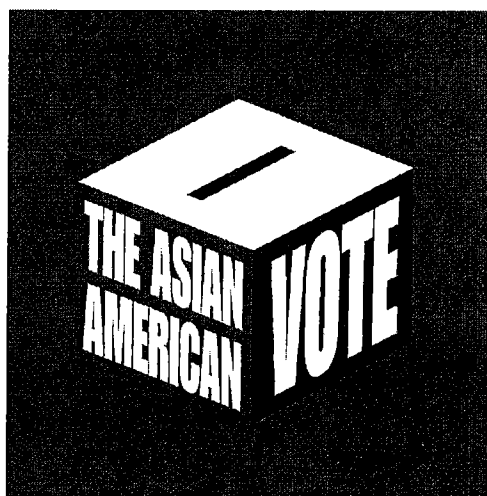


**ASIAN AMERICANS AND
THE VOTING RIGHTS ACT:
THE CASE FOR REAUTHORIZATION**



**A REPORT OF THE
ASIAN AMERICAN LEGAL DEFENSE
AND EDUCATION FUND**

MAY 2006

The Asian American Legal Defense and Education Fund (AALDEF), founded in 1974, protects and promotes the civil rights of Asian Americans through litigation, legal advocacy, and community education.

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EXECUTIVE SUMMARY

Much is at stake for the Asian American community as Congress considers reauthorization of the federal Voting Rights Act of 1965. As one of the fastest growing populations in the United States, Asian Americans have utilized the VRA to register and vote in record numbers. In particular, the language assistance provisions of Section 203, when correctly implemented, have provided full access to the ballot for Asian American voters who are limited English proficient and have yet to master the English language.

Since 1992, Asian American voter registration and turnout have increased at exponential rates, due in large part to an amendment expanding the language assistance provisions of Section 203. Prior to the amendment, the trigger, set at 5 percent, failed to encompass Asian American communities despite high rates of limited English proficiency and low voter registration. The amendment added a numeric trigger requiring Section 203 coverage in jurisdictions where citizens of voting age number at least 10,000. The effect was that over 200,000 Asian Americans nationwide, in 10 counties in California, Hawai'i, and New York, became eligible to receive language assistance. Following the 2000 census, Section 203 coverage increased 70 percent to cover over 672,750 Asian Americans in 16 jurisdictions in Alaska, Hawai'i, California, Illinois, New York, Texas, and Washington.

While Section 203 has empowered the Asian American community in the political process, voter disenfranchisement continues to plague language minority communities, including Asian Americans, through voting barriers that include habitual noncompliance with the VRA, institutional disenfranchisement, racially hostile poll workers, voter intimidation, and discrimination in the areas of education, employment, housing, and other social services.

Since 1988, the Asian American Legal Defense and Education Fund, a national civil rights organization based in New York City, has monitored elections through a multilingual exit poll survey and poll monitoring. AALDEF has collected valuable data that documents both the use of, and the continued need for, language assistance. In 2004, AALDEF expanded its survey to 8 states, covering 81 poll sites in 23 cities. The survey, the largest of its kind, polled almost 11,000 Asian American voters in 23 Asian languages and dialects.

Asian American voters in AALDEF's surveys have consistently confirmed the need for language assistance, either in the form of translated ballots and voting materials, or oral language assistance from bilingual interpreters. Moreover, the surveys revealed steady limited English proficiency in the Asian American community, fueled by a constant rate of naturalization and the arrival of new immigrant groups from Southeast Asia. These findings warrant both reauthorization and even expansion of Section 203. This report summarizes almost 17 years' worth of data that AALDEF has collected, and confirms that while significant progress has been achieved under the Voting Rights Act, the promise of democracy has yet to be fulfilled for Asian Americans. The report covers in detail, the following:

- ***Asian American population***
In 2004, Asian Americans numbered 14 million. According to the 2000 Census, more than half (53 percent) acquired citizenship through naturalization, and 79 percent of Asian American children age 5 and older speak a language other than English at home. Over 40 percent of the Asian American population is limited English proficient.
- ***Limited English proficiency (LEP)***
According to the 2000 Census, the following Asian American groups had the highest rates of limited English proficiency: Korean (59%), Vietnamese (59%), Chinese (52%), Cambodian (41%), Bangladeshi (39%), Thai (36%), Laotian (33%), and Pakistani (26%).
- ***Voting age population and turnout***
Asian Americans of voting age increased to 6.3 million in 2000 from 3.6 million in 1996. Asian American voter turnout increased 71 percent to nearly 3 million in 2000 from 1.7 million in 1996.
- ***Voter registration 1996 to 2004***
Asian American registration grew 58.7 percent from 1996 to 2004, the highest rate as compared to Hispanic registration (45%), Black registration (15%), and White registration (7%).
- ***Voter turnout 1996 to 2004***
Asian American voter turnout grew 71 percent from 1996 to 2004. Comparatively, Hispanic turnout grew 57 percent, Black turnout grew 26 percent, and White turnout grew 15 percent.
- ***Current Section 203 coverage***
Currently, language assistance extends to over 672,750 Asian Americans in 16 jurisdictions in 7 states: Alaska, Hawai'i, California, Illinois, New York, Texas, and Washington. The 5 languages covered include Chinese, Korean, Filipino, Vietnamese, and Japanese.
- ***The ongoing need for language assistance***
In AALDEF's November 2005 survey, the following Asian ethnic groups in New York indicated a preference for voting with language assistance: Chinese (38%), Korean (35%), Vietnamese (25%), and Bangladeshi (20%). In New Jersey, 28 percent of Korean voters indicated a preference for voting with language assistance. Finally, in Massachusetts, where a lawsuit by the U.S. Department of Justice resulted in the City of Boston providing translated ballots, voting materials, and language assistance in Vietnamese and Chinese, in November 2005, 50 percent of Chinese and Vietnamese voters indicated a preference for voting with language assistance.
- ***The use of language assistance***
AALDEF's survey revealed that in 2005, the LEP rate of first-time Asian American voters polled was 69 percent, 68 percent of first-time voters used an interpreter to vote,

and 53 percent used translated materials. Similar rates exist in previous years in which AALDEF documented the use of language assistance. In 2004, one-third of all Chinese American and Korean American voters in AALDEF's survey said they used an interpreter to vote.

- ***Institutional disenfranchisement***

Institutional factors that contribute to the disenfranchisement of language minority voters were first documented in 1975 during the Congressional hearings to add language assistance under the VRA. Today, those racially disparate institutional factors that disenfranchise Asian American voters include incomplete voter rolls, denial of provisional ballots, improper identification checks, interpreter shortages, and poor poll worker training.

- ***Racially hostile voter intimidation***

Racially discriminatory tactics continue to be employed by elections administrators and political candidates to intimidate Asian American citizens attempting to exercise their right to vote. In 2004 in Edison, New Jersey, radio hosts ridiculed then Asian American mayoral candidate, Jun Choi, as a "foreigner" and urged listeners to vote for "Americans." In the 1999 City Council elections in Palisades Park, New Jersey, then-mayoral incumbent, Sandy Farber, wrote to constituents warning against Korean Americans "attempting to take over our town and change it inside out." In 2002 in Queens County, New York, one poll inspector referred to South Asian voters as "terrorists."

- ***Legacy of historical discrimination***

Educational barriers in the Asian American community remain one of the more significant obstacles to the full enfranchisement of Asian Americans. While Asian Americans have made progress in the realm of education since 1992, disparate levels of achievement among Asian American communities are stark. More recently-arrived immigrant/refugees from Vietnam, Laos, and Cambodia struggle to finish high school and represent a greater proportion of Asian American students who drop out. As the sons and daughters of parents displaced into refugee communities and relocated to economically-depressed areas, many of these students entered cash-strapped school districts that failed to adequately prepare them for success.

- ***Hate crimes and racial profiling***

Hate crimes and racial profiling have marginalized Asian Americans and denied them a sense of belonging to this country's rich legacy of immigrant success. Incidents of hate crimes and racial profiling range from the profiling of Dr. Wen Ho Lee at Los Alamos Laboratory to the post-September 11 profiling of South Asian Americans and Muslim Americans. Unfortunately, police misconduct and brutality plagued Asian American communities long before September 11. Those incidents foster distrust between the police and the community they are sworn to serve. Moreover, that distrust opens the community to exploitation by violent predators who know their victims will rarely file police reports.

- ***Employment barriers***
Several studies show the “glass ceiling” remains a real obstacle for Asian American professionals despite misinformed notions of overwhelming success. Of senior managers at Fortune 1000 industrial and Fortune 500 companies, 97 percent are white. Similarly, in the legal community, while the number of Asian Americans earning a law degree increased 400 percent from 1975 to 2003, a miniscule percentage of Asian American associates remain at their firms long enough to make partner.
- ***Economic justice***
At the other end of the economic scale, thousands of poor and working-class Asian Americans struggle on a daily basis to survive. Indeed, compared with the general population, while more Asian American households are dual-income so that both parents share financial responsibilities, those same families continue to remain below the poverty level. The lack of job opportunities is often tied to a lack of access to educational opportunities earlier in life.
- ***Expansion of the numeric trigger***
To ameliorate the effects of this historical discrimination, Congress should again reauthorize and expand Section 203. The expansion should lower the trigger below 10,000.
 - Lowering the trigger to 7,500 would increase language coverage to 2 additional language groups (Cambodian and Asian Indian), in 17 jurisdictions. Most significantly, a 7,500 trigger would add Chinese coverage in Sacramento County, California; Cambodian in Los Angeles County; Korean in Cook County, Illinois; and Asian Indian in Queens County, New York.
 - Lowering the trigger to 5,000 would cover 8 Asian language groups (the same 5 languages under the current trigger, plus Cambodian, Asian Indian, and Thai) in 21 jurisdictions, including Chinese and Vietnamese in Fairfax County, Virginia, and Chinese in Montgomery County, Maryland.
- ***More frequent testing for coverage***
To accommodate the growing Asian American electorate, more frequent testing to determine whether coverage should be expanded to determine jurisdictional and language coverage. Currently, coverage is tied to the decennial census and only occurs once every 10 years. However, the U.S. Census Bureau is looking to the new American community Survey for determining economic, social, demographic, and housing information more frequently to allow the Census to update census demographics every 3 years and to make Section 203 determinations every 5 years.
- ***Periodic compliance reports***
Full and correct implementation of language assistance is necessary to ensure the full enfranchisement of language minority voters. As it stands, little incentive exists for jurisdictions to fully comply with federally-mandated requirements for language assistance. AALDEF suggests the further requirement that Section 203 covered

jurisdictions submit periodic compliance reports that detail the extent of implementation. The U.S. Department of Justice already includes such reports as part of its agreements in jurisdictions it has sued for noncompliance under Section 203.

- ***Enforcement: Section 5***

AALDEF strongly supports the reauthorization of the Section 5 preclearance provisions of the VRA. In the Asian American community, Section 5 plays an important role especially where it intersects with Section 203. Section 5 has also ensured that voting changes – such as poll site relocations, changes to local school board election procedures, and redistricting – do not weaken the voting strength of Asian Americans.

- ***Enforcement: Sections 6 – 9***

The federal examiner and observer provisions have had a deterrent effect that ensures jurisdictions under federal supervision will fully comply with the provisions of Section 203. AALDEF supports reauthorization of these sections because they facilitate enforcement of the VRA in Asian American communities.

INTRODUCTION

The 2000 Census revealed that the Asian American population ranked as one of the fastest growing communities of color in the United States. Numbering just 6.9 million in 1990, the Asian population now numbers 14 million, having increased 3.4 percent from 2003 to 2004 alone, the highest rate among all groups surveyed in that time.¹ The largest Asian ethnic groups in the United States consist of Chinese, who number 2.7 million, followed by 2.4 million Filipinos, 1.9 million Asian Indians, 1.2 million Koreans, 1.2 million Vietnamese, and 1.1 million Japanese.²

Asian Americans live primarily on the West Coast, where 49 percent of the population resides,³ with 20 percent of Asian Americans in the Northeast, 19 percent in the South, and 12 percent in the Midwest.⁴ The cities with the highest numbers of Asian Americans are New York, where almost 873,000 Asians reside, and Los Angeles, where Asians number over 407,000.⁵

The sheer exponential growth of the Asian American population, coupled with a maturing sense of political empowerment, creates a new constituency of voters. Asian citizens of voting age rose to 3.6 million in 1996 and to 6.3 million in 2004.⁶ Asian American voter registration has kept pace, increasing 58.7 percent to 3.5 million in 2004 from 2.2 million in 1996. Likewise, Asian American voter turnout rose in 2004, increasing 71 percent to nearly 3 million from 1.7 million in 1996.⁷ Empowering the Asian American community, therefore, requires a commitment to foster a tradition of civic participation, including protection of the fundamental right to vote.

Reauthorizing the Language Assistance Provisions (Section 203) of the Voting Rights Act of 1965⁸ can help growing Asian American communities meet their potential as influential constituencies. Section 203 requires covered jurisdictions to provide translated ballots and voting materials, as well as oral language assistance, for voters that are limited English proficient (“LEP”) and, as a group, have an illiteracy rate higher than the national average. Asian American communities have utilized the VRA’s language assistance provisions to increase voter registration and to ensure that language minority voters cast an informed ballot.

Congress added the language assistance provisions to remedy the disenfranchisement of LEP voters. In particular, Section 203 was intended to provide a temporary remedy to the educational disparities that had doomed language minority communities to limited educational

¹ Press Release, U.S. Census Bureau, Hispanic Population Passes 40 Million, Census Bureau Reports (June 9, 2005), available at <http://www.census.gov/Press-Release/www/releases/archives/population/005164.html>. From 1990 to 2000, the Asian population increased 48 percent to 11.9 million compared to a 13 percent increase in the total United States population during that same time period. JESSICA S. BARNES & CLAUDETTE E. BENNETT, U.S. CENSUS BUREAU, THE ASIAN POPULATION: 2000 5 tbl.1 (2002).

² BARNES & BENNETT, *supra* note 1, at 9 tbl.4.

³ *Id.* at 4.

⁴ *Id.*

⁵ *Id.* at 7.

⁶ KELLY HOLDER, U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2004 4 tbl.B (2006).

⁷ *Id.*

⁸ 42 U.S.C. § 1973aa-1a(c) (2006).

and economic opportunities. However, high LEP rates among Asian American citizens of voting age, coupled with the steady naturalization rate of Asians, demonstrate a continued need to provide language access to the ballot. Moreover, habitual noncompliance by covered jurisdictions, and the unfortunate realities of continued racial discrimination against racial and language minority voters, warrants reauthorization not only of Section 203, but also the preclearance provisions of Section 5,⁹ and the enforcement provisions of Sections 6 to 9.¹⁰ By reauthorizing and expanding provisions like Section 203, Congress can help Asian Americans sustain their gains in voter registration and turnout, and ensure that American citizens are not denied the right to vote simply because they have some difficulty with the English language.

Part I of this report discusses the success of Section 203 in registering and encouraging Asian American voters to turn out on Election Day. Despite these successes, the section documents the continued need for language assistance. AALDEF's 2004 multilingual exit poll survey, the largest survey of its kind, polling almost 11,000 Asian American voters, found that 41 percent of Asian American voters, surveyed in 81 poll sites in 23 cities throughout 8 states, were limited English proficient. Moreover, in exit poll surveys, including those before and after 2004, Asian American voters signaled the need for language assistance, either in the form of translated ballots and voting materials, or oral language assistance from interpreters. Finally, the high LEP rates, especially among newly-arrived immigrant groups from Southeast and South Asia, warrant reauthorization, and even expansion, of the language assistance provisions of Section 203.

