

**Joint Statement of  
Asian Americans Advancing Justice and  
Asian American Legal Defense and Education Fund**

**Before the  
Subcommittee on the Constitution and Civil Justice  
Committee on the Judiciary  
United States House of Representatives**

**Hearing  
“The Voting Rights Act after the Supreme Court's Decision in Shelby County”**

**July 18, 2013**

**Introduction**

Enforcement of the Voting Rights Act of 1965 (VRA) has been critical in preventing actual and threatened discrimination aimed at Asian Americans in national and local elections. Continuing discrimination in voting and more generally against Asian Americans remain, especially in areas of new growth such as the South and is likely to worsen as a result of the decision in *Shelby v. Holder*. Asian American voters have been left more vulnerable to wrongdoers and have suffered a serious roll-back in their right to vote. Asian Americans Advancing Justice (“Advancing Justice”) and the Asian American Legal Defense and Education Fund (“AALDEF”) submit this testimony to elucidate the precarious landscape of Asian American voting rights in wake of the Supreme Court’s decision in *Shelby v. Holder* and respectfully ask that it be entered into the record.

**Organizational Information**

Advancing Justice and AALDEF are organizations that promote the constitutional and civil rights of Asian Americans, including the right of Asian Americans to participate in the United States’ political process.

Advancing Justice is a national affiliation of four civil rights nonprofit organizations that joined together in 2013 to promote a fair and equitable society for all by working for civil and human rights and empowering Asian Americans and Pacific Islanders and other underserved communities. Our member organizations are: Asian Americans Advancing Justice | Chicago (formerly Asian American Institute - the leading pan-Asian organization in the Midwest dedicated to empowering the Asian American community through advocacy, research, education, leadership development, and coalition-building); Asian Americans Advancing Justice | AAJC (formerly Asian American Justice Center - a national organization that advances the civil and human rights of Asian Americans and builds and promotes a fair and equitable society for all

through public education, policy analysis and research, policy advocacy, litigation, and community capacity and coalition building); Asian Americans Advancing Justice | Asian Law Caucus (formerly Asian Law Caucus - the nation's oldest legal organization defending the civil rights of Asians and Pacific Islanders, particularly low-income, immigrant, and underserved communities); and Asian Americans Advancing Justice | Los Angeles (formerly Asian Pacific American Legal Center - the nation's largest legal organization serving Asians and Pacific Islanders, through direct legal services, impact litigation, policy advocacy, and leadership development). Advancing Justice was a key player in collaborating with other civil rights groups to reauthorize the Voting Rights Act in 2006. In the 2012 election, Advancing Justice conducted poll monitoring and voter protection efforts across the country, including in California, Florida, Georgia, Illinois, Texas, and Virginia.

AALDEF is a 39-year-old national civil rights organization based in New York City that promotes and protects the civil rights of Asian Americans through litigation, legal advocacy, and community education. AALDEF has monitored elections through annual multilingual exit poll surveys since 1988. Consequently, AALDEF has collected valuable data that documents both the use of, and the continued need for, protection under the VRA. In 2012, AALDEF dispatched over 800 attorneys, law students, and community volunteers to 127 poll sites in 14 states to document voter problems on Election Day. The survey polled 9,298 Asian American voters.

Advancing Justice-AAJC and AALDEF filed an amicus brief with the U.S. Supreme Court in *Shelby County, Alabama v. Holder* on behalf of 28 Asian American groups. The brief urged the Court to uphold Section 5 of the VRA, demonstrating that Section 5 was necessary to protect the voting rights of Asian Americans in areas such as political representation and discriminatory voting changes in light of the ongoing discrimination experienced by Asian Americans. This testimony draws heavily on the examples documented in our amicus brief.

### **Voting Discrimination Against Asian Americans Continues to Exist**

Asian Americans<sup>1</sup> continue to face pervasive and current discrimination in voting, particularly in jurisdictions that were previously covered for Section 5 preclearance.

For example, in the 2004 primary elections in Bayou La Batre, Alabama, supporters of a white incumbent running against Phuong Tan Huynh, a Vietnamese American candidate, made a concerted effort to intimidate Asian American voters. They challenged Asian Americans at the polls, falsely accusing them of not being U.S. citizens or city residents, or of having felony convictions.<sup>2</sup> The challenged voters were forced to complete a paper ballot and have that ballot vouched for by a registered voter. In explaining his and his supporters' actions, the losing incumbent stated, "We figured if they couldn't speak good English, they possibly weren't

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<sup>1</sup> The notion of "Asian American" encompasses a broad diversity of ethnicities, many of which have historically suffered their own unique forms of discrimination. Discrimination against Asian Americans as discussed here addresses both discrimination aimed at specific ethnic groups along with the discrimination directed at Asian Americans generally.

