<sup>86</sup>

To apply for a historical marker, THC lays out three requirements. Applicants are first encouraged to contact county historical commissions (CHC) and the property’s owner.<sup>87</sup> The first requirement for a complete application is property owner consent to display the marker.<sup>88</sup> Applicants are encouraged to contact CHCs because they can help gather documentation and complete the application, but most importantly, CHCs must approve the application before it is sent to THC.<sup>89</sup> Next, applicants must write a narrative history, entailing a research paper

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<sup>81</sup> National Historic Preservation Act of 1966, Pub. L. No. 89-665, Preamble, 815, 815 (1966).

<sup>82</sup> TEX. GOV’T CODE ANN. § 442.006 (West 2021).

<sup>83</sup> *Help With Existing Markers*, TEX. HIST. COMM’N, <https://www.thc.texas.gov/preserve/projects-and-programs/state-historical-markers/history-state-texas-historical-markers> [<https://perma.cc/HP2Q-AHD9>].

<sup>84</sup> The word “Tejano” descended from Spanish colonists or from Spanish Mexicans.

<sup>85</sup> *Id.*

<sup>86</sup> *Historical Markers*, TEX. HIST. COMM’N, <https://www.thc.texas.gov/preserve/projects-and-programs/state-historical-markers> [<https://perma.cc/KQ2Z-KU4T>].

<sup>87</sup> *How to Apply for a Historical Marker*, TEX. HIST. COMM’N, <https://thc.texas.gov/preserve/preservation-programs/historical-markers/apply-historical-marker> [<https://perma.cc/BGH9-68PD>].

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

that “documents the significance of the property or topic” and includes well documented footnotes or endnotes.<sup>90</sup> When a CHC approves an application, it is forwarded to THC; if THC approves, then they send a proposed draft inscription so that the applicant and respective CHC can approve or modify it.<sup>91</sup> Ultimately, the marker is cast and a dedication ceremony marks the end of the process.<sup>92</sup>

This program creates some new opportunities for Latinx heritage preservation across the state. The requirements are the same for all applicants, thus, an applicant seemingly needs to know of an important person or movement associated with a site and be able to properly research and document it. Unfortunately, this is where a large gap in the Latinx historical record plays an outsized role in limiting Latinx heritage preservation. Many of the injustices Latinos have suffered in Texas and nationwide are conveniently left out of history books and purposely obfuscated.<sup>93</sup> Often, experts and dedicated teams focused on preserving history are needed to meet the preservation criteria, which may not be broadly accessible to prospective applicants.

Recognizing some of these difficulties, THC launched the “Undertold Markers Program” in 2006.<sup>94</sup> As part of the program, THC collects a \$100 fee from historical marker applications and earmarks the money “to establish an account to offer funding incentives for special or priority markers.”<sup>95</sup> The goal of the program is to address “historical gaps, promote diversity of topics, and proactively document significant underrepresented subjects or untold stories.”<sup>96</sup> The application is shorter, asking applicants to propose a marker title, location, explain the subject in 250 words or less, suggest sources for historical research, and include two photos of the proposed location.<sup>97</sup> Applicants may also submit a

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> See Monica Muñoz Martinez, *THE INJUSTICE NEVER LEAVES YOU: ANTI-MEXICAN VIOLENCE IN TEXAS* (2020); Simon Romero, *Lynching in the West: Unwritten Violence Against Mexican Americans*, THE INDEP. (Mar. 7, 2019), <https://www.independent.co.uk/news/world/world-history/lynching-mexican-african-american-texas-racism-america-a8806506.html> [<https://perma.cc/T9EM-6C33>].

<sup>94</sup> *Undertold Markers*, TEX. HIST. COMM’N, <https://www.thc.texas.gov/preserve/projects-and-programs/state-historical-markers/undertold-markers> [<https://perma.cc/9CMH-GNPG>].

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> TEX. HIST. COMM’N, 2023 UNDERTOLD MARKER APPLICATION (2023) (on file with author).

traditional narrative history, but it is not required.<sup>98</sup> Generally, these curtailed requirements widen the opportunities for Latinx heritage preservation. A team of Latinx historians and scholars, self-titled “Refusing to Forget,” have successfully documented the history of anti-Mexican violence in Texas, thereby convincing THC to approve four of these undertold historical markers.<sup>99</sup>

Another opportunity for Latinx heritage preservation is Texas’ Heritage Trails. The Texas Heritage Trails Program traces its origins to the marketing of ten scenic driving trails in 1968 by Governor John Connally.<sup>100</sup> In 1997, the Texas Legislature tasked THC with creating a heritage tourism program, which led to the creation of ten heritage trails throughout the state.<sup>101</sup> These trails provide heritage information and programs for the driving public, simultaneously striving to induce economic development in those areas.<sup>102</sup> The trails have been wildly successful, generating \$83 billion in spending in 2019<sup>103</sup> and the distribution of over seven million travel guides since the trails’ inception.<sup>104</sup> In 2021, THC released “Hispanic Texas: Journey from Empire to Democracy,” a Texas travel guide.<sup>105</sup> This guide includes a brief history of Hispanics in Texas, a timeline of Hispanic events in Texas, and, most prominently, a guide to all the Hispanic cultural and historic sites along Texas’ ten Heritage Trails.<sup>106</sup>

### 3. Federal and Texas Tax Incentives

To aid preservation efforts, federal and state governments provide tax credits and grants to help maintain historic properties. The Secretary of the Interior provides a 20 percent income tax credit for the rehabilitation of historic buildings designated as “certified historic structures” by the National Park Service.<sup>107</sup> The National Park Service and SHPOs

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<sup>98</sup> *Id.*

<sup>99</sup> *Historical Markers, REFUSING TO FORGET*, <https://refusingtoforget.org/historical-markers> [<https://perma.cc/FVY7-6ZPH>].

<sup>100</sup> *Texas Heritage Trails Program History*, TEX. HIST. COMM’N, <https://thc.texas.gov/preserve/tourism-and-economic-development/texas-heritage-trails> [<https://perma.cc/JV7M-EGFM>].

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> HALFF ASSOCS., INC., TEXAS TRAIL STUDY 1, 51 (2022).

<sup>104</sup> MICHAEL HOLLERAN ET AL., ECONOMIC IMPACT OF HISTORIC PRESERVATION IN TEXAS 16 (UNIV. OF TEX. AT AUSTIN & RUTGERS, 2015).

<sup>105</sup> TEX. HIST. COMM’N, *HISPANIC TEXANS: JOURNEY FROM EMPIRE TO DEMOCRACY* 1 (2015).