Part II maintains that habitual noncompliance by jurisdictions covered under Section 203 has a discriminatory effect on LEP voters, including Asian Americans. Consistent with Congressional findings in 1975, 1982, and 1992, AALDEF found that the same voting barriers persist today and include institutional disenfranchisement brought about by poorly-administered Section 203 plans and racially hostile voter intimidation. Indeed, Asian American voters, and even Asian American candidates, remain the targets of outright racial hostility at the hands of elections officials who conduct improper identification checks, make racist remarks against Asian American voters, and, among a myriad of other violations, discriminate against Asian American voters based solely on race and national origin.

Part III of this report analyzes the lingering effects of historical discrimination against Asian Americans, including the resulting disenfranchisement of Asian American voters from the political process. Among the initial justifications for providing language assistance in 1975 was the finding by Congress that educational disparities in LEP communities resulted in the disenfranchisement of Asian American voters. By contrast, the modern perception of Asian American students is one of overwhelming success. The "Model Minority" myth, however, buries the fact that students from Asian American families who live in poverty, particularly those from Southeast Asia, fail to graduate from high school at alarmingly high rates. Additionally, Part III examines the effect hate crimes, racial profiling, and employment barriers like the glass ceiling, have on Asian American political participation.

⁹ *Id.* § 1973c (2006).

¹⁰ *Id.* §§ 1973d-f (2006).

Part IV turns to expansion of the numeric trigger of the coverage formula for Section 203. As it stands, the VRA requires language assistance in jurisdictions where citizens of voting age, who are limited English proficient, number at least 10,000 and have an illiteracy rate higher than the national average. By lowering the numeric trigger to 7,500, AALDEF's analysis has shown that Asian language assistance would expand to 17 jurisdictions and increase coverage from 5 language groups (Chinese, Korean, Filipino, Vietnamese, Japanese) to 7 (the previous 5 plus Cambodian and Asian Indian). Reauthorization of Section 203 should also include more frequent testing to determine jurisdiction and language coverage. Currently, coverage is determined following the decennial census. The exponential growth of the Asian American community (48 percent from 1990 to 2000, totaling 11.9 million), especially among Southeast and South Asians, warrants at least testing every 5 years so that jurisdictions on the cusp of Section 203 coverage at the beginning of a new decade may gain that coverage sooner.

Finally, Part V discusses the enforcement provisions of Section 5 and Sections 6 through 9 of the VRA. For Asian Americans, the preclearance provisions of Section 5 have played an important role at the local level. AALDEF has used Section 5 to object to proposed changes to the voting scheme used in School Board elections that had afforded Asian American candidates some measure of success, changes in poll site locations, and proposed redistricting plans affecting Asian American neighborhoods.

I. THE INCREASE OF ASIAN AMERICAN VOTER REGISTRATION AND TURNOUT UNDER THE LANGUAGE ASSISTANCE PROVISIONS OF SECTION 203

AALDEF's extensive data on Asian Americans with limited English proficiency is based on multilingual exit polls dating back to 1988. The voter surveys indicate a steady LEP rate within Asian American communities, and a corresponding preference for, and use of, language assistance at the voting booth.

According to the 2000 Census, two-thirds of the 11.9 million Asians in the United States are citizens.¹¹ More than half (53 percent) acquired citizenship through naturalization.¹² The 2000 Census also revealed that 79 percent of Asian American children age 5 and older speak a language other than English at home.¹³ Not surprisingly, over 40 percent of the Asian population is limited English proficient.¹⁴

Indeed, Congress recognized in 1992 that educational disparities significantly affect the ability of language minorities to participate in the electoral process. Section 203, first introduced as an amendment to the VRA in 1975, did not have a significant impact on Asian Americans because the percentage trigger that required the language minority group to consist of 5 percent of the citizens of voting age to obtain language assistance, was too high for most Asian communities to meet.¹⁵

After Congress amended the VRA in 1992, adding a numeric trigger that required coverage in jurisdictions where citizens of voting age numbered at least 10,000, over 200,000 Asian Americans nationwide, in 10 counties in California, Hawai'i, and New York, became eligible to receive minority language assistance. Following the 2000 census, Section 203 coverage expanded to cover over 672,750 Asian American voters in 16 jurisdictions in Alaska, Hawai'i, California, Illinois, New York, Texas, and Washington.¹⁶

To keep pace with the growing rate of Asian American voters, Congress must renew and expand Section 203 to ensure continued access to the ballot.

¹¹ TERRANCE J. REEVES & CLAUDETTE E. BENNETT, U.S. CENSUS BUREAU, *WE THE PEOPLE: ASIANS IN THE UNITED STATES* 9 (2004).

¹² *Id.*

¹³ *Id.* at 11.

¹⁴ *Id.* (stating 43 percent of the Asian American population is limited English proficient). *See also* 42 U.S.C. § 1973aa-1a(b)(3)(B) (2006) (defining LEP as the inability "to speak or understand English adequately enough to participate in the electoral process.").

¹⁵ 42 U.S.C. § 1973aa-1a(b)(2)(A) (2006).

¹⁶ 67 Fed. Reg. No. 144, 48871-77 (July 26, 2002) (Notices).

Table 1: Existing Section 203 Coverage for Asian Language Groups¹⁷

Group		Citizen Voting Age Population (CVAP)	CVAP & Limited English Proficient	Illiteracy Rate
ALASKA				
Kodiak Island Borough	Filipino	870	470	12.77%
CALIFORNIA				
Alameda County	Chinese	62,155	28,280	10.98%
Los Angeles County	Chinese	189,820	95,700	10.71%
Los Angeles County	Korean	79,740	42,390	2.67%
Los Angeles County	Filipino	156,320	34,985	4.46%
Los Angeles County	Vietnamese	48,070	30,340	10.42%
Los Angeles County	Japanese	85,765	12,510	2.88%
Orange County	Vietnamese	71,075	45,730	6.90%
Orange County	Chinese	39,565	14,805	4.36%
Orange County	Korean	25,235	12,240	2.37%
San Diego County	Filipino	78,195	17,155	4.58%
San Francisco County	Chinese	102,815	58,735	16.89%
San Mateo County	Chinese	32,570	11,780	6.24%
Santa Clara County	Vietnamese	48,375	31,265	5.76%
Santa Clara County	Chinese	61,620	24,895	5.12%
Santa Clara County	Filipino	44,950	11,245	3.65%
HAWAII				
Honolulu County	Filipino	111,270	24,815	10.44%
Honolulu County	Japanese	169,865	13,865	5.27%
Honolulu County	Chinese	88,600	12,640	13.49%
Maui County	Filipino	18,620	5,350	13.08%
ILLINOIS				
Cook County	Chinese	26,200	11,645	9.36%
NEW YORK				
Kings County	Chinese	51,290	33,635	13.32%
New York County	Chinese	41,770	21,070	21.33%
Queens County	Chinese	66,715	37,865	8.05%
Queens County	Korean	18,525	11,835	6.46%
TEXAS				
Harris County	Vietnamese	28,405	16,970	7.81%
WASHINGTON				
King County	Chinese	28,430	10,535	9.35%

¹⁷ *Id.* See also U.S. CENSUS BUREAU, Voting Rights Determination File, available at <http://www.census.gov/rdo/www/voting%20rights.htm>. Under the existing threshold, 672,750 eligible limited English proficient Asian American voters are currently covered under Section 203 language assistance.

While Section 203 coverage for Asian Americans increased 70 percent between the 1992 amendments and the 2000 Census, coverage did not generally encompass more recently arrived communities like Cambodians, Hmong, Laotians, Pakistanis, and Vietnamese, where the number of households that speak a language other than English is even higher than the national rate for Asian Americans.¹⁸ While Southeast Asian immigrants have become United States citizens at rates higher than the national average,¹⁹ members of these growing communities will surely have limited access to a ballot they can understand absent continued language assistance.

Like language barriers, cultural differences further contribute to the disenfranchisement of Asian American voters who are unfamiliar with the American electoral process, having come from Asian countries with political systems that are very different from that of the United States and that may even lack a tradition of voting. Thus, basic political procedures such as registration deadlines, party enrollment as a qualification to vote in primary elections, and the basic operations of voting machines, remain unfamiliar to these communities.

AALDEF's surveys mirror the Census data. In 2004, AALDEF expanded its multilingual exit poll survey to 8 states, covering 81 poll sites in 23 cities. The survey questioned almost 11,000 Asian American voters, the largest survey of its kind in the nation.²⁰ In the 2004 Election, AALDEF found that 41 percent of Asian American voters were limited English proficient. By ethnicity, the survey found the following groups had the highest LEP rates: Korean (59%); Vietnamese (59%); Chinese (52%); Cambodian (41%); Bangladeshi (39%); Thai (36%); Laotian (33%); and Pakistani (26%).²¹ The high LEP rates within these communities signals a continued need, and even expansion, of the language assistance provisions of Section 203.

Table 2: Characteristics of Respondents of AALDEF's Multilingual Exit Poll, November 2004²²

All Respondents	First-Time Voter	Foreign-Born	No Formal U.S. Education	English as Native Language	Limited English Proficient
10,789	38%	82%	29%	14%	41%
Chinese	37%	79%	37%	10%	52%
Korean	35%	87%	31%	10%	59%
Filipino	27%	75%	17%	22%	5%
South Asian	42%	88%	17%	20%	19%
Southeast Asian	46%	85%	21%	6%	47%

¹⁸ See REEVES & BENNETT, *supra* note 11, at 11 (stating over 90 percent of Cambodians, Hmong, Laotians, Pakistanis, and Vietnamese spoke a language other than English at home).

¹⁹ *Id.* at 9 fig.6.

²⁰ See generally, ASIAN AM. LEGAL DEF. AND EDUC. FUND, THE ASIAN AMERICAN VOTE, A REPORT OF THE AALDEF MULTILINGUAL EXIT POLL IN THE 2004 PRESIDENTIAL ELECTION (2005) [hereinafter THE ASIAN AMERICAN VOTE 2004]. (App. B.)

²¹ *Id.* at 2-4, 9.

²² See generally, *id.*

A. The Need for Language Assistance

Shiny Liu, a Chinese American voter from Queens County, New York, is limited English proficient. Although she has voted with English ballots in the past, she explained that she is more confident when she votes in her own language because she can be sure she understands her vote. Ms. Liu is 1 of 5 Asian American voters, represented by AALDEF, who sued the New York City Board of Elections in February 2006 for pervasive violations of the language assistance provisions of Section 203.²³ She described her voting experiences to illustrate why translated ballots and voting materials are still necessary:

The first time I voted was in 2003. I used an interpreter and a ballot that was translated into Chinese. Now, I know how to vote, so I vote alone without any assistance. I have voted on ballots in English before, but I am not comfortable doing so because I am not confident that I properly understand the English. I would rather vote on ballots translated into Chinese because I can be sure of who and what I am voting for.²⁴

AALDEF's multilingual exit polls reveal that Ms. Liu's preference for translated ballots and voting materials is a common sentiment among Asian American voters. As Ms. Liu expressed, a ballot can be overly complicated to understand when the voter is limited English proficient. Indeed, even a native-born, English-speaking voter can be confused by the highly sophisticated content of lengthy referenda, or the technical instructions for casting a provisional ballot. Confusing ballots and instructions, in fact, contributed to the Florida recount in the 2000 Elections.²⁵

²³ Compl., Chinatown Voter Educ. Alliance v. Ravitz, No. 06 Civ. 913 (S.D.N.Y. Feb. 6, 2006). (App. C.)

²⁴ Interview by Carlin Yuen, Law Clerk, Asian Am. Legal Def. and Educ. Fund, with Shiny Liu (Feb. 2006). (Note, the original interview was conducted in Mandarin.)

²⁵ U.S. COMM'N ON CIVIL RIGHTS, VOTING IRREGULARITIES IN FLORIDA DURING THE 2000 PRESIDENTIAL ELECTION (2001), *available at* <http://www.usccr.gov>.

Table 3: AALDEF's Exit Poll Respondents Prefer Voting with Language Assistance, November 2005²⁶

State	Ethnic Group	% Prefers to Vote with Language Assistance
NEW YORK	Chinese	38.3%
	Korean	35.1%
	Vietnamese	25.0%
	Bangladeshi	19.5%
	Pakistani	15.8%
	Asian Indian	6.7%
NEW JERSEY	Korean	28.1%
	Asian Indian	12.7%
	Chinese	10.3%
	Pakistani	10.0%
MASSACHUSETTS	Chinese	50.0%
	Vietnamese	50.0%
	Cambodian	23.8%

Moreover, contrary to opponents of language assistance,²⁷ language minority voters understand the importance of learning English and use the provisions as a means of participating in the democratic process. However, because of their financial circumstances, family obligations, or lack of access to English classes,²⁸ not every Asian voter has the opportunity to learn the English language.

²⁶ See Letter from Glenn D. Magpantay, Staff Attorney and Phillip A. Olaya, Voting Rights Pub. Educ. Coordinator, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Dec. 9, 2005) (App. D); Letter from Glenn D. Magpantay, Staff Attorney and Phillip A. Olaya, Voting Rights Pub. Educ. Coordinator, Asian Am. Legal Def. and Educ. Fund, to Hon. Peter C. Harvey, Attorney Gen., State of New Jersey (Jan. 6, 2006) (App. F); Letter from Glenn D. Magpantay, Staff Attorney and Phillip A. Olaya, Voting Rights Pub. Educ. Coordinator, Asian Am. Legal Def. and Educ. Fund, to Geraldine Cuddyer, Chair, Election Dep't, City of Boston (Jan. 5, 2006) (App. E); Letter from Glenn D. Magpantay, Staff Attorney and Phillip A. Olaya, Voting Rights Pub. Educ. Coordinator, Asian Am. Legal Def. and Educ. Fund, to Elections Comm'r, Lowell (Jan. 23, 2006) (App. E).

²⁷ See *ProEnglish Praises Letter by House Members Urging Sensenbrenner Not to Extend Bilingual Ballot Provisions of Voting Rights Act*, U.S. NEWswire, Feb. 3, 2006, available at <http://releases.usnewswire.com/GetRelease.asp?id=60469> (reporting that U.S. Reps. Peter King of New York and Steve King of Iowa circulated a letter to U.S. House Members to oppose renewal of the bilingual ballot requirements of the Voting Rights Act. Fifty-six House Members, including 6 Members of the U.S. House Judiciary Committee charged with oversight of reauthorization, signed the letter).

²⁸ See *Legislative Hearing on H.R. 9, A Bill to Reauthorize and Amend the Voting Rights Act of 1965: Part II Before the House Subcomm. on the Const., House Judiciary Comm.*, 109th Cong. at 16-18 (May 6, 2006) (statement of Dr. James Thomas Tucker, Voting Rights Consultant for the Nat'l Ass'n of Latino Elected and Appointed Officials (NALEO) Educational Fund) (documenting the shortage of adult ESL programs in covered jurisdictions. In Albuquerque, N.M., the city's largest ESL provider, Catholic Charities, has a 12-month, 1,000-person waiting list. In Boston, Mass., a 6- to 9-month waiting list of 16,725 persons often extends to 2 to 3 years. And in New York City, the estimated waiting list is 1 million. In 2005, just 41,437 adults were allowed to enroll in ESL classes after being selected through the city's lottery system, which generally rejects 75 percent of applicants.).

Henry Yee is an LEP voter who arrived in the United States 42 years ago and was a plaintiff-intervenor in *United States v. Boston*²⁹ filed in July 2005. Yee recounted the following:

When I first arrived in America, I wanted to learn [English], but I had no time. I had to work to survive. I had to work at a restaurant. All of us men had to work at the restaurants. The women worked as seamstresses. We had to work 12-hour days. I am retired now, but back then, I would work all day. The restaurants were busy and there just was not enough staff to help out. I was lucky if I got out of work within 10 hours.³⁰

Like Mr. Yee, Byung Soo Park, another plaintiff in AALDEF's lawsuit against the New York City Board of Elections, understands the importance of learning English. Because of a demanding work schedule as a truck driver, however, Mr. Park cannot find the time to learn.

