



**U.S. Commission on Civil Rights
Public Briefing
“An Assessment of Minority Voting Rights Access in the United States”
Held on Friday, February 2, 2018 in Raleigh, NC**

**Testimony of Asian Americans Advancing Justice – AAJC
March 19, 2018**

I. Introduction

Asian Americans Advancing Justice – AAJC (Advancing Justice – AAJC), along with Asian Americans Advancing Justice – Asian Law Caucus (Advancing Justice – ALC), Asian Americans Advancing Justice – Atlanta (Advancing Justice – Atlanta), Asian Americans Advancing Justice – Chicago (Advancing Justice – Chicago) and Asian Americans Advancing Justice – Los Angeles (Advancing Justice – LA), submit this testimony for the record for the public briefing “An Assessment of Minority Voting Rights Access in the United States” held on February 2, 2018 by the U.S. Commission on Civil Rights in Raleigh, NC.¹

Advancing Justice – AAJC is a part of Asian Americans Advancing Justice (Advancing Justice), a national affiliation of five 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. The Advancing Justice affiliation is comprised of our nation’s oldest Asian American legal advocacy center located in San Francisco (Advancing Justice – ALC), our nation’s largest Asian American advocacy service organization located in Los Angeles (Advancing Justice – LA), the largest national Asian American policy advocacy organization located in Washington D.C. (Advancing Justice – AAJC), the leading Midwest Asian American advocacy organization (Advancing Justice – Chicago), and the Atlanta-based Asian American advocacy organization that serves one of the largest and most rapidly growing Asian American communities in the South (Advancing Justice – Atlanta). Additionally, over 160 local organizations are involved in Advancing Justice – AAJC’s Community Partners Network, serving communities in 32 states and the District of Columbia. Advancing Justice - AAJC was a key player in collaborating with other civil rights groups to

¹ This testimony is based on Advancing Justice-AAJC’s report, “50 Years of the Voting Rights Act: An Asian American Perspective,” with updates where appropriate. See Terry Ao Minnis & Mee Moua, *50 Years of the Voting Rights Act: The Asian American Perspective*, 6 (2015), <http://advancingjustice-aaic.org/sites/default/files/2016-09/50-years-of-VRA.pdf> [hereinafter VRA Report].

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. And since the 2012 election, Advancing Justice – AAJC, in partnership with APIAVote, has run a multilingual Asian election protection hotline, 888-API-VOTE to provide assistance in-language to voters who have questions about the election process or are experience problems while trying to vote.

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, and for increasing the community’s access to the ballot. This testimony will detail barriers Asian Americans face in accessing the ballot, the laws that help to overcome these barriers, the impact of *Shelby County v. Holder*, 570 U.S. 2 (2013), on Asian Americans, the enforcement of the Voting Rights Act of 1965 (VRA) on behalf of Asian Americans, and finally, recommendations that can help ensure access to the ballot by Asian Americans. While Asian Americans are the nation’s fastest growing racial group and are quickly becoming a significant electoral force, the community will not be able to maximize its political power without the protection of their voting rights.

II. Asian American Voter Access

Asian Americans are the fastest growing racial group according to the last census, growing 46% between 2000 and 2010.² The 2010 Census showed over 17.3 million Asian Americans living in the United States, comprising 6% of the population.³ The 2010 Census also showed that Asian American communities are expanding beyond states with historically high concentrations, such as California and New York, to states with emerging immigrant populations.⁴ The fastest-growing Asian American communities by state last census were Nevada, Arizona, North Carolina, and Georgia, with Nevada’s Asian American community more than doubling between censuses.⁵

At the same time, we saw a parallel increase among Asian American voters, from 2 million voters in 2000 to over 5 million in 2012.⁶ In fact, there was an average increase of 747,500 voters per presidential election cycle from 2000 to 2016.⁷ This growth will continue, with Asian

² Asian Pac. Am. Legal Ctr. & Asian Am. Justice Ctr., *A Community of Contrasts: Asian Americans in the United States: 2011*, 16, http://www.advancingjustice.org/pdf/Community_of_Contrast.pdf [hereinafter *Community of Contrasts*].

³ *Id.* at 6.

⁴ *See id.* at 8.

⁵ *Id.*

⁶ *See* Table 2. Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age, for the United States: November 2012, U.S. Census Bureau, https://www2.census.gov/programs-surveys/cps/tables/p20/568/table02_5.xls. *See also* Table 2. Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age, for the United States: November 2016, U.S. Census Bureau, https://www2.census.gov/programs-surveys/cps/tables/p20/580/table02_5.xls.

⁷ Author’s calculations of U.S. Census Bureau data available on voter turnout in presidential elections through its Current Population Survey.

American, Native Hawaiian and Pacific Islander voters making up five percent of the national electorate by 2025 and 10 percent of the national electorate by 2044.⁸

Although there is an increase in voter engagement by Asian Americans, voter discrimination, language barriers, lack of access to voter resources, and unfamiliarity with the voting process challenge Asian Americans' ability to reach their full potential when it comes to civic engagement. Despite a doubling of Asian American voters in just over a decade nationally, there continues to be a consistent gap with White voters of 15-20% less in voter registration and turnout, election after election.⁹

a. Barriers to Access

A major obstacle facing Asian American voters is the language barrier. Of approximately 291 million people in the United States over the age of five, 60 million people, or just over 20%, speak a language other than English at home.¹⁰ Among those other languages, the top two categories are Spanish and Asian languages,¹¹ at 37 million and 11.8 million people, respectively.¹² This means, nationally, about 3 out of every 4 Asian Americans speak a language other than English at home and a third of the population is Limited English proficient (LEP),¹³ that is, has some difficulty with the English language.¹⁴ Voting can be intimidating and complex, even for native English speakers. It becomes that much more difficult for citizens whose first language is not English. Voting materials are written for a twelfth grade level of comprehension, which is much greater than that required for purposes of naturalization, making voting more challenging for voters with language barriers.¹⁵

Surveys conducted on Election Day show that language assistance is very important to Asian American voters. For example, 63 percent of Asian Americans surveyed in a 2012 post-election survey said in-language assistance would be helpful for them.¹⁶ Thirty percent of Chinese Americans, 33 percent of Filipino Americans, 50 percent of Vietnamese Americans and 60 percent of Korean Americans in Los Angeles County used some form of language assistance in

⁸ *Id.* at 1.

⁹ Author's calculations of U.S. Census Bureau data available on voter registration and turnout in presidential elections through its Current Population Survey.

¹⁰ U.S. Census Bureau, *Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for United States: 2009-2013*, <http://www2.census.gov/library/data/tables/2008/demo/language-use/2009-2013-acs-lang-tables-nation.xls> (released Oct. 2015) ("Languages Spoken at Home").

¹¹ "Asian languages" captures the following U.S. Census Bureau categories: Asian and Pacific Island Languages, Hindi, Gujarati, Urdu, and Other Indic Languages. It excludes Armenian and Persian.

¹² Languages Spoken at Home.

¹³ Community of Contrasts at 24, 26.

¹⁴ The current definition of LEP is persons who speak English less than "very well." The Census Bureau has determined that most respondents overestimate their English proficiency and therefore, those who answer other than "very well" are deemed LEP. See H.R. Rep. No. 102-655, at 8 (1992), *as reprinted in* 1992 U.S.C.A.N. 766, 772.

¹⁵ Ana Henderson, *English Language Naturalization Requirements and the Bilingual Assistance Provisions of the Voting Rights Act*, 2-4 (2006) (unpublished manuscript) (on file with the author).

¹⁶ Asian Americans Advancing Justice, *Strength in Numbers: Infographics from the 2012 AAPI Post-Election Survey* (2013), <http://naasurvey.com/wp-content/uploads/2015/10/2012-aapi-post-election-national.pdf>.

the November 2008 election. More than 60 percent of Vietnamese voters surveyed in Orange County for the November 2004 used language assistance to vote.

Unfortunately, language minority voters are often denied much-needed and federally-required assistance at the polls and face numerous barriers at the polls. First, problems can arise from poll workers who do not fully understand voting rights laws. For example, poll workers have denied Asian American voters their right to an assistor of their choice under Section 208 of the VRA¹⁷ or asking for ID when it is not needed.¹⁸ For example, during the 2012 general election, a poll worker in New Orleans mistaken thought only LEP voters of languages covered by Section 203 of the VRA were entitled to assistance in voting under Section 208. Since Vietnamese was not a Section 203-covered language either for the county or the state, the poll worker denied LEP Vietnamese voters the assistance of their choice when voting.¹⁹

Poll workers have also been hostile to, or discriminated against, Asian American voters at the polls. For example, only Asian American voters have been singled out and asked for photo identification whether it was legally mandated or not. During the 2008 election, in Washington, D.C., an Asian American voter was required to present identification several times, while a white voter in line behind her was not similarly asked to provide identification.²⁰ Also in 2008, poll workers only asked a Korean American voter and his family, but no one else, to prove their identity in Centreville, VA.²¹

Unfortunately, the persistent racist stereotype of Asian Americans as “outsiders,” “aliens,” and “foreigners” drives much of the discrimination faced by Asian Americans in voting.²² Asian Americans were denied the ability to vote for most of the country’s existence as Asian immigrants were barred from becoming citizens via federal policy until 1943 and subject to racial criteria for naturalization until 1952.²³ In fact, many legislative efforts prevented Asian

¹⁷ Section 208 of the VRA is the right to assistance of a voter’s choice by reason of blindness, disability, or inability to read or write the right and is discussed below.