<sup>106</sup> *Id.*

<sup>107</sup> *Historic Preservation Tax Incentives*, NAT’L PARK SERV., <https://www.nps.gov/subjects/>

certify the buildings and determine that the rehabilitation project is “consistent with the historic character of the property and, where applicable the district in which it is located.”<sup>108</sup> The historic site must be “depreciable,” meaning used it is used in a trade or business to produce income, and the rehabilitation must be “substantial,” encompassing over \$5,000 or the adjusted basis of the building, whichever is higher.<sup>109</sup> Additionally, once renovations are complete, the building must go back into service for its trade- or business-related purpose.<sup>110</sup> Applicants must apply to the National Park Service for certification of their rehabilitation project and, once approved, apply for the tax credit to the Internal Revenue Service through their income tax return.<sup>111</sup>

On top of federal tax incentives, Texas provides an additional 25 percent tax credit program aimed at providing relief for operation and maintenance costs.<sup>112</sup> The requirements for Texas’ Historic Preservation Tax Credit are similar to the requirements for the federal program. The building must have a historic designation either through the federal or state government.<sup>113</sup> The building must also be used for income-producing or non-profit purposes, meet the same rehabilitation cost requirements as the federal program, and likewise be placed back into service once work is complete.<sup>114</sup> Non-profits include 501(c)(3) and other tax-exempt 501(c) organizations as per the IRS code.<sup>115</sup> Texas does not have a state income tax, and thus the tax benefit is provided in the form of a tax credit on the franchise tax for private businesses or the insurance premium tax.<sup>116</sup> Applicants similarly apply to THC for approval of their proposed rehabilitations, and once approved and completed, are granted a tax credit certificate. That certificate grants the business a

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[taxincentives/about.htm](https://perma.cc/4RTR-JGYK) (last updated Aug. 30, 2023) [https://perma.cc/4RTR-JGYK].

<sup>108</sup> NAT’L PARK SERV., HISTORIC PRESERVATION TAX INCENTIVES 6 (2012).

<sup>109</sup> *Id.* at 9.

<sup>110</sup> *Id.* at 10.

<sup>111</sup> *Id.* at 13.

<sup>112</sup> *Historic Preservation Tax Credits*, TEX. HIST. COMM’N, <https://thc.texas.gov/preserve/grants-tax-credits-and-funding/historic-preservation-tax-credits> [https://perma.cc/PLN8-EJ3R].

<sup>113</sup> *Texas Historic Preservation Tax Credit Program*, TEX. HIST. COMM’N, <https://thc.texas.gov/preserve/grants-tax-credits-and-funding/historic-preservation-tax-credits/texas-historic> [https://perma.cc/NPQ9-CM2N].

<sup>114</sup> *Id.*

<sup>115</sup> *State Tax Credit for Nonprofits*, TEX. HIST. COMM’N, <https://www.thc.texas.gov/preserve/projects-and-programs/preservation-tax-incentives/texas-historic-preservation-tax-credit-0> [https://perma.cc/8CWB-A54E].

<sup>116</sup> *Id.*

tax credit on the state franchise tax for doing business in the state. If a non-profit entity has the tax credit, the credit can be sold to a tax-paying corporation in exchange for cash.<sup>117</sup> The Texas Historic Preservation Tax credit program can be concurrently applied with the federal program to ultimately provide up to a 45 percent tax credit to an applicant. Combined and individually, these credits incentivize preservation across the nation and state.

Additionally, the federal government and Texas both offer grants focused on historical preservation that could significantly accelerate Latinx heritage preservation. In 1977, the National Park Service funded the Historic Preservation Fund (HPF) to assist government and non-government organizations in the preservation of historic sites.<sup>118</sup> Over the past 40 years, more than \$1.2 billion in grants have been invested to aid in the preservation of historic sites across the country.<sup>119</sup> There are several types of individual grants that can aid in Latinx heritage preservation. The National Park Service's two most prominent grants are the Underrepresented Communities Grants (URC) and the History of Equal Rights Grants (HER).<sup>120</sup> URC grants aim to diversify nominations that are submitted for the National Register of Historic Places.<sup>121</sup> Aimed at entities like SHPOs, certified local governments, and non-profit organizations with or without 501(c)(3) status (as of 2023), URC provides funds to survey, inventory, and designate historic properties that are underrepresented in the National Register of Historic Places and among National Historic Landmarks.<sup>122</sup>

HER grants "preserve[] sites related to the struggle for any or all people to achieve equal rights in America."<sup>123</sup> However, the grant

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<sup>117</sup> *Id.*

<sup>118</sup> *Historic Preservation Fund Grant Programs*, NAT'L. PARK SERV., <https://www.nps.gov/subjects/historicpreservationfund/grant-programs.htm> (last updated Aug. 29, 2024) [<https://perma.cc/KSH2-TCC5>].

<sup>119</sup> *Id.*

<sup>120</sup> *Competitive Grants*, NAT'L PARK SERV., <https://www.nps.gov/subjects/historicpreservationfund/project-grants.htm> (last updated Aug. 29, 2024) [<https://perma.cc/5MGV-ZASX>].

<sup>121</sup> *Underrepresented Communities Grants*, NAT'L. PARK SERV., <https://www.nps.gov/subjects/historicpreservationfund/underrepresented-community-grants.htm> (last updated Aug. 29, 2024), [<http://perma.cc/P66E-UGMZ>].

<sup>122</sup> *Underrepresented Communities Application Information*, NAT'L. PARK SERV., <https://www.nps.gov/subjects/historicpreservationfund/urc-grant-info.htm> (last updated June 10, 2024) [<http://perma.cc/Z2FA-4GPS>].

<sup>123</sup> *History of Equal Rights*, NAT'L. PARK SERV., <https://www.nps.gov/subjects/historicpreservationfund/history-of-equal-rights.htm> (last updated Aug. 29, 2024) [<http://>

program is not limited to any specific group of people and is “intended to include the broadest possible interpretation of sites associated with efforts to achieve equal rights.”<sup>124</sup> The program’s main activity is funding physical preservation work or pre-preservation planning activities if the site is already listed on the National Register or eligible to become listed.<sup>125</sup> HER grants range from \$75,000 to \$750,000 for preservation projects and \$15,000 to \$75,000 for pre-preservation work.<sup>126</sup> These are just two of several federal grants that lend themselves to Latinx heritage preservation. Depending on the location and nature of the site, plenty of other grants and incentives are offered by the federal government and the State of Texas.

