



**Written Testimony of
Asian Americans Advancing Justice – AAJC**

**“The Right Side of History: Protecting Voting Rights in America”
United States Senate
Committee on the Judiciary
March 12, 2024 Hearing**

The Voting Rights Act of 1965 (VRA) has been a powerful tool to protect Asian Americans from discrimination and increase the community’s access to the ballot. Unfortunately, this tool has been rendered less effective in the wake of harmful and short-sighted decisions by the Supreme Court, including *Shelby County v. Holder*, 570 U.S. 2 (2013) (*Shelby County*) more than a decade ago. As one of the nation’s fastest growing racial group, Asian Americans are also an increasingly significant part of the electorate. Unfortunately, the community has yet to maximize its political power and will be unable to do so without a restored and strengthened VRA to fully protect their right to vote.

Asian Americans have a long history of being denied the rights held by U.S. citizens, including the right to vote. Racist laws barring Asian Americans from entering or staying in the country, owning land, or voting, among other exclusionary laws, were often based on the perception and fear of Asian Americans as “outsiders” and “perpetual foreigners,” and the attendant perceived political threat to the status quo. These problems continue to manifest today and are likely to worsen because of the inevitable demographic shifts across the nation. As one of the fastest growing racial or ethnic group for over the last several decades, Asian Americans are becoming more politically visible and viable all across the country, which is resulting in increased racial appeals against Asian American candidates and efforts to erect barriers to the ballot for Asian American voters. The loss of a functioning Section 5 preclearance regime has resulted in ongoing harms and discrimination against Asian American voters and must be restored and strengthened in order to ensure equal access to democracy for Asian Americans.

Organizational Information

Asian Americans Advancing Justice – AAJC (Advancing Justice – AAJC) is a national 501 (c)(3) nonprofit founded in 1991 in Washington, D.C. Advancing Justice – AAJC’s mission is to advance the civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. Advancing Justice – AAJC fights for our civil rights through education, litigation, and public policy advocacy, empowering our communities by bringing local and national constituencies together and ensuring Asian Americans are able to participate fully in our democracy.

Advancing Justice – AAJC is a member 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 Advancing Justice – ALC located in San Francisco, Advancing Justice – Los Angeles, Advancing Justice – AAJC located in Washington, D.C., Advancing Justice – Chicago, and Advancing Justice – Atlanta.

Advancing Justice – AAJC’s Community Partners Network enhances our voting rights advocacy by elevating community voices and providing insight into the issues facing our diverse community. This a collaboration of over 300 community-based organizations in 37 states¹ and the District of Columbia helps to further our reach and strengthen our understanding of the communities we represent across issue areas.

In particular, Advancing Justice – AAJC works to eliminate barriers Asian Americans face in participating in our nation's political process. This includes working to defend and enforce the Voting Rights Act (VRA), improving election systems, and providing analysis of Asian American electoral participation. In addition to poll monitoring and voter protection efforts across the country, Advancing Justice – AAJC, in partnership with APIAVote, has run a multilingual Asian election protection hotline 888-API-VOTE that provides in language assistance to voters who have questions about the election process or are experiencing problems while trying to vote. A key player in collaboration with other civil rights groups regarding the reauthorization of the Voting Rights Act in 2006, Advancing Justice – AAJC has engaged in ongoing efforts to address the disastrous *Shelby County* decision.

Additionally, through our litigation program, Advancing Justice – AAJC influences key civil rights issues that have significant impact on Asian Americans and immigrant communities, both in the courts and through technical assistance for our Community Partners. We pursue impact litigation in federal courts, file amicus briefs, including in cases before the U.S. Supreme Court, and engage with the broader racial and social justice coalition to advance key issues creatively. We have actively engaged in impact litigation and amicus work to protect Asian American voters.

Asian Americans Have Long Experienced Discrimination in the United States

Historians have documented the protracted history of Asian Americans in the United States.² Asian Americans have faced extensive discrimination throughout this time, including the denial of rights held by U.S. citizens, such as the right to vote.

¹ The states in which we have Community Partners are Alabama, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

² Erika Lee, *The Making of Asian America: A History* (New York: Simon and Schuster, 2015), 3.

In the mid-19th century, Chinese workers came to work in gold mines, agricultural and garment industries, and as railroad laborers on the west coast.³ At the end of the 19th century, Chinese immigrants were unfairly blamed for lack of economic opportunity.⁴ Such sentiments gave rise to the 1875 Page Act, which primarily targeted certain Asian immigrants deemed “undesirable.”⁵

Extending their racism from deterring “undesirables” to *all* new Chinese immigrants, the Senate followed suit by passing the Chinese Exclusion Act of 1882. As the first U.S. immigration law to bar an entire ethnic group, the Chinese Exclusion Act effectively prohibited Chinese immigrants from entering the U.S. for about 60 years and barred anyone of Chinese descent from gaining citizenship.⁶ Extending the Chinese Exclusion Act for another ten years, the Geary Act of 1892 required that Chinese individuals obtain “certificates of residence” while denying them the right to be released on bail upon application for a writ of habeas corpus.⁷ Furthermore, Chinese immigrants “were not allowed to bear witness in court”: only a “credible white witness” could testify on their behalf.⁸ Despite using the fig leaf of economic security as its pretense, the Chinese Exclusion Act fell in line with the larger anti-Chinese movement that advanced a racist campaign for white purity under threat from Chinese immigration.⁹

The Chinese exclusionary laws codified through legislation anti-Asian sentiments that had long been held in the United States. As legal scholar Leti Volpp has noted, “[f]ollowing the Civil War, Congress discussed the wisdom of completely striking racial restrictions to naturalization, but concerns about granting the privileges of citizenship to Chinese immigrants precluded such a shift.”¹⁰ The Naturalization Act of 1870 extended naturalization rights to all “aliens of African nativity and to persons of African descent,” while denying the right to all other non-whites, including Asian Americans.¹¹

³ Office of the Historian, “Chinese Immigration and the Chinese Exclusion Acts,” Milestones: 1866–1898, Milestones in the History of U.S. Foreign Relations (Foreign Service Institute, United States Department of State), accessed March 16, 2024, <https://history.state.gov/milestones/1866-1898/chinese-immigration>.

⁴ George Anthony Pepper, “Forbidden Families: Emigration Experiences of Chinese Women under the Page Law, 1875-1882,” *Journal of American Ethnic History* 6, no. 1 (Fall 1986): 28–46.

⁵ See, e.g. 2 Cong. Rec. 3482 (1874), which discusses the “petition of a very large number of people of the State of California” seeking relief “from the influx of...undesirable residents” originating from China.

⁶ 22 Stat. 58, 47 Cong. Ch. 126. “Chinese Exclusion Act (1882),” Milestone Documents (Washington, DC: National Archives, January 17, 2023), <https://www.archives.gov/milestone-documents/chinese-exclusion-act>.

⁷ Pub. L. No. 52-60, 27 Stat. 25.

⁸ Maureen Fan, “An Immigrant’s Story: Against a Wall of Exclusion,” *San Francisco Chronicle*, October 4, 2019, <https://www.sfchronicle.com/opinion/article/An-immigrant-s-story-Against-awall-of-14494875.php>.

⁹ Michael Luo, “The Forgotten History of the Purging of Chinese from America,” *New Yorker*, April 22, 2021, <https://www.newyorker.com/news/daily-comment/the-forgotten-history-of-the-purging-of-chinese-from-america>.

¹⁰ Leti Volpp, “‘Obnoxious To Their Very Nature’: Asian Americans and Constitutional Citizenship,” *Citizenship Studies* 5, no. 1 (February 2001): 73, <https://doi.org/10.1080/13621020020025196>.

¹¹ Marian L. Smith, “Race, Nationality, and Reality: INS Administration of Racial Provisions in U.S. Immigration and Nationality Law Since 1898,” *Prologue Magazine*, Summer 2002, <https://www.archives.gov/publications/prologue/2002/summer/immigration-law-1>.

In addition to immigration restrictions, the western United States exhibited anti-Asian sentiment by enacting land ownership laws that were racially exclusive, including explicit bans on Asian immigrants from owning land. For example, upon obtaining Statehood in 1859, Oregon ratified a Constitution that barred any "Chinaman" from owning property in the state, while granting "white foreigners" the same property ownership rights as native citizens.¹² California amended its constitution in 1879 to state that only aliens of the "white race or of African descent" were eligible for land ownership.¹³ Washington's territorial legislature passed a similar alien land law excluding Chinese from property ownership in 1886 in response to anti-Chinese unrest in the territory.¹⁴ The Washington legislature added a statute to their constitution in 1889 requiring intent to naturalize as a prerequisite for land ownership, thereby excluding Asian immigrants who were by law ineligible for naturalization.¹⁵

The Supreme Court compounded the impact of anti-Asian laws, setting harmful precedents by repeatedly upholding challenges to discriminatory laws against Asian immigrants and their descendants and establishing Congress' plenary power on immigration matters.¹⁶ Subsequent legislation, such as the Naturalization Act of 1906, which allowed only "free white persons" and "persons of African nativity or persons of African descent" to naturalize, were also upheld by the Supreme Court.¹⁷ Two key U.S. Supreme Court cases—*Ozawa v. U.S.* (1922) and *U.S. v. Thind* (1923)—held that Asian immigrants were not free white people and were therefore ineligible for naturalized citizenship.¹⁸

¹² Cherstin Lyon. "Alien land laws," *Densho Encyclopedia* <https://encyclopedia.densho.org/Alien%20land%20laws> (accessed February 21, 2024).

¹³ Mark L. Lazarus III, "An Historical Analysis of Alien Land Law: Washington Territory & State 1853-1889," *University of Puget Sound Law Review* 12 (1989): 197–246. Quote from 216.

¹⁴ *Id.* at 220–221. See also: Theodore Roodner, "Washington's Alien Land Law—Its Constitutionality," *Washington Law Review* 39 (1964): 115–116, <https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1423&context=wlr>.

¹⁵ They were denied the right to own land and related real property rights. See, e.g., *Webb v. O'Brien*, 263 U.S. 313 (1923) upholding California's Alien Land Law prohibiting land rights for "aliens ineligible for citizenship"; *Terrace v. Thompson*, 263 U.S. 197 (1923) upheld a similar Alien Land Law in Washington; see also Keith Aoki, "No Right To Own?: The Early Twentieth-Century 'Alien Land Laws' as a Prelude to Internment," *Boston College Third World Law Journal* 19, no. 1 (December 1998): 37–72, describing the history of Alien Land Laws, which, while facially race-neutral, were passed in response to Japanese immigrants competing for agricultural land; see also *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."

¹⁶ See, e.g., *Chae Chan Ping v. United States*, 130 U.S. 581 (1889). David A. Martin, "Why Immigration's Plenary Power Doctrine Endures," 68 *Oklahoma Law Review*, 29 (2015), <https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1013&context=olr>.

¹⁷ Pub. L. 59-338, 34 Stat. 596.

¹⁸ See, e.g., *Ozawa v. United States*, 260 U.S. 178, 198 (1922), which held that Ozawa, a Japanese immigrant who had lived in the U.S. for 20 years was "clearly ineligible for citizenship" because he "is clearly of a race which is not Caucasian"; *U.S. v. Thind*, 261 U.S. 204 (1923) which canceled an Indian national's US citizenship because he was not a "free white person" in accordance with how the words are commonly understood. See generally Elizabeth R. OuYang, "Two Recent Supreme Court Decisions and Changing Demographics Underscore the Importance of US Citizenship," *Asian American Law Journal* 27, no. 1 (2020): 4–18, <https://doi.org/10.15779/Z38PK07273>.