I became a citizen in October 2001 and registered to vote at the Korean American Voters' Council office with the help of their staff. Ever since I first registered to vote, I have never missed an election. Most recently, I voted in both Primary and General Elections, in September and November [2005]. Every time I vote I need to use the assistance of an interpreter. I need to continue voting with an interpreter because I am old. Many senior[s] . . . are limited English proficient, so we need interpreters in order to vote.

It also feels good to vote in America in my native language. Americans who know English should vote in English, but I did not go to school in the United States and I do not know English. I want to learn English but I have no time because I am a truck driver and work long hours on the road.

Korean Americans should be treated as United States citizens because that is what we are. I want us all to be treated equally.³¹

For Mr. Yee, Mr. Park, and countless other new citizens, economic barriers have hindered their ability to learn English. Nevertheless, Mr. Yee, a visible community advocate for affordable housing in Boston's Chinatown, and co-chair of the Chinatown Resident Association, understands the importance of civic participation, voting, and language assistance. Without language assistance, Mr. Yee's ability to vote on civic matters that directly affect his community would be severely limited.

These voters embody what Congress had intended when it enacted Section 203 in 1975: "[T]he purpose of suspending English-only and requiring bilingual elections is not to correct the

²⁹ *United States v. Boston*, No. 05-11598 WGY (D. Mass. 2005). (App. C.)

³⁰ Interview by Lily Liang, Interpreter, Asian Am. Legal Def. and Educ. Fund with Henry Yee (Jan. 19, 2006). (Note, the original interview was conducted in Cantonese.)

³¹ Interview by Daniel Baek, Program Dir., Korean Am. Voters' Council with Byun Soo Park (Jan. 2006). (Note, the original interview was conducted in Korean.)

deficiencies of prior educational inequality. It is to permit persons disabled by such disparities to vote now.”³²

B. The Use of Language Assistance

Language assistance removes barriers for LEP and first-time voters to register and cast informed votes. As AALDEF’s recent multilingual exit poll surveys reveal, a large percentage of first-time voters use language assistance, in the form of either an interpreter or translated materials.

Table 4: First-Time LEP Voters and the Use of Interpreters and Translated Materials³³

Election Year	LEP Rate of First-Time Voters	First-Time Voters Who Used an Interpreter	First-Time Voters Who Used Translated Materials
2005	69%	68%	53%
2004	39%	20%	14%
2003	61%	50%	33%
2002	61%	50%	33%
2001	64%	33%	37%
2000	60%	37%	29%

Asian American voters in general, including those who have voted in prior elections, have also expressed a consistent need for language assistance. In 2004 in Manhattan, of the 56 percent of Chinese American voters who were LEP, 34 percent were first-time voters, 41 percent said they needed an interpreter, and 39 percent said they needed translated materials to vote.³⁴ In Queens County, of the 67 percent of Korean American voters who were LEP, 35 percent were first-time voters, 34 percent said they needed an interpreter, and 49 percent said they needed translated materials to vote.³⁵

Similarly, in Massachusetts, high LEP rates among the Chinese and Vietnamese communities in Boston and Dorchester encouraged the Justice Department’s lawsuit against the City of Boston. In 2004 Dorchester’s Vietnamese community was 74 percent LEP.³⁶ Forty-five

³² S. REP. NO. 94-295, at 34 (1975).

³³ See ASIAN AM. LEGAL DEF. AND EDUC. FUND, ASIAN AMERICAN ACCESS TO DEMOCRACY IN THE 2004 ELECTIONS: LOCAL COMPLIANCE WITH THE VOTING RIGHTS ACT AND HELP AMERICA VOTE ACT (HAVA) IN NY, NJ, MA, RI, MI, IL, PA, VA (2005) [hereinafter ACCESS TO DEMOCRACY 2004]. (App. B); ASIAN AM. LEGAL DEF. AND EDUC. FUND, ASIAN AMERICAN ACCESS TO DEMOCRACY IN THE 2003 ELECTIONS IN NYC: AN ASSESSMENT OF NEW YORK CITY COMPLIANCE WITH THE LANGUAGE PROVISIONS OF THE VOTING RIGHTS ACT (2004) [hereinafter ACCESS TO DEMOCRACY 2003] (App. B); ASIAN AM. LEGAL DEF. AND EDUC. FUND, ASIAN AMERICAN ACCESS TO DEMOCRACY IN THE 2002 ELECTIONS IN N.Y.C.: AN ASSESSMENT OF NEW YORK CITY COMPLIANCE WITH THE LANGUAGE ASSISTANCE PROVISIONS OF THE VOTING RIGHTS ACT 19-20 (2003) [hereinafter ACCESS TO DEMOCRACY 2002] (App. B); ASIAN AM. LEGAL DEF. AND EDUC. FUND, ASIAN AMERICAN ACCESS TO DEMOCRACY IN THE N.Y.C. 2001 ELECTIONS: AN ASSESSMENT OF THE N.Y.C. BOARD OF ELECTIONS COMPLIANCE WITH THE LANGUAGE ASSISTANCE PROVISIONS OF THE VOTING RIGHTS ACT 6-7 (2002) [hereinafter ACCESS TO DEMOCRACY 2001] (App. B); NAT’L ASIAN PAC. AM. LEGAL CONSORTIUM, ET AL., ACCESS TO DEMOCRACY: LANGUAGE ASSISTANCE AND SECTION 203 OF THE VOTING RIGHTS ACT 10-11 (2000) [hereinafter NAPALC ELECTION 2000 REPORT] (App. B).

³⁴ ACCESS TO DEMOCRACY 2004, *supra* note 33, at 11. (App. B.)

³⁵ *Id.* (App. B.)

³⁶ See also Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to Michelle K. Tassinari, Legal Counsel, Elections Div., Sec’y of the Commonwealth 2 (Mar. 14, 2005). (App. E.)

percent were first-time voters, 60 percent said they needed an interpreter, and 54 percent said they needed translated materials to vote.³⁷ Among Boston's Chinese American community, where the LEP rate was 65 percent, 31 percent were first-time voters, 42 percent said they needed an interpreter, and 50 percent said they needed translated materials to vote.³⁸

In San Diego County, voter registration increased 20 percent among Latinos and Filipinos after the Justice Department sued the county and later negotiated an agreement to enforce Section 203 requirements.³⁹ Likewise, Vietnamese voter registration rose 40 percent after the county agreed to voluntarily provide language assistance for the Vietnamese American community.⁴⁰ Similarly, in Harris County, Texas, Vietnamese American voters doubled their turnout in 2003 after the Justice Department enforced language assistance on the county's electronic voting machines.⁴¹ In the 2004 Elections, Harris County voters elected the first Vietnamese American to the state legislature.⁴²

The introduction of language assistance in jurisdictions where the Justice Department has pursued action shows a positive correlation between voter registration and turnout in LEP communities. As a result, the participation rates of Asian Americans nationally have increased dramatically over the last decade. While numerically registration and voting has steadily risen across all racial groups, Asian Americans are becoming active and civically engaged at an extremely fast pace. These growth rates are consistent with the eligible Asian electorate. The concentration of Asian citizens of voting age, has grown 73 percent from 1996 to 2004, compared to the national rate of 9 percent.⁴³

Table 5: Growth in Registration from 1996 to 2004, Current Population Survey⁴⁴

NATIONALLY (in thousands)	Nov-04	Nov-00	Nov-96	Growth in Registration from 1996 to 2004
Total Registered	142,070	129,549	127,661	11.3%
Asian Reported Registered	3,508	2,470	2,210	58.7%
Hispanic Reported Registered	9,308	7,546	6,435	44.6%
Black Reported Registered	16,035	15,156	13,991	14.6%
White Reported Registered	111,318	103,588	104,101	6.9%

³⁷ *Id.* (App. E.)

³⁸ *Id.* (App. E.)

³⁹ *United States v. San Diego County*, No. CV-04-2698 (S.D. Cal. 2004).

⁴⁰ *Id.*

⁴¹ Mem. of Understanding and Agreement, Harris County and U.S. Dep't of Justice (Mar. 2, 2004).

⁴² Hubert Vo was elected to the Texas House of Representatives from the 142nd District.

⁴³ See HOLDER, *supra* note 6, at 2 tbl.A; AMIE JAMIESON, ET AL., U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2000 5 tbl.A (2002); LYNNE M. CASPER & LORETTA E. BASS, U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 1996 5 tbl.4 (1998).

⁴⁴ See HOLDER, *supra* note 6, at 4 tbl.B; JAMIESON, *supra* note 43, at 5 tbl.A; CASPER & BASS, *supra* note 43, at 2 tbl.2.

Table 6: Growth in Voting from 1996 to 2004, Current Population Survey⁴⁵

NATIONALLY (in thousands)	Nov-04	Nov-00	Nov-96	Growth in Voting from 1996 to 2004
Total Voted	125,736	110,826	105,017	19.7%
Asian Reported Voted	2,980	2,045	1,741	71.2%
Hispanic Reported Voted	7,587	5,934	4,834	57.0%
Black Reported Voted	14,016	12,749	11,156	25.6%
White Reported Voted	99,567	89,469	86,604	15.0%

But absent reauthorization and expansion of Section 203, the progress that Asian American voters have made in terms of registration and turnout will stagnate or regress to pre-1992 levels.

C. Language Assistance and Asian American Elected Officials

The effectiveness of language assistance is further evident in the ability of Asian American candidates to win elected office oftentimes with overwhelming support from the Asian American community. Language assistance empowers Asian American voters and provides access to the elections process so they may register and elect their candidates of choice.

For example, in New York City, where Chinese American voters gained language assistance in 1992, the first Asian American, John Liu, was elected to the New York City Council in 2001.⁴⁶ Statewide, Jimmy Meng was the first Asian American elected to the New York State Assembly in 2004.⁴⁷ Both candidates relied heavily on support from voters in Flushing in Queens County, New York, where a large concentration of Asian American voters, many of whom are LEP, reside. Absent language assistance, Asian American candidates will have a harder time registering and turning out voters from the community, especially LEP voters who have difficulty navigating English ballots and voting materials.

⁴⁵ See HOLDER, *supra* note 6, at 4 tbl.B; JAMIESON, *supra* note 43, at 5 tbl.A; CASPER & BASS, *supra* note 43, at 1 tbl.1.

⁴⁶ Bryan Virasami, *Groundbreaking Win for Asian Americans*, NEWSDAY, Nov. 8, 2001.

⁴⁷ Steven Kurutz, *'Jimmy Cares' of Flushing Earns a Place in Civic History*, N.Y. TIMES, Nov. 8, 2004, § 14, at 6.

II. THE DISCRIMINATORY EFFECT OF HABITUAL NONCOMPLIANCE

Voter registration and turnout among Asian American and other language minority voters increase when jurisdictions properly implement language assistance plans. But without reauthorization and expansion of Section 203, the progress that Asian American voters have made in terms of registration and turnout will stagnate or regress to pre-1992 levels.

AALDEF has shared the results of its exit poll surveys with the New York City Board of Elections in regular correspondence that identifies both successful practices and details of the Board's level of noncompliance with Section 203, including interpreter shortages, poorly trained poll workers, and missing Election Day materials.⁴⁸ However, while AALDEF sought to work

⁴⁸ Letter from Glenn D. Magpantay, Staff Attorney and Phillip A. Olaya, Voting Rights Pub. Educ. Coordinator, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Dec. 9, 2005) (App. D); Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Oct. 13, 2005) (App. D); Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (June 16, 2005) (App. D); Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Dec. 10, 2004) (App. D); Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Dec. 6, 2004) (App. D); Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Nov. 29, 2004) (App. D); Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Oct. 18, 2004) (App. D); Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Oct. 6, 2004) (App. D); Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (May 21, 2004) (App. D); Letter from Glenn D. Magpantay, Staff Attorney and Margaret Fung, Exec. Dir., Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Feb. 17, 2004) (App. D); Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Nov. 2, 2003) (App. D); Letter from Margaret Fung, Exec. Dir. and Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Aug. 5, 2003) (App. D); Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (July 18, 2003) (App. D); Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (June 16, 2003) (App. D); Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to Danny DeFrancesco, Exec. Dir., New York City Bd. of Elections (Feb. 8, 2002) (App. D); Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to Danny DeFrancesco, Exec. Dir., New York City Bd. of Elections (Feb. 5, 2002) (App. D); Letter from Margaret Fung, Exec. Dir. and Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to Daniel DeFrancesco, Exec. Dir., New York City Bd. of Elections 3 (Dec. 20, 2001) (App. D); Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to Danny DeFrancesco, Exec. Dir., New York City Bd. of Elections (Nov. 26, 2001) (App. D); Letter from Margaret Fung, Exec. Dir. and Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to Danny DeFrancesco, Exec. Dir., New York City Bd. of Elections (Nov. 2, 2001) (App. D); Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to Danny DeFrancesco, Exec. Dir., New York City Bd. of Elections (Dec. 21, 2000) (App. D); Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to Danny DeFrancesco, Exec. Dir., New York City Bd. of Elections (Dec. 12, 1998) (App. D); Letter from Margaret Fung, Exec. Dir. and Glenn Magpantay, NAPIL Equal Justice Fellow, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Oct. 21, 1998) (App. D); Letter from Glenn Magpantay, NAPIL Equal Justice Fellow, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Oct. 21, 1998) (App. D); Letter from Elizabeth OuYang, Asian Am. Legal Def. and Educ. Fund, to Danny DeFrancesco, Exec. Dir., New York City Bd. of Elections (May 16, 1997) (App. D); Letter from Margaret Fung, Exec. Dir., Asian Am. Legal Def. and Educ. Fund, to Danny DeFrancesco, Exec. Dir., New York City Bd. of Elections (July 23, 1996) (App. D);

with the Board to improve compliance on language assistance, the Board failed to correct ongoing problems faced by Asian American voters.

As a final avenue to redress the Board's habitual non-compliance, on February 6, 2006, AALDEF, on behalf of 4 Asian American organizations and 5 Asian American voters, sued the New York City Board of Elections for its continued failure to comply with the language assistance provisions of the VRA.⁴⁹ AALDEF alleged that the Board failed to fully provide Chinese language assistance in the covered jurisdictions of New York, Kings, and Queens Counties, and failed to provide Korean language assistance in Queens County.⁵⁰ The Complaint detailed the Board's non-compliance with Section 203 and asks the court to order the Board to "devise, publicize, and implement a remedial plan to ensure that limited English proficient Chinese and Korean Americans are able to participate in all phases of the electoral process."⁵¹

A. Voting Barriers in 1975, 1982, 1992, and the Present

Although passage of the original VRA in 1965 dramatically increased voter registration in communities of color, the legislation failed to address the special concerns of language minority voters who faced the additional obstacle of language barriers. In the 1975 Congressional hearings on reauthorization, the U.S. Senate Judiciary Committee found that "language minority citizens are also excluded from the electoral process through the use of English-only elections."⁵² The Committee went on to cite high illiteracy rates among Asian American communities that resulted from "the failure of state and local officials to afford equal educational opportunities to members of language minority groups,"⁵³ that resulted in low voting participation.⁵⁴ Disparate treatment in housing, the courts, and employment was also linked to the overall disenfranchisement of language minority citizens.⁵⁵ Ultimately, the Committee concluded "the language disabilities of Asian Americans are particularly egregious and deter their participation in the electoral process,"⁵⁶ and recommended that the VRA be amended to include the language assistance provisions codified in Section 203.⁵⁷

During the 1982 Reauthorization debate, the U.S. Senate recognized that despite the 1975 amendments to the VRA, discrimination in registration and voting continued to exist, including:

Memorandum from Margaret Fung, Exec. Dir. and Elizabeth OuYang, Staff Attorney, Asian Am Legal Def. and Educ. Fund, to Susanna Lorenzo-Giguere, U.S. Dep't of Justice (Dec. 17, 1993) (App. D); Letter from Margaret Fung, Exec. Dir. and Elizabeth OuYang, Asian Am. Legal Def. and Educ. Fund, to Danny DeFrancesco, Exec. Dir., New York City Bd. of Elections (Oct. 15, 1993) (App. D); Letter from Margaret Fung, Exec. Dir., Asian Am. Legal Def. and Educ. Fund, to Danny DeFrancesco, Exec. Dir., New York City Bd. of Elections (Oct. 9, 1992) (App. D).