Established in 1989, Texas provides grants through the Texas Preservation Trust Fund (TPTF).<sup>127</sup> The TPTF allows qualified applicants to survey, restore, preserve, plan, and enhance their heritage preservation activities.<sup>128</sup> These grants are offered on a one-to-one match basis where the TPTF matches the dollar amount spent by each applicant, up to the maximum grant amount.<sup>129</sup> Grants range from \$10,000 to \$50,000, meaning that for many preservation projects in Texas, the state is investing the same amount of money as the preservationists.<sup>130</sup>

## **B. A Case Study of Segregated Mexican Schools in Texas**

### *1. The Roosevelt School in Hidalgo County*

For Latinos in the City of Mission, Texas, attending the Theodore Roosevelt School was the common denominator for Latinos. Until its destruction, the Roosevelt School’s auditorium and classroom were the

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[perma.cc/FV3P-LJM7](https://perma.cc/FV3P-LJM7)].

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> NAT’L PARK SERV., HISTORY OF EQUAL RIGHTS (HER) 2 (2024). Preservation means “the act or process of applying measures necessary to sustain the existing form, integrity and materials of an historic property.” 36 C.F.R. §68.2(a). Pre-preservation work includes that which helps understand what steps must be taken to properly preserve a site. Examples include having an engineer or architect assess building conditions and draw up plans or specifications. See, e.g., *African American Civil Rights Grant Program*, NAT’L PARK SERV. (Aug. 2022), <https://www.nps.gov/media/video/embed.htm?id=F2F40154-34DD-4B72-B4F0-09BE5EE81960>. [<https://perma.cc/YH9H-RK4C>].

<sup>127</sup> *Texas Preservation Trust Fund*, TEX. HIST. COMM’N, <https://www.thc.texas.gov/preserve/projects-and-programs/texas-preservation-trust-fund> [<https://perma.cc/38R7-8D6X>].

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

only surviving elements of the City of Mission's once-segregated school system.<sup>131</sup> While most Americans may think of school segregation as a Black and white issue, in areas with a large Latinx population, Latinos were sequestered in their own separate school system.<sup>132</sup> Indeed, the Texas Constitution mandated the racial segregation of Black and white students from elementary school to college, but there was a de facto practice of segregating Latinos as well.<sup>133</sup> In 1921, Mission built a school for the education of Mexican-American children. As was customary at the time, the school was built with "Spanish-influenced design features such as arched windows and doorways and a flat roof with Mission-style parapet walls and clay tile."<sup>134</sup> With the onset of refugees from the Mexican Revolution just a few miles across the river, the class sizes swelled.<sup>135</sup> The Mission Independent School Board adapted by adding an auditorium in 1928.<sup>136</sup> Continued growth led to the 1949 addition of a classroom building in the same style as the rest of the campus.<sup>137</sup> In 1968, the school district's accrediting team condemned the building and razed it, except for the 1928 auditorium and 1949 classroom addition.<sup>138</sup> The district then left the campus desolate for ten years until they constructed another classroom addition and operated the campus as an alternative school.<sup>139</sup>

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<sup>131</sup> ROOSEVELT SCHOOL AUDITORIUM AND CLASSROOM ADDITION NATIONAL REGISTER OF HISTORIC PLACES REGISTRATION FORM, NAT'L PARK SERV. 8 (2002).

<sup>132</sup> See *Hernandez v. Texas*, 347 U.S. 475, 479–80, 479 fn. 10 (1954) (describing the segregation of Mexican children into Mexican schools for the first four school grades under the pretense of English language acquisition); *Indep. Sch. Dist. v. Salvatierra*, 33 S.W.2d 790, 795 (Tex. App. 1930) ("In this case this court can say no more than that the school authorities have no power to arbitrarily segregate Mexican children, assign them to separate schools, and exclude them from schools maintained for children of other white races, merely or solely because they are Mexicans."); see also DAVID MONTEJANO, *ANGLOS AND MEXICANS IN THE MAKING OF TEXAS 1836–1986*, 262 (1987) (contextualizing Mexican segregation within the larger historical narrative of inter-ethnic and inter-racial relations between Mexicans and Anglos in the shaping of Texas).

<sup>133</sup> Victoria-María MacDonald, *Demanding their Rights: The Latino Struggle for Educational Access and Equity*, NAT'L PARK SERV., <https://www.nps.gov/articles/latinothemeeeducation.htm> (last updated July 10, 2020) [<https://perma.cc/78BA-R5WN>].

<sup>134</sup> ROOSEVELT SCHOOL AUDITORIUM AND CLASSROOM ADDITION NATIONAL REGISTER OF HISTORIC PLACES REGISTRATION FORM, *supra* note 115.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* (The school district accrediting team cited "safety reasons" as its justification for demolishing the building).

<sup>139</sup> *Id.* Texas alternative schools are "educational and self-discipline alternative instructional programs . . . for students in elementary through high school who are removed

Notable alumni of the school include: U.S. Representative Kika de la Garza; Texas State Senator Juan “Chuy” Hinojosa; the nearby City of McAllen’s first Latinx superintendent, Dr. Pablo Pérez; and professional wrestler Merced “Tito Santana” Solis.<sup>140</sup> The Roosevelt School, or at least the 1928 auditorium and 1949 classroom additions, were listed on the National Register of Historic Places on August 30, 2002.<sup>141</sup> As described above, the Roosevelt School was significant for its unique Spanish revival architecture and its history as the only “Mexican school” that educated Latinx children in the racially segregated community of Mission.

On April 14, 2021, despite the Roosevelt School’s local significance and status on the National Register of Historic Places, the Mission Independent School District Board voted to demolish the school.<sup>142</sup> Citing structural safety concerns, the district administration explained that, since 2006, there had been issues with the building, but that Hurricane Hanna exacerbated the problem past the point of no return.<sup>143</sup> Having last used the building in 2006, the district noted that 30 percent of the roof had collapsed and the entire floor needed replacement.<sup>144</sup> Estimates placed repairing the structure at \$1.5 million, while demolishing it to make way for a parking lot would only cost \$157,000.<sup>145</sup> Voting to tear down the historic building, Trustee Petra Ramirez reasoned, “[i]t’s just a danger and we don’t have the money to fix it . . . if we need it for a parking lot, let’s be wise and use it for what we need.”<sup>146</sup>

Countering the school board’s arguments, Vice Chair Gabriel Ozuna of the Hidalgo County Historical Commission instead claimed

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from their regular classes for mandatory or discretionary disciplinary reasons.” 19 Tex. Admin Code §103.1201 (a). Texas alternative schools are the result of a response to a 1980s juvenile crime wave. *see generally* Augustina H. Reyes, *Alternative Education: The Criminalization of Student Behavior*, 29 Fordham Urban L. J. 539, 540-41 (2001).