Ultimately, immigrants from all Asian nations were barred from immigrating to the United States through the Immigration Act of 1924¹⁹ which expanded the reach of the Chinese Exclusion Act. These exclusionary laws remained in effect until they were repealed by the 1943 Magnuson Act and radically shaped the demographic landscape of America.²⁰

In the most egregious example of anti-Asian sentiment by the United States government, a mere year before these exclusionary laws were repealed by the Magnuson Act, President Roosevelt issued Executive Order 9066. Under the guise of national security, the order authorized the mass incarceration of Japanese Americans in a series of incarceration camps in the United States interior two months after the bombing of Pearl Harbor. Despite the absence of any alleged crimes and without trial or representation, approximately 120,000 U.S. residents of Japanese ancestry, half of whom were children, were incarcerated in federal detention centers. Two thousand of them would never again experience freedom, dying while incarcerated from infectious diseases, bad sanitation, or after being shot by guards.²¹ Another 5,000 American babies were born while in detention.²² The Supreme Court upheld the laws and curfews imposed by Executive Order 9066 against U.S. citizens of Japanese descent in a disgraceful series of opinions: *Korematsu v. United States*, 323 U.S. 214 (1944); *Hirabayashi v. United States*, 320 U.S. 81 (1943); *Yasui v. United States*, 320 U.S. 115 (1943).

In 1960, only 877,934 Asian Americans are recorded as living in the United States—a mere half of one percent of the American population.²³ And due to these restrictions on immigration and naturalization, Asian Americans were left without the ability to vote throughout much of the country's history.

Legacy of Exclusionary Laws

The ongoing legacy of exclusionary laws against Asian Americans and Japanese incarceration is still felt in the policies of today. In some instances, the government recognized its discrimination. For example, President Ronald Reagan apologized for Japanese incarceration and signed the Civil Liberties Act of 1988, which also gave surviving Japanese Americans \$20,000.²⁴ Knowing the historical injustices suffered by Chinese immigrants and their descendants, the Senate introduced and passed a resolution in 2011

¹⁹ Pub. L. 68-139, 43 Stat. 153.

²⁰ Pub. L. 78-199, 57 Stat. 600.

²¹ Gisela Perez Kusakawa, "The Korematsu Legacy: 'Stand up for What Is Right!,'" Advancing Justice – AAJC (blog), January 30, 2020, <https://medium.com/advancing-justice-aajc/the-korematsu-legacy-stand-up-for-what-is-right-4a19c5af491d>.

²² *Id.*

²³ Asian Americans Advancing Justice, "Inside the Numbers: How Immigration Shapes Asian American and Pacific Islander Communities" (Washington, DC, June 2019), https://www.advancingjustice-aaajc.org/sites/default/files/2019-06/1153_AAJC_Immigration_Final_Pages_LR-compressed.pdf.

²⁴ Helen Yoshida, "Redress and Reparations for Japanese American Incarceration," The National WW2 Museum, August 13, 2021, <https://www.nationalww2museum.org/war/articles/redress-and-reparations-japanese-american-incarceration>.

acknowledging the discriminatory nature of the Chinese Exclusion Act and other laws against those of Chinese descent in America.²⁵

But the legacy of anti-Asian laws are still with us. Karen Korematsu noted the similarities between the Muslim Ban—when immigrants from predominantly Muslim countries were prohibited from coming into the United States—and the discrimination her father faced during World War II.²⁶ And despite recognizing the injustice of the Korematsu case, the majority of the Supreme Court in *Trump vs. Hawaii* upheld the Muslim ban.²⁷ Other examples, such as the modern detention of families, including children, and the targeting and profiling of Asian Americans and immigrants from Asia, demonstrates that the vestige of the country’s history of anti-Asian racism is alive in contemporary United States society.²⁸ Anti-Asian racism has only been stoked in recent years by a growing xenophobic backlash against immigrants.²⁹ Members of our community have been victims of hate crimes simply for being a person of color or for being perceived as unwanted immigrants.³⁰ Harassment and violence directed toward Asian Americans who were wrongly blamed for the COVID-19 pandemic resulted in the exponential increase in hate crimes against Asian Americans during the last several years.³¹

The current political climate has also seen a resurgence of “alien land laws.” Twenty seven states have introduced discriminatory land bills since November 2022 and eight states have enacted them: Alabama, Arkansas, Florida, Indiana, Louisiana, Montana, Tennessee,

²⁵ S. Res. 201, 112th Cong. (2011) (enacted), <https://www.congress.gov/bill/112th-congress/senate-resolution/201/text>.

²⁶ *Id.*

²⁷ *Trump v. Hawaii*, 585 U.S. ___, 710 (2018) (abrogating *Korematsu v. United States*, 323 U.S. 214, 225 (1944))”

²⁸ Asian Americans were also subject to other discriminatory laws during this time. They were removed from their homes and confined to areas set aside for slaughterhouses and other businesses thought prejudicial to public health or comfort. See *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) describing the prejudicial enforcement of a San Francisco ordinance. They also faced a number of other discriminatory laws ranging from foreign miner taxes, directed at Chinese gold miners, to anti-Asian business regulations. See Sucheng Chan, *Asian Americans: An Interpretive History*, Twayne’s Immigrant Heritage of America Series (Boston, Massachusetts: Twayne Publishers, a division of G. K. Hall & Co., 1991), 46-47. Both immigrant and native-born Asian Americans also experienced pervasive discrimination in everyday life. *People v. Brady*, 40 Cal. 198, 207 (1870) upholding a law providing that “No Indian. . . or Mongolian or Chinese, shall be permitted to give evidence in favor of, or against, any white man” against Fourteenth Amendment challenge); see also *Gong Lum v. Rice*, 275 U.S. 78 (1927) upholding segregation of Asian schoolchildren.

²⁹ See “Confronting Discrimination in the Post-9/11 Era: Challenges and Opportunities Ten Years Later” (Washington, DC: Department of Justice, October 19, 2011), https://www.justice.gov/sites/default/files/crt/legacy/2012/04/16/post911summit_report_2012-04.pdf, at 4, noting that the FBI reported a 1,600 percent increase in anti-Muslim hate crime incidents in 2001.

³⁰ See, e.g., *id.*, at 7-9 discussing numerous incidents of post-9/11 hate crimes prosecuted by the DOJ.

³¹ Since February 2020, almost 10,000 hate incidents targeting Asian Americans have been reported to Stop AAPI Hate (<https://stopaapihate.org/>) and the Asian American Advancing Justice affiliation’s Stand Against Hatred reporting site (<https://www.standagainsthatered.org/>) since the beginning of the pandemic. For more recent data, see Asian Americans Advancing Justice, “PACAANHPI: Response to Belonging, Inclusion, Anti-Asian Hate, Anti-Discrimination; Data Disaggregation; Immigration and Citizenship Status; and Language Access Subcommittees’ Questions,” (Washington, DC, February 28, 2024), <https://www.advancingjustice-aajc.org/publication/pacaanhpi-response-belonging-inclusion-anti-asian-hate-anti-discrimination-data>.

and Virginia.³² These laws regularly prohibit real estate purchases by citizens and business entities from countries with adversarial relationships with the United States, often including China and North Korea. They also place restrictions on the purchase of agricultural land as well as parcels in proximity to “critical infrastructure” such as power plants and military installations.³³ Many of these bills have been introduced in states with a long history of discriminating against Asian Americans through the use of these “alien land laws.” For example, Florida was the last state to repeal its “alien land law,” allowing the law to remain on the books until 2018.³⁴ Five years later, another alien land law, S.B. 264, was introduced in Florida and was signed by Governor Ron DeSantis on May 8, 2023.³⁵ Texas has a history of passing alien land laws dating back to 1891.³⁶ On October 9th, 2023, Texas State Senator Lois Kolkhorst introduced S.B. 51 which seeks to completely ban Chinese, Iranian, North Korean, and Russian citizens from purchasing agricultural land in the state.³⁷ Florida and Texas are formerly-covered Section 5 jurisdictions that are continuing to discriminate against Asian Americans. These discriminatory land laws will likely only grow more prevalent as anti-Asian sentiments continue to rise.³⁸

Ongoing Voting Discrimination against Asian Americans

The common thread that weaves together much of the discrimination faced by Asian Americans throughout the nation’s history is the false stereotype of Asian Americans as “outsiders,” “aliens,” and “perpetual foreigners.”³⁹ This stereotype has infected Asian

³² Asian Americans Advancing Justice | AAJC, “Background: Texas S.B. 51” (Washington, DC, October 12, 2023), <https://www.advancingjustice-aaajc.org/sites/default/files/2023-11/TX%20SB%2051%20One%20Pager%20101623%20Final.pdf>.

³³ “Florida’s Real Estate Investment Ban Recalls ‘Alien Land Laws,’” *Commercial Observer*, September 27, 2023, <https://commercialobserver.com/2023/09/florida-chinese-real-estate-investment-ban/>.

³⁴ Deanna Allbrittin, “Florida Was Last State in US to Remove ‘Alien Land Law’ Used Historically for Asian Discrimination,” *WFTV*, March 26, 2021, <https://www.wftv.com/news/local/florida-was-last-state-us-remove-alien-land-law-used-historically-asian-discrimination/Z5NA45Z5P5FTN67AOKFLPT3UU/>.

³⁵ “Governor Ron DeSantis Cracks Down on Communist China,” May 8, 2023, <https://www.flgov.com/2023/05/08/governor-ron-desantis-cracks-down-on-communist-china/>.

³⁶ Texas State Historical Association, “Alien Land Law,” *Handbook of Texas*, November 1, 1994, <https://www.tshaonline.org/handbook/entries/alien-land-law>.

³⁷ Asian Americans Advancing Justice | AAJC, “Background: Texas S.B. 51.”

³⁸ The Rounds Amendment was recently included in the Senate version of the Fiscal Year 2024 National Defense Authorization Act. This provision would effectively prohibit foreign nationals from China, Russia, North Korea, and Iran from owning agricultural land in the United States by requiring the President of the United States to block specific types of transactions based on recommendations from the Committee on Foreign Investment in the United States (CFIUS). The amendment currently has no exceptions for visa holders and contains a high standard for a waiver, which must be granted by the President of the United States. “S.Amdt.813 to S.Amdt.935 to S.2226 - 118th Congress (2023-2024),” legislation, accessed March 6, 2024, <https://www.congress.gov/amendment/118th-congress/senate-amendment/813/text>.

³⁹ See, e.g., Claire Jean Kim, “The Racial Triangulation of Asian Americans,” *Politics & Society* 27, no. 1 (March 1999): 105–38, 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, “Wen Ho Lee and the Consequences of Enduring Asian American Stereotypes,” *UCLA Asian Pacific American Law Journal* 7, no. 1 (2001): 72–87; Terri Yuh-lin Chen, “Hate Violence as Border Patrol: An Asian American Theory of Hate Violence,” *Asian Law Journal* 7, no. 1 (January 2000): 74–75, <https://doi.org/10.15779/Z38VP22>; Cynthia Kwei Yung Lee, “Beyond Black and

American voters' ability to participate in the political process, with Asian Americans facing pervasive discrimination in voting, including in jurisdictions that were previously covered for Section 5 preclearance.

