



 An Advancing Justice | AAJC Report

Photo: Nearly half of Asian American adults are limited English proficient, and two key sections of the Voting Right Act have made it possible for many Asian Americans to participate in our democracy. Credit: Vote Here by Christopher Collins, Map of Urban Linguistic Landscape via Creative Commons

50 YEARS OF THE VOTING RIGHTS ACT: THE ASIAN AMERICAN PERSPECTIVE

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Asian Americans Advancing Justice | AAJC is a national nonprofit organization fighting for civil and human rights and working to empower Asian Americans and Pacific Islanders to participate in our democracy. Advancing Justice | AAJC is part of a national affiliation that also includes Advancing Justice - Atlanta, Advancing Justice - Asian Law Caucus (San Francisco), Advancing Justice - Chicago and Advancing Justice - Los Angeles.

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INTRODUCTION AND SUMMARY

On the 50th Anniversary of the passage of the Voting Rights Act (VRA), Asian Americans Advancing Justice | AAJC issues this report to highlight the importance of the VRA in protecting and promoting the emerging Asian American vote.

Citizenship and ability to vote are inextricably intertwined. Without one, the other is impossible to achieve. And for the better part of America's history, the franchise was denied to the Asian American community due to its inability to gain citizenship.

Early in America's founding, naturalization was limited to only "free white persons." Two key U.S. Supreme Court cases from the 1920s – *Ozawa v. U.S.* and *U.S. v. Thind* – held that Asian immigrants were not free white people and therefore, ineligible for naturalized citizenship. Federal policy barred immigrants of Asian descent from becoming U.S. citizens through legislation such as the Chinese Exclusion Act of 1882 (prohibiting immigration of Chinese laborers) and the Immigration Act of 1924 (banning immigration from almost all countries in the Asia-Pacific region). It was not until 1943 with the repeal of the Chinese Exclusion Act, that persons of Chinese origin were granted the ability to naturalize. Most other Asians were granted the ability to naturalize by 1952 through the McCarran-Walter Act (Immigration and Nationality Act of 1952) and subsequent amendments in 1965.

This report will detail patterns of discrimination and voter suppression directed squarely at the Asian American vote, particularly in locations where it is significant enough to take on "swing" characteristics such as political cohesion. Indeed, Asian Americans are the nation's fastest growing racial group and are quickly becoming an electoral force to be reckoned with. But Asian American political power will not reach its full potential unless voting rights are protected and unfettered access to the polls are ensured. This is why we do what we do.

To be sure, Asian Americans Advancing Justice | AAJC's work in this field on the behalf of the Asian American community stands on the shoulders of the many who came before us. The seminal events that culminated in the passage of the Voting Rights Act in 1965 revolved around the systemic suppression of the African American vote through literacy tests, intimidation and outright violence in the southern states. Asian Americans marched alongside the Reverend Martin Luther King on the Edmund Pettus Bridge in 1965, and the VRA has long included racial minorities including Asian Americans in its protections. But it was not until decades later, as the Asian American community grew, that the community could more fully take advantage of the protections of the VRA and influence subsequent Congressional re-authorizations with provisions for language access.

The passage of the Voting Rights Act 50 years ago represents one of the high-water marks in our nation's civil rights history. Yet, the VRA is currently under fire following the U.S. Supreme Court's 2013 decision in *Shelby v. Holder* that effectively gutted the Act's powerful pre-clearance regime. Tactics to restrict voting rights might have

changed from 50 years ago – there are no longer literacy tests or oaths of allegiance. Rather, the tactics are in more sophisticated and institutionalized forms such as laws limiting early voting, eliminating same-day and automatic registration, and requiring qualified identification. Sadly, these modern-day tactics still affect the same groups of Americans – racial, ethnic and language minorities – that the Voting Rights Act set out to protect in 1965.

That is why it is more important than ever for groups like Asian Americans Advancing Justice | AAJC to band together with other civil rights organizations to celebrate the 50th Anniversary of the VRA and to collectively advocate for the fulfilment of its promise to a nation of diverse communities to be able to express their opinions and voices through the ballot box.