<sup>140</sup> Lea Juarez, *Historic Auditorium Demolition Begins, Missionites Attempt to Save it*, PROGRESS TIMES (June 12, 2023), <https://www.progresstimes.net/2023/06/12/historic-auditorium-demolition-begins-missionites-attempt-to-save-it> [https://perma.cc/Z6XJ-HND8].

<sup>141</sup> *Details for Roosevelt School Auditorium and Classroom Addition*, TEX. HIST. COMM’N, <https://atlas.thc.state.tx.us/Details/2002000909/print> [https://perma.cc/W7GR-FLZT].

<sup>142</sup> Mission Consolidated Independent School District, Mission CISD Regular Board of Trustees Meeting, Google Drive (Apr. 14, 2023), <https://drive.google.com/file/d/1Lxa-IcJfYX4MlwnXVhFOqQp4lhtMUKNB/view> [https://perma.cc/L69H-Q3E2].

<sup>143</sup> Juarez, *supra* note 141.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

the school district did not do enough to save the Roosevelt School.<sup>147</sup> While the school district itself might not have had the funds earmarked for preservation, it failed to do its homework and take advantage of the funds available for situations like these.<sup>148</sup> Ozuna notes that the federal HER grant alone could have covered half of the costs cited by the school district.<sup>149</sup> As the only segregated school in Mission, it played a unique role in the city's civil rights history and would fit all the criteria required to obtain the grant. Additionally, Ozuna highlighted that aside from the lack of research into available help, ignorance about historical preservation in South Texas and in the City of Mission itself created another conundrum for the Roosevelt School.<sup>150</sup>

While the Roosevelt School was proudly listed in the National Register for over twenty years, the City of Mission failed to provide for it under its own local preservation ordinance.<sup>151</sup> Preservation ordinances like the City of Mission's create "preservation overlay" districts which designate areas of a city that are protected by the ordinance.<sup>152</sup> Placing the Roosevelt School within its overlay district would require either a three-quarters majority vote by the city's planning commission and city council.<sup>153</sup> Extending protections to the Roosevelt School could have prevented its demolition by performing a few bureaucratic measures to slow down demolition. But Mission's ordinance was fatally flawed.<sup>154</sup> The local preservation ordinance was adapted from another city in the state without the proper changes that would account for the City of Mission's unique attributes. For example, instead of listing the county as Hidalgo County and the City of Mission throughout, Bell County and Plano appeared throughout.<sup>155</sup> To add insult to injury, in 2015 the city unknowingly shrank the historical district in half.<sup>156</sup> These oversights

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<sup>147</sup> Telephone Interview with Gabriel Ozuna (Oct. 20, 2023) (on file with author).

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Details for Roosevelt School Auditorium and Classroom Addition*, *supra* note 140.

<sup>152</sup> MISSION, TEX., ART. VIII USE DIST. & CONDITIONAL USES, §1.47B (2014).

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> Steve Taylor, *Bell County to be swapped for Hidalgo County in Mission's historical preservation ordinance*, RIO GRANDE GUARDIAN (June 22, 2023), <https://riograndeguardian.com/bell-county-to-be-swapped-for-hidalgo-county-in-missions-historical-preservation-ordinance/> [<https://perma.cc/HNX4-4A95>]. Bell County sits in the middle of Central Texas and Plano is just north of Dallas in Northern Texas.

<sup>156</sup> *Id.*

meant that the Roosevelt School lacked legal protections from demolition, the Mission School District had free reign to do what it pleased with the property, and the City of Mission was powerless to stop it. If it had been drafted properly, the ordinance would have allowed the City of Mission to fine the district for keeping the building in a state of disrepair and failing to maintain its structural integrity.<sup>157</sup> An adequate ordinance also would have required the school district to apply for a demolition permit and prove that it had exhausted all possible options to keep the building standing. Furthermore, a properly drafted preservation ordinance would have slowed the demolition process, thereby allowing outside actors like THC or Preservation Texas, a nonprofit dedicated to historic preservation, to step in and provide support. Listing on the National Register is therefore not enough: cities must implement ordinances that not only reflect the community's historic sites and geography but also feature legitimately protective measures.

Mission's local preservation ordinance posed another concern for Latinx heritage preservation in the city because it followed the historic lines of segregation. The historic properties in the northern, historically Anglo side of town, were listed in the city ordinances while the properties in the southern, historically Latinx part of town, were not.<sup>158</sup> Contrary to common belief, Latinx heritage sites like La Lomita Chapel,<sup>159</sup> a Catholic mission dating back to 1865, and the Rio Theater, an iconic Spanish theater in the middle of town, lacked any legal protections. Thankfully, the city amended its ordinances, expanded the historical district back to its original size, and included most historic Latinx sites within the city.<sup>160</sup>

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<sup>157</sup> Steve Taylor, *Salinas: City of Mission Just as Culpable as Mission CISD for Deterioration of Roosevelt Elementary*, RIO GRANDE GUARDIAN (June 4, 2023), <https://riograndeguardian.com/salinas-city-of-mission-just-as-culpable-as-mission-cisd-for-deterioration-of-roosevelt-elementary/> [https://perma.cc/8N39-W7NF].

<sup>158</sup> Taylor, *supra* note 151 (“Perhaps the biggest mistake with the Historical Preservation Ordinance, Historical Preservation Commission members said, was a decision made in 2015 to shrink by half the size of Mission’s Historical District. As a result of that change, historic buildings located south of the railroad tracks were no longer protected by the ordinance, which is why Mission CISD was able to bulldoze the nationally listed Roosevelt Auditorium with immunity.”).

<sup>159</sup> “La Lomita” is Spanish for “the hillock.” See *La Lomita Chapel*, CITY OF MISSION, <https://missiontexas.us/life-in-mission/attractions/la-lomita-chapel/> [https://perma.cc/8YU4-XJFE].