The “perpetual foreigner” stereotype manifests in verbal attacks against Asian American candidates and voters, negative political ads that falsely cite “Asia” as an enemy to the United States, and racial appeals whereby images of candidates of color are manipulated to trigger negative stereotypes. These manifestations are an ongoing issue that does not appear to be abating. Over the last several decades, attacks have been made against voters and candidates at all levels of office, creating a hostile environment for both voters and candidates and impeding full participation in the political process.

Below, this testimony chronologically details examples of discrimination against Asian American candidates and voters. Since the beginning of this decade, an increasing number of Asian Americans have sought elected office. According to an article, “[T]he number of AAPI candidates who ran for federal office [in the 2020 elections] doubled to 99, from 48 in the 2018 midterms. And the number running for state legislature seats across the country grew by at least 21.”⁴⁰ Moreover, the article noted, “these candidates have faced an environment of heightened anti-Asian racism that has surged since the pandemic began [...with many citing] President Trump’s rhetoric around the coronavirus [exacerbating] the racism they’ve faced throughout their lives.”⁴¹ The ongoing attacks against Asian American candidates and voters continued to occur against this backdrop, in some instances escalating in volume.

- In 2004, a Washington State man “challenged the voting credentials of hundreds of Washington voters,” accusing them of being illegally registered to vote.⁴² “On behalf of a group he call[ed] Washington State Americans for Legal Immigration,” Martin Ringhofer claimed these voters were “illegal” immigrants.⁴³ He targeted voters and “obtained a list of people who registered to vote when they obtained or renewed a driver’s license,” then looked for voters with names that “have no basis in the English language” and “appear to be from outside the United States” while eliminating from his challenge voters with names “that clearly sounded American-

White: Racializing Asian Americans in a Society Obsessed with O.J.,” *Hastings Women’s Law Journal* 6, no. 2 *Seeing the Elephant* (June 1, 1995): 165, 181; Note, “Racial Violence against Asian Americans,” *Harvard Law Review* 106, no. 8 (1993): 1926–43, <https://doi.org/10.2307/1341790>; see also Thierry Devos and Mahzarin R. Banaji, “American = White?,” *Journal of Personality and Social Psychology* 88, no. 3 (2005): 447–66, <https://doi.org/10.1037/0022-3514.88.3.447>, documenting empirical evidence of implicit beliefs that Asian Americans are not “American.”

⁴⁰ Chloe Weiner, “What It’s Like For Asian American Candidates During A Pandemic Marked By Racism,” *NPR*, November 1, 2020, sec. Race, <https://www.npr.org/2020/11/01/929960255/what-its-like-for-asian-american-candidates-during-a-pandemic-marked-by-racism>.

⁴¹ *Id.*

⁴² Jim Camden, “Man Says Votes from Illegal Immigrants,” *The Spokesman-Review*, March 31, 2005, <https://www.spokesman.com/stories/2005/mar/31/man-says-votes-from-illegal-immigrants/>.

⁴³ *Id.*

born, like John Smith, or Powell.”⁴⁴ This resulted in Ringhofer targeting voters of Asian and Latino descent.⁴⁵ One county auditor engaged the Department of Justice (DOJ) to investigate the problematic challenges.⁴⁶ When the *Spokesman-Review*, a Spokane-area newspaper, “contacted a dozen of the 161 people on Ringhofer’s Spokane County list,” they discovered that all of them were United States citizens.⁴⁷

- During the 2004 primary elections in Bayou La Batre, Alabama, only Asian Americans had their eligibility challenged at the polls by supporters of a white incumbent, who was facing a Vietnamese American opponent during the primaries. These supporters falsely accused Asian American voters of not being United States citizens or city residents, or of having felony convictions.⁴⁸ The losing incumbent’s rationale was “if they couldn’t speak good English, they possibly weren’t American citizens.”⁴⁹ DOJ’s investigation found the challenges racially motivated and prohibited interference from the challengers during the general election.⁵⁰
- Trenton, New Jersey, radio hosts used racial slurs and spoke in mock Asian gibberish on-air while demeaning a Korean American mayoral candidate in April 2005. One of the hosts, Craig Carton, said:

Would you really vote for someone named Jun Choi [said in fast-paced, high-pitched, squeaky voice]? ... And here’s the bottom line: no specific minority group or foreign group should ever dictate the outcome of an American election. I don’t care if the Chinese population in Edison has quadrupled in the last year, Chinese, should never dictate the outcome of an election, Americans should... And it’s offensive to me... not that I have anything against uh Asians... I really don’t... I don’t like the fact that they crowd the goddamn blackjack tables in Atlantic City with their little chain smoking and little pocket protectors.⁵¹

- At a community forum in November 2005, a South Asian candidate running for City Council Seat 4 in Orange City, Florida, Tom Abraham, was ridiculed for his accent by his opponent, Dan Sherrill. Sherrill said in the *Orlando Sentinel*, “I’m usually not

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Letter dated April 5, 2005, from Franklin County Auditor to Martin Ringhofer.

⁴⁷ Camden, “Man Says Votes from Illegal Immigrants.”

⁴⁸ “Challenged Asian Ballots in Council Race Stir Discrimination Concerns,” *Associated Press*, August 30, 2004, 2B.

⁴⁹ *Id.* See DeWayne Wickham, “Why Renew Voting Rights Act? Ala. Town Provides Answer,” *USA Today*, February 22, 2006, http://usatoday30.usatoday.com/news/opinion/editorials/2006-02-22-forum-voting-ac-t_x.htm (quoting defeated City Council incumbent Jackie Ladnier).

⁵⁰ *Id.*

⁵¹ Hearing on H.R. 9 Before the H. Subcomm. on the Const. of the H. Judiciary Comm., 109th Cong. 40 at 4 (2006) (prepared statement of K. Narasaki).

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.” Sherrill also said that voters wouldn't support Abraham if they saw and heard him, as reported in the *St. Petersburg Times*.⁵²

- In August 2006, at a campaign stop, then-Senator George Allen announced before a predominantly White audience “Let’s give a warm welcome to Macaca, here. Welcome to America and the real world of Virginia” in reference to one of his opponent’s South Asian staffers. Allen’s use of the racial slur *macaca* implied that the Virginia-born and raised South Asian staffer was somehow less American and did not belong because of his race.⁵³
- At a 2009 Texas House of Representatives hearing, legislator Betty Brown stated Asian American voters should adopt names that are “easier for Americans to deal with” as a solution to the burdens of voter identification laws.⁵⁴ Brown’s statement belied her perception that Asian Americans are separate from other “real Americans” and not welcome in American democracy.
- In June 2010, State Senator Jake Knotts referred to then-South Carolina State Representative Nikki Haley, an Indian American running for governor, 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 his belief that Haley was being guided by outside influences in foreign countries during her gubernatorial run.⁵⁵
- In August 2015, Deerpark, New York town Supervisor Gary Spears challenged voter registrations submitted by 30 Chinese-American college students, who all registered from a local college dormitory. Essentially questioning the citizenship of the students, Spears said that “all the alarms went off” when the registrations were submitted from the same address.”⁵⁶ Ultimately, “the voter registrations of the 30 students were cleared.”⁵⁷ An investigation by the attorney general found “several areas of concern,” including “over how the Orange County Board of Elections

⁵² South Asian Americans Leading Together, “From Macacas to Turban Toppers: The Rise in Xenophobic and Racist Rhetoric in American Political Discourse” (Takoma Park, Maryland: October 2010), https://saalt.org/wp-content/uploads/2012/09/From-Macacas-to-Turban-Toppers-Report.small_.pdf, 21.

⁵³ *Id.* at 17.

⁵⁴ R.G. Ratcliffe, “Texas Lawmaker Suggests Asians Adopt Easier Names,” *Houston Chronicle*, April 8, 2009, <http://www.chron.com/news/houston-texas/article/Texas-lawmaker-suggests-Asians-adopt-easier-names-1550512.php>.

⁵⁵ South Asian Americans Leading Together, “From Macacas to Turban Toppers,” 19.

⁵⁶ Chris Fuchs, “Chinese-American Students File Lawsuit Alleging Voter Intimidation,” *NBC News*, October 27, 2015, <https://www.nbcnews.com/news/asian-america/chinese-american-students-file-lawsuit-alleging-voter-intimidation-n452166>.

⁵⁷ *Id.*

handled the challenges, which were directed at whether the new voters were U.S. citizens... [T]he challenges did not specify a reason for questioning the students' citizenship and did not say, as required by New York election law, whether the reason for the challenges came from personal knowledge or was based on information provided by someone else."⁵⁸

- During a 2016 general election debate between the sitting Illinois Senator Mark Kirk and his challenger, Representative Tammy Duckworth, Duckworth spoke about her deep connection to military service. "You know, my family has served this nation in uniform going back to the Revolution. I'm a Daughter of the American Revolution."⁵⁹ Kirk then replied, "I forgot that your parents came all the way from Thailand to serve George Washington."⁶⁰ According to *The Washington Post*, "Duckworth's mother, Lamai, is Thai, but her late father, Franklin, is a Marine Corps veteran whose family roots trace to before the American Revolution. Rep. Duckworth was severely wounded in the Iraq War, losing her legs while serving as a helicopter pilot."⁶¹ Kirk's campaign failed to issue an apology.⁶²
- 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 called for their deportation.⁶³ The mailers said that "[t]he Chinese and Indians are taking over our town," and "Chinese school! Indian school! Cricket fields! Enough is enough."⁶⁴ 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.⁶⁵
- In 2018, the New Jersey Republican Party distributed campaign mailers about current Representative Andy Kim (NJ-03), who was running as a challenger to then-Representative Tom MacArthur, with the words "Something Is Real Fishy about Andy Kim," featuring a typeface called Chop Suey with a picture of a dead fish on

⁵⁸ Chris Fuchs, "Concerns Raised Over County Board's Handling of New Voter Challenges," *NBC News*, October 29, 2015, <https://www.nbcnews.com/news/asian-america/ny-attorney-general-raises-concerns-over-challenges-chinese-american-voters-n453801>.

⁵⁹ Rebecca Sinderbrand, "This Mark Kirk Debate Gaffe Is Stunningly Bad," *Washington Post*, November 25, 2016, <https://www.washingtonpost.com/news/the-fix/wp/2016/10/27/yes-it-was-the-most-criinge-worthy-debate-moment-of-the-week/>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Amy B Wang, "'DEPORT': Racist campaign mailers target Asian school board candidates," *Washington Post*, November 2, 2017, <https://www.washingtonpost.com/news/education/wp/2017/11/02/deport-racist-campaign-mailers-target-asian-school-board-candidates/>.