¹⁸ Asian Am. Legal Def. and Educ. Fund, *Asian American Access to Democracy in the 2014 Elections*, 19, 26 (2014), <http://aaldef.org/2014AccessToDemocracyReport.pdf>; Asian Americans Advancing Justice, *Voices of Democracy: Asian Americans and Language Access During the 2012 Elections*, 14 (2013), <http://advancingjustice-aaajc.org/sites/default/files/2016-10/Voices%20of%20Democracy.pdf> [hereinafter *Voices of Democracy*].

¹⁹ VRA Report at 16.

²⁰ Asian American Legal Defense and Education Fund, *Asian American Access to Democracy in the 2008 Elections*, 25-26 (2009), <http://www.aaldef.org/docs/AALDEF-AA-Access-to-Democracy-2008.pdf>.

²¹ *Id.*

²² 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). Racial stereotyping of Asian Americans reinforces an image of Asian Americans as “different,” “foreign,” and the “enemy,” leading to stigmatization of Asian Americans, heightened racial tension, and increased discrimination. Spencer K. Turnbull, Comment, *Wen Ho Lee and the Consequences of Enduring Asian American Stereotypes*, 7 *UCLA Asian Pac. Am. L.J.* 72, 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); Cynthia Kwei Yung Lee, *Beyond Black and White: Racializing Asian Americans in a Society Obsessed with O.J.*, 6 *Hastings Women’s L.J.* 165, 181 (1995); Note, *Racial Violence Against Asian Americans*, 106 *Harv. L. Rev.* 1926, 1930-32 (1993); see also 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”).

²³ 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; Immigration Act of 1924, ch. 190, 43 Stat.

immigrants from even entering the country and becoming citizens.²⁴ Asian immigrants were also prohibited from voting and owning land as they were legally identified as aliens “ineligible for citizenship.”²⁵ The “perpetual foreigner” stereotype is embedded in the political process. Insidious manifestations of the stereotype can be found in the verbal attacks levied against Asian American candidates and voters, negative political ads that use the misconception of “Asia” as an enemy to the U.S., and manipulation of images of candidates to trigger negative stereotypes of minority candidates. As reported in testimony by Asian Americans Advancing Justice—AAJC, the following excerpt provides some incidents occurring in the South against Asian American candidates and voters:

In November 2005, a candidate of South Asian descent, Tom Abraham, running for City Council Seat 4 in Orange City, Florida was mocked by his opponent for his accent at a community forum. His opponent, Dan Sherrill, claimed that he could not understand him and was quoted by the *Orlando Sentinel* as saying, “I’m usually not prejudiced, but I don’t want an Indian in my government. As far as I know, he could be a nice guy, but these kind of people get embedded over here. You remember 9/11.” The *St. Petersburg Times* further reported that Sherrill said that voters wouldn’t support Abraham if they saw and heard him. . . .

...

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. The statement made clear that Brown perceived the Asian American community’s voice as unwelcome in American politics and notably cast Asian Americans apart from other “Americans.” . . .

...

In May 2010, Americans for Job Security ran a television ad set in Bangalore, India with traditional South Asian music playing in the background. The ad utilized dark-skinned and accented actors dressed in traditional South Asian dress facetiously thanking U.S. Senate candidate and Arkansas Lieutenant Governor Bill Halter for outsourcing Arkansan jobs abroad. . . .

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).

²⁴ 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, 25 Stat. 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).

²⁵ *Ozawa v. United States*, 260 U.S. 178, 198 (1922); see, e.g., Cal. Const. of 1879 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”).

In June 2010, State Senator Jake Knotts described South Carolina State Representative Nikki Haley, an Indian American who was running in the state's gubernatorial race, as "[a] f---ing raghead . . . [w]e got a raghead in Washington; we don't need one in South Carolina . . . [s]he's a raghead that's ashamed of her religion trying to hide it behind being Methodist for political reasons." Knotts further stated he believed Haley had been set up by a network of Sikhs and was programmed to run for governor of South Carolina by outside influences in foreign countries. . . .

. . .

In September 2010, State Senator Nancy King targeted an opponent in the Maryland primary race for state Senate, Maryland State Delegate Saqib Ali, by sending mailers in which Ali's photograph was altered with darker skin tone and hair. Despite the King campaign's denial, the difference was clear when comparing the mailer to the original photo (that was also included in the mailer).²⁶

More recently, we continue to see these racist attitudes and stereotypes permeate our political process.

- During the 2017 local and statewide elections in New Jersey, Asian American candidates were targets of racist propaganda. *First*, in Edison, New Jersey, two school board candidates, Jerry Shi and Falguni Patel were targeted with anti-immigrant mailers that said "Make Edison Great Again" and calling for their deportation.²⁷ The mailers said that "[t]he Chinese and Indians are taking over our town," and "Chinese school! Indian school! Cricket fields! Enough is enough."²⁸ *Next*, in Hoboken, New Jersey, Sikh mayoral candidate, Ravi Bhalla was targeted with racist flyers placed on car windshields in Hoboken with the message "Don't let TERRORISM take over our town!" above his picture.²⁹ Ultimately, despite these xenophobic attacks, all three Asian Americans won their elections.
- At a Congressional hearing on March 15, 2018, Japanese-American Congresswoman Hanabusa questioned Interior Secretary Ryan Zinke about why the Trump Administration "cancelled funding for a program to preserve the history of internment camps that held people of Japanese ancestry -- most of

²⁶ *Testimony for the Senate Judicial Hearing on the Voting Rights Amendment Act of 2014*, S.1945, (June 25, 2014) (statement of Asian Americans Advancing Justice—AAJC) (footnotes omitted), <http://vrafortoday.org/wp-content/uploads/2014/07/AAJC-Testimony-for-6-25-14-Senate-Judiciary-Hearing-on-VRAA.pdf>.

²⁷ Amy B Wang, 'DEPORT': Racist campaign mailers target Asian school board candidates, Washington Post, Nov. 2, 2017, https://www.washingtonpost.com/news/education/wp/2017/11/02/deport-racist-campaign-mailers-target-asian-school-board-candidates/?utm_term=.c84f7d1ab7a2.

²⁸ *Id.*

²⁹ Alyana Alfaro, *Racist Campaign Literature Surfaces in New Jersey*, Observer, Nov. 6, 2017, <http://observer.com/2017/11/racist-campaign-literature-surfaces-in-new-jersey/>.

them Japanese-Americans -- during World War II.”³⁰ As part of her questioning, Representative Hanabusa began by detailing her own family’s experiences during this atrocious time in American history. In response, Secretary Zinke, began his response with an insensitive “Oh, Konnichiwa.”³¹ “Konnichiwa is a Japanese expression that roughly translates to ‘good afternoon.’ This prompted Hanabusa to shoot back that it was still morning, which meant ‘ohayo gozaimasu’ would actually be the more appropriate greeting.”³² Secretary Zinke’s remarks demonstrate the ongoing “perpetual foreigner” problem faced by Asian Americans; although she is a fourth-generation American-born member of Congress, Secretary Zinke somehow thought it appropriate to greet the Congresswoman in Japanese.

With the continued rapid growth of the Asian American population, additional barriers, including increased discrimination against Asian American voters, are also likely to occur. Racial tensions are often the result when groups of minorities grow rapidly in an area and where there is an increase in political relevance of the minority community.³³ This can lead to fear of and resentment toward Asian Americans by those in power, which can then result in hampering the Asian American community’s exercising of their right to vote free of harassment and discrimination.

We expect to see an increase in challenges to Asian American voters likely to occur with the purpose to undermine the community’s political voice, such as what happened during the 2004 primary elections in Bayou La Batre, Alabama. Supporters of a White incumbent, who faced a Vietnamese American opponent during the primaries, challenged the eligibility of only Asian Americans at the polls by falsely accusing them of not being U.S. citizens or city residents, or of

³⁰ *Interior Secretary Ryan Zinke criticized for internment camp remarks*, CBS News, March 16, 2018, <https://www.cbsnews.com/news/interior-secretary-ryan-zinke-criticized-for-internment-camp-remarks-colleen-hanabusa/>.

³¹ Id.

³² Id.