<sup>2</sup> See H.R. Rep. No. 109-478, at 45; see also *Challenged Asian ballots in council race stir discrimination concern*, Associated Press State & Local Wire, Aug. 29, 2004, available at <http://news.google.com/newspapers?nid=1817&dat=20040830&id=cc4dAAAIAIAJ&sjid=w6cEAAAIAIAJ&pg=6668,5046184>.

American citizens.”<sup>3</sup> The Department of Justice (DOJ) investigated the allegations and found them to be racially motivated.<sup>4</sup> As a result, the challengers were prohibited from interfering in the general election, and Bayou La Batre, for the first time, elected an Asian American to the City Council.<sup>5</sup>

In another example, from the 2004 Texas House of Representatives race, Hubert Vo’s victory over a white incumbent prompted two recounts, both of which affirmed Vo’s victory over the incumbent’s request that the Texas House of Representatives investigate the legality of the votes cast in the election. The implication was that Vo’s Vietnamese American supporters voted in the wrong district or were not U.S. citizens. Vo’s campaign voiced concern that such an investigation could intimidate Asian Americans from political participation altogether.<sup>6</sup> Vo’s election was particularly significant for the Asian American community because he is the first Vietnamese American state representative in Texas history.<sup>7</sup>

Also in 2004, New York poll workers required Asian American voters to provide naturalization certificates before they could vote.<sup>8</sup> At an additional poll site, a police officer demanded that all Asian American voters show photo identification, even though photo identification is not required to vote in New York elections. If voters could not produce such identification, the officer turned them away and told them to go home.<sup>9</sup>

### **Asian American Voters Lose Protection Against Discrimination Due to *Shelby* Decision**

Overt racism and discrimination against Asian Americans at the polls persist to the present day and will worsen without Section 5 to combat such behavior. Prior to the Supreme Court’s *Shelby* decision, voting rights advocates used Section 5 to protect Asian American voters in redistricting, changes to voting systems, and changes to polling sites. The following are current examples of harmful actions against Asian American voters that were stopped by Section 5, but now that the coverage formula has been struck, and most jurisdictions are no longer covered by

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<sup>3</sup> See DeWayne Wickham, *Why renew Voting Rights Act? Ala. Town provides answer*, USA Today, Feb 22, 2006, available at [http://www.usatoday.com/news/opinion/editorials/2006-02-22-forum-voting-act\\_x.htm](http://www.usatoday.com/news/opinion/editorials/2006-02-22-forum-voting-act_x.htm).

<sup>4</sup> See H.R. Rep. No. 109-478, at 45; see also Press Release, U.S. Dep’t of Justice, *Justice Department to Monitor Elections in New York, Washington, and Alabama*, Sept. 13, 2004, available at [http://www.justice.gov/opa/pr/2004/September/04\\_crt\\_615.htm](http://www.justice.gov/opa/pr/2004/September/04_crt_615.htm) (“In Bayou La Batre, Alabama, the Department will monitor the treatment of Vietnamese-American voters.”).

<sup>5</sup> See Wickham, *supra*.

<sup>6</sup> See Thao L. Ha, *The Vietnamese Texans*, in *Asian Texas* 284-85 (Irwin A. Tang ed. 2007).

<sup>7</sup> See Test. of Ed Martin, Trial Tr. at 350:15-23, *Perez v. Perry*, 835 F. Supp. 2d 209 (W.D. Tex. 2011) (hereinafter “Martin Test.”); Test. of Rogene Calvert, Trial Tr. at 420:2-421:13, *Perez*, 835 F. Supp. 2d 209; Test. of Sarah Winkler, Trial Tr. at 425:18-426:10, *Perez*, 835 F. Supp. 2d at 209.

<sup>8</sup> New York City has the nation’s largest Asian American population for places. Elizabeth M. Hoeffel, Sonya Rastogi, Myoung Ouk Kim & Hasan Shahid, U.S. Census Bureau, *The Asian Population: 2010*, at 12 tbl.3 (2012), available at [www.census.gov/prod/cen2010/briefs/c2010br-11.pdf](http://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf). Most of the examples of Section 5’s success in this brief draw from the Asian American experience in New York City because of its sizeable Asian American population and because it is one of the few places in the country covered under both Section 5 and Section 203.