⁴⁹ Compl., Chinatown Voter Educ. Alliance v. Ravitz, No. 06 Civ. 913 (S.D.N.Y. Feb. 6, 2006). (App. C.) AALDEF also alleged the Board violated Section 208, 42 U.S.C. § 1973aa-6 (2006), which allows voters to be assisted by "a person of their choice" when casting a ballot.

⁵⁰ *Id.* at 5.

⁵¹ *Id.* at 13.

⁵² S. REP. NO. 94-295, at 28.

⁵³ S. REP. NO. 94-295, at 28 (citing a 1947 California statute that established separate schools for students of Asian descent).

⁵⁴ 42 U.S.C. § 1973aa-1-1(a) (2006).

⁵⁵ S. REP. NO. 94-295, at 29.

⁵⁶ S. REP. NO. 94-295, at 28.

⁵⁷ 42 U.S.C. § 1973aa-1a.

“inconvenient location and hours of registration, dual registration for county and city elections, refusal to appoint minority registration and election officials, intimidation and harassment, frequent and unnecessary purgings and burdensome re-registration requirements, and failure to provide or abusive manipulation of assistance to illiterates.”⁵⁸

Ten years later, at the time Congress considered the Voting Rights Language Assistance Act of 1992, little progress had been made to improve the conditions of language minority groups. The U.S. Senate Judiciary Committee acknowledged that:

In 1975 and again in 1982, Congress found that discrimination against language minorities limited the ability of limited-English-proficient (LEP) members of those communities to participate effectively in the electoral process. In 1992, the Committee has determined that the type of discrimination previously encountered by these language minority populations still exists and the need for S. 203 continues.⁵⁹

Again, the Committee pointed to the “inequitable treatment in the United States education system” as a primary factor in the continued disenfranchisement of Asian American voters.⁶⁰

These findings show that after each round of reauthorization, Congress has come to the same conclusion: that educational disparities, and other institutional factors embedded in American society, have affected the ability of LEP voters, including Asian Americans, to participate in the democratic process. Given continued failures of the public education system, racism, and limited educational and employment opportunities for Asian Americans, the current debate continues to address all too familiar problems.

B. Institutional Disenfranchisement of Asian American Voters: Poorly-Trained Poll Workers, Incomplete Voter Rolls, Denial of Provisional Ballots, Improper Identification Checks, and Interpreter Shortages

Disparities in access to education, employment, housing, health care, social services, and political participation disenfranchise language minority voters at a disproportionate rate and send the message that their (multilingual) voices do not count. Asian American voter participation rates reflect these disparities and continue to lag behind those of other groups. In the November 2004 Elections, the voting-age citizen population of Non-Hispanic Whites was 67.2 percent, as compared to 60 percent for Blacks, 47.2 percent for Hispanics, and 44.1 percent for Asian and Pacific Islanders.⁶¹

⁵⁸ S. REP. NO. 97-227, at 14 (1981).

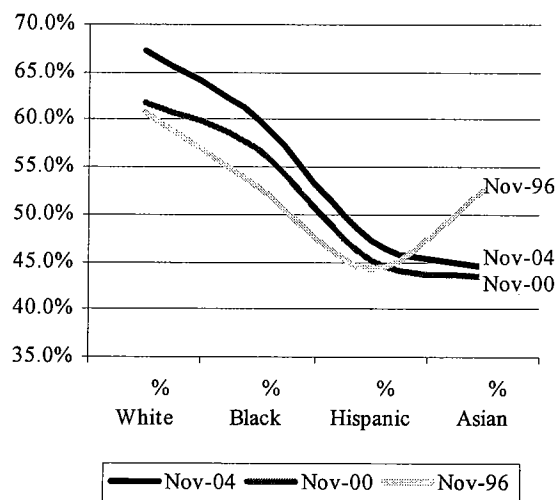
⁵⁹ H.R. REP. NO. 102-655, at 3 (1992), *reprinted in* 1992 U.S.C.C.A.N. 766, 767.

⁶⁰ H.R. REP. NO. 102-655, at 5.

⁶¹ HOLDER, *supra* note 6, at 6 fig.3.

Table 7: Voting Rates by Citizen Voting Age Population and Race, Current Population Survey⁶²

NATIONALLY	Nov-04	Nov-00	Nov-96
% Asian CVAP Voted	44.6%	43.3%	52.4%
% Hispanic CVAP Voted	47.2%	45.1%	44.3%
% Black CVAP Voted	60.0%	56.9%	53.0%
% White CVAP Voted	67.2%	61.8%	60.7%



Moreover, Congress recognized that the institutional factors contributing to the disenfranchisement of language minority voters in 1975 persisted in 1982 and 1992. Indeed, incomplete voter rolls, denial of provisional ballots, improper identification checks, interpreter shortages, and poor poll worker training continued to disproportionately affect language minority communities today.

At first glance, these complaints might seem like isolated incidents of noncompliance. However, as a collection of incidents, these complaints indicate either incompetence by elections administrators to effectively implement language assistance plans, or an unwillingness to do so. Moreover, the negative voting experience of just a few LEP voters could exacerbate the level of disenfranchisement within usually tightly-knit language minority communities.

Misinformed poll workers who demand identification from otherwise eligible Asian American voters may discourage others who hear, by word of mouth, that poll workers are harassing voters with excessive demands for identification. Previous AALDEF reports found that “Poll workers made improper or excessive demands for identification – often only from Asian American voters – and misapplied the [Help America Vote Act’s] ID requirements.”⁶³ Unnecessary identification checks by poll workers who question the eligibility of Asian American voters may lead to lower turnout from a disenfranchised community in subsequent elections. The same disenfranchisement could result when other community residents hear of long lines created by interpreter shortages, the lack of translated ballots or voting materials, and incomplete voter rolls.

To be sure, instances of racial hostility and physical intimidation continue to disenfranchise language minority voters. However, issues of noncompliance with the language access provisions produce the same result: the disenfranchisement of large numbers of

⁶² *Id.* at 4 tbl.B; JAMIESON, *supra* note 43, at 5 tbl.A; CASPER & BASS, *supra* note 43, at 1 tbl.1.

⁶³ ACCESS TO DEMOCRACY 2004, *supra* note 33, at 1. (App. B.)

American citizens who have the right to vote but are prevented from doing so only because they have some difficulty speaking the English language. Among the most recent problems:

- In New York City during the 2000 Presidential Elections, ballots in at least 6 poll sites in Queens reversed the translated party headings so that Republican candidates were listed as “Democrats,” and Democrats as “Republicans.”⁶⁴
- In Boston in 2004, election officials reported that poll workers at one site segregated voters and formed 2 separate lines for minority voters and white voters. They claimed that separate but equal lines for those who were limited English proficient would speed up the voting process for others. This resulted, in part, to a federal district court requiring the city to provide language assistance in Chinese and Vietnamese.⁶⁵
- AALDEF has documented instances in which poll workers have interfered with the right of Asian American voters to receive assistance under Section 208 of the VRA. In 2001, AALDEF documented that poll workers at P.S. 94 in Sunset Park, Brooklyn interfered with Chinese voters who brought someone to assist them in the voting booth, and that poll workers at Rutgers House in Manhattan’s Chinatown refused to allow official Board of Elections interpreters to enter the voting booth with Chinese voters at the voters’ requests.⁶⁶
- In New York City during the 2004 Presidential Elections, 82 of the 116 poll sites AALDEF monitored fell short of the required number of assigned Chinese and/or Korean interpreters, often creating long lines and confusion for LEP voters in need of language assistance.⁶⁷
- Poorly trained interpreters, or interpreters who proved unqualified to assist voters, also posed barriers to Asian American voters in need of language assistance. In 2002, several interpreters at P.S. 2 in Manhattan were not bilingual and did not understand English. Likewise, Korean interpreters at P.S. 189 in Queens County, New York did not know of the availability of Korean language materials.⁶⁸
- In 2004, large numbers of voters in New York, New Jersey, and Massachusetts reported that poll workers improperly required them to provide identification in order to vote. Under HAVA, only a very narrow category of first-time voters is required to provide identification when they vote.⁶⁹ In New York, 69 percent of Asian American voters who were required to show identification were not required to do so. In New Jersey, 51 percent of Asian American voters required to produce identification were not required to

⁶⁴ *Id.* at 3. (App. B.)

⁶⁵ *Id.* at 16. (App. B.)

⁶⁶ Letter from Margaret Fung, Exec. Dir. and Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to Daniel DeFrancesco, Exec. Dir., New York City Bd. of Elections 4 (Nov. 2, 2001). (App. D.)

⁶⁷ Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Nov. 29, 2004). (App. D.)

⁶⁸ ACCESS TO DEMOCRACY 2002, *supra* note 33, at 16-17. (App. B.)

⁶⁹ Help America Vote Act § 301(a)(5), 42 U.S.C. § 15301 (2002).

do so. Finally, in Massachusetts, 57 percent of Asian American voters who were required to provide identification were actually eligible voters exempt from the identification requirements.⁷⁰

These incidents demonstrate that Asian American voter disenfranchisement persists despite the federally-guaranteed protections under the VRA. The incidents were only a handful of problems voters reported in the last several elections, and they demonstrate continued intimidation and even intentional disenfranchisement of Asian American voters.⁷¹

AALDEF's election surveys also revealed repeated incidents of inaccurate notice, or no notice at all of voters' poll sites; poorly trained poll workers who misdirected voters to the wrong poll sites; or sudden changes of poll sites without notice to the affected voters.⁷² These all serve to continually disenfranchise voters and have a disproportionate impact on language minority communities.⁷³

- In New York, one Pakistani voter in Flushing stated that she was not informed that her poll site was changed, and noted that approximately 200 families in her neighborhood were also affected by this change, many of whom were senior citizens who could not travel to the other site. At least 100 voters at one site in Richmond Hill were redirected, and a poll worker commented that "Queens recently rezoned its precincts" and that voters had not been made aware that their poll sites had been changed. South Asian voters in Floral Park complained about being shuffled between 2 poll sites in the neighborhood for the past 3 years and again in 2004.⁷⁴
- In New Jersey, a first-time South Asian voter in Jersey City had to go to 6 different poll sites. She eventually voted, but by provisional ballot. She stated that poll workers were incompetent, "it's too much trouble to vote," and that she does not want to vote in the next election.⁷⁵

Finally, oral language assistance also plays an important role in helping LEP voters cast an informed vote. In 2004, one-third of all Chinese American and Korean American respondents in AALDEF's survey used an interpreter to vote.⁷⁶ However, election observers have reported

⁷⁰ ACCESS TO DEMOCRACY 2004, *supra* note 33, at 18-19. (App. B.)

⁷¹ See also *id.* at 15-16 (App. B); ACCESS TO DEMOCRACY 2003, *supra* note 33 (App. B); ACCESS TO DEMOCRACY 2002, *supra* note 33 (App. B); ACCESS TO DEMOCRACY 2001, *supra* note 33, at 6-7 (App. B); ACCESS TO DEMOCRACY 2000, *supra* note 33 (App. B); NAPALC ELECTION 2000 REPORT, *supra* note 33 (App. B).

⁷² ACCESS TO DEMOCRACY 2004, *supra* note 33, at 20-21. (App. B.) See also S. REP. NO. 94-295, at 792 (discussing locations of poll sites).

⁷³ See Glenn Magpantay, *Asian American Access to the Vote: The Language Assistance Provisions (Section 203) of the Voting Rights Act and Beyond*, 11 ASIAN L.J. 31, 37-48 (2004) (detailing non-compliance with Section 203, including: ballots with ineffective or faulty translations, misleading and confusing, and that transliterate candidates' names; translated materials and signs that are unavailable, hidden, and ineffective; poor training for poll workers; non-compliance with oral language assistance, including interpreter shortages and poor performance; poll worker interference with language assistance; and discrimination by poll workers).

⁷⁴ ACCESS TO DEMOCRACY 2004, *supra* note 33, at 20. (App. B.)

⁷⁵ *Id.* at 20-21. (App. B.)

⁷⁶ See Magpantay, *supra* note 73, at 37-48.

that when poll site interpreters are understaffed, voters who depend on language assistance have left without voting.

A survey of 113 poll sites in 2004 found that 82 fell short of the required Chinese and Korean interpreters.⁷⁷ As recently as 2005, 11 of 18 poll sites in Manhattan, and 10 of 19 poll sites in Queens, fell short of the assigned number of interpreters.⁷⁸ The shortage of interpreters in New York City in 2005 was further punctuated when voting machines at a particularly busy poll site in Chinatown were shut down by the Board of Elections after the discovery that Chinese-translated ballots were unavailable. With just one Chinese interpreter, voters waited for assistance, and the interpreter estimated that he assisted 60 to 70 voters in the half hour that machines were shut down.⁷⁹

C. Racially Hostile Voter Intimidation

Although widespread racial hostility toward racial and language minorities does not approach the levels it did prior to 1975, racist sentiments continue to manifest themselves in the form of physical and verbal intimidation by elections administrators. Inevitably, in every election AALDEF has observed since 1988, Asian American voters have reported incidents of racist behavior by poll workers. Among the most recent problems:

- In 2004 in Queens County, New York, a poll site coordinator said, “I’ll talk to [Asian voters] the way they talk to me when I call to order Chinese food,” and then said random English phrases in a mock Chinese accent.⁸⁰
- In 2004 in Queens County, New York, several white voters yelled at Asian Americans, saying, “You all are turning this country into a third-world waste dump!” and “You should prepare and learn English at home before you come out to vote!”⁸¹
- In 2004 in Kings County, New York, a poll site coordinator asked, “How does one tell the difference between Chinese and Japanese?” and brought her fingers to the side of each eye and moved her skin up and down.⁸²

⁷⁷ Letter from Glenn D. Magpantay, Staff Attorney and Phillip A. Olaya, Voting Rights Pub. Educ. Coordinator, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Dec. 9, 2005) (App. D); Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Oct. 13, 2005) (App. D).

⁷⁸ Letter from Glenn D. Magpantay, Staff Attorney and Phillip A. Olaya, Voting Rights Pub. Educ. Coordinator, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Dec. 9, 2005) (App. D); *See also* ACCESS TO DEMOCRACY 2003, *supra* note 33, at 10 (finding 78 of 120 Chinese interpreters, and 54 of 77 Korean interpreters, reported for work in the November 2003 Elections) (App. B); ACCESS TO DEMOCRACY 2002, *supra* note 33, at 15-17; ACCESS TO DEMOCRACY 2001, *supra* note 33, at 11 (detailing the rejection of Korean volunteers and the resulting shortage of interpreters on Election Day, including 5 major poll sites where Korean interpreters did not show up) (App. B); ACCESS TO DEMOCRACY 2001, *supra* note 33, at 8 (noting the shortage of Chinese interpreters) (App. B).

⁷⁹ Letter from Glenn D. Magpantay and Phillip A. Olaya to John Ravitz. (App. D.)

⁸⁰ ACCESS TO DEMOCRACY 2004, *supra* note 33, at 15. (App. B.)

⁸¹ *Id.* (App. B.)

⁸² *Id.* (App. B.)