³³ See generally Toni Monkovic, *Why Donald Trump Has Done Worse in Mostly White States*, New York Times, Mar. 8, 2016, http://www.nytimes.com/2016/03/09/upshot/why-donald-trump-has-done-worse-in-mostly-white-states.html?_r=0 (“Political scientists have written about the importance of tipping points in ethnic strife or resentment around the globe. It occurs when one group grows big enough to potentially alter the power hierarchy.”); see also Audrey Singer, Jill H. Wilson & Brooke DeRenzis, Metropolitan Policy Program at Brookings, *Immigrants, Politics, and Local Response in Suburban Washington* (2009), https://www.brookings.edu/wp-content/uploads/2016/06/0225_immigration_singer.pdf (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*, New York Times, Feb. 20, 2009, http://www.nytimes.com/2009/02/22/nyregion/thecity/22froz.html?_r=3&pagewanted=1 (describing ethnic tensions in Bellerose, Queens, New York, where the South Asian population is growing); Ramona E. Romero & Cristóbal Joshua Alex, *Immigrants Becoming Targets of Attacks*, National Campaign to Restore Civil Rights, Jan. 26, 2009, <http://rollback.typepad.com/campaign/2009/01/it-has-happened-again---in-early-december-less-than-a-month-after-seven-teenagers-brutally-attacked-and-killed-marcelo-luc.html> (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*, Los Angeles Times, Apr. 12, 2007, <http://articles.latimes.com/2007/apr/12/local/me-chinohills12> (describing protest of Chino Hills residents to Asian market opening in their community where 39% of residents were Asian).

having felony convictions.³⁴ The losing incumbent's rationale was "if they couldn't speak good English, they possibly weren't American citizens."³⁵ DOJ's investigation found the challenges racially motivated and prohibited interference from the challengers during the general election.³⁶ That year, Bayou La Batre elected its first Asian American to the City Council.³⁷ Similarly, in Harris County (Houston), Texas, during the 2004 Texas House of Representatives race, accusations of non-citizen voting were implied in the request for an investigation by the losing incumbent into the election resulting in the victory of Hubert Vo, a Vietnamese American.³⁸ While both recounts affirmed Vo's victory, making him the first Vietnamese American state representative in Texas history, his campaign voiced concern that such an investigation could intimidate Asian Americans from political participation altogether.³⁹

b. Laws to Address Barriers to Voting

The Voting Rights Act of 1965 has proven to be an effective tool in breaking down these barriers and helping Asian American voters access the ballot across the country.

i. Section 203

Section 203 has been one of the most critical provisions in ensuring Asian Americans are able to cast their ballot. Section 203 was enacted during the 1975 reauthorization of the VRA because Congress recognized that certain minority citizens, due to limited English speaking abilities, experienced historical discrimination and disenfranchisement. Congress documented a "systematic pattern of voting discrimination and exclusion against minority group citizens who are from environments in which the dominant language is other than English," and an "extensive evidentiary record demonstrating the prevalence of voting discrimination and high illiteracy rates among language minorities." Congress singled out Latinos, Asian Americans, American Indians, and Alaska Natives for protection under Section 203 VRA due to its finding that:

[T]hrough the use of various practices and procedures, citizens of [the four covered groups] have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational

³⁴ See H.R. Rep. No. 109-478, at 45 (2006); *Challenged Asian Ballots in Council Race Stir Discrimination Concerns*, Associated Press, Aug. 30, 2004, at 2B.

³⁵ See DeWayne Wickham, *Why Renew Voting Rights Act? Ala. Town Provides Answer*, USA Today, Feb. 22, 2006, http://usatoday30.usatoday.com/news/opinion/editorials/2006-02-22-forum-voting-act_x.htm (quoting defeated City Council incumbent Jackie Ladnier).

³⁶ See *id.*

³⁷ See Press Release, U.S. Dep't of Justice, Justice Department to Monitor Elections in New York, Washington, and Alabama (Sept. 13, 2004), 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.").

³⁸ See *Decided Victory: Heflin's Camp Swelled Store of Disinformation*, Houston Chronicle, Feb. 9, 2005, <http://www.chron.com/opinion/editorials/article/Decided-victory-Heflin-s-camp-swelled-store-of-1640120.php>.

³⁹ See *id.*; Thao L. Ha, *The Vietnamese Texans*, in *Asian Texans: Our Histories and Our Lives*, 263, 284-85 (Irwin A. Tang ed., 2007).

opportunities afforded them resulting in high illiteracy and low voting participation.

Section 203 was enacted to remedy racial discrimination in the voting process that results in the disenfranchisement of language minorities from the four covered language groups.⁴⁰

The 1992 amendment by Congress to Section 203 expanded the coverage formula to better capture language minority communities in need of assistance in the voting process. The modification to the coverage formula that most benefited Asian Americans was the addition of the “10,000 voting-age citizen” population trigger to “cover ‘highly populated metropolitan areas’ where ‘many language minority citizens in need of assistance are not covered because they do not make up a large enough percentage of the local population to trigger coverage.’”⁴¹ The 1990 Census figures showed that there were many thousands of LEP language minority citizens who lived in large metropolitan areas that were not covered by the original coverage formula. Despite the fact that there were 39,000 LEP Chinese American voters in Los Angeles County, California, 37,000 LEP Asian Americans voters in Honolulu County, Hawaii, and thousands of LEP Asian American citizens living in San Francisco County, California as well as Queens County, Kings County, and New York County in New York, only San Francisco County would have been eligible for Section 203 coverage under the 5% trigger.⁴² With the addition of the new 10,000 voting-age citizen trigger, the following Section 203 determination in 2002 saw the coverage of 16 counties (or their political subdivision equivalents) in seven states for Asian languages, representing twenty-seven Asian American communities.⁴³

The promise of Section 203 in helping LEP citizens to vote has yet to be fully realized because of varying degrees of compliance by different jurisdictions. In a 2012 poll monitoring effort that spanned seven states and 900 voting precincts, Advancing Justice and our local partners found that:

- Poll workers were often unaware of the availability of translated materials, did not properly display the translated materials (with one-third of all polling sites monitored having low visibility or no display of materials), and exhibited an unwillingness to display translated materials when requested.

⁴⁰ Congress limited Section 203 protections to these four language groups because it continually found that they have faced and continued to face significant voting discrimination because of their race and ethnicity. Other language groups were not included because Congress did not find evidence that it experienced similar sustained difficulties because of their race and ethnicity in voting when they enacted the provision. See Bilingual Election Requirements, 52 U.S.C. § 10503; S. Rep. No. 94-295, at 31 (1975). Section 2 helps to provide protections for language minority groups that fall outside of the four covered groups as discussed later in the chapter.

⁴¹ James Thomas Tucker, *The Battle Over Bilingual Ballots*, 86 (2009).

⁴² *Id.*

⁴³ The states with 203 coverage for Asian languages are: Alaska, California, Hawaii, Illinois, New York, Texas and Washington. The Asian languages covered by Section 203 during the 2002 determinations are languages for the Chinese, Filipino, Japanese, Korean, and Vietnamese populations. *Voting Rights Act Amendments of 1992, Determinations Under Section 203*, Federal Register (2002), <https://www.federalregister.gov/articles/2002/07/26/02-19033/voting-rights-act-amendments-of-1992-determinations-under-section-203>.

- Polling sites did not provide adequate notice of assistance available, including inadequate translated directional signs outside to guide voters to polling sites and poor or no display of “we speak” or “we can assist you” signs indicating language assistance available at the location.
- In almost all the jurisdictions monitored, there was a lack of bilingual poll workers. Almost half of the polling sites that did have bilingual poll workers failed to provide identification of bilingual poll workers and those bilingual poll workers failed to proactively approach voters needing language assistance.
- Poll workers lacked knowledge about language assistance requirements and other voting laws, such as whether voters must present photo identification.

In 2016, the Census Bureau released an updated list of Section 203 jurisdictions based upon 2010–2014 American Community Survey data with parts of Alaska, California, Hawaii, Illinois, Massachusetts, Michigan, Nevada, New Jersey, New York, Texas, Virginia and Washington covered. The newly-covered language groups were: Asian Indian in Middlesex County, NJ; Cambodian in Lowell City, MA and Los Angeles County, CA; Chinese in Contra Costa County, CA, San Diego County, CA, and Malden City, MA; and Vietnamese in Tarrant County, TX and Fairfax County, VA. Today, 45 Asian American populations located in 27 counties, boroughs, census areas or cities, including six new Asian American populations have been added to Section 203 coverage since the last list was released in 2011.⁴⁴ Seven Asian ethnic groups are covered: Asian Indian, Bangladeshi, Chinese, Filipino, Korean, Cambodian and Vietnamese. After the 2016 determinations, there were no longer any jurisdictions covered for Japanese (where previously there were two) and Maui County, HI was no longer covered for the Filipino community.

ii. *Section 208*

Section 208 has been an important complement to Section 203 for Asian American voters. Because Section 203 does not apply nationwide, not all LEP voters can take advantage of these benefits. While Asian American populations are growing rapidly, and the Section 203 coverage of jurisdictions that must provide language assistance is increasing, there are still many LEP Asian Americans who do not have access to Section 203 language assistance.