<sup>9</sup> See Continuing Need for Section 203’s Provisions for Limited English Proficient Voters, Hearing Before the S. Judiciary Comm., 109th Cong. 37 (2006) (testimony of Margaret Fung, AALDEF, Exec. Dir.); Letter from G. Magpantay, AALDEF Staff Attorney, to J. Ravitz, Exec. Dir., New York City Bd. of Elections (June 16, 2005) (submitted to Congress).

Section 5, Asian Americans are once again vulnerable to nefarious discriminatory actions such as these that will weaken their voting rights and power.

For example, discriminatory redistricting plans continue to be drafted in states with large Asian American communities. As shown in *Perry v. Perez*, 132 S. Ct. 934 (2012), the Texas Legislature drafted a redistricting plan, Plan H283, that would have had significant negative effects on the ability of minorities, and Asian Americans in particular, to exercise their right to vote.

Since 2004, the Asian American community in Texas State House District 149 has voted as a bloc with Hispanic and African American voters to elect Hubert Vo, a Vietnamese American, as their state representative. District 149 has a combined minority citizen voting-age population of 62 percent.<sup>10</sup> Texas is home to the third-largest Asian American community in the United States, growing 72 percent between 2000 and 2010.<sup>11</sup>

In 2011, the Texas Legislature sought to eliminate Vo's State House seat and redistribute the coalition of minority voters to the surrounding three districts. Plan H283, if implemented, would have redistributed the Asian American population in certain State House voting districts, including District 149 (Vo's district), to districts with larger non-minority populations.<sup>12</sup> Plan H283 would have thus abridged the Asian American community's right to vote in Texas by diluting the large Asian American populations across the state.<sup>13</sup>

In addition to discrimination in redistricting, Asian American voters have also endured voting system changes that impair their ability to elect candidates of choice. For example, before 2001 in New York City, the only electoral success for Asian Americans was on local community school boards. In each election – in 1993, 1996, and 1999 – Asian American candidates ran for the school board and won.<sup>14</sup> These victories were due, in part, to the alternative voting system

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<sup>10</sup> See United States and Defendant-Intervenors Identification of Issues 6, *Texas v. United States*, C.A. No. 11-1303 (D.D.C.), Sept. 29, 2011, Dkt. No. 53.

<sup>11</sup> Asian American Center for Advancing Justice, *A Community of Contrasts: Asian Americans in the United States 2011*, App. B, at 60 (2011), available at [http://www.advancingjustice.org/pdf/Community\\_of\\_Contrast.pdf](http://www.advancingjustice.org/pdf/Community_of_Contrast.pdf). (hereinafter "*Community of Contrasts*").

<sup>12</sup> See Martin Test. at 350:25-352:25. District 149 would have been relocated to a county on the other side of the State, where there are few minority voters. See <http://gis1.tlc.state.tx.us/download/House/PLANH283.pdf>.

<sup>13</sup> In fact, it was only due to Section 5 that the Texas Legislature was not able to dilute the Asian American community's right to vote. Advancing Justice-AAJC's partner, the Texas Asian-American Redistricting Initiative (TAARI), working with a coalition of Asian American and other civil rights organizations, participated in the Texas redistricting process and advocated on the District 149 issue. Despite the community's best efforts, the Texas Legislature pushed through this problematic redistricting plan. However, because of Section 5's preclearance procedures, Asian Americans and other minorities had an avenue to object to the Texas Legislature's retrogressive plan, and Plan H283 was ultimately rejected as not complying with Section 5. See *Texas v. United States*, C.A. No. 11-1303 (D.D.C.), Sept. 19, 2011, Dkt. No. 45, ¶ 3. Indeed, AALDEF submitted an amicus brief to the D.C. District Court illustrating how the Texas plan retrogressed the ability of Asian Americans to elect a candidate of their choice and violated Section 5. However, the U.S. Supreme Court vacated the District Court of the District of Columbia's ruling suspending Texas' redistricting map as moot in light of their decision in *Shelby*.