- In 2004 in Edison, New Jersey, one poll worker carried on for several minutes stating that, “If you are an American, you better lose the rest of the [Asian] crap.”⁸³
- In 2004 in Falls Church, Virginia, a poll worker commented to other poll workers, in the presence of a Pakistani American voter, that he knew about Muslims and said, “If you think certain cultures are weird, you should read about them. They’re really weird.”⁸⁴
- In 2004 in Palisades Park, New Jersey, the Borough Clerk of the City of Palisades Park approached AALDEF’s election observer and said, “Maybe you should teach your people how to read English.”⁸⁵
- In 2003 in Queens County, New York, a poll site coordinator made disparaging remarks about South Asian voters. She repeatedly referred to herself as a “U.S. citizen” and said that she was “born here” in front of South Asian voters. She instructed the door clerk to “keep an eye” on all the South Asian voters.⁸⁶
- In 2003 in Chinatown in Manhattan, a voter complained that all the poll inspectors at his poll site mocked his last name, which was “Ho.”⁸⁷
- In 2002 in Queens County, New York, one poll worker referred to South Asian voters as “terrorists.”⁸⁸
- In 2001 in Queens County, New York, an elderly Korean voter asked for a Korean interpreter to assist her inside the voting booth. The inspector said, “I don’t think you should be allowed to vote if you can’t speak English.”⁸⁹
- In 2000 in Queens County, New York, an elderly Korean married couple came to the poll site to vote. The wife needed assistance from her husband. At that point, the poll worker blew up at the older Korean woman and yelled, “You cannot talk to anyone!” She further threatened, “You can end up in jail!” The couple was completely bewildered and became fearful at the exceptionally hostile attitude of the poll worker.⁹⁰

These instances, while not physically harmful, have the same result: the disenfranchisement of Asian American voters who receive the message they are perpetual foreigners and are citizens denied a voice in the political process.

⁸³ *Id.* (App. B.)

⁸⁴ *Id.* (App. B.)

⁸⁵ ACCESS TO DEMOCRACY 2004, *supra* note 33, at 15. (App. B.)

⁸⁶ ACCESS TO DEMOCRACY 2003, *supra* note 33, at 7. (App. B.)

⁸⁷ *Id.* (App. B.)

⁸⁸ ACCESS TO DEMOCRACY 2002, *supra* note 33, at 19. (App. B.)

⁸⁹ Letter from Margaret Fung, Exec. Dir. and Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to Daniel DeFrancesco, Exec. Dir., New York City Bd. of Elections 3 (Dec. 20, 2001). (App. D.)

⁹⁰ ACCESS TO DEMOCRACY 2000, *supra* note 33. (App. B.)

D. The Effect of Institutional Disenfranchisement and Racist Intimidation

While Asian American voters have used language assistance to register, vote, and elect Asian American candidates, the number of Asian American elected officials is still small, given the growth of the Asian American population.

At the federal level, Asian American Congressional Members comprise less than 1 percent of the U.S. House and Senate members.⁹¹ Indeed, outside of Hawai'i, an Asian American candidate has not won a statewide seat since 1996, when Governor Gary Locke won the governor's seat in Washington. At the state level, there are 64 Asian American state senators and 97 state representatives.⁹² There are only 3 Asian American governors, all of whom come from U.S. territories that include American Samoa, Guam, and the Mariana Islands.⁹³ At the local level, there are just 19 city mayors, including 12 from California, 3 from Hawai'i, 1 in Illinois, 2 in Michigan, and 1 in New Jersey.⁹⁴ Finally, just 123 Asian American elected officials sit on city or county councils throughout the country.⁹⁵

While the election of candidates like Washington Governor Gary Locke or New York City Councilmember John Liu is notable for their historic significance,⁹⁶ the recency of their victories underscores the wide gap that still exists between the growing numbers of Asian Americans and their inclusion in the political process.

⁹¹ U.C.L.A. ASIAN AM. STUDIES CTR. & ASIAN PAC. AM. INST. FOR CONG. STUDIES, NAT'L ASIAN PACIFIC AMERICAN POLITICAL ALMANAC 2005-06 60 (12th ed. 2005).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *See supra* Part I.C.

III. THE LEGACY OF HISTORICAL RACIAL DISCRIMINATION AGAINST ASIAN AMERICANS

The widespread failure to fully implement federally-mandated language assistance programs highlights just one institutional barrier that continues to disenfranchise language minority voters. Other factors that marginalize Asian American communities from the political process include disparate access to education, jobs, healthcare, and other social services, which stem from historically discriminatory and xenophobic immigration policies.

Indeed, in the United States, Asians have experienced discrimination in the unique context of exclusionary immigration policies aimed at denying citizenship based on race and national origin alone. The denial of citizenship, in turn, meant that Asians did not have the right to vote. The historical legacy of these discriminatory policies has led to the disparities that continue to marginalize Asian American communities from full participation in the American experience, including the empowerment derived from meaningful political participation.

Remedial legislation like Section 203 was designed to rectify inequities that arose because of historical discrimination. However, such remedial legislation requires a showing of purposeful discrimination against Asian American voters to warrant continued, and even expanded, language assistance. Moreover, the remedial legislation must be “congruent and proportional” to ameliorate the alleged harm.⁹⁷ Section 203 warrants reauthorization because the instances of purposeful discrimination, as detailed in the 1975, 1982, and 1992 Congressional reports, continue today, and stem from historical, societal, and institutional factors that disenfranchise language minority voters.

A. U.S. Immigration Policy: Asian Exclusion

In 1868, just a few years before completion of the transcontinental railroad, the United States signed the Burlingame Treaty,⁹⁸ which denied the Chinese laborers who built the railroad from becoming naturalized citizens, and barred the wives of day laborers from entering the United States. Congress later passed the Chinese Exclusion Act,⁹⁹ which barred Chinese immigration for 10 years. After the Act expired, additional legislation required all Chinese to register with the government and carry proof of residency.¹⁰⁰ A second Exclusion Act,¹⁰¹ passed by Congress in 1924, further barred the immigration of all Asians, except for Filipinos who agreed to serve in the military for 3 years. Similar restrictions barred Chinese women who were married to American citizens, from citizenship,¹⁰² while the Cable Act¹⁰³ later threatened to strip Chinese American women of citizenship if they married foreign-born Asians.

The government did not limit its restrictions on Asian communities to discriminatory immigration policies. It also targeted Asian American communities through restrictive land

⁹⁷ See *City of Boerne v. Flores*, 521 U.S. 507 (1997).

⁹⁸ The Burlingame Treaty, July 28, 1868, U.S.-China, 16 Stat. 739.

⁹⁹ Chinese Exclusion Act, 22 Stat. 58 (1882) (repealed 1943).

¹⁰⁰ Geary Act, 22 Stat. 58 (1892).

¹⁰¹ Immigration Act of 1924, 43 Stat. 153 (1924).

¹⁰² Act of March 2, 1907, 34 Stat. 1228, § 3, 34 Stat. 1228 (1907).

¹⁰³ Cable Act, 42 Stat. 1022, (1924).

ownership laws, like the California Land Act,¹⁰⁴ barred Asians from jury service,¹⁰⁵ and ensured segregated school policies that restricted Asian school children to “Oriental” public schools.¹⁰⁶ As with other racial minority groups, numerous state governments passed anti-miscegenation laws to prevent marriage between whites and “Mongolians.”¹⁰⁷ Even when legal challenges were filed, courts upheld the laws and thus validated de jure discrimination.¹⁰⁸

The greatest historical example, of course, is *Korematsu v. United States*,¹⁰⁹ in which the U.S. Supreme Court upheld the internment of 120,000 Japanese and Japanese American citizens and residents following the bombing of Pearl Harbor. President Franklin D. Roosevelt issued Executive Order 9066 on February 19, 1942, and designated areas of exclusion for people of Japanese ancestry. The Executive Order, however, did not designate exclusion of Americans with German or Italian ancestry even though the United States was already at war with those countries. Even after the war ended, the United States government did not officially apologize until 1988 despite the widespread acknowledgment that the internment was a heinous policy fueled by anti-Asian racism.

Discriminatory policies continued to be enforced through the mid-twentieth century. Indeed, even after Congress allowed all Asians to naturalize in 1952, a quota of 105 immigrants from each country limited the number of Asian immigrants.¹¹⁰ Following the civil rights movement of the 1950’s and 1960’s, more subtle forms of racism continued to marginalize Asian American communities, including laws that made Asian Americans ineligible from receiving the benefits of minority aid programs, the underemployment of highly-educated Asian Americans, and even a return to violent crimes fueled by racial hatred.¹¹¹

B. The Lingering Effects of Historical Discrimination

Because of these discriminatory laws, Asian Americans continue to deal with the legacy of inequitable access to education, employment, housing, health care, social services, and, of course, political participation. Moreover, the growth of new communities from Southeast Asian countries like Vietnam, Laos, and Cambodia, displaced because of war, has given rise to anti-

¹⁰⁴ Alien Land Law, 1913 Cal. Stat. 206, ch. 113, §§ 1-2 (1913).

¹⁰⁵ Geary Act, 22 Stat. 58 (1892).

¹⁰⁶ See S. REP. 94-295, at 28-29 (stating that until 1947, “a California statute authorized local school districts to maintain separate schools for children of Asian descent, and if such separate schools were established, the statute prohibited these children from attending any other school.”).

¹⁰⁷ See BILL ONG HING, MAKING AND REMAKING ASIAN AMERICAN THROUGH IMMIGRATION POLICY 1850-1990 251 n.7 (1993) (stating that the Oregon antimiscegenation law “prohibited marriage between a white person and a person more than half Chinese.” Further, an 1880 California anti-miscegenation statute prohibited marriage between a white person and a “negro, mulatto, or Mongolian” (citing Cal. Codes, Ch. 41 § 1 (1880) (repealed 1959)).

¹⁰⁸ Ping v. United States, 130 U.S. 581 (1889) (affirming the exclusion of Chinese from immigrating to the U.S.). See also *Ozawa v. United States*, 260 U.S. 178 (1922) (affirming extension of the Naturalization Act to other Asian immigrants and limiting naturalization to “free white persons”).

¹⁰⁹ 323 U.S. 214 (1944).

¹¹⁰ Immigration and Nationality Act of 1952, 8 U.S.C. § 1422.

¹¹¹ Su Sun Bai, Comment, *Affirmative Pursuit of Political Equality for Asian Pacific Americans: Reclaiming the Voting Rights Act*, 139 U. PA. L. REV. 731, 750-51 (1991).

Asian violence, police brutality, and egregious worker exploitation.¹¹² The lingering effects of discrimination include continued marginalization of these communities and warrant renewal of the language access provisions of Section 203.

1. Educational barriers

The U.S. Census Bureau found that a high correlation exists between the level of educational attainment and voter turnout.¹¹³ Educational barriers in the Asian American community – despite the “Model Minority Myth” that categorically portrays Asian Americans as the epitome of the immigrant success story – remain one of the more significant obstacles to the full enfranchisement of Asian Americans and threaten to ensure that Asian American students fail to develop the ability to understand the political process and to partake in civic exercises like voting.

During the 1992 reauthorization proceedings, Congress found, as it had in 1975, that the most detrimental inequity to language minorities was the United States education system. “The problems suffered by language minorities include state and local school funding disparities and de facto segregation.”¹¹⁴ Moreover, Congress acknowledged that “the unavailability of adequate English as a Second Language programs for both school age children and adults prevents [limited English proficient citizens] from learning English.”¹¹⁵

The consequence of a disparate educational system was to compromise the ability of LEP citizens to participate equally in the electoral process.¹¹⁶ Congress recognized that an adequate remedy was to provide language assistance to LEP voters “to overcome the negative effect that the lack of education has on voter participation.”¹¹⁷

Although Asian Americans have made progress in the realm of education since the last round of reauthorization in 1992, disparate levels of achievement among Asian American communities are stark. The diversity of languages, cultures, religions, socio-economic status, and political experiences among multiple Asian ethnic groups presents a unique challenge to educators. More recently-arrived immigrant/refugees from Southeast Asian countries like Vietnam, Laos, and Cambodia struggle to finish high school and represent a greater proportion of Asian American students who drop out.

In a comprehensive national study on cultural backgrounds and educational issues, the National Education Association (NEA) documented the barriers, including the “Model Minority

¹¹² See Katharya Um, *A Dream Denied, Educational Experiences of Southeast Asian American Youth, Issues and Recommendations* (First National Southeast Asian Youth Summit, University of California-Berkeley), Dec. 9, 2000, at iii (stating that “[a]fter resettlement in the U.S., most [Southeast Asian students] go on to experience additional challenges of poverty, daily encounters with delinquency and crime, family dysfunctionality, and racism both at school and in society.”).

¹¹³ AMIE JAMIESON ET AL., U.S. CENSUS BUREAU, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2000 5 (2002) (finding that “people with more education, higher incomes, and jobs [were] more likely to vote.”).

¹¹⁴ H.R. REP. 102-655, at 8 (1992), *reprinted in* 1992 U.S.C.C.A.N. 766, 767.

¹¹⁵ H.R. REP. 102-655, at 5.

¹¹⁶ S. REP. 102-315, at 7.

¹¹⁷ S. REP. 102-315, at 8.

Myth,” that hinder the educational opportunities of Asian and Pacific Islander Americans.¹¹⁸ “While educational attainment among East Asian and South Asian groups is high, educational attainment among Pacific Islanders and Southeast Asian groups is relatively low. For example, the percentage of Southeast Asian Americans who have earned a bachelor’s degree is lower than the percentages for Black, Hispanic, and American Indian/Alaska Native adults.”¹¹⁹

Several factors, including social class, English proficiency, date of arrival to the United States, and racist bullying and marginalization by classmates, indicate the likelihood of academic success for most Asian American students.

In a study of the Korean American community, high achieving students came from families whose parents were well-educated professionals, though they may have been unable to secure positions in their respective professions with the corresponding compensation that would have allowed for greater educational opportunities for their children.¹²⁰ By contrast, the study found that working class and poor Korean parents worked long hours and were excluded from Korean social networks established to assist students to succeed.¹²¹ Likewise, middle-class Chinese American parents prepared their children for the college preparation and admissions process, while working class parents, who worked long hours and had a limited education, were unable to provide their children with the same guidance.¹²²

The simplicity of the “Model Minority Myth” further deteriorates in light of the variation of educational attainment among Southeast Asian Americans. The NEA study found that Southeast Asian refugees who arrived earlier tended to consist of educated professionals, while later waves of refugees were usually from rural areas and had very little education.¹²³ Within the Southeast Asian community, Vietnamese Americans have achieved the most success in academics, with 9.4 percent of Vietnamese American students attaining a bachelor’s degree.¹²⁴ At the other end of the spectrum, 59.6 percent of Hmong American adults over 25 did not receive a high school education, and just 7.5 percent attained a bachelor’s degree.¹²⁵

Asian American students, over half of whom do not consider English their first language, face the further challenge of having to compete with native-born, English-speaking

¹¹⁸ STACEY J. LEE & KEVIN K. KUMASHIRO, NAT’L EDUC. ASSOC., A REPORT ON THE STATUS OF ASIAN AMERICANS AND PACIFIC ISLANDERS IN EDUCATION: BEYOND THE “MODEL MINORITY” STEREOTYPE (2005).

¹¹⁹ *Id.* at 2 (finding that 59.6% of Hmong American adults over 25 have less than a high school education. Further, “Compared to both Vietnamese and Hmong students, Cambodian students score lower on standardized tests, receive relatively lower grade point averages, and have higher dropout rates.”).

¹²⁰ *Id.* (citing J. LEW, KOREAN AMERICAN HIGH SCHOOL DROPOUTS: A CASE STUDY OF THEIR EXPERIENCES AND NEGOTIATIONS OF SCHOOLING, FAMILY, AND COMMUNITIES (2003)).