Nevertheless, all citizens who have difficulty with English, no matter where they live or what their native language is, have the right through Section 208 to an assistor of their choice to help them in the voting booth.⁴⁵ The only limitation on this rule is that the assistor cannot be one’s employer or union representative. The assistor can even be a teenage child or a non-U.S. citizen and can be for any language. Section 208’s distinct advantage is its availability at every polling site throughout the nation.

⁴⁴ The breakdown for Asian ethnic groups was: Chinese American populations in 18 jurisdictions; Filipino American populations in 8; Vietnamese American populations in 9; Korean American populations in 4; Indian American populations in 3; Bangladeshi American populations in 1; and Cambodian American population in two. <https://advancingjustice-la.org/sites/default/files/2016-Section-203-Fact-Sheet.pdf>

⁴⁵ *Voices of Democracy* at 5.

Congress added Section 208 to the VRA in 1982 to ensure that “blind, disabled, or illiterate voters could receive assistance in a polling booth from a person of their own choosing[.]”⁴⁶ Congress found that citizens who either do not have written language ability or who are unable to read or write English proficiently were more susceptible to having their votes unduly influenced or manipulated, and thus were more likely to be discriminated against at the polls.⁴⁷ Congress also stressed the importance of the voter’s freedom to choose his or her assistor, as opposed to having someone appointed by elections officials to assist the voter. Voters may feel apprehensive about casting a ballot in front of someone they do not know or trust, or could even be misled into voting for a candidate they did not intend to select.⁴⁸ Congress determined that the right to an assistor of choice is the only way to ensure that voters can exercise their right to vote without intimidation or manipulation.⁴⁹

iii. *Section 2*

Section 2 of the VRA applies nationwide and mandates that all jurisdictions avoid implementing any voting standard, practice, or procedure that results in the denial or abridgement of the right of any citizen to vote on account of their race, color, or membership in a language minority group.⁵⁰ Section 2 has been utilized in “vote dilution” challenges to at-large election systems and redistricting plans, “vote denial” challenges to restrictive voting practices, and language discrimination challenges.

Section 2 can require states to create new majority-minority districts to avoid diluting minority voting strength during redistricting. Additionally, Section 2 prohibits the enactment of redistricting plans that have a discriminatory effect or were adopted with a discriminatory purpose. Other practices that dilute the minority voting strength include: at-large election systems, multi-member election districts and annexations of white residential areas that either fence out minority residential areas or reduce a city’s minority population percentage in the context of at-large voting.⁵¹

Section 2 is also used to challenge voting practices that limit or restrict access to registration or voting that discriminate on the basis of race or language minority status. Practices that could be challenged include: proof of citizenship for voter registration, other limitations to voter registration, improper purging of voter registration rolls, limitations on early in-person voting or absentee voting, photo ID requirements for in-person voting, polling place changes, and voter intimidation.

⁴⁶ S. Rep. No. 97-417 at 2 (1982).

⁴⁷ *Id.* at 62.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ 52 U.S.C. § 10301.

⁵¹ *See id.* at 34.

Finally, Section 2 can also be used to address the needs of LEP language minority voters. As previously mentioned, while Section 203 has been able to break down the language barriers for Asian American, Latino, American Indian and Alaska Native voters in certain jurisdictions, many language minority voters still face language barriers at the polls. Voters of other language groups not covered have not benefited from Section 203, whether because the community is not populous enough to trigger Section 203 coverage or because the community is not one of the four protected language groups under Section 203.⁵² Section 2 provides another measure of protection for all language minorities by prohibiting voting practices or procedures that discriminate on the basis of race, color, or membership in a language minority group.

III. Laws Affecting AAPI Voter Access since Shelby

Section 5 of the Voting Rights Act prohibits the enforcement or administration by covered jurisdictions of “any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting” without first receiving approval, or “preclearance,” from DOJ or the U.S. District Court for the District of Columbia.⁵³ Section 5 applies to numerous voting changes in covered jurisdictions, including redistricting, annexation of other territories or political subdivisions, and polling place. Voting changes with a discriminatory purpose or with a retrogressive effect (that is, where the change puts minorities in a worse position than if the change did not occur) will not be pre-cleared and thus Section 5 prohibits the submitting jurisdiction from adopting the voting change.

In enacting the VRA in 1965, Congress recognized that previous efforts to litigate discriminatory voting practices were limited in their effectiveness as particularly recalcitrant jurisdictions would simply replace the struck-down discriminatory practice with another, newer discriminatory practice. Responding to the persistent nature of discriminatory schemes in voting, Congress developed a mechanism in the VRA to provide a “check” on whether proposed voting changes by particularly bad actors would be problematic for minority voters – Section 5 preclearance.

As Asian American communities continue to grow, they are also moving to nontraditional cities and areas of the country. Previously-covered Section 5 jurisdictions in the South are also where the Asian American population is growing. Georgia and North Carolina are among the three fastest-growing Asian American populations.⁵⁴ In fact, five of the states covered in their entirety and another four states covered partially by Section 5 are among the top 20 states with the

⁵² Other language groups have not been included in the Section 203 framework because Congress has not found evidence that they experienced similar sustained difficulties because of their race and ethnicity in voting. 52 U.S.C. § 10503; S. Rep. No. 94-295 at 31.

⁵³ 52 U.S.C. § 10304. The following States are covered by Section 5: Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia. Only certain counties or towns in the following states are covered under Section 5: California, Florida, Michigan, New York, North Carolina, and South Dakota. It must be noted, however, that even if only a part of a jurisdiction is covered by Section 5, congressional and state legislative redistricting plans for the entire state must be submitted for review. For a detailed listing of counties and towns covered, please visit http://www.justice.gov/crt/about/vot/sec_5/covered.php.

⁵⁴ Terry M. Ao, Alyson Hong, & Sophia Lai, *Census 2000: Asian Population Demographic Data*, 10 (2002), http://www.advancingequality.org/files/census_handbook.pdf.

fastest-growing Asian American populations. The remaining covered states all experienced a growth in their Asian American populations.⁵⁵ 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. 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, including in the voting context.⁵⁶ Such discrimination creates an environment of fear and resentment toward Asian Americans, which jeopardizes Asian Americans' ability to exercise their right to vote free of harassment and discrimination.

The community's population growth will likely lead to increased efforts to undermine the political voice of Asian Americans similar to the recent and ongoing efforts to restrict access to the polls.⁵⁷ This trend has already become evident in relation to the growth of the Latino voting population.⁵⁸ Asian Americans are potential swing voters⁵⁹ and are becoming numerous enough to make the difference in certain races, and they will be facing new, more aggressive tactics to minimize their political impact. Section 5 protections are needed more than ever.

Unfortunately, the U.S. Supreme Court weakened the VRA in *Shelby*. The Court ruled 5-4 that the formula used to determine Section 5 jurisdictions was based on "decades-old data and eradicated practices," despite the extensive record confirming that these areas continued to commit acts of voting discrimination.⁶⁰ Thus, while the Court did not invalidate Section 5, it rendered it useless by invalidating the formula that determined what jurisdictions were

⁵⁵ *Id.*

⁵⁶ 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*, Washington Post, Jan. 5, 2011, <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).

⁵⁷ See Ari Berman, *Texas Voter ID Law Discriminates Against Women, Students and Minorities*, The Nation, Oct. 23, 2013, <http://www.thenation.com/blog/176792/texas-voter-id-law-discriminates-against-women-students-and-minorities#> (noting that Texas' voter ID law likely would have an extremely disproportionate impact on Hispanic voters); Emily Deruy, *Could New Voter ID Laws Really Disenfranchise 10 Million Latinos?*, Fusion, Sep. 24, 2012, <http://fusion.net/justice/story/voter-id-laws-hinder-10-million-eligible-latinos-11471> (arguing that recent proof of citizenship and photo identification requirements and voter roll purges had the potential to disenfranchise millions of Latino voters); and Christopher Ingraham, *Study Finds Strong Evidence for Discriminatory Intent Behind Voter ID Laws*, Washington Post, Jun. 3, 2014, <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/06/03/study-finds-strong-evidence-for-discriminatory-intent-behind-voter-id-laws/> (finding that state legislators who had supported voter ID laws were less likely to respond to emails sent from voters with Hispanic-sounding names).

⁵⁸ See Mexican American Legal Defense and Educational Fund, National Association of Latino Elected and Appointed Officials, and National Hispanic Leadership Agenda, *Latinos and the VRA: A Modern Fix for Modern-Day Discrimination*, https://www.maldef.org/assets/pdf/Latinos_and_the_VRA.pdf.