<sup>14</sup> See Lynette Holloway, *This Just In: May 18 School Board Election Results*, N.Y. Times, June 13, 1999, available at <http://www.nytimes.com/1999/06/13/nyregion/making-it-work-this-just-in-may-18-school-board-election-results.html>; Jacques Steinberg, *School Board Election Results*, N.Y. Times, June 23, 1996, available at <http://www.nytimes.com/1996/06/23/nyregion/neighborhood-report-new-york-up-close-school-board-election->

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.”<sup>15</sup> In 1998, New York attempted to switch from a “preference voting” system, where voters ranked their choices, to a “limited voting” system, where voters could select only four candidates for the nine-member board, and the nine candidates with the highest number of votes were elected.<sup>16</sup> This change would have put Asian American voters in a worse position to elect candidates of their choice.<sup>17</sup>

Furthermore, the ability of Asian Americans to vote is also frustrated by sudden changes to poll sites without informing voters. For example, ever since AALDEF began monitoring elections in New York City, there have been numerous instances of sudden poll site closures in Asian American neighborhoods where the Board has failed to take 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 have been misdirected by poll workers on Election Day, thus creating confusion for Asian American voters and disrupting their ability to vote.

In 2001, primary elections in New York City were rescheduled due to the attacks on the World Trade Center. The week before the rescheduled primaries, AALDEF discovered that a certain poll site, I.S. 131, a school located in the heart of Chinatown and within the restricted zone in lower Manhattan, was being used by the Federal Emergency Management Agency for services related to the World Trade Center attacks. The Board chose to close down the poll site and no notice was given to voters. The Board provided no media announcement to the Asian language newspapers, made no attempts to send out a mailing to voters, and failed to arrange for the placement of signs or poll workers at the site to redirect voters to other sites. In fact, no consideration at all was made for the fact that the majority of voters at this site were limited English proficient, and that the site had been targeted for Asian language assistance under Section 203.<sup>18</sup> With Section 5 no longer applicable in most jurisdictions, disruptive changes to polling sites, voting systems, and redistricting plans can now occur unfettered, wreaking havoc on Asian American voters’ ability to cast an effective ballot.

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results.html; Sam Dillon, *Ethnic Shifts Are Revealed in Voting for Schools*, N.Y. Times, May 20, 1993, available at <http://www.nytimes.com/1993/05/20/nyregion/ethnic-shifts-are-revealed-in-voting-for-schools.html>.

<sup>15</sup> See Thomas T. Mackie & Richard Rose, *The International Almanac of Electoral History* 508 (3d ed. 1991).

<sup>16</sup> See 1998 N. Y. Sess. Laws 569-70 (McKinney).

<sup>17</sup> AALDEF utilized Section 5 to protect Asian American voters in NY by providing comments urging DOJ to oppose the change and deny preclearance as the proposed change would make Asian Americans worse off. DOJ interposed an objection and prevented the voting change from taking effect. See Letter from M. Fung, AALDEF Exec. Dir., and T. Sinha, AALDEF Staff Attorney, to E. Johnson, U.S. Dep’t of Justice (Oct. 8, 1998) (submitted to Congress with AALDEF Report and on file with counsel). See also, *Voting Rights Act: Section 5 of the Act—History, Scope, and Purpose*, Hearing Before the H. Subcomm. on the Const., H. Judiciary Comm., 109th Cong. 1664-66 (2005) (appendix to statement of the Honorable Bradley J. Schlozman, U.S. Dep’t. of Justice) (providing Section 5 objection letter to Board and summarizing changes made to the voting methods, along with overall objections to the changes).

<sup>18</sup> The voters were only protected from this sudden change that would have caused significant confusion and lost votes because DOJ issued an objection under Section 5 and informed the Board that the change could not take effect. The elections subsequently took place as originally planned at I.S. 131, and hundreds of votes were cast on September 25. See AALDEF Report at 41.

## **Discrimination Against Asian Americans Creates a Barrier to Voting**

Discrimination against Asian American populations is of particular concern given the perception of Asian Americans as “outsiders,” “aliens,” and “foreigners.”<sup>19</sup> Based on this perception, at various points in history, Asian Americans were denied rights held by U.S. citizens. Remnants of the sentiment that evoked these denials persist today and continue to harm Asian Americans.