¹²¹ *Id.*

¹²² *Id.* (citing V. Louie, *Parents’ Aspirations and Investment: The Role of Social Class in the Educational Experiences of 1.5 and Second-Generation Chinese Americans*, 71 HARV. EDUC. REV. 438 (2001)).

¹²³ *Id.* at 3.

¹²⁴ *Id.* (citing M. ZHOU AND C. BANKSTON, GROWING UP AMERICAN: HOW VIETNAMESE CHILDREN ADAPT TO LIFE IN THE UNITED STATES (1998)).

¹²⁵ *Id.* (citing M. ZHOU AND C. BANKSTON, GROWING UP AMERICAN: HOW VIETNAMESE CHILDREN ADAPT TO LIFE IN THE UNITED STATES (1998)).

classmates.¹²⁶ Bilingual education, therefore, is crucial to ensuring LEP students adjust to their educational experiences without the threat of being left behind. Nevertheless, the NEA assessed that “[d]espite the growing number of immigrant students in schools throughout the country, many schools lack the expertise to adequately serve second-language learners.”¹²⁷

In a study of Asian Americans in the New York City public school system, the Coalition for Asian American Children and Families (CACF) found that in 2000 and 2001, Asian American students, who are more likely to be first-generation or immigrants themselves, comprised almost 20 percent of all English Language Learners.¹²⁸ Chinese-speaking students comprised 11.1 percent of English Language Learners.¹²⁹ Other Asian language groups included Urdu (2.7 percent), Bengali (2.6 percent), Korean (1.7 percent), and Punjabi (1.0 percent). These students primarily live in ethnic enclaves in the city where language assistance is most needed.

CACF’s study, limited to New York City, did not account for emerging Southeast Asian immigrant communities in places like Massachusetts, Texas, and Louisiana. Indeed, educational attainment for Southeast Asian American communities runs far behind other Asian American communities. While just 1.4 percent of the overall population has had no formal schooling, 26 percent of Cambodians, 45 percent of Hmong, and 23 percent of Laotians indicated they had no formal schooling.¹³⁰

LEP rates within the Asian American community, as well as exponential growth among Southeast Asian Americans, underscores the importance of engaging newly eligible voters whose limited educational opportunities may affect the likelihood of their participation in civic matters. Coupled with the overall educational barriers that continue to plague Asian American students, the lingering effects of this country’s discriminatory past remain disturbingly visible.

Moreover, educational disparities are linked to income and poverty factors that affect language minorities and marginalize Asian American communities who become disengaged from the political process. According to the U.S. Census Bureau, Asian and Pacific Islander families were more likely than the general population to have incomes of less than \$25,000.¹³¹ The report further stated that in 2001, 10 percent, or 1.3 million Asians and Pacific Islanders, lived below the poverty line.

¹²⁶ ASIANWEEK ET AL., *THE NEW FACE OF ASIAN PACIFIC AMERICA, NUMBERS, DIVERSITY & CHANGE IN THE 21ST CENTURY* 206 (Eric Lai & Dennis Arguelles eds. 2003).

¹²⁷ LEE & KUMASHIRO, *supra* note 118, at 5.

¹²⁸ VANESSA LEUNG, *THE COALITION FOR AS. AMER. STUDENTS AND FAMILIES* 18 (2004) (citing Bd. of Educ. of the City of New York, Office of English Language Learners, Facts & Figures 2000-2001).

¹²⁹ *Id.* at 19.

¹³⁰ *Oversight Hearing on the Voting Rights Act: Section 203-Bilingual Election Requirements, Part I Before the House Subcomm. on the Const., House Judiciary Comm.*, 109th Cong. at 6 (Nov. 8, 2005) (statement of Margaret Fung, Exec. Dir., Asian Am. Legal Def. and Educ. Fund) available at <http://judiciary.house.gov/media/pdfs/fung110805.pdf> [hereinafter Fung, AALDEF VRA Testimony before Congress, 2005]. (App. A.)

¹³¹ TERRANCE REEVES & CLAUDETTE BENNETT, U.S. CENSUS BUREAU, *THE ASIAN AND PACIFIC ISLANDER POPULATION IN THE UNITED STATES* 6 (2003).

2. Hate crimes and racial profiling

Despite the progress this country has made in bridging racial divisions, hate crimes continue to plague Asian American communities. Of the 4,863 reported offenses of single-bias hate crime incidents motivated by race in 2004, 5.2 percent, or 217 incidents, targeted Asians.¹³² In the same year, offenses against Muslims, many of whom are of South Asian and Southeast Asian descent, accounted for 12.7 percent of the 1,586 reported incidents of religious bias.¹³³

In one case involving allegations of hate crimes and discriminatory denial of access to public accommodations, AALDEF represented 6 Asian American Syracuse University students who were denied service at a Denny's restaurant and then left the diner only to be physically beaten by white customers while two security guards did nothing to stop the attack.¹³⁴ In another case of campus violence, John Lee, a Korean American student at the State University of New York at Binghamton, and 3 other Asian American classmates, were beaten by white members of the school's wrestling team in 2000. The victims were attacked unwittingly, and for no other reason than because of their race.¹³⁵

Racial profiling likewise singles out members of the Asian American community simply because of their race. Following the September 11 attacks, South Asian and Muslim students faced hate violence and discrimination that went unreported to school officials. Students who were LEP immigrants faced the additional obstacle of not knowing who to turn to for help. In one case, AALDEF represented an eleventh-grade South Asian student who had expressed his fear of a possible terrorist attack to his teacher. Instead of assuaging the student's fears, the school suspended him for making a "terrorist threat."

Even before September 11, racial profiling posed a threat to Asian Americans. An infamous case of racial profiling before September 11 was the allegation that Los Alamos National Laboratory scientist, Dr. Wen Ho Lee, committed espionage and funneled nuclear secrets to China. The Federal Bureau of Investigations arrested Dr. Lee in December 1999 and charged him with 59 felony counts of mishandling classified nuclear data. After more than a year of investigative missteps and overzealous prosecution, the F.B.I. eventually dropped all but one of its charges, and Dr. Lee pleaded guilty to just one count of copying classified files.¹³⁶

The fallout of the campaign finance scandals of 1996 presaged the xenophobic and reactionary profiling of Asian Americans that later led to the controversial investigation, dismissal, and arrest of Dr. Wen Ho Lee. In the wake of investigations into illegal contributions by foreign nationals to the Democratic Party, an Asian American member of the U.S.

¹³² FED. BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, HATE CRIMES STATISTICS 2004 5 (2005).

¹³³ *Id.*

¹³⁴ *See Lizardo v. Denny's, Inc.*, 270 F.3d 94 (2d Cir. 2001).

¹³⁵ Lynette Clemetson, *The New Victims of Hate*, NEWSWEEK, Nov. 6, 2000, at 61.

¹³⁶ *See F.B.I. Faulted in Nuclear Secrets Investigation*, N.Y. TIMES, Dec. 13, 2001, at A35. The F.B.I., however, was not the only institution to prematurely pursue a zealous witch hunt. The media seemed to forget its role as the Fourth Estate and failed to question governmental tactics last seen during the height of the Cold War under former Director J. Edgar Hoover. Indeed, *The New York Times* felt the need to publicly apologize for its faulty coverage, and issued a rare public apology. *See From the Editor: The Times and Wen Ho Lee*, N.Y. TIMES, Sep. 26, 2000, at A2.

Commission on Civil Rights, Yvonne Lee, was even denied entrance to the White House.¹³⁷ Discriminatory profiling of individuals of Asian ethnicity sends the message that certain groups remain perpetual foreigners in their own country.

In the political arena, racist tactics are still designed to intimidate Asian American voters:

- In the 2005 elections in New Jersey, 2 radio personalities known as the “Jersey Guys,” ridiculed at length then-mayoral candidate, Jun Choi, by telling voters that Americans should vote for “Americans.” The Jersey Guys also mocked Asian American accents and said too many Asians gambled in Atlantic City. In an interview that followed the arrival of federal observers, the campaign manager of Choi’s opponent said, “[Asians] walk in here. They don’t know what they’re doing, and their countryman is telling them who to vote for.”¹³⁸ In effect, the Jersey Guys attempted to mask voter intimidation under the guise of humor.
- In the 1998 election for New York State Attorney General, then-incumbent Dennis Vacco sued to overturn his loss in a close election. Vacco alleged that voters in poor, immigrant communities, many of which were Asian American, voted illegally and said discrepancies between the number of missing names from credit reports and voter registration lists was evidence that 103,000 voters cast illegal ballots.¹³⁹ His lawsuit would have required a police sweep of poor, immigrant communities to verify the eligibility of minority voters by knocking on targeted residences and requiring them to prove their eligibility to vote.
- Also in the 1998 primary elections in New York, poll workers harassed 4 Chinese American sisters who attempted to vote in Brooklyn. One poll worker outright refused to allow the sisters to vote even though the polls were open for at least 45 more minutes. The site coordinator also scolded the sisters for requesting translated materials and for reading a Chinese language voting instructions placard. Poll workers demanded that the police remove the sisters from the poll site, but the police officer refused and affirmed that the sisters had a right to vote.¹⁴⁰
- In the 1999 City Council elections in Palisades Park, New Jersey, then-mayoral incumbent, Sandy Farber, made racial appeals and warned voters against Korean Americans “attempting to take over our town and change it inside out.” Farber did not attempt to cloak his blatantly racist appeal with code words or subtle slights at Korean Americans. In attacking a Korean American candidate for City Council, Farbert wrote:

¹³⁷ See Lena H. Sun, *Bias Greets Visitors to the White House*, WASH. POST, Sep. 11, 1997, at A01.

¹³⁸ Jeffrey Barca, *Feds to Watch Edison Vote*, HOME NEWS TRIB., Nov. 11, 2005, available at <http://www.thnt.com/apps/pbcs.dll/article?AID=/20051102/NEWS/511020421/1001>.

¹³⁹ See Letter from Margaret Fung, Exec. Dir. and Glenn D. Magpantay, Democracy Project Dir., Asian Am. Legal Def. and Educ. Fund, to Hon. Janet Reno, Attorney Gen. of the United States, U.S. Dep’t of Justice (Dec. 8, 1998). (App. P.) See also Statement of Margaret Fung, Exec. Dir., Asian Am. Legal Def. and Educ. Fund, Press Conf. at New York City Hall (Dec. 11, 1998). (App. P.)

¹⁴⁰ Letter from Glenn Magpantay, NAPIL Equal Justice Fellow, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Oct. 21, 1998). (App. D.)

“Now we are faced with a new problem – one that threatens to wipe out our history and our heritage. . . . Our quality of life will be brought to an abrupt and chaotic end.”¹⁴¹

- In Hamtramck, Michigan, the Justice Department sued the city and law enforcement officials who engaged in blatant racial profiling. During the 1999 elections, officials in Hamtramck, a historically Polish community with a growing South Asian population, profiled Arab and South Asian voters. Police escorted Arab and Bangladeshi voters from voter lines to interrogate them about their eligibility to vote and required them to provide multiple forms of identification and proof of citizenship. The improper use of police, racist profiling, and blatant attempt to disenfranchise Arab and Bangladeshi voters in Hamtramck was not unlike the forms of intimidation used against minority voters prior to passage of the VRA in 1965.¹⁴²

Similarly, improper police conduct at poll sites, like racial profiling and improper demands for identification, erects yet another barrier to the full enfranchisement of Asian American voters. In the November 2004 Elections, police were also improperly involved in the administration of the elections.

- In Chinatown in New York City, AALDEF observers reported that a police officer sat at a table in a polling place and required Asian American voters to show picture identification, not at all a requirement in New York elections. If voters could not produce picture identification, the officer turned them away from the polls and told them to go home. The improper police involvement also caused long lines among those Asian American voters who had to wait and show the officer their identifications.¹⁴³
- At another poll site, an Asian American voter complained that a police officer accompanied her in the voting booth when the voting machine broke down. The officer asked for whom she was voting. After the machine was fixed, the police officer still stuck his head in while the voter cast her ballot.¹⁴⁴

Such improper police conduct causes the community to remain suspicious of the authorities charged with protecting them and marginalizes the community from the political process.

3. Employment barriers

Despite the high educational attainment and professional achievements of some Asian Americans, workplace discrimination continues to exist. Resumes may be passed over because

¹⁴¹ Letter from Sandy Farber, Mayor, Borough of Palisades Park (November 1999). (App. P.)

¹⁴² *United States v. Hamtramck* (E.D. Mich. 2000) (on file with the U.S. Dep’t of Justice).

¹⁴³ Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir., New York City Bd. of Elections 9 (June 16, 2005). (App. D.)

¹⁴⁴ Letter from Glenn D. Magpantay to John Ravitz, at 9. (App. D.)

applicants' names are too ethnic. In the case of one major retailer, The Limited Inc., applicants looked too ethnic to work on the sales floor of Abercrombie & Fitch stores.¹⁴⁵

In the professional arena, highly educated Asian Americans continue to find themselves pinned beneath the proverbial glass ceiling.¹⁴⁶ In a report commissioned by the Glass Ceiling Act,¹⁴⁷ a 21-member commission found that 97 percent of senior managers at Fortune 1000 industrial and Fortune 500 companies are white.¹⁴⁸ The commission further found that 95 percent to 97 percent of the managers are male, and that while there are women and minorities in leadership roles, their compensation is almost always lower.¹⁴⁹

For Asian Americans, the glass ceiling takes on a different meaning, as the misperception that Asian Americans generally succeed professionally overshadows the fact that barriers tied to race also prevent Asian Americans from rising to higher levels. The Glass Ceiling Commission said this phenomenon was related to the fact that other racial groups, including Asians themselves, did not identify Asians as "minorities."¹⁵⁰ The danger is the failure to acknowledge that Asian Americans have less of an opportunity than Caucasians to rise in the corporate world.¹⁵¹

A recent case filed by the U.S. Equal Employment Opportunity Commission demonstrates the persistence of the glass ceiling. In October 2005, the E.E.O.C. sued a software technology company because it failed to pay a female employee of Vietnamese descent the same salary as her male counterparts.¹⁵² The employee had assumed responsibilities comparable to a managerial position but was paid \$50,000 less than white male colleagues in that position.¹⁵³

In the legal community, while the number of Asian Americans earning their law degrees increased 400 percent from 1975 to 2003, and while Asian Americans now comprise the largest number of minorities working in private law firms, a miniscule percentage of Asian American associates remain at their firms long enough to make partner.¹⁵⁴ Likewise, Asian Americans in the position of General Counsel at Fortune 500 companies number less than a handful.¹⁵⁵

¹⁴⁵ See *Gonzalez v. Abercrombie & Fitch*, No. CV-04-4731 SI (N.D. Cal. 2004). In a nationwide class action lawsuit, rejected minority applicants alleged Abercrombie of failing to hire them because of their race, ethnicity, and/or national origin. The plaintiffs alleged that Abercrombie's marketing strategy to promote a culture and lifestyle that was "Classic American" did not include Latinos, African Americans, and Asian Americans, and led to a store-wide policy against the hiring of minorities for its sales floors. The case was settled with the plaintiffs winning a \$40 million agreement.

¹⁴⁶ See generally, FED. GLASS CEILING COMM'N, *GOOD FOR BUSINESS: MAKING FULL USE OF THE NATION'S HUMAN CAPITAL* (1995).

¹⁴⁷ 42 U.S.C. § 2000e (2006).

¹⁴⁸ FED. GLASS CEILING COMM'N, *supra* note 146, at iii-iv.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 103.

¹⁵¹ *Id.* at 111 (stating, "In fact, Asian and Pacific Islander American men are well represented as professionals in the workforce, but they are underrepresented in executive-managerial positions.").

¹⁵² *E.E.O.C. v. Borland Software Corp.*, No. 05-3979 HRL (N.D. Cal. Oct. 19, 2005).