⁵⁹ See Caitlin Yoshiko Kandil, *Asian Americans' numbers and political influence are growing*, Los Angeles Times, Sept. 22, 2016, <http://www.latimes.com/socal/daily-pilot/entertainment/tn-wknd-et-0925-asian-american-voting-20160903-story.html>; Seung Min Kim, *The one big Senate race that Asian-Americans could decide*, Politico, Aug. 25, 2016, <https://www.politico.com/story/2016/08/senate-nevada-asian-american-voters-227366>.

⁶⁰ *Shelby Cnty. v. Holder*, 133 S.Ct. 2612, 2627 (2013).

required to submit voting changes for preclearance. But at the same time, the Court recognized that “no one doubts” that voting discrimination still exists and invited Congress to pass legislation with a modernized formula.⁶¹

Since the Court invalidated the key enforcement provision of the Act in 2013, voting discrimination has become harder to stop. In states, counties, and cities across the country, legislators pushed through laws designed to make it harder for minorities to vote. In the lead-up to the 2014 election, a resurgence of laws to increase barriers to voting, and dilute minority voting strength, have put the right to vote in more danger than at any time in the past 50 years. For example, in 2013, just one month after the *Shelby* decision, North Carolina – where the Asian American population increased by 85 percent between 2000 and 2010 -- passed H.B. 589. The legislation restricts voting through a ban on paid voter registration drives; elimination of same-day voter registration; allows voters to be challenged by any registered voter of the county in which they vote, rather than just their precinct; reduction of early voting by a week; authorization of vigilante poll observers with expanded range of interference; an expansion of the scope of who may examine registration records and challenge voters; a repeal of out-of-precinct voting; elimination of flexibility in opening early voting sites at different hours within a county; and curtailing satellite polling sites for the elderly or voters with disabilities. In striking down the law, the Fourth Circuit found that the legislature purposefully and selectively decided to attack specific election laws that benefit African American voters in order to impede their political participation. In fact, the court noted that “the new provisions target African Americans with almost surgical precision” and “impose cures for problems that did not exist.”⁶² This litigation would not be necessary if Section 5 were still in full force. Indeed, one state senator noted that it was because of the Court’s decision in *Shelby County* that the legislature was free to “go with the full bill,” indicating his full awareness that they would never have received approval for the bill under the full protections of the VRA. In 2016, 14 states, including Alabama, Arizona, Mississippi, South Carolina, Texas, and Virginia, which were previously covered in full or in part by Section 5, had new voting restrictions that include strict photo ID requirements and registration restrictions in place for the first time in a presidential election.⁶³ These are just the newest restrictions in a broader voter suppression movement that began after the 2010 elections, where almost half of all states have new restrictions in place since then.

⁶¹ *Id.* at 2619.

⁶² Robert Barnes and Ann E. Marimow, *Appeals Court Strikes Down North Carolina’s Voter-ID Law*, Washington Post, July 29, 2016, https://www.washingtonpost.com/local/public-safety/appeals-court-strikes-down-north-carolinas-voter-id-law/2016/07/29/810b5844-4f72-11e6-aa14-e0c1087f7583_story.html?utm_term=.8e86e5a8273c. See also Complaint, *North Carolina State Conference of the NAACP et al. v. McCrory et al.*, No. 1:13-cv-658 (M.D.N.C. Aug. 12, 2013)., Complaint, *League of Women Voters et al v. North Carolina et al.*, No. 1:13-cv-00660 (M.D.N.C. Aug. 12, 2013)., and, Complaint, *U.S. v. The State of North Carolina*, No. 13-cv-861 (M.D.N.C. Sept. 30, 2013).

⁶³ Brennan Center for Justice, Webpage on New Voting Restrictions in America, https://www.brennancenter.org/sites/default/files/analysis/New_Voting_Restrictions.pdf.

IV. Scope and Efficacy of Department of Justice Voting Rights Act Enforcement for AAPIs

a. Section 203 enforcement

Of course, the Section 203 determination of coverage is only the first step in ensuring LEP language minority voters are in fact receiving language assistance in the voting process. Successful implementation of Section 203 begins with pre-election planning. Election officials should work with community members to ensure that their Section 203 plan works for the local community, such as getting input from groups on where to target precincts and review of translated materials. Election officials must publicize the availability of language assistance and conduct voter education. Again, we recommend working with local organizations to supplement efforts to help ensure that community members are receiving the information in a culturally and linguistically appropriate manner. Community-based organizations (CBOs), including Asian Americans Advancing Justice affiliates, have also engaged in poll monitoring projects to ensure compliance with Section 203 on Election Day. When problems have arisen in Section 203 compliance, the Department of Justice and CBOs have engaged with the jurisdiction to correct the problems.

When properly implemented, Section 203 increases civic engagement among Asian American citizens. Asian Americans had the highest increase of new voter registration between 1996 and 2004 at approximately 58.7 percent.⁶⁴ DOJ's Section 203 enforcement helped increase voter registration and turnout. After DOJ filed a Section 203 lawsuit in San Diego County, California, voter registration among Hispanics and Filipinos rose by over 20 percent and Vietnamese registrations increased by 40 percent; the County agreed to voluntarily provide additional language assistance to Vietnamese who had just missed the Section 203 threshold mark.⁶⁵ And in Harris County, Texas, the turnout among Vietnamese eligible voters doubled following the DOJ's efforts in 2004.⁶⁶ That same year, Harris County elected the first Vietnamese American to the Texas state legislature after the county began fully complying with Section 203. Also, in 2004, over 10,000 Vietnamese American voters registered in Orange County, which helped elect the first Vietnamese American to California's state legislature.⁶⁷

Section 203 also led to an increase in political representation by "candidates of choice" as a direct result of the increased civic engagement of these groups. During the last reauthorization of the VRA in 2006, Congress noted a sharp rise in the number of Asian American elected officials in federal, state, and local offices. As noted in the House report, the total number of elected officials in 2004 was 346, up from 120 in 1978. Of the 346 total elected officials, 260

⁶⁴ James Thomas Tucker, *The Battle Over Bilingual Ballots*, 229 (2009).

⁶⁵ Alberto R. Gonzales, *Prepared Remarks of Attorney General Alberto R. Gonzales at the Anniversary of the Voting Rights Act*, The United States Department of Justice (Aug. 2, 2005), <http://www.justice.gov/archive/ag/speeches/2005/080205agvotingrights.htm>.

⁶⁶ *Id.*

⁶⁷ Martin Wisckol, *Little Saigon's Big Clout*, Orange County Register, Aug. 21, 2013, <http://www.ocregister.com/articles/vietnamese-188422-community-american.html>.

serve at the local level, up from 52 in 1978.⁶⁸ Approximately 75 Asian American officials serve at the state legislative level. The VRA and particularly the passage of Section 203 have been instrumental in these gains. For example, the vast majority of Asian American elected officials at the time of the study, 75%, were elected in jurisdictions covered by Section 203 of the VRA.⁶⁹ In the state legislatures, 65% of Asian Americans were elected from jurisdictions covered by the VRA.⁷⁰ In city councils, 79% of Asian Americans were elected from VRA-covered jurisdictions.⁷¹ And among those serving on the school boards, 84% of Asian Americans were elected from covered jurisdictions.⁷²

The following are examples of section 203 violations prosecuted by US Department of Justice on behalf of Asian Americans:

- In July 2002, the Census Bureau determined that Harris County qualified for Section 203 coverage in Vietnamese (in addition to Spanish). In 2003, Harris County election officials violated Section 203 by failing to provide Vietnamese ballots on its electronic voting machines. Harris County attempted to remedy the problem by creating paper ballot templates in Vietnamese. However, the County did not make these templates widely available to voters and did not offer them to voters at all polling places. Pressure by the Department of Justice (DOJ), Advancing Justice | AAJC, and the Asian American Legal Network of Texas resulted in a settlement agreement that addressed the County's violations. Specifically, the County agreed to (1) hire an individual to coordinate the County's Vietnamese language election program; (2) provide all voter registration and election information and materials, including the voting machine ballot, in Vietnamese, as well as English and Spanish; (3) establish a broad-based election advisory group to make recommendations and assist in election publicity, voter education, and other aspects of the language program; and (4) train poll officials in election procedures and applicable federal voting rights law.
- In June 2011, DOJ filed a complaint alleging that Alameda County, California violated Section 203 of the VRA by failing to provide effective access to Spanish- and Chinese-speaking citizens who needed language assistance and translated materials and information to cast an informed ballot. In particular, the county failed to provide election-related information and assistance to LEP Chinese voters. It also failed to recruit, train, and appoint an adequate pool of Chinese-speaking poll workers, and failed to translate information (e.g., ballots, registration forms, sample ballots, election notices, and its website) into Chinese. Alameda County has been continuously covered under Section 203 for Spanish and Chinese languages since 1992. On October 19, 2011

⁶⁸ Carol Hardy-Fanta, Christine Marie Sierra, Pei-te Lien, Dianne M. Pinderhughes, and Wartyna L. Davis, *Race, Gender and Descriptive Representation: An Exploratory View of Multicultural Elected Leadership in the United States* 4 (Sept. 4, 2005), <http://www.gmcl.org/pdf/APSA9-05-05.pdf>.