⁶⁴ *Id.*

⁶⁵ Alyana Alfaro, "Racist Campaign Literature Surfaces in New Jersey," *Observer*, November 6, 2017, <http://observer.com/2017/11/racist-campaign-literature-surfaces-in-new-jersey/>.

ice. In July 2021, Representative Kim was again targeted in a video made by Republican challenger Tricia Flanigan, in which she says about Kim, “He doesn’t represent our interests. He is not one of us.” Representative Kim responded that such words were deliberately used against him as an Asian American, and that “‘Not one of us’ are words that make many Asian Americans constantly feel like we are seen as foreigners in our own country.”⁶⁶

- According to NPR, in April 2020, Taiwanese American “Yuh-Line Niou, a member of the New York State Assembly, was passing out KN95 masks in front of a Kosher deli in her district when she was verbally harassed by a stranger who approached her on the street. ‘He said something like, ‘You’re the one who brought the virus here. I hope you die,’ she recalled. I hope you die’,’ she recalled. ‘It’s horrifying. You’re doing what you can to help people and everyone else wants you to die’.”⁶⁷
- The same NPR article noted that David Kim, “a Democratic congressional candidate in Los Angeles County [... found] his Twitter inbox had filled with racist messages telling him to ‘go back to your country’ and ‘eat bats.’⁶⁸ Kim said, “I’ve gotten so many comments, online at least [...] I’d never heard that type of racism to my face — not to that extreme.”⁶⁹ The article went on to say that “Kim, who’s Korean American [...] said he expected to experience some racism as a candidate.”⁷⁰ In his own words, Kim stated, “the whole national sentiment sort of supersized it and blew it up.”⁷¹
- In 2020, dozens of voters in Lowell, Massachusetts were subject to “anti-Asian and xenophobic comments that were being hurled at voters standing in line,” said Iván Espinoza-Madrigal, the executive director of the Boston-based Lawyers for Civil Rights organization.⁷² He reported that the slurs included comments like, “Go back to where you come from” and were quite “loud and audible” so that they could be heard by many voters in line.⁷³ Census Bureau data show that 23.2% of the city’s

⁶⁶ Mary Chao, “‘Not one of us’: Congressman Andy Kim responds to video by potential GOP challenger,” *NorthJersey.com*, July 20, 2021; updated July 21, 2021, <https://www.northjersey.com/story/news/politics/2021/07/20/gop-candidate-tricia-flanigan-video-andy-kim-not-one-us/8034983002/>.

⁶⁷ Chloe Weiner, “What It’s Like For Asian American Candidates During A Pandemic Marked By Racism,” *NPR*, November 1, 2020, sec. Race, <https://www.npr.org/2020/11/01/929960255/what-its-like-for-asian-american-candidates-during-a-pandemic-marked-by-racism>.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Jackson Cote, “Anti-Asian Slurs Lodged at Voters in Massachusetts City, Civil Rights Group Says,” *Masslive.com*, November 4, 2020, sec. Politics, <https://www.masslive.com/politics/2020/11/its-simply-aborrent-anti-asian-xenophobic-slurs-lodged-at-voters-in-2-precincts-in-highly-diverse-massachusetts-city-civil-rights-group-says.html>.

⁷³ *Id.*

nearly 111,000 residents are Asian, with estimates putting Lowell’s Southeast Asian population, many of whom are refugees, at above 30,000.⁷⁴

- In April 2023, Van Tran, a Vietnamese American City Council member in Morrow, Georgia, was criticized by a fellow councilmember who called her “un-American” and someone who “failed as a citizen of this country.” NBC News described how Tran was attacked in response to “backing a petition for multilingual voting ballots during city-level elections.”⁷⁵ The article went on to describe how “Morrow, which has a population of 6,400 residents, is 32.9% Asian and 22% Hispanic or Latino, according to the U.S. Census. Tran is a naturalized citizen who immigrated to the U.S. 17 years ago. She said she was motivated to propose the initiative because a significant demographic of the town is Latino and Vietnamese.”⁷⁶
- New Jersey Assemblywoman Sadaf Jaffer “decided in early 2023 she would not run for reelection” to the New Jersey General Assembly.⁷⁷ She cited concerns that racial “slurs would affect her nine-year-old daughter.”⁷⁸ Jaffer was among “the first Asian American and Muslim women lawmakers to join the legislature.”⁷⁹ She described experiencing racism “during her campaigns.”⁸⁰ For example, people questioned whether she was an American even though she was born in the United States. On social media, one comment had labeled her an “infiltrating savage.”⁸¹ Another read “Muslims need to be removed from the planet by any means necessary.”⁸² Women of color remain underrepresented in New Jersey politics, where “[j]ust one third of [the state’s] 120 [...] lawmakers are women. Only 5% of legislators are Asian American, compared to 12% of the state population.”⁸³

Language Barrier to Access for Asian American Voters

A major obstacle facing some Asian American voters is the language barrier, which can lead to discrimination. According to the American Community Survey (ACS) in 2022, of the 315 million people in the United States over the age of five, 69 million people, or 22%,

⁷⁴ *Id.*

⁷⁵ “Supporters Rally around Vietnamese American City Council Member Who Was Called ‘Un-American,’” *NBC News*, July 26, 2023, <https://www.nbcnews.com/news/asian-america/vietnamese-american-city-council-member-georgia-called-un-american-dra-rcna96290>.

⁷⁶ *Id.*

⁷⁷ Taylor Jung, “Hate Kept Assemblywoman Jaffer from Second Run,” *NJ Spotlight News*, January 22, 2024, <https://www.njspotlightnews.org/2024/01/jersey-city-mayor-steven-fulop-legislature-women-minorities-language-access-bill-sen-te-resa-ruiz-d-essex-muslim-asian-american-hate-racism-prejudice-bigotry-black-caucus-chair-shavonda-sumter-d-b/>.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

speak a language other than English at home.⁸⁴ Among those other languages, the top three categories are Spanish, other Indo-European (which includes South Asian languages, such as Gujarati, Hindi, Urdu and Bengali), and Asian languages,⁸⁵ at 42 million, 12.1 million and 11.2 million people, respectively.⁸⁶ This means, nationally for people in the 2021 ACS who were Asian alone⁸⁷, about 3 out of every 4 Asian Americans speak a language other than English at home and almost one-third of the population is Limited English Proficient (LEP)⁸⁸ –that is, has some difficulty with the English language.⁸⁹ 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 or higher of comprehension, which is much greater than that required for purposes of naturalization, making voting more challenging for voters with language barriers.⁹⁰

Language minority voters are often denied much-needed and federally required assistance at the polls and face numerous barriers at the polls.⁹¹ 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

⁸⁴ U.S. Census Bureau, "Language Spoken at Home." *American Community Survey, ACS 1-Year Estimates Subject Tables, Table S1601, 2022*, [https://data.census.gov/table/ACSST1Y2022.S1601?t=Language Spoken at Home](https://data.census.gov/table/ACSST1Y2022.S1601?t=Language%20Spoken%20at%20Home). Accessed on March 14, 2024.

⁸⁵ "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. See Sandy Dietrich and Erik Hernandez, "Language Use in the United States: 2019," *American Community Survey Reports* (Washington, DC: U.S. Census Bureau, August 2022), 3, 6, 8.

⁸⁶ U.S. Census Bureau, "Languages Spoken at Home."

⁸⁷ To capture the growing biracial and multiracial population, people can check more than one of the available races when filling out the Census. The Census Bureau describes this as either "Race Alone" or "Race Alone or in Combination." Whenever we use Race Alone, we mean those who only marked the specific race category. When we say Race Alone or in Combination, we mean anyone who marked that specific race category, regardless of what other races they may have also selected.

⁷⁰ U.S. Census Bureau, "CITIZENSHIP STATUS BY AGE BY LANGUAGE SPOKEN AT HOME AND ABILITY TO SPEAK ENGLISH FOR THE POPULATION 5 YEARS AND OVER," 2021. *American Community Survey, ACS 5-Year Estimates Selected Population Detailed Tables, Table B16008, 2021*, accessed on March 18, 2024, [https://data.census.gov/table/ACS5Y5SPT2021.B16008?t=012:Language Spoken at Home](https://data.census.gov/table/ACS5Y5SPT2021.B16008?t=012:Language%20Spoken%20at%20Home).

⁸⁹ 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.C.A.N. 766, 772*.

⁹⁰ Ana Henderson, *English Language Naturalization Requirements and the Bilingual Assistance Provisions of the Voting Rights Act* (2006), 2-4. Unpublished manuscript on file with the author.

⁹¹ In 2021, South Asian voters sued the town of Hamtramck, Michigan, for failing to provide adequate Bengali-language translations of ballots and other election-related material despite being obligated to do so by federal elections officials in accordance with Section 203 of the VRA. See "South Asian Voters Sue Hamtramck, MI for Alleged Voting Rights Violations," *News India Times*, June 4, 2021, <https://www.newsindiatimes.com/south-asian-voters-sue-hamtramck-mi-for-alleged-voting-rights-violations/>. Likewise, in the town of Malden, Massachusetts, legal advocacy groups observed violations during March primaries and local elections in 2020, where poll monitors found that "seven out of 10 poll sites did not provide any Chinese language interpreters and that almost all poll sites were missing some translated signage and/or materials" as mandated by the VRA. See "How a Boston Suburb Corrected Voter Rights Violations against Asian Americans," *NBC News*, December 10, 2020, <https://www.nbcnews.com/news/asian-america/how-boston-suburb-corrected-voter-rights-violations-against-asian-americans-n1250454>.

the VRA⁹² or asked for ID when it is not needed.⁹³ During the 2012 general election, a poll worker in New Orleans mistakenly 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.⁹⁴ Additionally, LEP voters may face hostile and/or discriminatory poll workers who are suspicious of the voters' accent or limited English proficiency.⁹⁵ Community based, nonpartisan, poll monitors have reported that poll workers often are unaware of and question the need for language assistance. For example, poll workers in Virginia have questioned needing language assistance at all because in order to become a citizen "you have to take the test in English."

The Growing Asian American Electorate Becoming a Potential Threat to the Status Quo and the Need to Protect Asian American Voters

The Growing Asian American Electorate

The ongoing and significant rapid growth of the Asian American community, including its electorate, creates further risk for discrimination against Asian American voters.

⁹² 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. In DeKalb County, Georgia, Korean Americans with limited English proficiency encountered difficulties when trying to bring an interpreter into their polling place for elections on November 6, 2018. A Georgia state law requiring interpreters to be either registered voters in the same precinct or eligible family members conflicted with a federal law which gives voters wider latitude in their choice of interpreters. This caused confusion for some poll workers as to which rules to follow. See "Federal Law Allows Nearly Anyone to Translate for Voters. At Polls, It Can Be a Different Story.," *NBC News*, December 19, 2018, <https://www.nbcnews.com/news/asian-america/federal-law-allows-nearly-anyone-translate-voters-polls-it-can-n949056>. Likewise, Texas enacted voting laws in 2021 that restricted voter assistance to only reading the ballot for the voter, marking a ballot for a voter, or directing a voter to read and mark the ballot. These restrictions were only lifted after a federal lawsuit successfully argued that the limitations violated Section 208 of the VRA. See Ashley Lopez, "Texas Is Barred from Enforcing New Restrictions on Voter Assistance," *NPR*, July 19, 2022, sec. Elections, <https://www.npr.org/2022/07/19/1112310993/texas-is-barred-from-enforcing-new-restrictions-on-voter-assistance>.

⁹³ Asian Americans Advancing Justice, *Voices of Democracy: Asian Americans and Language Access During the 2012 Elections* (Washington, DC, 2013), 14, <http://advancingjustice-aaajc.org/sites/default/files/2016-10/Voices%20of%20Democracy.pdf>; Asian American Legal Defense and Education Fund, *Asian American Access to Democracy in the 2014 Elections* (New York, 2014), 19, 26, <https://cdn.sanity.io/files/iroghafc/production/9528add7a123d9e02f7099755734dbde968d8d2c.pdf>.

⁹⁴ Terry Ao Minnis and Mee Moua, *50 Years of the Voting Rights Act: The Asian American Perspective* (Washington, DC: Asian Americans Advancing Justice | AAJC, 2015), 16, <http://advancingjustice-aaajc.org/sites/default/files/2016-09/50-years-of-VRA.pdf>.