¹⁵³ *Id.*

¹⁵⁴ See generally, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM'N, *DIVERSITY IN LAW FIRMS* (2003).

¹⁵⁵ See Minority Corp. Counsel. Assoc., *Asian Lawyers Gaining*, *DIVERSITY & THE BAR* (Aug. 1999), available at http://www.mcca.com/site/data/magazine/diversity_magazine/diversity1199.shtml.

Asian American professionals possess the educational background and financial means to play an influential role in American society. However, barriers to career advancement, like the glass ceiling and the virtual absence of Asian American professionals from the leadership ranks of the board room and law firm partnerships, suggest that merit and ingenuity, at least in practice, do not warrant the same rewards for Asian American professionals.

IV. EXPANSION OF THE NUMERIC TRIGGER AND ADDITIONAL REFORMS

The exponential growth of the Asian American population in the United States, coupled with their increasing rates of citizenship and demonstrated needs for language assistance in exercising the fundamental right to vote, warrants reauthorization and expansion of the language assistance provisions. By modifying the Section 203 numeric trigger below 10,000, language assistance can expand to cover more language minority groups in more jurisdictions.

A. The Effect of Lowering the Numeric Trigger to 7,500

Under the current numeric trigger, 5 Asian language groups (Chinese, Korean, Filipino, Vietnamese, and Japanese) are covered in 16 jurisdictions. Lowering the trigger to 7,500 would increase language coverage to 2 additional language groups (Cambodian and Asian Indian), in 17 jurisdictions. Most significantly, a 7,500 trigger would add Chinese coverage in Sacramento County, California; Cambodian in Los Angeles County; Korean in Cook County, Illinois; and Asian Indian in Queens County, New York.

Moreover, lowering the trigger to 5,000 would cover 8 Asian language groups (the same 5 languages under the current trigger, plus Cambodian, Asian Indian, and Thai) in 21 jurisdictions. Notably, expansion would provide for Chinese and Vietnamese language assistance in Fairfax County, Virginia, and Chinese language assistance in Montgomery County, Maryland.

Table 8: Coverage Lowering the Numerical Trigger to 7,500¹⁵⁶

Group		Citizen Voting Age Population (CVAP)	CVAP & Limited English Proficient	Illiteracy Rate
CALIFORNIA				
Alameda County	Filipino	43,895	9,335	5.57
Los Angeles County	Cambodian	12,135	7,830	29.44
Sacramento County	Chinese	19,715	8,085	16.14
San Diego County	Vietnamese	17,285	9,915	8.93
San Francisco County	Filipino	29,360	8,295	7.11
San Mateo County	Filipino	37,185	8,695	4.60
ILLINOIS				
Cook County	Korean	18,770	8,930	4.54
NEW YORK				
Queens County	Asian Indian	43,900	8,640	3.18
WASHINGTON				
King County	Vietnamese	13,605	8,230	10.27
<i>Under this threshold, an additional 77,955 eligible limited English proficient Asian American voters would be covered for Section 203 language assistance.</i>				

¹⁵⁶ See U.S. CENSUS BUREAU, Voting Rights Determination File, available at <http://www.census.gov/rdo/www/voting%20rights.htm>.

Table 9: Additional Coverage Lowering the Numerical Trigger to 5,000¹⁵⁷

Group		Citizen Voting Age Population (CVAP)	CVAP & Limited English Proficient	Illiteracy Rate
CALIFORNIA				
Alameda County	Vietnamese	12,095	7,075	11.10
Contra Costa County	Chinese	19,945	6,070	4.70
Los Angeles County	Asian Indian	29,740	5,405	5.27
Los Angeles County	Thai	10,405	5,130	5.56
Sacramento County	Vietnamese	8,060	5,010	11.08
San Diego County	Chinese	20,195	6,295	10.09
HAWAII				
Honolulu County	Korean	20,010	5,830	5.75
ILLINOIS				
Cook County	Asian Indian	27,310	6,630	4.00
Cook County	Filipino	33,550	5,955	3.36
MARYLAND				
Montgomery County	Chinese	14,755	5,815	4.47
TEXAS				
Harris County	Chinese	16,385	7,025	9.32
VIRGINIA				
Fairfax County	Vietnamese	11,920	6,960	4.89
Fairfax County	Korean	12,090	5,970	1.68
<i>Under this threshold, an additional 79,170 eligible limited English proficient Asian American voters would be covered for Section 203 language assistance.</i>				

B. More Frequent Testing for Coverage

Another recommendation for expanding language access under Section 203 is to require more frequent testing to determine whether coverage should expand to a particular jurisdiction. While the U.S. Census Bureau determines Section 203 coverage once every 10 years,¹⁵⁸ the Census Bureau is already using a new procedure for determining economic, social, demographic, and housing information through the use of the American Community Survey that is sent to randomly selected addresses every month. This development allows the Census Bureau to update census demographics every 3 years, and to make Section 203 determinations every 5 years.¹⁵⁹

¹⁵⁷ *Id.*

¹⁵⁸ 42 U.S.C. § 1973aa-1a(b)(2)(A) (2006) (stating, “A State or political subdivision is a covered State or political subdivision . . . if the Director of the Census determines, based on census data, that . . .”).

¹⁵⁹ Mem. from Julie Fernandes, Leadership Conf. on Civil Rights to voting rights listserv, Section 203 Modifications and Clarifications, July 20, 2005 (hereinafter Fernandes, LCCR Memo on 203 Modification).

More frequent determinations of Section 203 coverage would benefit Asian American communities that have experienced exponential population growth year-to-year but must wait until the end of each decade for the Census Bureau to verify such growth.¹⁶⁰ The Korean American community experienced this problem in New York. Following large population gains in the 1980s, the Korean American community, according to the 1990 Census, was short 250 persons to gain coverage under Section 203.¹⁶¹ Although that community might have reached the numeric trigger in the early half of the 1990s, it did not officially gain coverage until after the 2000 Census.¹⁶² More recently, the Vietnamese community in San Diego fell 85 persons short of the numeric trigger following the 2000 Census.¹⁶³ Even though that community may have surpassed the trigger, the Census Bureau will not determine coverage until after 2010. More frequent testing for coverage will open language access to thousands of voters who might otherwise have to wait another few election cycles before gaining coverage.¹⁶⁴

C. Relative Costs of Compliance

A national survey of jurisdictional compliance with the language assistance provisions of Section 203 found that 90 percent of jurisdictions reported bilingual written material expenses made up only an average of 3 percent of total election costs.¹⁶⁵ Moreover, 59 percent of jurisdictions in their survey incurred no extra costs by providing oral language assistance, and 54 percent incurred no additional costs by providing bilingual written materials.¹⁶⁶ Overall, 40 percent of jurisdictions in the survey reported no extra costs for providing oral and written language assistance.¹⁶⁷ Finally, the study found that most jurisdictions minimized the costs of language assistance by targeting specific areas.¹⁶⁸

¹⁶⁰ Magpantay, *supra* note 73, at 55.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Notice of Lodgment and Mem. of Agreement in *United States v. San Diego County* (S.D. Cal. 2004).

¹⁶⁴ In addition to the numeric threshold, Section 203 further requires that the community, as a group, has a higher illiteracy rate than the national illiteracy rate. 42 U.S.C. § 1973aa-1a(b)(2)(A). Another alternative to expanding language assistance is to eliminate the illiteracy requirement, or to use a different measure of the requirement. Indeed, the current measure of illiteracy (less than a fifth grade education), has little to do with English proficiency and is problematic because of the way the Census Bureau frames the question. The question is ambiguous as to whether the respondent was educated abroad or in the United States, and has disqualified languages and jurisdictions from Section 203 coverage. Glenn D. Magpantay & Nancy W. Yu, *Asian Americans and Reauthorization of the Voting Rights Act*, 19 NAT'L BLACK L.J. 1, 26-27 (2006).

¹⁶⁵ *Oversight Hearing on the Voting Rights Act: Section 203-Bilingual Election Requirements, Part II Before the House Subcomm. on the Const., House Judiciary Comm.*, 109th Cong. at 4-7 (Nov. 9, 2005) (statement of Dr. James Thomas Tucker, Attorney, Ogletree Deakins, P.C., Adjunct Professor, Barrett Honors College at Arizona State University) available at <http://judiciary.house.gov/media/pdfs/tucker110905.pdf> (referring to RODOLFO ESPINO & JAMES TUCKER, MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS, 82-84 (2006)).

In this study, 42.7 percent of the 361 jurisdictions that responded to the authors' survey provided complete cost data for language assistance, and 39.9 percent of the responding jurisdictions provided complete cost data for bilingual written materials. The reason that some jurisdictions did not provide cost data ranged from the absence of language assistance to the fact that jurisdictions did not separate the cost of language assistance from the total cost of the overall administration of elections.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

The relatively low cost of language assistance could be further offset by using money allocated to the states by the federal government under HAVA.¹⁶⁹ Although states could budget the costs of language assistance into their HAVA compliance plans,¹⁷⁰ few actually take advantage of these funds for this purpose.¹⁷¹

D. Periodic Compliance Reports

AALDEF's documentation of habitual noncompliance in covered jurisdictions demonstrates that absent a mechanism to gauge the level of compliance by those jurisdictions, little incentive exists to fully comply with federally-mandated requirements for language assistance. Indeed, the Justice Department already requires periodic compliance reports when it negotiates consent agreements from jurisdictions it has sued for pervasive noncompliance with the language assistance provisions, or a showing under Section 2 of the VRA that a jurisdiction's election procedures discriminate on the basis of race, color, or language minority status.¹⁷²

In its Memorandum of Understanding and Agreement with Harris County, Texas, the Justice Department requires the county to provide assurances of its compliance with the VRA by providing Vietnamese language assistance. One safeguard requires each election judge to complete and sign a checklist that attests the election judge posted or made available Vietnamese-language voting materials, including sample ballots, voter registration and address update forms, affidavits, and other voting materials.¹⁷³ Further, the Agreement established a County Coordinator exclusively responsible for implementing the county's Vietnamese language assistance program and developing a comprehensive publicity program to notify the Vietnamese-speaking community about the program.¹⁷⁴ The Agreement also accounts for community involvement through an advisory group composed of members of the Vietnamese-speaking community who meet to discuss implementation of the language assistance plan, review all translated election announcements and notices, and analyze the elections procedures used to administer the plan. Similar provisions are included in the Justice Department's agreement with the City of Boston to provide Vietnamese and Chinese language assistance.¹⁷⁵

These agreements demonstrate that cooperation between elections administrators and language minority communities facilitates implementation of language assistance programs and ensures accurate translations, timely and effective notice, and adequate oral language assistance.¹⁷⁶

¹⁶⁹ See generally, Glenn D. Magpantay, *Two Steps Forward, One Step Back, and a Side Step: Asian Americans and the Federal Help America Vote Act*, 10 U.C.L.A. ASIAN PAC. L.J. 31 (2005).

¹⁷⁰ *Id.* at 47 n.121.

¹⁷¹ *Id.*

¹⁷² 42 U.S.C. § 1973(a) (2006).

¹⁷³ Mem. of Understanding and Agreement, Harris County and U.S. Dep't of Justice, at ¶ 8 (Mar. 2, 2004).

¹⁷⁴ *Id.* at ¶ 9.

¹⁷⁵ See, e.g., *United States v. City of Boston*, No. 05-11598 WGY (D. Mass. 2005) (stating "The City of Boston therefore agrees to evaluate each bilingual program after each election (e.g., following the 2005 preliminary election) to determine which aspects of such programs are functioning well, whether any aspects need improvement, and, if improvements are needed, how to address them. The Department of Justice shall be available to meet with the City of Boston following each election to share information it learns through its federal examiners, and to assist the City of Boston in its ongoing assessment of its bilingual election program."). (App. C.)

¹⁷⁶ 28 C.F.R. § 55.16.

V. THE ENFORCEMENT PROVISIONS OF THE VOTING RIGHTS ACT

Two enforcement provisions of the Voting Rights Act that are critical for Asian American voters are also set to expire in 2007 and must be reauthorized to ensure that the language assistance provisions remain effective. The enforcement and preclearance provision, codified at Section 5, has ensured that voting changes do not weaken the voting strength of Asian Americans.¹⁷⁷ The federal observer and examiner provisions, codified at Sections 6 - 9,¹⁷⁸ have guarded against possible discrimination at the polls and documented discriminatory barriers.

A. Section 5's Impact on Asian Americans

Section 5 covers jurisdictions that have a history of racial voter discrimination.¹⁷⁹ Once covered, Section 5 requires that changes to any voting qualification, standard, practice, or procedure or redistricting plan be “precleared” by the U.S. Department of Justice or the U.S. District Court for the District of Columbia before going into effect.¹⁸⁰ To obtain preclearance, the jurisdiction must show that the proposed change does not have the purpose or effect of denying or abridging the right to vote because of race or color.¹⁸¹ If preclearance is denied, then the change cannot be implemented.¹⁸²

In New York City, Section 5 covers New York, Kings, and Bronx Counties.¹⁸³ New York and Kings Counties have particularly large Asian American populations. Section 5 has protected Asian Americans from voting changes that would have diluted their voting strength. Three notable examples are Community School Board Elections, poll site changes, and the requirement to provide language access to the vote.

1. New York City School Board Elections

Before 2001, the only electoral success for Asian Americans was on the local community school boards.¹⁸⁴ In each election, in 1993, 1996, and 1999, Asian American candidates ran for school board and won.¹⁸⁵ This stood in stark contrast to the total absence of Asian Americans in the City Council, State Legislature, or Congress, despite a city-wide population of over 800,000 Asian Americans, and 15 Asian American elected officials on the school boards.¹⁸⁶

¹⁷⁷ 42 U.S.C. § 1973c (2006).

¹⁷⁸ *Id.* § 1973d (2006).

¹⁷⁹ *Id.* § 1973c.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ 28 C.F.R. § 51.4 (2006).

¹⁸⁴ ASIAN AM. LEGAL DEF. AND EDUC. FUND, ASIAN AMERICAN PARTICIPATION IN THE 1993 NEW YORK CITY SCHOOL BOARD ELECTIONS 14 (1993) [hereinafter 1993 AALDEF School Board Report]; ASIAN AM. LEGAL DEF. AND EDUC. FUND, ASIAN AMERICAN PARTICIPATION IN THE 1996 NEW YORK CITY SCHOOL BOARD ELECTIONS 14 (1997) [hereinafter 1996 AALDEF School Board Report]. (App. O.)

¹⁸⁵ In 1993, 6 of a total of 11 Asian American candidates won. In 1996, 11 of a total of 15 Asian American candidates won election. In 1999, 15 of a total number of 21 Asian American candidates won. *School Board Election Results*, N.Y. TIMES, June 23, 1996.

¹⁸⁶ See Anemona Hartocollis, *U.S. Rejects Voting Plan For Local School Boards*, N.Y. TIMES, Feb. 5, 1999.

The school boards used an alternative voting system known as “single transferable voting” or “preference voting.” Instead of selecting one representative from single-member districts, voters ranked candidates in order of preference, from “1” to “9.” Minority voting rights advocates such as Harvard Law Professor Lani Guinier, have praised the alternative voting system as a way to promote minority representation.¹⁸⁷

In 1998, however, New York opted to change the voting system from “preference voting” in which voters ranked their choices, to a different system of “limited voting” where voters could select only 4 candidates for the 9-member board, and the 9 candidates with the highest number of votes were elected. This voting change was submitted to the Justice Department for preclearance.

AALDEF submitted comments to the Justice Department in opposition to the change and urged denial of preclearance because Asian American voters would be in a worse position to elect candidates of their choice.¹⁸⁸ The Justice Department, under its authority under Section 5, interposed an objection and prevented the voting change from taking effect.¹⁸⁹ Asian Americans continued to enjoy representation on the school board.