This shameful history of extensive discrimination against the Asian American community in the United States is well known. Until 1943, federal policy barred immigrants of Asian descent from even becoming United States citizens, and it was not until 1952 that racial criteria for naturalization were removed altogether.<sup>20</sup> Indeed, history is replete with examples of anti-immigrant sentiment directed towards Asian Americans, manifesting in legislative efforts to prevent Asian immigrants from entering the United States and becoming citizens.<sup>21</sup>

Legally identified as aliens “ineligible for citizenship,” Asian immigrants were prohibited from voting and owning land.<sup>22</sup> Both immigrant and native-born Asians also experienced

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<sup>19</sup> See, e.g., Claire Jean Kim, *The Racial Triangulation of Asian Americans*, 27 Pol. & Soc’y 105, 108-16 (1999) (describing history of whites perceiving Asian Americans as foreign and therefore politically ostracizing them). In 2001, a comprehensive survey revealed that 71% of adult respondents held either decisively negative or partially negative attitudes toward Asian Americans. Committee of 100, *American Attitudes Toward Chinese Americans and Asians* 56 (2001), available at <http://www.committee100.org/publications/survey/C100survey.pdf>. Racial representations and stereotyping of Asian Americans, particularly in well-publicized instances where public figures or the mass media express such attitudes, reflect and reinforce an image of Asian Americans as “different,” “foreign,” and the “enemy,” thus stigmatizing Asian Americans, heightening racial tension, and instigating discrimination. Cynthia Lee, *Beyond Black and White: Racializing Asian Americans in a Society Obsessed with O.J.*, 6 Hastings Women’s L.J. 165, 181 (1995); Spencer K. Turnbull, Comment, *Wen Ho Lee and the Consequences of Enduring Asian American Stereotypes*, 7 UCLA Asian Pac. Am. L.J. 72, 74-75 (2001); Terri Yuh-lin Chen, Comment, *Hate Violence as Border Patrol: An Asian American Theory of Hate Violence*, 7 Asian L.J. 69, 72, 74-75 (2000); Jerry Kang, Note, *Racial Violence Against Asian Americans*, 106 Harv. L. Rev. 1926, 1930-32 (1993); Thierry Devos & Mahzarin R. Banaji, *American = White?*, 88 J. Personality & Soc. Psychol. 447 (2005) (documenting empirical evidence of implicit beliefs that Asian Americans are not “American”).

<sup>20</sup> See Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, 58-61 (prohibiting immigration of Chinese laborers; repealed 1943); Immigration Act of 1917, ch. 29, 39 Stat. 874, 874-98, and Immigration Act of 1924, ch. 190, 43 Stat. 153 (banning immigration from almost all countries in the Asia-Pacific region; repealed 1952); Leti Volpp, *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 UCLA L. Rev. 405, 415 (2005).

<sup>21</sup> See, e.g., Philippines Independence Act of 1934, ch. 84, 48 Stat. 456, 462 (imposing annual quota of fifty Filipino immigrants; amended 1946); Immigration Act of 1924, ch. 190, 43 Stat. 153 (denying entry to virtually all Asians; repealed 1952); Scott Act of 1888, ch. 1064, 1, 25 Stat. 504, 504 (rendering 20,000 Chinese re-entry certificates null and void); Naturalization Act of 1790, ch. 3, 1 Stat. 103 (providing one of the first laws to limit naturalization to aliens who were “free white persons” and thus, in effect, excluding African-Americans, and later, Asian Americans; repealed 1795).

<sup>22</sup> See *Ozawa v. United States*, 260 U.S. 178, 198 (1922); see, e.g., Cal. Const. art. II, § 1 (1879) (“no native of China . . . shall ever exercise the privileges of an elector in this State”); *Oyama v. California*, 332 U.S. 633, 662 (1948) (Murphy, J., concurring) (noting that California’s Alien Land Law “was designed to effectuate a purely racial discrimination, to prohibit a Japanese alien from owning or using agricultural land solely because he is a Japanese alien”).

pervasive discrimination in everyday life.<sup>23</sup> Perhaps the most egregious example of discrimination was the incarceration of 120,000 Americans of Japanese ancestry during World War II without due process.<sup>24</sup> White immigrant groups whose home countries were also at war with the United States were not similarly detained and no assumptions regarding their loyalty, trustworthiness and character were similarly made.<sup>25</sup>