THE ASIAN AMERICAN ELECTORATE AND ITS PARTICULAR CHALLENGES

The Asian American population in the United States grew 46% between 2000 and 2010 – the fastest growing racial group during that period.ⁱ As of the 2010 Census, there are over 17.3 million Asian Americans living in the United States, comprising 6% of the population.ⁱⁱ Asian American communities are expanding from states with historically high concentrations of Asian Americans, such as New York and California, to states with more recently-established immigrant populations.ⁱⁱⁱ For example, over the last decade, Asian American communities grew most rapidly in Nevada, Arizona, North Carolina, and Georgia. Nevada’s Asian American population more than doubled between 2000 and 2010.^{iv}

There is a corresponding increase amongst Asian American, Native Hawaiian and Pacific Islander (NHPI) voters, nearly doubling from 2 million voters in 2000 to 3.9 million in 2012.^v By 2025, Asian American and NHPI voters will make up five percent of the national electorate and by 2044, Asian American and NHPI voters will constitute 10 percent of the national electorate.^{vi} Asian Americans have also been quick to develop civic and political infrastructures, including a growing base of voters, donors, elected officials, appointees and public policy advocates. Asian Americans and NHPIs are growing significantly in their political presence. There was an average increase of 600,000 voters per midterm election cycle from 1994 to 2010.^{vii} Congressional candidates of Asian American descent increased nearly four-fold from 10 candidates in 2010 to 39 in 2014.^{viii}

With this increased potential in political power comes an intensified effort to register the community. On National Voter Registration Day 2014, 317 organizations helped register Asian American voters, up from 154 organizations that participated in 2012.^{ix} This has been critical since, once registered, Asian Americans turn out to vote in numbers greater than the national average. In 2012, for example, 79 percent of registered Asian American voters cast ballots, compared to only 58.2 percent nationwide.^x The 2014 Midterm Elections showed that Asian American voters could produce the margin of victory in competitive House races given the community’s high turnout rates once registered. In more than 60 House races across the country, including but not limited to congressional districts in Georgia, New York, Illinois, Minnesota, Maryland, California and Hawaii, the Asian American and NHPI community constituted eight percent or more of the voting-age population – large enough to close the gap in those races.^{xi} This trend will only continue as the Asian American population grows, naturalizes and migrates across the country into non-traditional gateway cities.

However, voter discrimination, language barriers, lack of access to voter resources and unfamiliarity with the voting process challenge Asian Americans’ ability to reach their full potential when it comes to civic engagement.

Sixty percent of Asian Americans are foreign-born and almost half of Asian American adults are limited English proficient.^{xii} Voting can be an intimidating and complicated process, even for native English speakers. And for citizens whose first language is not English, the process is even more difficult to navigate. While only a third- or

fourth-grade level of English proficiency is needed to become a U.S. citizen, voting materials such as ballot initiatives and voting booth directions often require at least a high school level education.^{xiii} Even worse, language minority voters are often denied much-needed and federally-required assistance at the polls.

Indeed, Election Day surveys confirm that language assistance is important to Asian American voters from various ethnic communities. For example, 30 percent of Chinese Americans, 33 percent of Filipino Americans, 50 percent of Vietnamese Americans and 60 percent of Korean Americans in Los Angeles County used some form of language assistance in the November 2008 election. More than 60 percent of Vietnamese voters surveyed in Orange County for the November 2004 election used language assistance to vote.

And until recently, concentrations of Asian American populations have not been significant enough to take advantage of the Voting Rights Act to mandate the creation of majority-minority districts in the redistricting context. In fact, Asian Americans often find their communities split into different districts, thus reducing their voting power and political clout.^{xiv}

Efforts to suppress the Asian American vote have been buoyed by the continuous perception of Asian Americans as “foreigners,” and thus, not worthy of full or equal participation in the electoral process. Discriminatory attitudes toward Asian Americans are prevalent in the political process, as evidenced by verbal attacks levied against Asian American candidates and voters, and political ads using racially discriminatory imagery or perceptions to malign candidates running for office, including manipulating the images of candidates to trigger negative stereotypes of minority candidates such as darkening a candidate’s skin tone. These types of incidents are also likely to have a chilling effect on Asian Americans’ willingness and desire to participate in the political process as they are constantly being told that they are “un-American” and do not belong.