⁹⁵ In 2020, Salewa Ogunmefun noted that migrant voters were being targeted. She said, "[w]e had a lot of conversations with judges of elections where they said things ranging from, 'we just wanted to be able to understand their name,' or 'I just wanted to understand what they were saying,' but it was very targeted toward migrant voters." Her organization, The Center for Popular Democracy, received complaints from York County, Pennsylvania because in places with significant immigrant or limited English proficiency populations, identification was being requested. Nina Feldman, "Election Day Voting Barriers: Language access, constables, correcting mistakes," *WHYY*, November 4, 2020, <https://why.org/articles/election-day-voting-barriers-language-access-constables-correcting-mistakes/>. See also Dan Klepal, "Asian Americans Say They Faced Voting Problems," *The Atlanta Journal-Constitution*, March 9, 2013, sec. News, <https://www.ajc.com/news/asian-americans-say-they-faced-voting-problems/LHPEDLTT1BDPQwplboWN1O/>.

Throughout history, “the pockets of most determined efforts to restrict minority voting rights were areas of the country where racial/ethnic groups made up a larger than average share of the population” because that is when “they will be more likely to have substantial influence on election outcomes.”⁹⁶

Since the passage of the 1965 Immigration Act ended race-based immigration quotas, Asian American communities in the United States have grown extensively and are starting to reach a point where they can be the margin of victory in many places. The statistics in this section are for Asian and Asian ethnicities alone or in combination with other races.⁹⁷ According to the 2020 Census, Asian Americans continued to be among the nation’s fastest growing racial group, with a national growth rate of 38.6% between 2010 and 2020; growing to over 24.0 million Asian Americans and making up 7.2% of the total population.⁹⁸ From the American Community Survey, the number of eligible Asian American voters grew by 45% from 8.3 million in 2010 to over 12 million in 2020 (as compared to a growth rate of 24% for the total population over that same time period).⁹⁹ Leading into the 2024 election, Asian Americans continue to be the fastest growing electorate (defined as the citizen voting age population {CVAP}) with a projected 15% increase in the Asian American electorate from 2020.¹⁰⁰ The roughly 15 million Asian Americans eligible to vote represents about 6.1% of the overall electorate.¹⁰¹

Often viewed inaccurately as a monolithic group, Asian Americans are exceedingly diverse, with different perspectives and needs. The previous decade showed that the country's fastest growing Asian American ethnic groups were the Nepalese, Burmese, Singaporean, Bhutanese, and Mongolian populations—each more than doubling in size between 2010 and 2020. Chinese Americans continue to be the largest Asian American ethnic group,

⁹⁶ Hearing on “The Need to Enhance the Voting Rights Act: Practice-Based Coverage” Before the H. Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Judiciary Comm., 117th Cong. (July 27, 2021) (prepared statement of Professor Bernard L. Fraga) (“B. Fraga Testimony”), <http://docs.house.gov/meetings/JU/JU10/20210727/113962/HHRG-117-JU10-Wstate-FragaB-20210727.pdf>.

⁹⁷ Respondents can check more than one of the available races when filling out the Census. The Census Bureau describes this as either “Race Alone” or “Race Alone or in Combination.”

⁹⁸ Calculation based on U.S. Census Bureau Redistricting Data (PL 94-171) Table P1. 2020 national race data at <https://data.census.gov/cedsci/table?q=table%20p1&tid=DECENNIALPLNAT2010.P1> and state data at <https://data.census.gov/cedsci/table?g=0100000US%240400000&y=2010&d=DEC%20Redistricting%20Data%20%28PL%2094-171%29&tid=DECENNIALPL2010.P1&hidePreview=true>; 2020 data at <https://data.census.gov/cedsci/table?q=redistricting&g=0100000US,%240400000&tid=DECENNIALPL2020.P1&hidePreview=true>.

⁹⁹ 5-year American Community Survey data analyzed through IPUMS USA, University of Minnesota, at www.ipums.org. Steven Ruggles, Sarah Flood, Matthew Sobek, Daniel Backman, Annie Chen, Grace Cooper, Stephanie Richards, Renae Rodgers, and Megan Schouweiler. IPUMS USA: Version 15.0 [dataset]. Minneapolis, MN: IPUMS, 2024. <https://doi.org/10.18128/D010.V15.0>

¹⁰⁰ Abby Budiman, Jeffrey S. Passel, and Carlyne Im, “Key Facts about Asian American Eligible Voters in 2024” (Washington, DC: Pew Research Center, January 10, 2024), <https://www.pewresearch.org/short-reads/2024/01/10/key-facts-about-asian-american-eligible-voters-in-2024/>.

¹⁰¹ *Id.*

numbering over 5.2 million nationally, followed by Indian, Filipino, Vietnamese, Korean, and Japanese. These top six groups account for 80% of all Asian Americans in 2020.¹⁰²

Asian Americans are also geographically diverse and are growing fastest in non-traditional gateway communities. Between 2010 and 2020, the top 10 fastest growing Asian American populations were in North Dakota, South Dakota, Nebraska, District of Columbia, North Carolina, Indiana, Texas, South Carolina, Montana, and Utah with growth rates ranging between 60.9% to 103.1%. California had an Asian population of over 7.0 million in 2020, by far the nation's largest. It was followed by New York (2.2 million), Texas (1.8 million), New Jersey (1.0 million), and Washington (almost 940,000). Of the four Census regions of the US, the South had the fastest growing Asian American population with a growth rate of 54% from 2010 to 2020. As a result, the South region was now home to 1 in 4 Asian Americans, while the share of Asian Americans living in the West region fell from 46% to 43%.¹⁰³

We are also seeing an increase among Asian American voting participation. Between 2010 to 2020, the growth rate of eligible Asian Americans registering to vote (97%; from 4.1 million to almost 8.2 million registered) and voting (190%; from 2.6 million to 7.6 million who voted) was even greater during that same time period. The 2020 election showed over 1.8 million additional eligible voters from the previous presidential election, and an even higher increase in Asian Americans who actually registered and voted. This represents a 28.1% increase in registered Asian Americans and 37.0% increase in Asian Americans who voted between the 2016 and 2020 presidential elections. Comparing the 2018 and the 2022 midterm elections reveals similar growth rates for registered Asian Americans, with an increase of 27.1%. However, the growth rate for Asian Americans who voted was smaller at a 11.4% increase.

¹⁰² Internal analysis of 2010 and 2020 Census data. U.S. Census Bureau, "TOTAL POPULATION," 2020. Decennial Census, DEC Detailed Demographic and Housing Characteristics File A, Table T01001, 2020, accessed on March 19, 2024, [https://data.census.gov/table/DECENNIALDDHCA2020.T01001?t=04&g=010XX00US\\$0400000&d=DEC Detailed Demographic and Housing Characteristics File A](https://data.census.gov/table/DECENNIALDDHCA2020.T01001?t=04&g=010XX00US$0400000&d=DEC%20Detailed%20Demographic%20and%20Housing%20Characteristics%20File%20A); and U.S. Census Bureau, "ASIAN ALONE WITH ONE OR MORE ASIAN CATEGORIES FOR SELECTED GROUPS," 2010. Decennial Census, DEC Summary File 1, Table PCT6, 2010, accessed on March 19, 2024, [https://data.census.gov/table/DECENNIALSF12010.PCT6?q=asian&g=010XX00US\\$0400000&y=2010&d=DEC Summary File 1](https://data.census.gov/table/DECENNIALSF12010.PCT6?q=asian&g=010XX00US$0400000&y=2010&d=DEC%20Summary%20File%201).

¹⁰³ U.S. Census Bureau, "PROFILE OF GENERAL POPULATION AND HOUSING CHARACTERISTICS," 2020. Decennial Census, DEC Demographic Profile, Table DP1, 2020, accessed on March 18, 2024, [https://data.census.gov/table/DECENNIALDP2020.DP1?g=020XX00US1,2,3,4&y=2020&d=DEC Demographic Profile](https://data.census.gov/table/DECENNIALDP2020.DP1?g=020XX00US1,2,3,4&y=2020&d=DEC%20Demographic%20Profile), and U.S. Census Bureau, "RACE (TOTAL RACES TALLIED)," 2010. Decennial Census, DEC Summary File 1, Table P6, 2010, accessed on March 18, 2024, [https://data.census.gov/table/DECENNIALSF12010.P6?t=Race and Ethnicity&g=020XX00US1,2,3,4&d=DEC Summary File 1](https://data.census.gov/table/DECENNIALSF12010.P6?t=Race%20and%20Ethnicity&g=020XX00US1,2,3,4&d=DEC%20Summary%20File%201).

Presidential Elections

Year	Asian CVAP	Registered Asian	Asians Voted
2020	12,641,000	8,157,000	7,593,000
2016	11,118,000	6,369,000	5,542,000
2012	9,033,000	5,173,000	4,331,000
Growth in #s (2016–2020)	1,523,000	1,788,000	2,051,000
Growth by % (2016–2020)	14%	28%	37%

Midterm Elections

Year	Asian CVAP	Registered Asian	Asians Voted
2022	13,631,000	8,382,000	5,658,000
2018	12,170,000	6,595,000	5,080,000
2014	10,332,000	5,166,000	2,883,000
Growth in #s (2018–2022)	1,461,000	1,787,000	578,000
Growth by % (2018–2022)	12%	27%	11%

The growing Asian American electorate has the potential to influence election outcomes. For example, in the last presidential election in 2020, the Asian American electorate in the state (defined in this specific case as the citizen voting age population) was larger than the margin of victory in 10 states: Georgia, Arizona, Nevada, Wisconsin, North Carolina, Hawaii, Pennsylvania, Texas, Florida, and Michigan. Two states, Alaska and Virginia, had Asian American electorates that were 97% and 96% of the margins of victory, respectively.¹⁰⁴

Persistent Voter Participation Gaps Prevents Asian Americans From Fully Capitalizing on Their Increase in Size and Potential to Influence

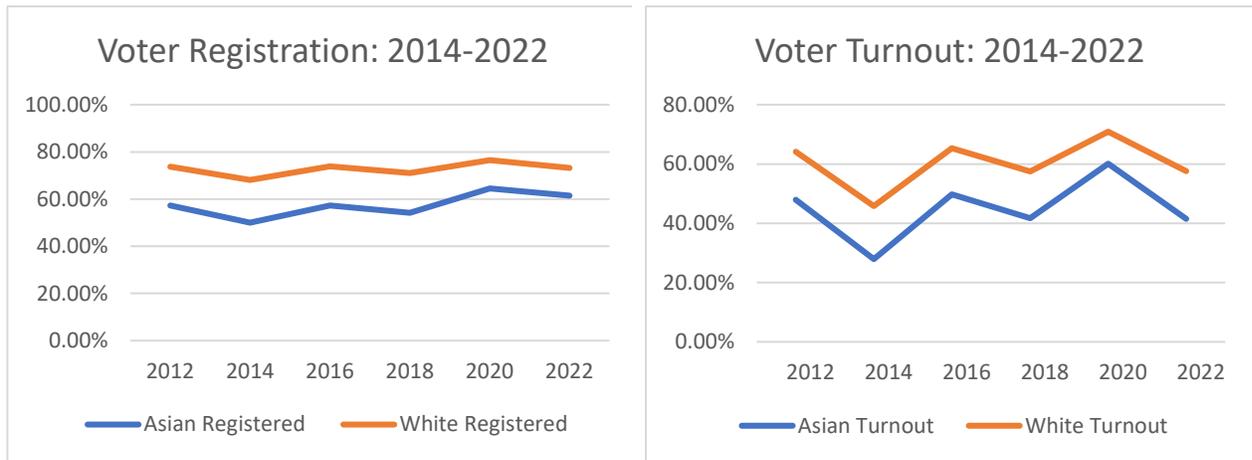
Growth in an electorate of color is often perceived as a threat to the status quo, with those in power often taking steps to silence the growing populace to keep them from maximizing their political strength. The U.S. has historically restricted the right to vote to specific segments of the population, often identified as a group based on race, ethnicity, national origin, and gender, through a myriad of tactics.¹⁰⁵ Exclusion of certain groups of voters was often based in providing a political advantage to those in power— that is, “[w]here minority

¹⁰⁴ Internal analysis using Presidential election data from MIT Election Data and Science Lab, 2017, "U.S. President 1976–2020", <https://doi.org/10.7910/DVN/42MVDX>, Harvard Dataverse, V7, UNF:6:MkQHx147hJCgscG5lqK77g== [fileUNF] and voter turnout data from U.S. Census Bureau, "Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States: November 2020," 2020. Current Population Survey, Table 4b, 2020, accessed on March 18, 2024, <https://www2.census.gov/programs-surveys/cps/tables/p20/585/table04b.xlsx>.