Racist sentiment towards Asian Americans is not a passing adversity but a continuing reality, fueled in recent years by reactionary post-9/11 prejudice and a growing backlash against immigrants.<sup>26</sup> Numerous hate crimes have been directed against Asian Americans either because of their minority group status or because they are perceived as unwanted immigrants.<sup>27</sup> In 2010, the nation's law enforcement agencies reported 150 incidents and 190 offenses motivated by anti-Asian/Pacific Islander bias.<sup>28</sup>

Discriminatory attitudes towards Asian Americans manifest themselves in the political process as well. For example, during a 2009 Texas House of Representatives hearing, legislator Betty Brown suggested that Asian American voters adopt names that are "easier for Americans to deal with" in order to avoid difficulties imposed on them by voter identification laws.<sup>29</sup> Although this statement did not physically obstruct any voters from reaching the polls, it made clear that the Asian American community's voice was unwelcome in American politics and notably cast Asian Americans apart from other "Americans." At a campaign rally during the 2004 U.S. Senate race in Virginia, incumbent George Allen repeatedly called a South Asian

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<sup>23</sup> *People v. Brady*, 40 Cal. 198, 207 (1870) (upholding law providing that "No Indian. . . or Mongolian or Chinese, shall be permitted to give evidence in favor of, or against, any white man" against Fourteenth Amendment challenge); *see also Gong Lum v. Rice*, 275 U.S. 78 (1927) (upholding segregation of Asian schoolchildren).

<sup>24</sup> *See* Exec. Order 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942) (authorizing the internment); *see also Korematsu v. United States*, 323 U.S. 214 (1944) (upholding the internment under strict scrutiny review).

<sup>25</sup> *See Korematsu*, 323 U.S. at 233, 240-42 (Murphy, J., dissenting) (noting that similarly situated American citizens of German and Italian ancestry were not subjected to the "ugly abyss of racism" of forced detention based on racist assumptions that they were disloyal, "subversive," and of "an enemy race," as Japanese Americans were); Natsu Taylor Saito, *Internments, Then and Now: Constitutional Accountability in Post-9/11 America*, 72 Duke F. for L. & Soc. Change 71, 75 (2009) (noting "the presumption made by the military and sanctioned by the Supreme Court that Japanese Americans, unlike German or Italian Americans, could be presumed disloyal by virtue of their national origin").

<sup>26</sup> *See* U.S. Dep't of Justice, *Confronting Discrimination in the Post-9/11 Era: Challenges and Opportunities Ten Years Later*, at 4 (Oct. 19, 2011) (noting that the FBI reported a 1,600 percent increase in anti-Muslim hate crime incidents in 2001), *available at* [http://www.justice.gov/crt/publications/post911/post911summit\\_report\\_2012-04.pdf](http://www.justice.gov/crt/publications/post911/post911summit_report_2012-04.pdf).

<sup>27</sup> *See, e.g., id.*, at 7-9 (discussing numerous incidents of post-9/11 hate crimes prosecuted by the DOJ).

<sup>28</sup> Fed. Bureau of Investigation, *Hate Crime Statistics* (2010), *available at* <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2010/tables/table-1-incidents-offenses-victims-and-known-offenders-by-bias-motivation-2010.xls>.

<sup>29</sup> R.G. Ratcliffe, *Texas Lawmaker Suggests Asians Adopt Easier Names*, Houston Chron., Apr. 8, 2009, *available at* <http://www.chron.com/news/houston-texas/article/Texas-lawmaker-suggests-Asians-adopt-easier-names-1550512.php>.

volunteer for his opponent a “macaca” – a racial epithet used to describe Arabs or North Africans that literally means “monkey” – and then began talking about the “war on terror.”<sup>30</sup>

Incidents of discrimination and racism like these perpetuate the misperception that Asian American citizens are foreigners, and have the real effect of denying Asian Americans the right to fully participate in the electoral process. These barriers will only increase as the Asian American population continues to grow. Asian Americans have become the fastest growing minority group in the United States. While the total population in the United States rose 10 percent between 2000 and 2010, the Asian American population increased 43 percent during that same time span.<sup>31</sup>

The fastest population growth occurred in the South, where the Asian American population increased by 69 percent.<sup>32</sup> With the coverage formula struck and no current Section 5 coverage for these states, Asian Americans are susceptible to extensive discrimination, both in voting and other arenas. When groups of minorities move into or outpace general population growth in an area, reactions to the influx of outsiders can result in racial tension.<sup>33</sup> Thus, as Asian American populations continue to increase rapidly, particularly in the South, levels of racial tension and discrimination against racial minorities can be expected to increase.<sup>34</sup>

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<sup>30</sup> See Tim Craig & Michael D. Shear, *Allen Quip Provokes Outrage, Apology; Name Insults Webb Volunteer*, Wash. Post, Aug. 15, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/14/AR2006081400589.html>.