VRA ADDRESSES VOTING DISCRIMINATION AGAINST ASIAN AMERICANS

The following is an overview of specific provisions of the VRA, how they have impacted the Asian American community, and ongoing issues and concerns.

Over 30 countries and ethnic groups that speak over 100 different languages are represented^{xv} in the Asian American community and approximately one out of every three Asian American adults are limited English proficient (LEP). Perhaps no other provisions of the VRA have helped Asian Americans to cast their ballot more than Sections 203 and 208.

Language Access – Section 203

Section 203 of the VRA is a language voting assistance provision that requires multilingual elections for Latinos, Asian Americans, American Indians and Alaska Natives in certain jurisdictions that meet population and literacy requirements as determined by the Census Bureau.^{xvi} A jurisdiction becomes covered under Section 203 when it meets the threshold of the Section 203 formula by meeting the requirements of (a) and (b):

- a.
 - i. More than 5% of the voting-age citizens in a jurisdiction belong to a single language minority community and have Limited English Proficiency (“LEP”)
 - ii. More than 10,000 voting-age citizens in a jurisdiction belong to a single language minority community and are LEP

OR

- iii. Exceeds five percent of all reservation residents on an Indian reservation

AND

EXAMPLES OF VOTING DISCRIMINATION FACED BY ASIAN AMERICANS

- In the 2004 primary elections in Bayou La Batre, Alabama, supporters of a white incumbent running against a Vietnamese American candidate intimidated Asian American voters by challenging only Asian Americans at the polls and falsely accusing them of not being U.S. citizens, or city residents, or of having felony convictions. The losing incumbent rationalized their targeting because “We figured if they couldn’t speak good English, they possibly weren’t American citizens.” The Department of Justice found these challenges were racially motivated and prohibited challengers from interfering in the general election. That year, Bayou La Batre elected its first Asian American to the City Council.
- In 2004 in New York, poll workers at numerous poll sites required identification from Asian American voters, even though photo identification is not required to vote in New York elections. At one poll site, poll workers required Asian American voters to provide naturalization certificates before they could vote. At another poll site, a police officer demanded that all Asian American voters show photo identification. If voters could not produce such identification, the officer turned them away and told them to go home, denying them their right to vote.

b. The illiteracy rate of the citizens in the language minority is higher than the national illiteracy rate.^{xvii}

Once covered, the jurisdiction must provide language assistance in the covered language. This means that all information provided in English must also be provided in the covered languages, including any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots. In addition to translating written materials, covered jurisdictions are required to provide oral assistance at polling sites, and publicity prior to Election Day about the availability of language assistance at polling sites.^{xviii} Section 203 compliance requires that materials and assistance be provided in a way “designed to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities” throughout all stages of the electoral process.^{xix}

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

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

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

The 1992 amendment by Congress to Section 203 expanded the coverage formula to better capture language minority communities in need of assistance in the voting process. The modification to the coverage formula that most benefited Asian Americans was the addition of the “10,000 voting-age citizen” population trigger to “cover ‘highly populated metropolitan areas’ where ‘many language minority citizens in need of assistance are not covered because they do not make up a large enough percentage of the local population to trigger coverage.’”^{xxi} The 1990 Census figures showed that there were many thousands of LEP language minority citizens who lived in large metropolitan areas that were not covered by the original coverage formula. Despite the fact that there were 39,000 LEP Chinese American voters in Los Angeles County, California, 37,000 LEP Asian Americans voters in Honolulu County, Hawaii, and thousands of LEP Asian American citizens living in San Francisco County, California as well

as Queens County, Kings County, and New York County in New York, only San Francisco County would have been eligible for Section 203 coverage under the 5% trigger.^{xxii} With the addition of the new 10,000 voting-age citizen trigger, the Section 203 determination in 2002 saw the coverage of 16 counties (or their political subdivision equivalents) in seven states for Asian languages, representing 27 Asian American communities.^{xxiii}

Impact on Asian American voters

In 2011, the Census Bureau released an updated list of Section 203 jurisdictions based upon 2005–2009 American Community Survey data. Parts of Massachusetts, Michigan, Nevada and New Jersey were added to the previously covered areas from the 2002 determinations. Today, a total of 43 Asian American communities in 22 jurisdictions are now covered for Asian languages under Section 203.^{xxiv} Seven Asian ethnic groups are covered: Asian Indian, Bangladeshi, Chinese, Filipino, Japanese, Korean and Vietnamese. Section 203 also covers the Cambodian community in Los Angeles. To implement this requirement, the County determined that it would provide language assistance to both Cambodian and Thai voters.