<sup>160</sup> *Notice of Special Meeting* MISSION HIST. PRESERVATION COMM’N (June 19, 2023), <https://missiontexas.us/wp-content/uploads/2023/06/Mission-Historic-Preservation-Committee-AGENDA-06-19-2023.pdf> [https://perma.cc/57DY-ZTFM]; *City Council Agenda Item &*

These changes, unfortunately, arrived too late to counteract the problematic ordinance that enabled the demolition of the Roosevelt School on June 9, 2023.<sup>161</sup>

## 2. *The Blackwell School in Presidio County*

Out west in the town of Marfa, the Blackwell School was the sole institution providing public education to Mexican and Mexican-American children from 1909 to 1965.<sup>162</sup> Segregated education in Marfa started in 1892, and once a new school was built for Anglo students, Mexican students attended school at the former building until 1909, when the Blackwell School was erected.<sup>163</sup> Originally called “the Ward” or “Mexican School,” the school got its name from its longtime principal, Jesse Blackwell.<sup>164</sup> At the time, the school was a two-room adobe brick building with a front-gabled wood-shingled roof.<sup>165</sup> The students that attended the Blackwell School came from a variety of backgrounds. Situated in West Texas, just 60 miles from México, Mexican immigrants were constantly settling in Marfa.<sup>166</sup> Whether they were the children of cowhands, refugees from the Mexican Revolution, or longtime resident Tejanos, they all learned to read and write at the Blackwell School.<sup>167</sup> In 1965, the Marfa Independent School District desegregated, and most of the buildings associated with the Blackwell School were razed, except for the two-room adobe brick building.<sup>168</sup> The school district chose to leave the building abandoned.<sup>169</sup>

In 2006, Joe Cabezuela, a Blackwell alumnus, learned that the last remaining building was slated to be torn down.<sup>170</sup> Lobbying and work-

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*Recommendation Summary*, CITY OF MISSION (July 24, 2023) (on file with author).

<sup>161</sup> Lee Juarez, *Mission Attempts to Remedy Preservation Ordinance Issues*, PROGRESS TIMES, (June 23, 2023), <https://www.progresstimes.net/2023/06/23/mission-attempts-to-remedy-preservation-ordinance-issues> [<https://perma.cc/JJA9-FUQ7>].

<sup>162</sup> BLACKWELL SCHOOL NATIONAL REGISTER OF HISTORIC PLACES REGISTRATION FORM, NAT’L PARK SERV. 10 (Oct. 21, 2019) (on file with author).

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at 14.

<sup>166</sup> *Id.* at 11.

<sup>167</sup> *Id.*

<sup>168</sup> BLACKWELL SCHOOL NATIONAL REGISTER OF HISTORIC PLACES REGISTRATION FORM, *supra* note 158, at 10.

<sup>169</sup> *Blackwell School 1909-1965*, THE BLACKWELL SCH. ALL., <https://www.theblackwellschool.org/explore-history> [<https://perma.cc/59UV-ZKTT>].

<sup>170</sup> BLACKWELL SCH. ALL., STRATEGIC PLAN 3 (2017).

ing with the school district, alumni including Cabezuela explained the school's importance to the community and volunteered to preserve the structure and its legacy.<sup>171</sup> Consequently, the school district leased the building for 99 years to a newly formed "Blackwell School Alliance."<sup>172</sup> Alumni got to work cleaning out the building so historian Richard Williams could create the Blackwell School Museum.<sup>173</sup> The Alliance hosted reunions, open houses, fundraisers, and other events to fund the restoration and preservation of the Blackwell School and its history.<sup>174</sup>

The Alliance's hard work in preserving their history has paid off. Talking about the Blackwell School, Lionel Salgado, who attended the school from 1941 to 1951, says that "[p]eople for some reason don't want to think about it, but it's part of history."<sup>175</sup> The racism and segregation that defined students' experiences at the Blackwell School are emblematic of common themes throughout U.S. history.

The application to the National Register of Historic Places took three years to compile and includes several stories about the Blackwell School from community members, students, and teachers.<sup>176</sup> For instance, in 1954, the Blackwell School convened a school-wide English "lesson" wherein students collectively "buried Mr. Spanish."<sup>177</sup> Jesse Blackwell, the school's namesake and one of its principals, believed that students who were raised in Spanish-speaking homes were disadvantaged.<sup>178</sup> Consistent with this belief, subsequent administrators eventually decided the Blackwell School would be an English-only campus.<sup>179</sup> In the fall of 1954, Evelyn Davis, a Blackwell English teacher asked students to write "I will not speak Spanish" on paper, stuffed those writings into a coffin, and held a burial and funeral for their Spanish.<sup>180</sup> In a stunning act of defiance, Maggie Marquez, an elementary school student at Blackwell,

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<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> Abbie Perrault, *Marfa's Blackwell School Joins the National Register of Historic Places*, BIG BEND SENTINEL (Dec. 18, 2019), <https://bigbendsentinel.com/2019/12/18/marfas-blackwell-school-joins-the-national-register-of-historic-places> [<https://perma.cc/FT2F-SF23>].

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> Rachel Monroe, *Unburying the Past*, NAT'L PARKS CONSERVATION ASS'N (Summer 2022), <https://www.npca.org/articles/3169-unburying-the-past> [<https://perma.cc/RL3Q-YSBW>].

<sup>179</sup> *Id.*

<sup>180</sup> Perrault, *supra* note 171; BLACKWELL SCHOOL NATIONAL REGISTER OF HISTORIC PLACES REGISTRATION FORM, *supra* note 158, at 16.

told her friends after the funeral “Nadie me va quitar mi español. No pueden hacernos esto.”<sup>181</sup> Maggie was overheard by her teacher and sent to the principal’s office, who “whipped me so hard with a big paddle, I’ll never forget it. . . . I ran all the way home.”<sup>182</sup> Despite the school’s efforts, Mr. Spanish survived. At the 2007 Blackwell School reunion, alumni recreated Mr. Spanish’s casket and, with a Spanish language dictionary in hand, “unburied” Mr. Spanish to reclaim their mother tongue.<sup>183</sup>

Persistent efforts and some luck elevated the Blackwell School to National Landmark status. Progress began when its board president, Gretel Enck, ran into ex-congressman Will Hurd in Alpine, TX.<sup>184</sup> This serendipitous moment led to conversations with the National Parks Conservation Association and several politicians in Texas and Washington, D.C.<sup>185</sup> Intense lobbying, which involved highlighting the Blackwell School’s similarities to the school segregation documented in the 2013 Latino Theme Study, paid off.<sup>186</sup> Bundled into an omnibus Lands Act, President Biden signed the “Blackwell School National Historic Site Act” on October 17, 2022, designating the Blackwell School site in Marfa as part of the National Park System.<sup>187</sup> On July 17, 2024, Secretary of the Interior Deb Haaland formally established the Blackwell School as a National Historic Site, expressing that “[b]y honoring the legacy of Blackwell School, we recognize the resilience and contributions of the Latino community in our shared history.”<sup>188</sup> Protecting the site in rec-

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<sup>181</sup> BLACKWELL SCHOOL NATIONAL REGISTER OF HISTORIC PLACES REGISTRATION FORM, *supra* note 158, at 16 (In English: “No one’s going to take away my Spanish. They can’t do that to us.”).