⁶⁹ *Id.* at 17.

⁷⁰ *Id.*

⁷¹ *Id.* at 17-18.

⁷² *Id.* at 18.

the court entered a consent decree requiring the County to provide bilingual language assistance at the polls and election-related materials and information in Spanish, Chinese, and newly covered languages as determined by the Census Bureau. The parties agreed that federal observers may monitor Election Day activities in polling places in Alameda County.

- In July 2013, plaintiffs sued the NYC Board of Elections for failing to comply with the language assistance provisions of the VRA.⁷³ At the time the suit was filed, four elections had passed since the Census Bureau announced in October 2011 that Queens County was covered under Section 203 for Asian Indian language assistance, but the Board had not complied with the law. The Board had failed to provide language assistance in Asian Indian languages in any of the elections since the 2011 determinations. In March 2014, the case settled with the Board agreeing to provide language assistance to the Asian Indian voters in Queens.⁷⁴

Other Section 203 cases that have been brought by DOJ on behalf of Asian Americans as detailed in the Leadership Conference on Civil and Human Rights' report, "The Persistent Challenge of Voting Discrimination: A Study of Recent Voting Rights Violations by State"⁷⁵ include:

- *United States v. City of Walnut, CA* (2007) – On April 12, 2007, DOJ filed a complaint against the city of Walnut, CA under Section 203 alleging that the city failed to translate election materials and provide assistance for limited English proficient Chinese and Korean voters. On November 9, 2007, the court entered a consent decree to ensure that the city translate election materials and provide assistance for limited-English proficient Chinese and Korean voters and ordering the appointment of federal observers until December 31, 2010.
- *United States v. City of Rosemead, CA* (2005) – On July 14, 2005, DOJ filed a complaint and proposed consent decree alleging that the city of Rosemead violated Section 203. The complaint claimed that the city failed to translate most of its election-related information into Spanish, Chinese, and Vietnamese or to provide bilingual assistance at polling sites in those languages, as required by the VRA. The consent decree was approved by a three-judge panel of the court, and required the city to establish effective

⁷³ See Complaint, *All. of S. Asian Am. Labor v. Bd. of Elections in the City of New York*, No. 1:13-cv-03732 (E.D.N.Y. July 2, 2013), <http://aaldef.org/ASAALvBOE.pdf>.

⁷⁴ *Minutes of Meeting of the Commissioners of Elections in the City of New York* (Feb. 11, 2014), <http://vote.nyc.ny.us/downloads/pdf/documents/boe/minutes/2014/021114%20meet.pdf>; Press Release, Asian American Legal Defense and Education Fund, NYC Board of Elections Settles Lawsuit on Bengali Ballots in Queens (Mar. 24, 2014), <http://aaldef.org/press-releases/press-release/nyc-board-of-elections-settles-lawsuit-on-bengali-ballots-in-queens.html>.

⁷⁵ The Leadership Conference on Civil and Human Rights, *The Persistent Challenge of Voting Discrimination: A Study of Recent Voting Rights Violations by State* (2014), <http://archives.civilrights.org/press/2014/Racial-Discrimination-in-Voting-Whitepaper.pdf>.

Spanish-, Chinese-, and Vietnamese-language election programs, and authorized the use of federal observers to monitor the city's elections.

- *United States v. San Diego County, CA* (2004) – DOJ's complaint alleged that the county's practices and procedures concerning Spanish heritage and Filipino voters violated Section 203. The United States and the county agreed to a memorandum of agreement and a stipulated order, both of which were filed on June 23, 2004. The agreement provided for Spanish and Tagalog (Filipino) language election programs, and also a complete Vietnamese-language program to serve a minority language group that narrowly missed the threshold for Section 203 coverage. The court signed the order, including an interlocutory order providing for the appointment of federal examiners and observers pursuant to Section 3 on July 7, 2004.

b. Section 208 enforcement

Although Section 208 does not obligate state or local governments to provide any language assistance, it does provide for a method of enforcement. It is a violation of the VRA if election officials obstruct or deny a voter's right to use an assistor of choice.⁷⁶ The United States Department of Justice (DOJ) has authority to enforce voting rights laws and ensure that voters' rights are protected in federal elections.⁷⁷

DOJ has filed numerous lawsuits against localities for violations of Section 208.⁷⁸ For example, in 2003, DOJ alleged that poll workers in Berks County, Pennsylvania denied Spanish-speaking voters the right to bring assistors of choice into the voting booth in violation of Section 208.⁷⁹ The court found that poll workers' behavior violated Section 208⁸⁰ and contributed to a "hostile and unequal treatment of Hispanic and Spanish-speaking voters[.]"⁸¹ *The court emphasized that when jurisdictions deny voters the right to bring their assistor of choice into the voting booth, "voters feel uncomfortable with the process, do not understand the ballot, do not know how to operate the voting machine, and thus cannot cast a meaningful vote[.]"*⁸² The court ordered Berks County to allow voters their assistors of choice to help them in all aspects of the voting process, including inside the voting booth.⁸³ Lastly, the court ordered that the county train poll workers not to stop voters from bringing an assistor of their choice into the voting booth.⁸⁴

⁷⁶ Angelo N. Ancheta, *Language Accommodation and the Voting Rights Act in Voting Rights Act Reauthorization of 2006: Perspectives on Democracy, Participation, and Power*, 293, 304 (Ana Henderson ed., 2007).

⁷⁷ 52 U.S.C. § 10308(d). See also *U.S. v. Berks County, PA*, 277 F. Supp. 2d 570, 577 (E.D. Pa 2003).

⁷⁸ These claims have often been sought in conjunction with enforcement of other provisions on behalf of language minority voters. See generally http://www.justice.gov/crt/about/vot/litigation/recent_208.php.

⁷⁹ *U.S. v. Berks County, PA* at 530-31 (illustrates incidents of poll workers denying assistors of choice for LEP Hispanic voters).

⁸⁰ *Id.* at 580.

⁸¹ See *id.* at 575-577.

⁸² *Id.* at 580.

⁸³ *Id.* at 584.

⁸⁴ *Id.*

In another example, DOJ sued Miami-Dade County in 2002 for violating Section 208 because poll workers prevented LEP Haitian American voters from having assistants of choice while voting.⁸⁵ DOJ also alleged that the county failed to train poll workers on their duty to allow for voter assistance under Section 208.⁸⁶ The case resulted in an agreement between DOJ and Miami-Dade where the county agreed to comply with Section 208 and prevent violations in the future.⁸⁷ The county also agreed to provide new poll worker training and hire bilingual poll workers for the Haitian American community.⁸⁸

While most states that have adopted Section 208 into their election codes follow the language of Section 208 without modification, some states provide more inclusive language, and other states are less clear about whether LEP voters would qualify for assistance. These variances can affect proper interpretation and implementation of the law. DOJ should investigate these state laws to determine if there are Section 208 violations.

For example, Idaho's Section 208 provision states that a voter "who is unable by reason of physical or other disability to record his vote by personally marking his ballot and who desires to vote, then and in that case such elector shall be given assistance by the person of his choice...."⁸⁹ The language is unclear about whether voters who cannot read or write English are included in this provision. This leaves open the possibility that poll workers would not consider an inability to read or write English as a reason to permit voters to have someone assist them.

Several states institute more stringent restrictions likely to create additional barriers for LEP voters. Restrictions such as time limits, limits placed on the person providing assistance, and the exercise of discretion by election officials to determine voters' eligibility for assistance conflict with the intent of Section 208 and could lead to the denial of assistance to LEP voters. For example, several states limit the number of voters one person can assist. In Missouri, if a voter declares an inability to read or write English, the voter can be assisted by a person of the voter's choice. But the person assisting can only assist one voter per election, unless that person is an immediate family member of the voter.⁹⁰ In Arkansas, a person chosen to assist a voter can help up to six voters to mark and cast a ballot in an election.⁹¹ In Minnesota, the person providing assistance is only allowed to mark the ballots of up to three voters in an election.⁹² During the 2012 General Election in St. Paul, Minnesota, a group of Hmong LEP voters chose Election Protection volunteers to assist in casting their votes. Poll workers insisted on limiting each volunteer to three voters, in compliance with Minnesota law as they

⁸⁵ Consent Order, *United States v. Miami-Dade County* (No. 02-21698, S.D. Fla., June 17, 2002), http://www.justice.gov/crt/about/vot/sec_2/miamidade_cd.php.

⁸⁶ *Id.* at ¶¶ 2-3.

⁸⁷ *See id.*

⁸⁸ *Id.* at ¶¶ 5-6.

⁸⁹ Conduct of Elections, Idaho Code § 34-1108 (2014).

⁹⁰ Election Authorities and Conduct of Elections, § 115.445(3) R.S.Mo. (2014).