¹⁰⁵ Hearing on “The Need to Enhance the Voting Rights Act: Practice-Based Coverage” Before the H. Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Judiciary Comm., 117th Cong. (July 27, 2021) (prepared statement of Professor Luis Ricardo Fraga) (“L. Fraga Testimony”), <http://docs.house.gov/meetings/JU/JU10/20210727/113962/HHRG-117-JU10-Wstate-FragaL-20210727.pdf> and <http://docs.house.gov/meetings/JU/JU10/20210727/113962/HHRG-117-JU10-Wstate-FragaL-20210727-SD001.pdf>.

groups could influence politics, even if only as significant members of coalitions with White voters, efforts to restrict voting rights followed.”¹⁰⁶

One indicator of potential ongoing voting discrimination is a persistent gap in racial voter participation—that is, the ongoing relative depression of participation by voters of color as compared to white voters. A recent study noted that “[t]he racial turnout gap—or the difference in the turnout rate between white and nonwhite voters—is a key way of measuring participation equality.”¹⁰⁷ Despite increases in the size of the electorate (as referenced above), Asian Americans are not maximizing their political power. Voter participation rates persistently lag behind that of white voters. This has certainly been quantifiable since data on Asian American voters has been available, but is also likely to have been the case for as long as Asian Americans have had the right to vote in this country. Asian Americans are not maximizing their voting strength—one reason for which is ongoing and increasing voter suppression and discrimination.¹⁰⁸



¹⁰⁶ B. Fraga Testimony. See also, L. Fraga Testimony.

¹⁰⁷ Kevin Morris and Coryn Grange, “Growing Racial Disparities in Voter Turnout, 2008–2022” (New York: Brennan Center for Justice, New York University School of Law, March 2, 2024), <https://www.brennancenter.org/our-work/research-reports/growing-racial-disparities-voter-turnout-2008-2022>.

¹⁰⁸ *Id.*

TABLE: Asian American v. Non-Hispanic White Political Participation: Presidential Elections¹⁰⁹

Year/Race	% Registered	% Turnout
2020		
Asian American	64.5%	60.1%
White	76.5%	70.9%
2016		
Asian American	57.3%	49.8%
White	73.9%	65.3%
2012		
Asian American	57.3%	47.9%
White	73.7%	64.1%
Existing Gap		
2020	12.0%	10.8%
2016	16.6%	15.5%
2012	16.4%	16.2%

TABLE: Asian American v. Non-Hispanic White Political Participation: Midterm Elections¹¹⁰

Year/Race	% Registered	% Turnout
2022		
Asian American	61.5%	41.5%
White	73.2%	57.6%
2018		
Asian American	54.2%	41.7%
White	71.0%	57.5%
2014		
Asian American	50.0%	27.9%
White	68.1%	45.8%
Existing Gap		
2022	11.7%	16.1%
2018	16.8%	15.8%
2014	18.1%	17.9%

The Ability to Protect Asian American Voters was Harmed by Shelby County

The Supreme Court has made voting discrimination harder to stop, including for Asian Americans. Voter suppression laws have proliferated since the *Shelby County* decision. The increase in voter suppression is no surprise in light of increasing voter participation by communities of color (even while there continues to be a participation gap). History shows that when “successful attempts to fully enfranchise a previously excluded group have been attempted, those in power—whether perceived or in reality—have often worked to reverse that enfranchisement.”¹¹¹ The reality is that “retrenchment and reaction have often led to backsliding that required even greater efforts to overcome the policies and practices of dilution and disenfranchisement.”¹¹² Additionally, the *Shelby County* decision resulted in legislators pushing through laws designed to make it harder for minorities to vote, particularly in previously covered jurisdictions.

¹⁰⁹ U.S. Census Bureau, "Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States," 2012, 2016, and 2020. Current Population Survey, Table 4b, 2012, 2016, 2020, accessed on March 18, 2024, <https://www.census.gov/topics/public-sector/voting/data/tables.html>.

¹¹⁰ U.S. Census Bureau, "Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States," 2014, 2018, and 2022. Current Population Survey, Table 4b, 2014, 2018, 2022, accessed on March 18, 2024, <https://www.census.gov/topics/public-sector/voting/data/tables.html>.

¹¹¹ L. Fraga Testimony.

¹¹² L. Fraga Testimony.

During the 2021–2023 period, at least 1,204 restrictive bills were considered by lawmakers in 49 states.¹¹³ Voters in 27 states will face new restrictions for the 2024 presidential election as a result of at least 62 laws restricting access to voting passed between 2021–2023.¹¹⁴ Furthermore, an analysis of state laws passed between 2011 and 2023 by the Voting Rights Lab reveals that previously covered preclearance states passed 25 laws restricting voter access or interfering with election administration from 2011–2023, with 20 of those passed after *Shelby County v. Holder*.¹¹⁵

The *Shelby County* decision and the rise in voter suppression laws have harmed Asian American voters, who have had to litigate cases that may not have been necessary prior to *Shelby County* as the challenged laws would have had to go through the preclearance approval process. Numerous lawsuits were brought on behalf of Asian Americans since the decision, including several in Georgia and Arizona—both previously covered jurisdictions—in which Advancing Justice has been engaged. For both Georgia and Arizona, below we provide demographic snapshots, describe the voter suppression bills, and detail their harm to voters.

Georgia

Demographic Snapshot of Georgia’s Asian American and Pacific Islanders in 2024¹¹⁶

- 610,257 AAPI Population
- 51.9% Population Growth since 2012
- 328,471 Eligible AAPI Voters
- 4.16% AAPI Share of Electorate
- 64.5% of Asian American adults speak a language other than English at home
- 33.9% of Asian American adults are LEP

¹¹³ Brennan Center for Justice, “Voting Laws Roundup: 2023 in Review” (New York: New York University School of Law, January 18, 2024), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2023-review>; Brennan Center for Justice, “Voting Laws Roundup: December 2022” (New York: New York University School of Law, February 1, 2023), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2022>; Brennan Center for Justice, “Voting Laws Roundup: December 2021” (New York: New York University School of Law, January 12, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021>.

¹¹⁴ Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, and Wyoming. See Brennan Center for Justice, “Voting Laws Roundup: 2023 in Review”; Brennan Center for Justice, “Voting Laws Roundup: December 2022”; Brennan Center for Justice, “Voting Laws Roundup: December 2021.”

¹¹⁵ See Voting Rights Lab “VRL Research: Voting Legislation in Preclearance Jurisdictions - External” (Washington, DC: 2024), <https://docs.google.com/spreadsheets/d/1jWoDpj6VHt7B8kbnx3TNvmYKhWLFPrTPbRRRHuPVh28/>.

¹¹⁶ APIAVote, “2024 AAPI Voter Demographics | Georgia,” AAPI Voter Demographics By State (Washington, DC, 2024), <https://apiavote.org/wp-content/uploads/Georgia-2024-State-Fact-Sheet.pdf>.

COUNTIES WITH HIGHEST AAPI POPULATIONS

	AAPI Share of County Population	Size of AAPI Population	AAPI Eligible Voter Share of County Population	Number of AAPI Eligible Voters
Gwinnett County	12.8%	122,482	20.7%	65,695
Fulton County	7.6%	80,882	10.5%	38,387
DeKalb County	6.2%	47,549	8.9%	21,275
Cobb County	5.6%	42,946	8	22,134
Forsyth County	16.6%	42,032	25.9%	14,553

- Georgia Exact Match

Efforts to purge voters from the voter rolls have fallen more heavily on voters of color, including Asian Americans. The absence of a functioning Section 5 as a result of the *Shelby County* decision has resulted in ongoing litigation and increased harm to voters of color in Georgia. Georgia has enacted various iterations of an “exact match” protocol since 2008: a voter registration protocol that places would-be voters in “pending” status on voter rolls if their voter registration data does not match exactly the same information as it appears in other state databases, such as driver services or Social Security. In 2009, in objecting to the program through the preclearance process, DOJ criticized Georgia’s protocol as “flawed” and “frequently subject[ed] a disproportionate number of African-American, Asian, and/or Hispanic voters to additional and . . . erroneous burdens on the right to register to vote.” The DOJ found that Asian American and Pacific Islander applicants were more than twice as likely as their white counterparts to be flagged under “exact match.”¹¹⁷

The program was able to secure approval in the preclearance process after the state added new safeguards. However, it was unclear whether these safeguards were actually utilized, and the program was challenged by civil rights organizations in 2016. Of the 34,874 voter registrations cancelled from July 2013 to July 2015 as a result of the “exact match” system, approximately 76.3 percent of those registrations were submitted by registrants of color. “Of those, Black applicants were eight times more likely to fail the state’s verification process than white applicants, and Latinos and Asian-Americans were six times more likely to fail.”¹¹⁸ Would-be voters were penalized by a process fraught with data entry mistakes, limitations in the matching software, and other glitches that applicants had no way of knowing existed. “Other problems [...] included applicants who

¹¹⁷ Brentin Mock, “How Dismantling the Voting Rights Act Helped Georgia Discriminate Again,” *Bloomberg.com*, October 15, 2018, sec. CityLab: Justice, <https://www.bloomberg.com/news/articles/2018-10-15/how-georgia-s-exact-match-program-was-made-possible>.

¹¹⁸ Kristina Torres, “Georgia Settles Federal Lawsuit Alleging It Blocked Thousands of Minority Voters,” *The Atlanta Journal-Constitution*, February 9, 2017, sec. Politics, <https://www.ajc.com/news/state--regional-govt--politics/georgia-settles-federal-lawsuit-alleging-blocked-thousands-minority-voters/4M2dMAHDRvC8fLYoV01fxN/>.

used their surname as a first name, which is common among some Korean-Americans.”¹¹⁹ The lawsuit was settled with the state agreeing to suspend the program.¹²⁰

Passed in 2017, a revised “exact match” process has continued to have a discriminatory impact on minority voter registrants, producing erroneous non-matches at high rates. In 2017, Georgia reportedly purged 560,000 names from its voter registration rolls in a single day, the largest voter roll purge in American history.¹²¹ Additionally, based on data produced by the Georgia Secretary of State’s office, of the approximately 51,111 voter registrations that were “pending” on July 4, 2018, due to the exact match program, approximately 80.15 percent were submitted by Black, Latino, and Asian American registrants.¹²²

Another lawsuit was brought in 2018 challenging the revised exact match protocol in light of these purges. In 2019, the state removed 313,000 voters from the rolls on the grounds that they moved from their voter registration address. A subsequent analysis revealed that 63.3% of the voters had not moved at all and that the flawed purge process predominantly impacted non-white voters in the Atlanta metro region, where the majority of Asian American and Pacific Islander voters in Georgia reside. While the Georgia General Assembly largely ended the protocol in 2019 with regard to identity data, they left intact the part of the program that allowed eligible Georgia voters to continue to be burdened by the “citizenship match” portion of the protocol, which flags voters as potential noncitizens based on data from the Department of Driver Services known to be outdated. Many of the affected voters are Asian American and Pacific Islander, as they are often voters who recently naturalized as citizens and/or obtained a Georgia driver’s license prior to naturalization. Additionally, Georgia aggressively purges voter registration rolls in a way that disproportionately harms Asian American and Pacific Islander voters.¹²³

- Voter Suppression Bill SB 202

In March 2021, Georgia Governor Brian Kemp signed into law Georgia Senate Bill 202 (“SB 202”), a bill that was introduced in the Georgia General Assembly just 35 days earlier.