<sup>182</sup> *Id.*

<sup>183</sup> WFAA, *La Vida: How “Mr. Spanish” Died and Came Back to Life in West Texas*, YouTube (Nov. 23, 2021), <https://www.youtube.com/watch?v=RivJej7pM7w&t=28s> [<https://perma.cc/98P4-UZ9B>]; Evelyn Davis later explained that the intention behind burying Mr. Spanish was to serve the best interests of the Marfa’s Spanish speaking students. See BLACKWELL SCHOOL NATIONAL REGISTER OF HISTORIC PLACES REGISTRATION FORM, *supra* note 158, at 16 fn. 16.

<sup>184</sup> Sam Karas, *Blackwell School Alliance Makes Strides Toward Federal Recognition, Launches Fundraising Campaign*, BIG BEND SENTINEL (Nov. 23, 2021), <https://bigbendsentinel.com/2021/11/23/blackwell-school-alliance-makes-strides-toward-federal-recognition-launches-fundraising-campaign/> [<https://perma.cc/U48C-5JFX>].

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> Press Release, United States Department of Interior, President Biden Designates Blackwell School National Historic Site as America’s Newest National Park (Oct. 18, 2022).

<sup>188</sup> Press Release, United States Department of Interior, Biden-Harris Administration Establishes Blackwell School National Historic Site as America’s Newest National Park (July

ognition of its historical legacy of segregation, the Blackwell School's designation as a National Historic Site is perhaps a landmark in and of itself for the overarching goals of historical preservation.

### III. LESSONS LEARNED

Latinx heritage preservation faces legal barriers that impede preservation efforts. In this Part, the Comment proposes solutions that would apply not only to Latinx heritage preservation, but the preservation of other ethnic and cultural heritage sites as well.

#### A. *Comparing the Roosevelt and Blackwell Schools*

##### 1. *Lack of Education and Outreach*

The main driver of the destruction of the Roosevelt School, simply put, was ignorance. When the City of Mission amended its preservation ordinances, it eliminated half of its historic preservation zone, leaving half of all sites unprotected.<sup>189</sup> This can be attributed to oversight as well as a general ignorance of how the preservation process functions. To be sure, national status is an important milestone, but the majority of historic preservation protections are administered through local land use and zoning laws.<sup>190</sup> Listing on the National Register provides access to resources and increases awareness, but as seen with the Roosevelt School, local governments must intervene to slow the demolition process.<sup>191</sup> When the school district chose to bulldoze the school instead of attempting to lower costs by applying for grants (or devising some other funding scheme), ignorance proved to be a destructive force. Overall, the community in South Texas was woefully unaware of how to preserve its treasured school and thus did little to save it.

The Blackwell School, on the other hand, has survived amid a similar legal landscape. Faced with public outcry over the possibility of bulldozing the school, the local school district instead decided to lease out the land to enable preservation.<sup>192</sup> This could be attributed to the

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17, 2024).

<sup>189</sup> Taylor, *supra* note 143.

<sup>190</sup> See *Protect an Important Place*, NAT'L PARK SERV., <https://www.nps.gov/subjects/historicpreservation/protect.htm> (last updated Nov. 1, 2023) [<https://perma.cc/27VM-JFAR>].

<sup>191</sup> See *id.*

<sup>192</sup> BLACKWELL SCH. ALL., *supra* note 166, at 3.

experience many of the Blackwell School members had in preservation, but also to the district's awareness of the school's importance in the community.<sup>193</sup>

When speaking to school board and city hall leadership about the Roosevelt School, Gabe Ozuna highlighted that elected officials were simply unaware of the provisions for aid afforded to them by applicable state and federal regulations.<sup>194</sup> While the local historical commission conducts some public outreach, it is chronically underfunded and is thus limited in its reach.<sup>195</sup> The preservation of significant Latinx heritage sites has suffered as a direct result.

## 2. Community Support

Another key difference between the demolition of the Roosevelt School and the preservation of the Blackwell School is the community support the Blackwell School received.<sup>196</sup> Since the Blackwell School held frequent reunions for its alumni, many of them enjoyed a shared sense of identity and valued the school.<sup>197</sup> The Roosevelt School, by contrast, lacked a motivated community that would proactively rally for its preservation. By the time the broader Roosevelt School community knew of its planned destruction, it was too late for them to stop it.<sup>198</sup> The group of people that spoke up to protect the Roosevelt School was ultimately too small to make the demolition a school board priority.<sup>199</sup> Wider public knowledge and awareness about local history is needed to elevate the community's interest in preservation and avoid the future demolition of buildings like the Roosevelt School.

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<sup>193</sup> Sterry Butcher, *Marfa's Blackwell School Has a Painful Past. That's Why the Town Wants to Save It.*, TEX. MONTHLY (Jan. 2019), <https://www.texasmonthly.com/being-texan/marf-blackwell-school-has-a-painful-past-thats-why-the-town-wants-to-save-it/> [<https://perma.cc/FKF9-HBYB>].

<sup>194</sup> Telephone Interview with Gabriel Ozuna, *supra* note 129.

<sup>195</sup> *Id.*

<sup>196</sup> Compare Butcher, *supra* note 181 and BLACKWELL SCH. ALL., *supra* note 166, at 3, with Juarez, *supra* note 141.

<sup>197</sup> See Mary Cantrell, *Community Members, Alumni Gather to Exchange Views Over the Blackwell School's Pending National Historic Site Designation*, BIG BEND SENTINEL (July 20, 2022), <https://bigbendsentinel.com/2022/07/20/community-members-alumni-gather-to-exchange-views-over-the-blackwell-schools-pending-national-historic-site-designation/> [<https://perma.cc/F9W6-UWGG>].

<sup>198</sup> Taylor, *supra* note 134.

<sup>199</sup> Cantrell, *supra* note 198.