2. Poll Site Changes

Changes to poll sites are extremely disruptive to the ability of Asian Americans to vote. In every election AALDEF has monitored in New York City, the Board of Elections has not taken all the reasonable steps to ensure that Asian American voters are informed of their correct poll sites. Voters have been misinformed about their poll sites *before* the elections or misdirected by poll workers at poll sites on Election Day. Section 5 has helped to minimize these disruptions.

First, the requirement of preclearance provides one level of mandatory public notice. Any changes to poll sites must be submitted for preclearance. Once submitted, the Attorney General must notify interested individuals and groups of the proposed submission.¹⁹⁰ The Department provides copies of detailed submissions to groups who request the information. In 2005, AALDEF had formally requested that the New York City Board of Elections place AALDEF on the Board’s distribution list for all proposed poll site changes submitted pursuant to Section 5.¹⁹¹ The Board responded that it had no such distribution list and, therefore, was not

¹⁸⁷ LANI GUINIER, *THE TYRANNY OF THE MAJORITY* 41 (1994); *Holder v. Hall*, 114 S. Ct. 2581, 2594-2602 (1994) (Thomas, J., concurring). For a fuller discussion of alternative voting systems, see THE CENTER FOR VOTING AND DEMOCRACY, *VOTING AND DEMOCRACY REPORT* 15 (1995); John B. Anderson, Opinion/Essays, *Go Back to the Drawing Board to Make More Votes Count*, CHRISTIAN SCI. MON., Jan. 12, 1996, at 18.

¹⁸⁸ Letter from Margaret Fung, Exec. Dir. and Tito Sinha, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to Elizabeth Johnson, Chief, Voting Section, Civil Rights Div., U.S. Dep’t of Justice (Oct. 8, 1998). (App. O.)

¹⁸⁹ Letter from Bill Lann Lee, Acting Asst. Attorney Gen., Civil Rights Div., U.S. Dep’t of Justice, to Eric Proshansky, Asst. Corp. Counsel, City of New York (Feb. 4, 1999) (App. O); Anemona Hartocollis, *U.S. Rejects Voting Plan For Local School Boards*, N.Y. TIMES, Feb. 5, 1999.

¹⁹⁰ 28 C.F.R. § 51.32 (2006); *id.* § 51.33 (2006).

¹⁹¹ Letter from Glenn D. Magpantay, Staff Attorney, Asian Am. Legal Def. and Educ. Fund, to John Ravitz, Exec. Dir. and Steven Richman, Counsel, New York City Bd. of Elections (Dec. 15, 2005). (App. N.)

able to inform groups of proposed changes. The Justice Department, through Section 5, was the only way that community groups would know about proposed changes.

Once alerted, Section 5 has prevented sudden poll sites closures in Asian American neighborhoods that would have been made without notice to the community. Indeed, even in emergencies, poll site changes, absent notice, constitute violations of Section 5. In 2001, the primary elections were scheduled for September 11. But the elections were cancelled due to the attacks on the World Trade Center and rescheduled for September 25.¹⁹²

The week prior to the rescheduled primary elections, AALDEF discovered that a certain poll site, I.S. 131, located in the heart of Chinatown and within the restricted zone in Lower Manhattan, was being used by the Federal Emergency Management Agency (FEMA) for services related to the World Trade Center disaster. The Board of Elections chose to close down the poll site but failed to inform voters of the change. The Board managed, however, to submit the proposed change to the Justice Department for preclearance under Section 5.

AALDEF filed oral objections with the Justice Department for the closure of the poll site because no notice had been given to voters. There was no media announcement for the Asian language newspapers, no attempts to send out a mailing to voters, and no arrangements to place signs or poll workers at the site to redirect voters to other poll sites. No consideration was made for the fact that the majority of voters at this site were limited English proficient and the site was targeted for Asian language assistance under Section 203. AALDEF contended that the New York City Board of Elections should have considered placing bilingual poll workers and translated signs at the poll site directing voters where to vote. The Justice Department issued an objection and informed the Board of Elections that the change could not take effect. The elections took place as originally planned at I.S. 131, and hundreds of votes were cast on September 25. Without Section 5, those voters would have lost their right to vote.

3. Language Assistance and Section 5 Enforcement

Section 5 has had its greatest influence on the ability of Asian Americans to participate in the political process in the Section 203 context. When jurisdictions are covered under both Sections 5 and 203 – such as New York and Kings Counties in New York, Alameda County in California, and the State of Texas – the two provisions combined have been powerful tools to ensure that language minorities have full access to the vote.

Section 5 requires that plans for compliance with Section 203, or changes to current practices to comply with Section 203, must be precleared. As noted above, interested individuals and community groups may review the submission and comment during the preclearance period.¹⁹³

¹⁹² The New York City Board of Elections is to be commended for conducting the rescheduled Primary Elections under the extraordinary circumstances following September 11. There was high voter turnout in the September 25 election. The Board's efforts enabled New Yorkers to demonstrate their strong commitment to the democratic process, even in times of crisis.

¹⁹³ Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, as Amended, 28 C.F.R. § 51.29 (2006) (allowing individuals and groups to make comments under Section 5).

Section 5 played a pivotal role in shaping the Chinese Language Assistance Program in New York, which was first adopted after the City gained coverage under Section 203 in 1992. Although the Board of Elections had agreed to provide sample ballots and voting instructions in Chinese for the 1994 primary elections, it claimed that New York's mechanical-lever voting machines did not have space for the candidates' names in Chinese. AALDEF met on numerous occasions with local election officials to convince them that candidates' names must be transliterated into Chinese, emphasizing that the transliterated name was the single most important piece of information on the ballot to voters.¹⁹⁴

One reason why transliterating names was of paramount importance was because Asian-language media outlets also transliterate the names of candidates. Section 203's legislative history and regulations acknowledge Asian-language media outlets as a source of news for language minority groups.¹⁹⁵ AALDEF found in its 2004 exit poll that more than half (over 51 percent) of the 11,000 respondents received their news about politics and community issues from the ethnic press, rather than mainstream media outlets.¹⁹⁶ Even Section 203's critics readily admit the "long tradition in the United States of ethnic newspapers—often printed in languages other than English—providing political guidance to readers in the form of sample ballots and visual aids that explain how to vote."¹⁹⁷ Because of the manner in which Asian Americans receive political and candidate information, the transliteration of candidates' names on ballots was critical.

Community groups pressed for fully translated ballots that included the transliteration of candidates' names. Unfortunately, political and media advocacy only went so far.¹⁹⁸ Ultimately, the denial of preclearance of the Board of Elections's language assistance program under Section 5 is what forced the recalcitrant Board to provide fully translated machine ballots with candidates' names in Chinese. Section 5's comment and preclearance process gave community groups and individuals real opportunities to shape meaningful language assistance programs.¹⁹⁹

The interaction of Section 5 and 203 also came into play after the 2000 Census. The census reported a 66 percent growth in the Asian American population in New York.²⁰⁰ Commensurate with this growth, the number of poll sites and election districts targeted to

¹⁹⁴ Fung, AALDEF VRA Testimony before Congress, 2005, *supra* note 130, at 5. (App. A.)

¹⁹⁵ S. REP. NO. 94-295, at 33 (1975). 28 C.F.R. § 55.18 (e) (2006) (discussing minority media).

¹⁹⁶ ACCESS TO DEMOCRACY 2004, *supra* note 33, at 12. (App. B.)

¹⁹⁷ *Oversight Hearing on the Voting Rights Act: Section 203-Bilingual Election Requirements, Part I Before the House Subcomm. on the Const., House Judiciary Comm.*, 109th Cong. at 7 (Nov. 8, 2005) (statement of Linda Chavez, Pres., One Nation Indivisible) (quoting JOHN J. MILLER, *THE UNMAKING OF AMERICANS: HOW MULTICULTURALISM HAS UNDERMINED AMERICA'S ASSIMILATION ETHIC*, 242-43 (Free Press 1998)), available at <http://judiciary.house.gov/OversightTestimony.aspx?ID=510>.

¹⁹⁸ During one lively meeting of the election commissioners, over 100 Asian Americans packed the hearing room, carrying banners and Chinese-language signs demanding their right to fully-translated bilingual ballots. An August 19, 1994 editorial in *The New York Times* delivered a scathing rebuke of the Board of Elections' inaction under the Voting Rights Act: "That sounds like the foot-dragging bureaucratic arguments that have been raised all over America at one time or another against giving minorities their rights. It is no excuse for not obeying the law."

¹⁹⁹ Fung, AALDEF VRA Testimony before Congress, 2005, *supra* note 130. (App. A.)

²⁰⁰ JESSICA S. BARNES & CLAUDETTE E. BENNETT, U.S. CENSUS BUREAU, *THE ASIAN POPULATION: 2000* 5 tbl.2 (2002).

provide language assistance significantly increased. Despite this population growth, the Board of Elections tried to curtail its language assistance program by proposing a change in its targeting formula.

The Board's proposed change would have increased the voting age population (VAP) threshold to target assistance by poll site. The current methodology, used then and now, was an aggregated Chinese or Korean VAP of 125 for all the election districts (EDs) at particular sites. The new methodology proposed to increase the aggregated VAP to 200. The effect of this change was the removal of nearly 70 poll sites (26 in Manhattan, 12 in Brooklyn, and 27 in Queens) from being targeted for Chinese language assistance. This also removed 16 sites in Queens for Korean language assistance.

AALDEF submitted comments in opposition to preclearance under Section 5 arguing that the change was retrogressive.²⁰¹ The Justice Department, in deciding whether to interpose an objection, sent the Board of Elections a "more information" letter that asked for more detailed information to refute AALDEF's contentions. It also gave the City another opportunity to demonstrate how the change did not place Asian Americans in a worse position to exercise their right to vote. Upon receiving this "more information" letter, along with AALDEF's opposition letter, the Board of Elections withdrew its submission to change the targeting formula. It was because of Section 5 that Section 203 has been fully implemented in New York.

4. Redistricting

Section 5 has also been used by Asian Americans to comment on redistricting plans. Every 10 years the boundaries of voting districts must be redrawn to make them equal in population.²⁰²

After Census 1990 and 2000, AALDEF and many community groups submitted comments under Section 5 on the redistricting plans for the New York City Council and New York State Legislature.²⁰³ AALDEF asserted that Asian American neighborhoods should be kept within a single district, documenting political cohesion among Asian American voters and the presence of communities of interest within certain districts. AALDEF also objected to proposed city council redistricting plans that would have joined Manhattan's Chinatown, where mostly lower-income Chinese reside, with the heavily white, upscale neighborhood of Soho, Tribeca and Battery Park City.

Section 5 has provided a mechanism for Asian Americans to comment on voting changes that would deny them a meaningful opportunity to elect candidates of their choice. Section 5 should be reauthorized and the full range of its protections should be restored.

²⁰¹ Letter from Glenn Magpantay, Asian Am. Legal Def. and Educ. Fund, to Joseph Rich, Acting Chief, Voting Sec., Civil Rights Div., U.S. Dep't of Justice (Oct. 17, 2003). (App. N.)

²⁰² See generally, *Reynolds v. Sims*, 377 U.S. 533 (1964).

²⁰³ See App. O.

B. Sections 6 – 9's Impact on Asian Americans

Jurisdictions with a history of racial discrimination are covered under Section 5. When a jurisdiction is covered under Section 5, the Attorney General is authorized, under Sections 6 - 9, to dispatch federal observers and examiners to ensure compliance with the Voting Rights Act.²⁰⁴ Sections 6 through 9 protect minority voters from possible intimidation and other tactics that may undermine their political participation. The sections also authorize observers to document instances of noncompliance and other voting barriers that can be used in litigation.

1. Language Assistance

Under Sections 6 through 9, federal observers have been sent to monitor elections in jurisdictions covered by Section 203. Their presence has provided local elections administrators with the incentive to better comply with Section 203 and remedy deficiencies. For example, in the 2000 Elections, many voters in New York City were turned away because there were too few interpreters at poll sites.²⁰⁵ The observations and reports filed by the Justice Department following the elections persuaded the New York City Board of Elections to implement and maintain a backup pool of interpreters who could be assigned on the day of the election. This has helped alleviate the problem of interpreters who did not show up at their assigned poll sites in subsequent elections.

In other elections, Asian American voters and community groups complained that translations of candidates' names on ballots were too small for voters to read. After federal observers were sent to New York to observe this complaint, the Board of Elections began to place magnifying sheets inside voting booths for voters to use. The evidence and observations gathered under Sections 6 - 9 have been powerful tools to remedy deficiencies in the implementation of Section 203.

2. Deterrent Effects of Federal Examiners and Observers

The dispatch of federal examiners and observers under Sections 6 - 9 has a deterrent effect on discriminatory conduct. In 2004, before the general election, the New York City Board of Elections considered the videotaping and photographing of voters. Attorneys from the Justice Department expressed their view that this would violate federal law and the Board of Elections quickly dropped any further consideration of this proposal.

In another instance, reports had circulated before the 2001 mayoral elections in New York that "voter integrity" poll watchers were going to be placed in poll sites in minority neighborhoods. Community groups had denounced the effort as an attempt at voter suppression and called upon the Justice Department to dispatch federal observers. The Justice Department sent federal observers, and few reports of voter intimidation by non-poll workers were reported on election day. Sections 6 through 9 are powerful tools that give the Attorney General the tools to curtail and prevent threats of voter discrimination.

²⁰⁴ 42 U.S.C. § 1973c (2006).

²⁰⁵ William Murphy et al., *Spirit Willing, System Weak*, NEWSDAY, Nov. 8, 2000, at A10.

The Voting Rights Act's enforcement provisions, Sections 5 and 6 - 9 are critically important to prevent the disenfranchisement of minority voters and to ensure the full implementation of Section 203. These temporary provisions of the VRA should be reauthorized in order to preserve and enhance the political participation of Asian Americans.

VI. CONCLUSION

A recent ruling by a federal district court summarizes well the importance of language assistance:

Voting without understanding the ballot is like attending a concert without being able to hear. Even if the voter, illiterate in English, may be able to distinguish one candidate's last name from another, the voter illiterate in English may not understand the office for which the various candidates are running, and surely cannot understand the various propositions, ranging from bond authorizations to constitutional amendments. But the meaningful right to vote extends beyond the immediate four corners of the voting machine. Advertisements of the location of polling places and sample official ballots are meaningless if a large segment of the voters in a particular precinct cannot read the material. Voting officials who cannot communicate with Spanish-speaking voters cannot discharge their duties. The voters themselves may have difficulty establishing their right to vote and to exercise their right to special assistance at the polling place . . .²⁰⁶

Section 203 warrants reauthorization because the instances of purposeful discrimination, as detailed in the 1975, 1982, and 1992 Congressional reports, continue today, and stem from historical, societal, and institutional factors that serve to disenfranchise Asian American and other language minority voters. Moreover, disparities in the educational opportunities available to language minority students persist. The failure to address this shortfall nearly guarantees that these students will continue to be marginalized from the political process, since there is a strong corollary between educational attainment and voter turnout.²⁰⁷ Habitual noncompliance in jurisdictions where the federal government already requires language assistance demonstrates that absent Section 203, language minority voters will be further disenfranchised from the political process. Accordingly, Sections 5, 6-9, and 203 should be renewed and restored in order to ensure that the right to vote is fully protected as guaranteed by the Constitution.

²⁰⁶ *United States v. Berks County*, 250 F. Supp. 2d 525, 527 (E.D. Pa. 2003).

²⁰⁷ JENNIFER CHEESEMAN DAY & KELLY HOLDER, U.S. CENSUS BUREAU, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2002 3 (stating "Older individuals, homeowners, married couples, and people with more schooling, higher incomes, and jobs all have higher voting rates.").

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