Of course, the Section 203 determination of coverage is only the first step in ensuring LEP language minority voters are in fact receiving language assistance in the voting process. Successful implementation of Section 203 begins with pre-election planning. Election officials should seek assistance from community members to ensure that their Section 203 plan works for the local community, such as getting input from groups on where to target precincts and requesting review of translated materials. Election officials must publicize the availability of language assistance and conduct voter education. Again, we recommend working with local organizations to supplement efforts to help ensure that community members are receiving the information in a culturally and linguistically

SECTION 203 VIOLATIONS PROSECUTED BY U.S. DEPARTMENT OF JUSTICE

- In July 2002, the Census Bureau determined that Harris County qualified for Section 203 coverage in Vietnamese (in addition to Spanish). In 2003, Harris County election officials violated Section 203 by failing to provide Vietnamese ballots on its electronic voting machines. Harris County attempted to remedy the problem by creating paper ballot templates in Vietnamese. However, the County did not make these templates widely available to voters and did not offer them to voters at all polling places. Pressure by the Department of Justice (DOJ), Advancing Justice | AAJC, and the Asian American Legal Network of Texas resulted in a settlement agreement that addressed the County's violations. Specifically, the County agreed to (1) hire an individual to coordinate the County's Vietnamese language election program; (2) provide all voter registration and election information and materials, including the voting machine ballot, in Vietnamese, as well as English and Spanish; (3) establish a broad-based election advisory group to make recommendations and assist in election publicity, voter education, and other aspects of the language program; and (4) train poll officials in election procedures and applicable federal voting rights law.
- In June 2011, DOJ filed a complaint alleging that Alameda County, California, violated Section 203 of the VRA by failing to provide effective access to Spanish- and Chinese-speaking citizens who needed language assistance and translated materials and information to cast an informed ballot. In particular, the county failed to provide election-related information and assistance to LEP Chinese voters. It also failed to recruit, train, and appoint an adequate pool of Chinese-speaking poll workers, and failed to translate information (e.g., ballots, registration forms, sample ballots, election notices, and its website) into Chinese. Alameda County has been continuously covered under Section 203 for Spanish and Chinese languages since 1992. On October 19, 2011 the court entered a consent decree requiring the County to provide bilingual language assistance at the polls and election-related materials and information in Spanish, Chinese, and newly covered languages as determined by the Census Bureau. The parties agreed that federal observers may monitor Election Day activities in polling places in Alameda County.
- In July 2013, plaintiffs sued the NYC Board of Elections for failing to comply with the language assistance provisions of the VRA.* At the time the suit was filed, four elections had passed since the Census Bureau announced in October 2011 that Queens County was covered under Section 203 for Asian Indian language assistance, but the Board had not complied with the law. The Board had failed to provide language assistance in Asian Indian languages in any of the elections since the 2011 determinations. In March 2014, the case settled with the Board agreeing to provide language assistance to the Asian Indian voters in Queens.

appropriate manner. Community-based organizations (CBOs), including Asian Americans Advancing Justice affiliates, have also engaged in poll monitoring projects to ensure compliance with Section 203 on Election Day. When problems have arisen in Section 203 compliance, the Department of Justice and CBOs have engaged with the jurisdiction to correct the problems.