### **B. Federal Law and Policy**

Congress should amend the scope of the National Historic Preservation Act to encompass broader cultural categories. The foundation of the National Historic Preservation Act was the Antiquities Act, which aimed to protect prehistoric Native American ruins and artifacts.<sup>200</sup> Congress should act to amend the National Historic Preservation Act along similar lines. The National Historic Preservation Act allows the Secretary of the Interior to “expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.”<sup>201</sup> However, the Act limits its discussion of cultural preservation to Native American tribes, “encourag[ing] the preservation of Native American cultural items and of property of religious or cultural importance to Indian tribes, Native Hawaiian organizations, and other Native American groups.”<sup>202</sup> The Act should be amended to broadly define “culture” to include additional communities that are present or have previously been present in the United States.

The National Park Service’s criteria for eligibility on the National Register of Historic Places and National Historic Landmarks should also be amended. As mentioned above, the significance criteria only allow for the inclusion of sites that are associated with specific historical events, individuals, architecture, or prehistoric information.<sup>203</sup> These narrow criteria can limit the inclusion of Latinx heritage sites and those belonging to other marginalized cultures. Amending the criteria to explicitly include sites significant to ethnic groups or social and cultural movements would facilitate the preservation of Latinx heritage and that of other marginalized groups. These changes would only expand the important impact of the work created by the 2013 Latino Theme Study.

Altering federal tax incentives may also benefit segregated schools and other historic sites across the country. The federal tax benefits currently associated with preservation generally exclude entities like public school districts.<sup>204</sup> The federal tax code did not provide incentives for

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<sup>200</sup> Antiquities Act of 1906, 34 Stat. 225 (1906).

<sup>201</sup> 54 U.S.C. § 302101.

<sup>202</sup> 54 U.S.C. § 306131.

<sup>203</sup> See 36 C.F.R. § 65.4.

<sup>204</sup> *Historic Preservation Tax Incentives Eligibility Requirements*, NAT’L PARK SERV., <https://www.nps.gov/subjects/taxincentives/eligibility-requirements.htm> (last updated May 28, 2024) [<https://perma.cc/K2Y9-V25C>].

historic preservation until the Tax Reform Act of 1976, which shifted the market by making preservation a viable commercial venture.<sup>205</sup> These changes were spurred by congressional concern about urban decline; providing monetary incentives served to promote urban revitalization.<sup>206</sup> In contrast, the federal approach to local governments were block grants and devolved control of federal funds.<sup>207</sup> Consistent with a “Reaganomics” approach of adapting public policy to private industry, the tax incentives provided no specific carve-out for public entities like local school districts.<sup>208</sup>

To qualify for these tax benefits, the site must be in commerce and generating income, otherwise the entity is not eligible.<sup>209</sup> Many, if not all, of the segregated schools in the United States are publicly owned and, as a result, local governments and school districts are limited in their ability to leverage federal tax credits to promote preservation.<sup>210</sup> If the incentive programs were amended to allow public entities not in commerce to take advantage of available tax benefits, sites like the Roosevelt School could qualify for tax credits that meaningfully reduce the cost of preservation.

Aside from changes to existing federal law and regulations, the Department of Interior could also commit itself to institutional preservation of the diverse communities in the United States. The Latinx Theme Study was extremely successful, as were the subsequent “LGBTQ America” and “African American Outdoor Recreation” studies.<sup>211</sup> However, many of the past studies created by the Park Service “provide much less historical context than do recent studies and may

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<sup>205</sup> MALCOLM M. SIMMONS, CONG. RSCH. SERV., 87-302 ENR, HISTORIC PRESERVATION PROGRAM: STRUCTURE, HISTORY, AND CONGRESSIONAL POLICIES 21 (1987).

<sup>206</sup> Stephanie Ryberg-Webster, *Urban Policy in Disguise: A History of the Federal Historic Rehabilitation Tax Credit*, 14 J. OF PLANNING HIST. 204, 205 (2015).

<sup>207</sup> *Id.* at 206.

<sup>208</sup> *Id.* at 205.

<sup>209</sup> NAT’L PARK SERV, *supra* note 207.

<sup>210</sup> See *A History of Private Schools and Race in the American South*, S. EDU. FOUND., <https://southerneducation.org/publications/history-of-private-schools-and-race-in-the-american-south/> [<https://perma.cc/6RR5-M8UL>].

<sup>211</sup> See LGBTQ AMERICA: A THEME STUDY OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER HISTORY, NAT’L PARK SERV. (Megan E. Springate ed., 2016), available at <https://outhistory.org/exhibits/show/national-park-foundation-and-n/npslgbtqamerica> [<https://perma.cc/V3A4-BKEX>] (this theme study is not available on the NPS website as of February 23, 2025); ANDREW W. KAHRL, MALCOLM CAMMERON & BRIAN KATEN, AFRICAN AMERICAN OUTDOOR RECREATION, NAT’L PARK SERV. (2022).

simply consist of a list of properties that relate to a given theme.”<sup>212</sup> The Park Service could, perhaps in collaboration with its partners, commit to a “re-study” of its past themes after twenty or fifty years to provide updates in accordance with modern standards and historical understandings to expand its relevance and reach.

### C. *Texas Law and Policy*

On the whole, Texas law is conducive to preservation across the state, but some changes are warranted to enable better Latinx heritage preservation. As proposed at the federal level, Texas should allow public entities to benefit from state tax provisions that are intended to make preservation more affordable and accessible. Like the federal tax programs, benefits are reserved for income-producing sites, though Texas allows non-profits to benefit as well. But the key issue remains that, unless segregated school sites are being run for profit, they are not eligible for state tax incentives.

Because *de jure* segregation ended in 1964,<sup>213</sup> the historic buildings containing the memories associated with America’s troubled racial history are all more than sixty years old. Many are deteriorating rapidly, leaving them vulnerable to demolition. Public school districts are already stretched thin, so preserving a historic building may not always be prioritized, regardless of the building’s significance within its community.<sup>214</sup> One possible solution to this dilemma would involve a carve-out for school districts and other local government entities to take advantage of the tax benefits that are currently unavailable to them. Because Texas administers its tax benefits through a franchise tax limited to entities “doing business in Texas,” school districts are left without relief.<sup>215</sup>

The best available alternative for public school districts is the state education code’s “Donation of Surplus Property” provision, which allows districts to donate real property and improvements “formerly used as a

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<sup>212</sup> *Full List of Theme Studies*, NAT’L. PARK SERV. (Oct. 16, 2024), <https://www.nps.gov/subjects/nationalhistoriclandmarks/full-list-of-theme-studies.htm> [https://perma.cc/3QNG-XKG7].

<sup>213</sup> 1964 Civil Rights Act, Pub. L. 88-352, §201(a); 1965 Voting Rights Act, Pub. L. 89-110.