<sup>31</sup> See Hoeffel *et al.*, *supra* note 5, at 1, 3. The U.S. Census Bureau data in this brief reflects figures for Asian Americans who reported themselves as “Asian alone.” Counting the Asian American community’s rapidly growing multiracial population, who reported as “Asian alone or in combination,” this growth rate is 46 percent. *Community of Contrasts*, *supra*, at 15.

<sup>32</sup> *Id.* at 6.

<sup>33</sup> See Gillian Gaynair, *Demographic shifts helped fuel anti-immigration policy in Va.*, The Capital (Feb. 26, 2009), available at <http://www.hometownannapolis.com/news/gov/2009/02/26-10/Demographic-shifts-helped-fuel-anti-immigration-policy-in-Va.html> (noting that longtime residents of Prince William County, Virginia, perceived that their quality of life was diminishing as Latinos and other minorities settled in their neighborhoods); James Angelos, *The Great Divide*, N.Y. Times, Feb. 22, 2009 (describing ethnic tensions in Bellerose, Queens, New York, where the South Asian population is growing), available at [http://www.nytimes.com/2009/02/22/nyregion/thecity/22froz.html?\\_r=3&pagewanted=1](http://www.nytimes.com/2009/02/22/nyregion/thecity/22froz.html?_r=3&pagewanted=1); Ramona E. Romero and Cristóbal Joshua Alex, *Immigrants becoming targets of attacks*, The Philadelphia Inquirer, Jan. 25, 2009 (describing the rise in anti-Latino violence where the immigration debate is heated in New York, Pennsylvania, Texas, and Virginia); Sara Lin, *An Ethnic Shift is in Store*, L.A. Times, Apr. 12, 2007, at B1 (describing protest of Chino Hill residents to Asian market opening in their community where 39% of residents were Asian), available at <http://articles.latimes.com/2007/apr/12/local/mechinohills12>.

<sup>34</sup> In 2011, the growth of immigrant communities and rising anti-immigrant sentiment in Alabama led to the passage of H.B. 56, the toughest immigration enforcement law in the country. Also in 2011, state lawmakers in other southern states, including Georgia and South Carolina, launched efforts to deny the automatic right of citizenship to the U.S.-born children of undocumented immigrants. See Shankar Vedantam, *State Lawmakers Taking Aim at Amendment Granting Birthright Citizenship*, Wash. Post, Jan. 5, 2011, available at <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/05/AR2011010503134.html>; see also *United States v. Wong Kim Ark*, 169 U.S. 649 (1898) (holding Fourteenth Amendment grants U.S. citizenship to native-born children of alien parents). At the federal level, Alabama members of the U.S. House of Representatives co-sponsored legislation to enact this restriction. Birthright Citizenship Act of 2011, H.R. 140, 112th Cong. (2011). This bill was reintroduced in 2013 and co-sponsored again by Alabama Representatives, as well as legislators from Arizona, Georgia, and Texas. Birthright Citizenship Act of 2013, H.R. 140, 113th Cong., (2013).



Such discrimination creates an environment of fear and resentment towards Asian Americans, many of whom are perceived as foreigners based on their physical attributes. This perception, coupled with the growing sentiment that foreigners are destroying or injuring the country, jeopardizes Asian Americans' ability to exercise their right to vote free of harassment and discrimination. Given the discrimination against Asian Americans and immigrants that persists as these populations continue to grow, the lack of Section 5 protections will be problematic for these communities.

## **Conclusion**

American citizens of Asian ancestry have long been targeted as foreigners and unwanted immigrants, and racism and discrimination against them persists to this day. These negative perceptions have real consequences for the ability of Asian Americans to fully participate in the electoral and political process. Section 5 of the VRA was an effective tool in protecting Asian American voters against a host of actions that threaten to curtail their voting rights. However, the Supreme Court's recent decision dismantling the coverage formula has left a large gap in protections for Asian American voters that requires Congressional action. We look to Congress to work in a bipartisan fashion to respond to the Court's ruling and strengthen the VRA as it did during the 2006 reauthorizations and each previous reauthorization. We respectfully offer our assistance in such a process.