¹¹⁹ Kristina Torres, “Federal Lawsuit Alleges Georgia Blocked Thousands of Minority Voters,” *The Atlanta Journal-Constitution*, September 14, 2016, sec. Politics, <https://www.ajc.com/news/state--regional-govt--politics/federal-lawsuit-alleges-georgia-blocked-thousands-minority-voters/EKb979oRoBe4yJ3Uo1nDfP/>.

¹²⁰ Mock, “How Dismantling the Voting Rights Act Helped Georgia Discriminate Again.”

¹²¹ Mark Niese, Geoffrey Hing, and Angela Caputo, “Many Eligible Georgia Voters Were Canceled in Nation’s Largest Purge,” *The Atlanta Journal-Constitution*, March 12, 2020, sec. Politics, <https://www.ajc.com/news/state--regional-govt--politics/many-eligible-georgia-voters-were-canceled-nation-largest-purge/jRlixHpVs0I9wVQYdDjxvM/>.

¹²² “Challenging Georgia’s Racially Discriminatory ‘Exact Match’ Policy (Georgia Coalition for the People’s Agenda v. Raffensperger),” Campaign Legal Center, April 12, 2021, <https://campaignlegal.org/cases-actions/challenging-georgias-racially-discriminatory-exact-match-policy-georgia-coalition>.

¹²³ First Amended Complaint Advancing Justice SB 202. See also, Brief for Asian Americans Advancing Justice – AAJC, National Association of Latino Elected and Appointed Officials Education Fund, LatinoJustice PRLDEF, and Seventeen Other Organizations as Amici Curiae, *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833 (2018), <https://www.advancingjustice-aaajc.org/sites/default/files/2017-09/16-980%20bsac%20Asian%20Americans%20Advancing%20Justice%20et%20al.pdf>.

Several proponents of SB 202 explained that the intent of the bill was to reduce Georgian voter turnout, especially in light of the record number of votes were cast by Georgians in the 2020 General Election and 2021 Runoff Elections. Georgia achieved that unprecedented turnout, in part, by affording its voters several options for exercising their constitutional right to vote, both in person on Election Day and through mail-in absentee ballots that could be returned through the postal system or deposited in secure drop boxes. SB 202, which was rushed through in an erratic and non-transparent legislative process, eliminated many of these options and made accessing the ballot more difficult.

Advancing Justice – AAJC, Advancing Justice – Atlanta, and Advancing Justice – ALC brought a lawsuit challenged certain provisions of SB 202 under Section 2 of the VRA, as well as the Fourteenth and Fifteenth Amendments to the United States Constitution.¹²⁴ The challenged provisions decrease the time frame to request and receive absentee-by-mail ballots, limit access to secure drop boxes, prohibit election officials from proactively mailing absentee-by-mail ballot applications, and impose additional identification requirements for absentee-by-mail ballots. The lawsuit contends that such voting restrictions intentionally discriminate against communities of color, specifically voting-eligible Asian American and Pacific Islander Georgians, disproportionately and negatively impacting the voting ability of Georgia’s voting-eligible AAPI population in violation of federal law.

Asian Americans and Pacific Islanders in Georgia vote absentee-by-mail at a substantially higher rate than the average voter in the state. During the 2020 General Election, approximately 40% of Asian American and Pacific Islander voters used absentee-by-mail voting, compared to about 26% of all Georgian voters on average. And during the 2021 Runoff Elections, approximately 34% of Asian American and Pacific Islander voters voted absentee-by-mail, compared to about 24% of all Georgian voters on average. As these statistics reflect, absentee-by-mail ballots facilitate greater Asian American and Pacific Islander participation in Georgia’s elections. The Asian American community has a higher proportion of foreign-born residents compared to other racial groups in Georgia, and limited English proficiency (LEP) remains common in the Georgia Asian American community. For context, more than one in five Asian American and Pacific Islander households in Georgia are LEP households. Furthermore, while Asian Americans make up less than five percent of Georgia’s total population, they form approximately one quarter (24.39%) of the state’s LEP population. Newly naturalized citizens, first time voters, and LEP voters often need more time to review their ballot materials and/or seek assistance from persons authorized under Georgia law. Absentee-by-mail voting allows these voters crucial time and resources that may be less available or accessible through in-person voting.

¹²⁴ See Asian Americans Advancing Justice – Atlanta, “Asian American Advocacy Groups File Lawsuit to Ensure Freedom to Vote,” Press Release (Atlanta, March 25, 2021), <https://www.advancingjustice-atlanta.org/news/freedomtovote>; First Amended Complaint, *Asian Americans Advancing Justice – Atlanta v. Raffensperger*, No. 1:21-cv-1333 (N.D. Ga. Apr. 27, 2021), <https://storage.courtlistener.com/recap/gov.uscourts.gand.288705/gov.uscourts.gand.288705.27.0.pdf> (First Amended Complaint Advancing Justice SB 202).

Further limiting the ability of Georgian Asian Americans and Pacific Islanders to vote is the reduced access to secure drop boxes. Before SB 202 was enacted, Georgia voters enjoyed the ability to safely and securely cast their ballots in one of 330 drop boxes in Georgia, most of which were freestanding outside of a building and often accessible 24 hours a day. Moreover, drop box locations were permitted to open as early as 49 days before Election Day, and did not close until 7:00 p.m. on Election Day. As a result of SB 202, the number of drop boxes will be reduced sharply. For example, in Gwinnett County, whose population is approximately 50% non-white and 12.5% Asian American and Pacific Islander, there were 23 ballot drop boxes during the 2020 election cycle. Under SB 202, that number will dwindle; likely, only six drop boxes will be permitted for a county of over 936,000 residents. Similarly, Fulton County, a county with over one million residents and home to the second-largest Asian American and Pacific Islander population in the state, offered 36 drop boxes during the 2020 election cycle. But SB 202 would force Fulton County to cut the number of drop boxes to as few as nine. Combined with a drastic reduction in the hours these drop boxes will be made available, these changes will harm Asian American and Pacific Islander voters in Georgia who will already face time constraints to navigate a further-complicated absentee-by-mail ballot system.

The effect of these restrictions on Asian American and Pacific Islander voters, in addition to other restrictions in SB 202 that disproportionately affect communities of color, would not have passed muster under a Section 5 review, as voters of color would be worse off as a result of this voting change. Instead of a resource-efficient process to assess the proposed voting change (under preclearance), there are currently eight lawsuits challenging these provisions and many voters will likely be harmed while these lawsuits work their way through the legal process.¹²⁵

Arizona

Demographic Snapshot of Arizona’s Asian American Pacific Islanders in 2024¹²⁶

- 400,024 AAPI Population
- 50.1% Population Growth since 2012
- 231,988 Eligible AAPI Voters
- 4.36% AAPI Share of Electorate
- 51% of Asian American adults speak a language other than English at home
- 22.1% of Asian American adults are LEP

¹²⁵ Brennan Center for Justice, “Voting Rights Litigation Tracker 2021: Georgia” (New York: New York University School of Law, October 3, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-rights-litigation-tracker-2021#georgia>.

¹²⁶ APIAVote, “2024 AAPI Voter Demographics | Arizona,” AAPI Voter Demographics By State (Washington, DC, 2024), <https://apiavote.org/wp-content/uploads/Arizona-2024-State-Fact-Sheet.pdf>.

COUNTIES WITH HIGHEST AAPI POPULATIONS

	AAPI Share of County Population	Size of AAPI Population	AAPI Eligible Voter Share of County Population	Number of AAPI Eligible Voters
Maricopa County	4.4%	195,714	6.4%	108,013
Pima County	3%	31,390	4%	19,737
Pinal County	1.9%	8,106	2.5%	5,563

- Arizona Voter Suppression Bills: H.B. 2492 and H.B. 2243

The state government of Arizona has a long history of seeking to unjustly restrict or outright deny the voting rights of Arizona’s voters of color and naturalized voters. In 2022, Arizona passed H.B. 2492 and H.B. 2243, two state laws designed to restrict and deny the voting rights of Arizona’s voters of color and naturalized voters. On their own, each law sought to suppress voters of color and naturalized voters; combined, they attempted to establish various citizenship and “proof” requirements for voting, along with swift voter cancellations and the creation of an “anyone-can-accuse” investigation system that refers accused voters who are unable to provide onerous evidence of citizenship to criminal investigations. Specifically, they do this by (1) making it harder to register to vote, (2) chilling voters from registering to vote, (3) cancelling already-registered voters for certain elections for failure to provide documentary proof of citizenship, and (4) commands county recorders to arbitrarily investigate and cancel accused voters who are unable to provide onerous evidence of citizenship within 35 days—and then refer them to the county attorneys and the attorney general for criminal investigation. Advancing Justice – AAJC sued Arizona on behalf of Arizona Asian American Native Hawaiian and Pacific Islander for Equity Coalition, challenging the two state laws and were able to enjoin many of its harmful provisions.

H.B. 2492 and H.B. 2243 were the latest entries in a nearly two-decade attempt by Arizona to unduly burden voting rights via “proof of citizenship” requirements and punishment schemes, during which time Arizona was repeatedly told by the courts—including the U.S. Supreme Court—that its “proof of citizenship” requirements are in contravention of law. On the heels of the Supreme Court’s rejection of the proof of citizenship requirement for Federal Form users, Arizona did two things. First, Arizona sought to have the Federal Form changed by challenging the Election Assistance Commission’s decision to not include proof of citizenship on the Federal Form. Second, Arizona implemented a bifurcated voter registration system, allowing individuals to register to vote with the Federal Form for federal elections only, but requiring voters in state and local elections to satisfy the proof of citizenship requirement of Proposition 200. This bifurcated system was challenged in court as violating potential voters’ First and Fourteenth Amendment rights, which resulted in Arizona entering into a consent decree requiring the state to treat Federal Form applicants and state form applicants without proof of citizenship the same.¹²⁷

¹²⁷ LULAC v. Reagan, No. 2:17-cv-04102-DGC (June 18, 2018), ECF No. 37.

The onerous provisions of H.B. 2492 and H.B. 2243 would have a disproportionate impact on voters of color and naturalized voters, including Asian Americans. AANHPIs and other ethnic groups are disproportionately likely to lack or timely obtain the forms of documentary proof of citizenship required under H.B. 2492 and H.B. 2243 to register to vote and remain on the voter rolls.