<sup>214</sup> See Bethany Erickson, *The State Hasn’t Addressed School Funding. Some Districts Say They’re Done Waiting*, DALLAS MAG., (Sept. 14, 2023, 2:40 PM), <https://www.dmagazine.com/frontburner/2023/09/the-state-hasnt-addressed-school-funding-some-districts-say-theyre-done-waiting> [https://perma.cc/N38X-YLZL].

<sup>215</sup> *Franchise Tax Overview*, TEX. COMPTROLLER, <https://comptroller.texas.gov/taxes/publications/98-806.php> [https://perma.cc/3862-WZ3Q].

school campus to a municipality, county, state agency, or nonprofit organization” if the proper steps are taken.<sup>216</sup> While this provides an avenue for school districts to aid preservation, it still forces often cash-strapped districts to bear the burden of the costs associated with that donation. Moreover, it relies on the willingness of another local government or nonprofit to take on the preservation of an aging building.

Another method to further Latinx heritage preservation in Texas is the creation and distribution of travel guides, like those created by the THC. As the largest group in Texas’ population, Hispanic and Latinx Texans are increasingly vital to the state’s welfare.<sup>217</sup> Providing over \$50 billion in state taxes and wielding over \$150 billion in spending power, engagement with Latinx Texans is vital for the long-term wellbeing of the state and THC.<sup>218</sup> Explicitly marketing to Latinx Texans and out-of-state tourists would ideally lead to increased revenue for Latinx heritage sites, contributing to their long-term financial viability. Committing the resources to produce a Latinx Texan theme study may also help increase engagement with Latinx heritage sites across the state. Continuing to highlight the contributions of Latinx Texans in a visible and commercially viable manner would increase participation in and awareness of preservation efforts. In light of Texas’ political and legal climate, which has often been hostile to marginalized communities and their cultural contributions, these proposed changes are not just about protecting buildings: they strive to affirm the value of Latinx heritage and ensure the state’s diverse history is recognized and celebrated. By addressing gaps in tax incentives, supporting school districts, and actively promoting Latinx heritage, Texas can take meaningful steps toward fostering a truly representative approach to preservation.

#### IV. CONCLUSION

Historic sites look different as one travels across the United States. Whether an important neighborhood in New Orleans, a segregated

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<sup>216</sup> Tex. Educ. Code § 11.1541 (a) (2003).

<sup>217</sup> Alexa Ura, *Hispanics Officially Make up the Biggest Share of Texas’ Population, New Census Numbers Show*, TEX. TRIB. (June 21, 2023, 11:00 PM), <https://www.texastribune.org/2023/06/21/census-texas-hispanic-population-demographics/> [https://perma.cc/8ZSV-4NYG].

<sup>218</sup> American Immigration Council, *Power of the Purse: Contributions of Hispanic Americans in Texas*, NEW AM. ECON. RSCH. FUND (Nov. 18, 2021), <https://research.newamericaneconomy.org/report/power-of-the-purse-contributions-of-hispanic-texans> [https://perma.cc/J5MG-ELDH].

school in Texas, or the gathering place of the Boston Tea Party, each site preserves part of the United States' unique social fabric and history. While the United States, and Texas specifically, have struggled to preserve much of their history, federal and state law present opportunities for Latinx heritage preservation to flourish. Moving away from the Spanish Black Legend, the National Park Services' Latino Theme Study provides a strong framework to continue Latinx heritage preservation efforts nationwide. Texas' own efforts have begun to place Latinx people on the map both literally and culturally.

Despite these successes, challenges abound legally and politically. As of early 2025, the Trump administration's executive orders to end all funding for diversity, equity, and inclusion programs pose clear risks to Latinx heritage preservation.<sup>219</sup> Emulating the Trump administration, Governor Abbott of Texas is also leading a similar crusade that threatens Latinx heritage preservation.<sup>220</sup> Texas is now moving to extend the ban on diversity, equity, and inclusion to all methods of public education.<sup>221</sup> While Latinx history was already underrepresented in Texas' public school curriculum,<sup>222</sup> these orders will render it nearly impossible to improve education about Latinx history and preservation of Latinx heritage across the state for the foreseeable future.

These government actions jeopardize the preservation of cultures belonging to marginalized communities beyond Latinx Americans. Shortly after taking office, the Trump administration removed all references to transgender people from federal government websites, including at Stonewall National Monument, a gay bar in New York that was critical to the fight for LGBTQ+ rights.<sup>223</sup> While deleting information from a website will not erase the contributions of transgender Americans, it

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<sup>219</sup> Exec. Order No. 14151, 90 Fed. Reg. 8339 (Jan. 20, 2025) (Executive Order ending government funding for Diversity, Equity, and Inclusion Programs).

<sup>220</sup> Tex. Exec. Order GA-55, 50 Tex. Reg. 810 (Feb 14, 2025) (Texas State Executive order villainizing Equity, Diversity, and Inclusion programs and Critical Race Theory).

<sup>221</sup> Jaden Edison, *Gov. Greg Abbott Wants to Extend Texas' DEI ban to K-12 Schools*, TEX. TRIB. (Jan 17, 2025, 8:00 PM), <https://www.texastribune.org/2025/01/17/texas-dei-k12-schools-greg-abbott/> [<https://perma.cc/4WTV-PPA3>].

<sup>222</sup> Green & Arroyave, *supra* note 66.

<sup>223</sup> Press Release, GLAAD, GLAAD Amplifies Voices Against Removal of Trans People, History from Park Service Website (Feb. 15, 2025), <https://glaad.org/releases/glaad-amplifies-voices-against-removal-of-trans-people-history-from-park-service-website/> [<https://perma.cc/KY49-YKGE>].

cruelly omits major cultural figures and milestones from the nation's official narrative.<sup>224</sup>

The legal and political challenges that affect Latinx heritage preservation warrant modifications to federal and Texas law. Achieving this progress will involve a sizable effort and, given the current composition of the United States and Texas legislatures, might require a long-term project that extends beyond the current administration. However, as evidenced by the divergent paths of the Roosevelt and Blackwell Schools, greater public awareness about available government programs is one effective measure to ensure Latinx heritage preservation over time. Greater efforts to educate both the public and local officials will provide for better outcomes not just for Latinx heritage preservation, but for cultural preservation writ large.

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<sup>224</sup> See generally MICHEL-ROLPH TROUILLOT, *SILENCING THE PAST: POWER AND THE PRODUCTION OF HISTORY* (1995) (contemplating the influence of power and the recording of history).