⁹¹ Privacy—Assistance to Disabled Voters, A.C.A. § 7-5-310 (b)(4)(b) (2014).

⁹² Minn. Stat. § 204C.15 (2014).

understood it.⁹³ Advancing Justice | AAJC intervened and contacted the County Attorney's office to allege a violation of Section 208. The county agreed to allow the assistants to help more than three voters as long as two election judges observed the assistance being provided during that election.

c. Section 5 enforcement

Section 5 helped address discriminatory redistricting plans that 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.⁹⁴ Texas is home to the third-largest Asian American community in the United States, growing 72 percent between 2000 and 2010.⁹⁵

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.⁹⁶ 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.⁹⁷

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

⁹³ *Id.*

⁹⁴ 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.

⁹⁵ See Community of Contrasts, Appendix B.

⁹⁶ 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>.

⁹⁷ 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*.

school board and won.⁹⁸ These victories were due, in part, to the 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.”⁹⁹ 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.¹⁰⁰ This change would have put Asian American voters in a worse position to elect candidates of their choice.¹⁰¹

Furthermore, the ability of Asian Americans to vote is also frustrated by sudden changes to poll sites without informing voters. For example, 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 203.¹⁰² 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.

In jurisdictions covered by both Sections 5 and 203, Section 5 complements the enforcement of Section 203. Jurisdictions that are covered by both Sections 5 and 203 must obtain preclearance

⁹⁸ See Lynette Holloway, *This Just In: May 18 School Board Election Results*, New York Times, June 13, 1999, <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*, New York Times, June 23, 1996, <http://www.nytimes.com/1996/06/23/nyregion/neighborhood-report-new-york-up-close-school-board-election-results.html>; Sam Dillon, *Ethnic Shifts Are Revealed in Voting for Schools*, New York Times, May 20, 1993, <http://www.nytimes.com/1993/05/20/nyregion/ethnic-shifts-are-revealed-in-voting-for-schools.html>.

⁹⁹ See Thomas T. Mackie & Richard Rose, *The International Almanac of Electoral History*, 508 (3d ed. 1991).

¹⁰⁰ See 1998 N. Y. Sess. Laws 569-70 (McKinney).

¹⁰¹ 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 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).

¹⁰² 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 Asian American Legal Defense and Education Fund, *Asian Americans and the Voting Rights Act: The Case for Reauthorization*, 41 (2006), <http://www.aaldef.org/docs/AALDEF-VRAReauthorization-2006.pdf>.

from the Justice Department before implementing any change in a language assistance program. For example, when the New York City Board of Elections refused to provide fully translated machine ballots, the Justice Department, acting pursuant to Section 5, compelled the Board to comply with Section 203 by providing machine ballots with all names transliterated into Chinese.¹⁰³

d. Section 2 enforcement

Redistricting

Historically, Asian Americans have found their communities split into different districts, thus reducing their voting power. In 2001, redistricting efforts divided Chicago's Chinatown—a compact community whose members have common ground in terms of history, ethnicity, language, and social concerns—from two Illinois Senate districts into three Senate districts, and from three Illinois House districts into four House districts. Similarly, after the 1991 redistricting in Los Angeles, Koreatown, which covers just over one square mile, was split into four City Council districts and five State Assembly districts. This fracturing was patently problematic after the 1992 riots in Los Angeles, where an estimated \$1 billion in damages occurred, concentrated mainly on businesses operated by Koreans and other Asian immigrants in Koreatown. However, because Asian Americans did not make up a significant portion of any elected official's constituency, officials were left with little incentive to respond to the community. Thus, when Koreatown residents approached their local officials for assistance with the cleanup and recovery effort, no one was willing to take responsibility for the neighborhood and they were unable to receive assistance.

While race cannot be the predominant or controlling factor in drawing districts¹⁰⁴, race remains a permissible consideration so long as it does not subordinate "traditional race-neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions, or communities defined by actual shared interests, to racial considerations."¹⁰⁵ Utilizing the idea of communities defined by actual shared interests and needs, or also known as "communities of interest," communities can argue that their community should be kept intact within a district during the redistricting process.¹⁰⁶ Communities of interest can be multi-racial and should be focused on commonalities between community members with respect to characteristics, needs and concerns.

During the 2011 redistricting cycle in California, Asian Americans successfully argued for keeping communities of interest together in the resulting maps approved by the Citizens

¹⁰³ Editorial, *Minority Rights in the Voting Booth*, New York Times, Aug. 19, 1994, <http://select.nytimes.com/search/restricted/article?res=F60910FB3D5DOC7A8DDDA10894DC494D81>.

¹⁰⁴ It is important to note, however, that race must be considered during the redistricting process to ensure that any map considered complies with the Voting Rights Act. *Shaw v. Reno*, 509 U.S. 630, 630 (1993).

¹⁰⁵ *Miller v. Johnson*, 515 U.S. 900, 916 (1995).

¹⁰⁶ It can also be used to defeat a claim of racial gerrymandering so long as the communities were actually considered when the districts were drawn and not as an afterthought. *Bush v. Vera*, 517 U.S. 952, 966-967 (1996).

Redistricting Commission for California Assembly, Senate, Board of Equalization, and Congressional districts. The Coalition of Asian Pacific Americans for Fair Redistricting (CAPAFR), a statewide coalition of Asian American and Pacific Islander organizations and individuals working in 10 regions, worked diligently to incorporate community feedback and input related to keeping together specific communities of interest and neighborhoods and conveyed this information to the commission via testimony at the public hearings. On behalf of CAPAFR, Asian Americans Advancing Justice -- Los Angeles, the coalition's anchor, developed state Assembly and Senate mapping proposals that incorporated the communities' priorities around their communities of interest. These testimonies and maps influenced the final district configurations in all 10 regions in which it worked, including the creation of California's first Asian American majority-minority state or federal district and the unification of many Asian American and Pacific Islander communities that were fragmented in the 2001 district maps.¹⁰⁷

Although Asian American populations are growing in virtually every state, their numbers can still be too small to take advantage of Section 2 in creating majority-minority districts. In some areas, these populations have begun to form minority coalition districts with other groups as a means to elect candidates of their choice.

A minority coalition district is one in which a) two minority groups (or more) have come together in coalition to constitute a politically cohesive voting bloc that could elect a representative of choice and b) where their numbers constitute a majority of their district. And under certain circumstances, the creation of minority coalition districts will be required under Section 2.¹⁰⁸ An example of a minority coalition district strategy can be found in Prince William County, Virginia, one of the nation's most diverse counties with a growth rate of Asian American population of 172 percent and Latinos by 204 percent. There local organizers argued that there was voter cohesion among Latinos, Asian Americans, and African Americans, and that if their numbers were fairly represented in the district maps, they would constitute minority coalition districts.¹⁰⁹

Language assistance

Section 2 has also been utilized to protect the voting rights of language minorities who do not reside in Section 203-covered jurisdictions, as well as language minority voters who fall outside of the four protected language groups (i.e., Latinos, Asian Americans, American Indians, and Alaskan Natives).

¹⁰⁷ Asian Pacific American Legal Center, *APALC's Redistricting Campaign Influences Commission Maps*, Voice for Justice (The Newsletter of the Asian Pacific American Legal Center), Fall 2011 (Vol. 27, No. 2), at 3, http://www.apalc.org/newsletters/newsletter_2011_fall.pdf.

¹⁰⁸ *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).

¹⁰⁹ Marcelo Ballve, New American Media, *Virginia's War of Maps: Immigrant Surge Challenges All-White Leadership*, (June 8, 2011), <http://newamericamedia.org/2011/06/northern-va-battle-shows-redistricting-is-no-longer-a-black-and-white-issue.php>.