Among other things, H.B. 2492 made the place of birth mandatory for the state voter registration form, in effect disclosing who are naturalized citizens. Next, Arizona voters who used the federal form to register to vote and did not provide documentary proof of citizenship, would be subjected to matching against databases to ascertain citizenship—databases that are outdated and who often do not have information on US born citizens. And if citizenship was not ascertained, these voters would not be allowed to vote in Presidential elections and subjected to criminal investigations. If voters somehow made it onto the rolls under HB 2243, they would be subject to similar database matching as in HB 2492 when their records are not matched to proof of citizenship contained in driver records or voter files. This database matching and removal can take place just because someone has a “reason to believe” that a voter was not a citizen and the voter could not be matched to a database that recorded naturalized citizens but otherwise contained no information on US-born citizens. Furthermore, these removals could have taken place any time under HB 2243, right until the start of an election.

In addition, because AANHPIs comprise a large proportion of naturalized citizens in Arizona and the population of AANHPIs and other ethnic groups in Arizona is rapidly increasing, the requirements imposed by H.B. 2492 and H.B. 2243 on naturalized citizens could have had a disproportionately negative impact on voter registrations by AANHPIs. Each year from 2014 to 2020, Arizona had more than 11,000 residents naturalize and become U.S. citizens. Mexico is the country of origin with the highest percentage of naturalizations each year, followed by countries in Asia. H.B. 2492 and H.B. 2243 both create avenues for potential unwarranted criminal prosecution for naturalized citizens who are unable to provide documentary proof of citizenship in a timely manner.

This is particularly meaningful because 61.5% of the AANHPI citizen voting age population are naturalized citizens, according to 2020 Census Bureau data. Furthermore, many foreign-born Asian Arizonans are newer arrivals to Arizona. The 2020–2021 American Community Survey estimated that, for Asian Arizonans born outside the U.S., 20.9% entered the U.S. between 2000 and 2009, and 35.1% entered in 2010 or later.¹²⁸ In Arizona, the fee for obtaining a driver’s license ranged from \$10 to \$25, depending on age and type, at the time of the filing.¹²⁹ The fee for an identification card is \$12 for anyone under the age of 65.¹³⁰ To obtain a license or identification card, an applicant must provide proof of

¹²⁸ Pl.s’ JPF, *Mi Familia Vota v. Fontes*, No. 2:22-cv-00509-SRB (D. Ariz. Dec. 12, 2023) at 10, accessible at: <https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:fc9abca3-a845-4644-b0b1-22e251313417>.

¹²⁹ “Fees (Driver License) | Department of Transportation,” AZ.gov Motor Vehicle Division, accessed March 9, 2024, <https://azdot.gov/mvd/services/driver-services/driver-license-information/fees-driver-license>.

¹³⁰ *Id.*

identification, age, and authorized presence, such as a birth certificate, U.S. passport, or naturalization certificate. For Arizona, the birth certificate would come through regular mail, though additional fees could be paid for expedited shipping. Costs for U.S. passport books are \$130 to \$160, assuming an applicant can present evidence of citizenship, with an extra fee of \$150 if the applicant cannot.¹³¹ As of March 15, 2024 routine processing times are 6 to 8 weeks, and even 2 to 3 weeks when paying for expedited processing.¹³² The current cost for replacing a naturalization certificate is \$555.00.¹³³ Further costs for these documents can be expected should a life event, such as a name change, require a change to the information. Indirect costs associated with travel time and waiting time lead to further expense.¹³⁴ These costs are often too burdensome for members of the AANHPI community, naturalized citizens, and other voters of color in Arizona, and particularly burdensome for voters with limited English proficiency.

Worst of all, H.B. 2243 mandated that when a county recorder—or anyone else for that matter—questions the citizenship of a voter, based simply on a subjective, often racist, xenophobic, “reason to believe”—that accused voter would be subjected to outdated and unreliable government databases matches, and if unable to ascertain their citizenship and provide timely documentary proof, the Attorney General will investigate and may prosecute such a voter. As a consequence, H.B. 2492 and H.B. 2243 created a chilling effect on potential voters to register to vote, especially voters with limited English proficiency, AANHPIs, naturalized citizens, and other voters of color.

Ultimately, Advancing Justice – AAJC, along with others, was able to secure a victory striking down some of the worst provisions of both laws. As a result of the litigation, federal form voters who don’t provide documentary proof of citizenship *will* be able to vote in *all* federal elections, not just congressional elections. Voters, including AANHPIs (over 60% of whom are naturalized in Arizona), will not be forced to disclose their place of birth or required to prove their citizenship multiple times just because they are accused of not being American. Finally, voters can’t be systematically removed from voter rolls within 90 days of a federal election. Although the outcome in this case did not go as far as it should in protecting Arizona voters, it struck several key provisions of H.B. 2492 and H.B. 2243.¹³⁵

¹³¹ “United States Passport Fees Chart,” United States Department of State, January 2022, https://travel.state.gov/content/dam/passports/forms-fees/Passport%20Fees%20Chart_TSG_JAN%202022.pdf.

¹³² “Processing Times for U.S. Passports,” United States Department of State, December 18, 2023, <https://travel.state.gov/content/travel/en/passports/how-apply/processing-times.html>.

¹³³ “Application for Replacement Naturalization/Citizenship Document,” United States Citizenship and Immigration Services, January 30, 2024, <https://www.uscis.gov/n-565>.

¹³⁴ See, e.g., G. K. Butterfield, “Voting in America: Ensuring Free and Fair Access to the Ballot” (Washington, DC: Subcommittee on Elections, Committee on House Administration | 117th Congress, July 2021), https://cha.house.gov/sites/democrats.cha.house.gov/files/2021_Voting%20in%20America_v5_web.pdf.

¹³⁵ Asian Americans Advancing Justice | AAJC, “Opinion in *Mi Familia Vota et al v. Fontes et al Arizona Case*,” Legal Brief (Washington, DC, March 1, 2024), <https://www.advancingjustice-ajjc.org/publication/opinion-mi-familia-vota-et-al-v-fontes-et-al-arizona-case>.

While plaintiffs were ultimately able to succeed to a certain degree in the litigation, the litigation took years and significant resources to fight. Additionally, voters of color suffered during the past several years, feeling the exact chilling effect the bills were designed to create – all of which may well have been avoided with a fully functioning Section 5.

Asian Americans Need A Restored and Strengthened VRA That Addresses the Community's Needs

Because of the changing demographics of this country, a fully restored and modernized VRA, such as the John R. Lewis Voting Rights Advancement Act (JLVRAA), is needed more than ever.¹³⁶ JLVRAA recognizes that a legislative solution to the *Shelby County* decision must include both a substitute coverage formula for jurisdictions based on a history of voting discrimination and a mechanism that also addresses the needs of emerging communities of color that face discrimination aimed to silence their political influence by those currently in power. Section 5 preclearance has served, and must continue to serve, a powerful role in addressing voting discrimination conducted by persistent and perpetually bad actors with a history of engaging in voting discrimination. Asian Americans need Section 5 to be restored and once again functional to combat the increasing efforts to suppress the community's vote.

However, a history-based coverage formula alone is not enough to protect the voting rights of emerging minority populations. Today, more and more of the most rapidly growing racial, ethnic, and language-minority communities are found in cities and states where they were not previously in significant numbers.¹³⁷ Racial tensions often occur when groups of minorities grow rapidly in an area and where there is an increase in political relevance of that minority community.¹³⁸ Certain practices have historically been utilized

¹³⁶ A fully restored and modernized VRA is one that would also address the disappointing Supreme Court decision in *Brnovich v. DNC*. See, Asian Americans Advancing Justice | AAJC, "Asian Americans Advancing Justice – AAJC Calls On Congress to Protect Freedom to Vote Following Supreme Court Decision in Brnovich v. DNC," Press Release (Washington, DC, July 1, 2021), <https://www.advancingjustice-aaajc.org/press-release/advancing-justice-aaajc-brnovich>.

¹³⁷ See Nicholas Jones et al., "2020 Census Illuminates Racial and Ethnic Composition of the Country," America Counts: Stories (Washington, DC: United States Census Bureau, August 21, 2021), <https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html>.

¹³⁸ See generally Toni Monkovic, "Why Donald Trump Has Done Worse in Mostly White States," *New York Times*, March 8, 2016, <http://www.nytimes.com/2016/03/09/upshot/why-donald-trump-has-done-worse-in-mostly-white-states.html> ("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, and Brooke DeRenzis, "Immigrants, Politics, and Local Response in Suburban Washington," Survey Series for the Metropolitan Policy Program (Washington, DC: Brookings Institution, 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*, February 20, 2009, <http://www.nytimes.com/2009/02/22/nyregion/thecity/22froz.html> (describing ethnic tensions in Bellerose, Queens, New York, where the South Asian population is growing); Ramona E. Romero and Cristóbal Joshua Alex, "Immigrants Becoming Targets Of Attacks," National Campaign to Restore Civil Rights, Our Rights, Our Future (blog), January 26, 2009, <https://rollback.typepad.com/campaign/2009/01/it-has-happened-again--->

to silence the political voice of communities of color, precisely at the moment when they become numerous enough to acquire political salience. JLVRAA would address this phenomenon against emerging communities of color through practice-based preclearance. This requires preclearance review (performed by either the Department of Justice or the federal District Court in Washington, D.C.) prior to implementation of certain suspect practices where it would be most likely to be used in a discriminatory fashion.¹³⁹ Practice-based preclearance is particularly important for Asian American communities that are growing rapidly in numerous different cities and counties, and where they are beginning to emerge as a potential political power, as this growth in numbers and power can lead to fear of and resentment toward Asian Americans by those in power, resulting in the hampering of Asian Americans in exercising their right to vote free of harassment and discrimination.¹⁴⁰

In addition to restoring and strengthening Section 5 as described above, a fully restored and modernized VRA is one that would also address the disappointing Supreme Court decision in *Brnovich v. DNC*. The JLVRAA does just that in addition to providing important provisions around public notice and transparency, federal observers and other facets of the VRA. The JLVRAA seeks to restore and strengthen the VRA, providing a more fulsome, forward-focused toolbox in our ongoing fight to combat voting discrimination.

[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*, April 12, 2007, sec. California, <https://www.latimes.com/archives/la-xpm-2007-apr-12-me-chinohills12-story.html> (describing protest of Chino Hills residents to Asian market opening in their community where 39% of residents were Asian).

¹³⁹ See Asian Americans Advancing Justice | AAJC, Mexican American Legal Defense and Educational Fund (MALDEF), and National Association of Latino Elected and Appointed Officials Educational Fund (NALEO), “Practice-Based Preclearance: Protecting Against Tactics Persistently Used to Silence Minority Communities’ Votes,” Report (Washington, DC, November 5, 2019), <https://www.advancingjustice-aajc.org/report/practice-based-preclearance>. Note that practice-based preclearance could only apply in areas where history-based preclearance coverage is not in effect.

¹⁴⁰ For a more detailed accounting of practice-based preclearance, see testimonies from: “Legislative Proposals to Strengthen the Voting Rights Act,” U.S. Congress, Hearings before the House Judiciary Subcommittee on Constitution, Civil Rights, and Civil Liberties, 116th Congress, October 17, 2019, <https://www.congress.gov/event/116th-congress/house-event/110084>; “The Need to Enhance the Voting Rights Act: Practice-Based Coverage,” U.S. Congress, Hearings before the House Judiciary Subcommittee on Constitution, Civil Rights, and Civil Liberties, 117th Congress, July 27, 2021, <https://democrats-judiciary.house.gov/calendar/eventsingle.aspx?EventID=4651>; U.S. Congress, Hearings before the Senate Judiciary Subcommittee on the Constitution, 117th Congress, September 22, 2021, <https://www.judiciary.senate.gov/committee-activity/hearings/restoring-the-voting-rights-act-combating-discriminatory-abuses>.