For example, the Department of Justice (DOJ) brought a Section 2 case against the City of Boston on behalf of Chinese- and Vietnamese-speaking voters in 2005.¹¹⁰ On July 29, 2005, DOJ filed a complaint against the City of Boston under Sections 2 and 203 of the VRA alleging that the City's election practices and procedures discriminated against Latinos, Chinese Americans, and Vietnamese Americans, in violation of section 2 of the VRA. The suit also alleged that the City violated section 203 by failing to make all election information available in Spanish. DOJ alleged that the City abridged the right of LEP members of language minority groups to vote by treating LEP Latino and Asian American voters disrespectfully; refusing to permit LEP Latino and Asian American voters to be assisted by an assistant of their choice; improperly influencing, coercing or ignoring the ballot choices of LEP Latino and Asian American voters; failing to make available bilingual personnel to provide effective assistance and information needed by minority language voters; and refusing or failing to provide provisional ballots to LEP Latino and Asian American voters. On October 18, 2005, the court issued an order that, among other requirements, mandated the provision of language assistance to Chinese and Vietnamese voters.¹¹¹

DOJ also used Section 2 on behalf of language minority voters whose language is not covered under Section 203. For example, DOJ brought a Section 2 action on behalf of Arab American voters in Hamtramck, Michigan.¹¹² In 1999, an organization called "Citizens for Better Hamtramck" challenged voters (including Bengali Americans) who "looked" Arab, had Arab or Muslim sounding names, or had dark skin. The harassment included pulling voters from voting lines and forcing them to show passports or citizenship papers before they could vote, as well as forcing some of them to take an oath of allegiance even though they had appropriate citizenship documentation. As the result of an agreement with DOJ, the city agreed to appoint at least two Arab Americans or one Arab American and one Bengali American election inspector to provide language assistance for each of the 19 polling places where the voter challenges occurred.¹¹³

V. Recommendations for Ensuring Access to the Ballot Post-Shelby

a. Section 203 Recommendations

Covered jurisdictions can implement some best practices in their Section 203 efforts related to translated materials, bilingual poll workers, poll worker training, pre-election day activities and Election Day activities:

Jurisdictions should work to ensure translated materials are available, accessible and effective by conducting a comprehensive review of election materials to identify materials that should be

¹¹⁰ *United States v. City of Boston, MA* (D. Mass. 2005). DOJ also brought a Section 203 enforcement claim against the City of Boston for noncompliance in providing language assistance in Spanish.

¹¹¹ Consent Order, *United States v. City of Boston, Mass.*, (No. 05-11598, D. Mass., Oct. 18, 2005), http://www.justice.gov/crt/about/vot/sec_203/documents/boston_cd2.pdf.

¹¹² *United States v. City of Hamtramck, Michigan* (E.D. Mich. 2000).

¹¹³ *Id.*

(or still need to be) translated, using certified translation vendors for translations that includes a review process utilizing community-based organizations, and providing precincts with large tri-fold standing bulletin boards for materials' display. Additionally, for character-based languages, jurisdictions should ensure complete translation of ballot information by using phonetic translations (transliterations) of candidate names.

Prior to Election Day, covered jurisdictions should take a number of steps to ensure they are complying with Section 203 and providing appropriate language assistance to their voters. First, jurisdictions should establish an advisory committee consisting of representatives from community-based organizations that work with and/or serve language minority voters. Jurisdictions should also hire election staff, such as a language minority coordinator, to coordinate the jurisdiction's efforts to meet its Section 203 requirements. Jurisdictions should engage outside entities to assist with these efforts, including using ethnic media to publicize the availability of language assistance and conducting outreach to community members and language minority voters. If targeting poll sites for language assistance, jurisdictions should use sound methodology for identifying poll sites where language assistance is needed, including consultation with local leaders from the relevant language communities.

To ensure Election Day goes as smoothly as possible, jurisdictions should ensure they have the needed staff available and well-trained to address the needs of language assistance voters. Jurisdictions should recruit sufficient numbers of bilingual poll workers, as well as train all poll workers on language assistance and cultural sensitivity. Jurisdictions should also make sure poll workers understand all applicable voting laws, including federal obligations. To be able to handle issues that arise on Election Day, jurisdictions should establish a mechanism for handling complaints about poll workers lodged by language minority voters, including addressing and resolving Election Day problems on-the-spot, as well as setting up an Election Day troubleshooter team to check poll sites for, and resolve, issues such as missing bilingual poll workers or translated materials. Jurisdictions should also add multilingual capacity to their voter hotline.

b. Section 208 Recommendations

States should educate voters about their rights under Section 208 and state law, both before the election and at the polling locations. Informing voters in as many ways as possible about the right to assistance before Election Day will help LEP voters be more prepared when they come to the polls and will give them the confidence to vote knowing that someone they trust and who speaks their language will be with them through the voting process.

States should also take proactive steps to ensure their election officials and poll workers are well aware of these rights. Guidance from Secretaries of State to local election officials on implementing Section 208 requirements should be clearly articulated. Information on what Section 208 requires, how to manage requests for assistance, what to expect in these situations, and how state laws interact with this right would help local officials plan their poll

worker trainings and set protocols for polling places. It is equally important to provide comprehensive poll worker training on how to interact with voters requiring assistance.

c. Section 5 Recommendations

The US Supreme Court left it up to Congress to create new formulas for Section 5 coverage. That is the only viable, long-term remedy available to fill the gaps left behind by *Shelby*.

Two bills have been introduced in Congress that would restore the VRA. First, we saw the bicameral introduction of the Voting Rights Amendment Act of 2014 (VRAA) on January 16, 2014, to address the *Shelby* decision. The House bill (H.R. 3899) was introduced by Representatives James Sensenbrenner (R-WI), John Conyers (D-MI), Bobby Scott (D-VA), and John Lewis (D-GA). The Senate version (S. 1945) was introduced by Judiciary Committee Chairman Patrick Leahy (D-VT). In February 2015 (H.R. 885) and again in July 2017 (H.R. 3239), Representatives Sensenbrenner and Conyers reintroduced the bipartisan Voting Rights Amendment Act of 2015 and of 2017 respectively, in the House of Representatives. The bill's provisions would create a flexible, nationwide formula updated annually and based on current voting rights violations to determine which jurisdictions require preclearance for voting changes; enhance the power of federal courts to stop discriminatory voting changes from being implemented and to order preclearance remedies as needed; create new nationwide transparency of certain voting changes to keep communities informed about voting changes that raise concerns; and strengthen and expand federal observer program, an effective tool critical to combating discrimination directly at the polls

On June 24, 2015, the Voting Rights Advancement Act (Advancement Act) was introduced in the Senate (S. 1659) and the House (H.R. 2867). In June 2017 (H.R. 2978 and S.1419), the Voting Rights Advancement Act of 2017 was introduced by Representative Teri Sewell and Senator Patrick Leahy. The Advancement Act has received broad and vocal support from the civil rights community because it responds to the unique, modern-day challenges of voting discrimination that have evolved in the 50 years since the Voting Rights Act first passed. The Advancement Act recognizes that changing demographics require tools that protect voters nationwide—especially voters of color, voters who rely on languages other than English, and voters with disabilities. It also requires that jurisdictions make voting changes public and transparent. The Voting Rights Advancement Act would modernize the preclearance formula to cover states with a pattern of discrimination that puts voters at risk, ensure that last-minute voting changes won't adversely affect voters, protect voters from the types of voting changes most likely to discriminate against people of color and language minorities, enhance the ability to apply preclearance review when needed, and expand the effective Federal Observer program and improve voting rights protections for Native Americans and Alaska Natives.

In the almost five years since the *Shelby* decision, Congress has failed to restore the Voting Rights Act, and voters have been subject to more discrimination than at any time in the past 50 years. Congress now has two bills it could use as vehicles for restoring the Voting Rights Act. The time is now for Congress to take up and debate these two bills. Congress must come

together, as it has each time the Voting Rights Act has been before it, to restore the protections of the VRA.

d. Section 2 Recommendations

With Asian American populations growing across the country, community leaders should look to utilize Section 2 more to address the needs of the community. Asian Americans should become more involved in redistricting efforts to ensure our communities are not being divided into different districts, while also working with other communities of color to coordinate redistricting efforts and concerns.

Asian American leaders should look in particular collaborating with other communities of color to develop minority coalition districts that would meet the Section 2 requirements and could start electing candidates of choice in the future.¹¹⁴ As more Section 2 vote denial cases are being brought, the Asian American community should be engaged to determine whether these practices are having a negative impact on Asian American voters as well as other voters of color. Finally, Section 2 should be utilized more on behalf of language minority voters to secure language assistance remedies for LEP voters. This will be particularly important for communities with sizeable populations of LEP voters that may fall short of triggering Section 203 coverage

VI. Conclusion

The VRA recognizes the long history of disenfranchisement and pervasive discriminatory attempts to deny persons of color the right to vote. Despite gains that have been made over the fifty years since the enactment of the VRA, there is still more to be done. Voting discrimination and suppression are still very real and very current. Even the Chief Justice John Roberts notes that “voting discrimination still exists; no one doubts that.”

The U.S. Census Bureau forecasts that while the number of Asian immigrants will grow between now and 2040, the proportion of Asian Americans who are immigrants will decrease. With the high naturalization rate and increase of U.S.-born Asian Americans in the coming years, it is safe to assume that voter registration rates among the Asian American community will only increase and the full potential of the Asian American electorate will be unleashed.

It is precisely for these reasons that Voting Rights have been an integral part of our portfolio of work since our inception in 1991. Indeed, one of our challenges in pursuing this work is that for many, both within and outside of our community, voting discrimination and suppression are not considered problems endemic to Asian Americans, but rather other communities of color. We hope that this report helps to dispel that myth. Even as we celebrate the promise of the Voting Rights Acts and recount how it has already helped Asian Americans to cast their ballots every election day, we understand the need to maintain, enforce, restore and strengthen the Voting Rights Act for another fifty years.

¹¹⁴ *Thornburg v. Gingles*, 478 US 30, 84 (1986).