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

Section 203 also led to an increase in political representation by "candidates of choice" as a direct result of the increased civic engagement of these groups. During the last reauthorization of the VRA in 2006, Congress noted a sharp rise in the number of Asian American elected officials in federal, state, and local offices. As noted in the House report, the total number of elected officials in 2004 was 346, up from 120 in 1978. Of the 346 total elected officials, 260 serve at the local level, up from 52 in 1978.^{xxix} Approximately 75 Asian American officials serve at the state legislative level. The VRA and particularly the passage of Section 203 have been instrumental in these gains. For example, the vast majority of Asian American elected officials at the time of the study, 75 percent, were elected in jurisdictions covered by Section 203 of the VRA.^{xxx} In the state legislatures, 65 percent of Asian Americans were elected from jurisdictions covered by the VRA.^{xxxi} In city councils, 79 percent of Asian Americans were elected from VRA-covered jurisdictions.^{xxxii} And among those serving on the school boards, 84 percent of Asian Americans were elected from covered jurisdictions.^{xxxiii}

Ongoing concerns and issues

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

- Poll workers were often unaware about the availability of translated materials, did not properly display the translated materials (with one-third of all polling sites monitored having low visibility or no display of materials), and exhibited an unwillingness to display translated materials when requested.
- Polling sites did not provide adequate notice of assistance available, including inadequate translated directional signs outside to guide voters to polling sites and poor or no display of “we speak” or “we can assist you” signs indicating language assistance available at the location.
- In almost all the jurisdiction monitored, there was a lack of bilingual poll workers. Almost half of the polling sites that did have bilingual poll workers failed to provide identification of bilingual poll workers and those bilingual poll workers failed to proactively approach voters needing language assistance.
- Poll workers lacked knowledge about language assistance requirements and other voting laws, such as whether voters must present photo identification.

Recommendations

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

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

To ensure Election Day goes as smoothly as possible, jurisdictions should make certain they have the necessary staff available and well-trained to address the needs of language assistance voters. Jurisdictions should recruit sufficient numbers of bilingual poll workers, as well as train all poll workers on language assistance and cultural sensitivity. Jurisdictions should also make sure poll workers understand all applicable voting laws, including federal obligations. To be able to handle issues that arise on Election

Day, jurisdictions should establish a mechanism for dealing with complaints about poll workers lodged by language minority voters, including addressing and resolving Election Day problems on-the-spot, as well as setting up an Election Day troubleshooter team to check poll sites for, and resolve, issues such as missing bilingual poll workers or translated materials. Jurisdictions should also add multilingual capacity to their voter hotline.

Election Assistance – Section 208

ection 208 provides that voters have the right to have someone assist them in the voting process. The only limitation on this rule is that the assistor cannot be one’s employer or union representative. The assistor can even be a teenage child or a non-U.S. citizen. Section 208 is nationwide in its application with no limitation aside from the previously-mentioned employer/union rep prohibition.

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

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

DOJ has filed numerous lawsuits against localities for violations of Section 208.^{xl} For example, in 2003, DOJ alleged that poll workers in Berks County, Pennsylvania, denied Spanish-speaking voters the right to bring assistants of choice into the voting booth in violation of Section 208.^{xli} The court found that poll workers’ behavior violated Section 208^{xlii} and contributed to a “hostile and unequal treatment of Hispanic and Spanish-speaking voters[.]”^{xliii} The court emphasized that when jurisdictions deny voters the right to bring their assistor of choice into the voting booth, “voters feel uncomfortable with the process, do not understand the ballot, do not know how to operate the voting machine, and thus cannot cast a meaningful vote[.]”^{xliv} The court ordered Berks County to allow voters their assistants of choice to help them in all aspects of the voting process, including inside the voting booth.^{xlv} Lastly, the

court ordered that the county train poll workers not to stop voters from bringing an assistor of their choice into the voting booth.^{xlvi}

In another example, DOJ sued Miami-Dade County in 2002 for violating Section 208 because poll workers prevented LEP Haitian American voters from having assistors of choice while voting.^{xlvii} DOJ also alleged that the county failed to train poll workers on their duty to allow for voter assistance under Section 208.^{xlviii} The case resulted in an agreement between DOJ and Miami-Dade where the county agreed to comply with Section 208 and prevent violations in the future.^{xlix} The county also agreed to provide new poll worker training and hire bilingual poll workers for the Haitian American community.¹

Impact on Asian American voters

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

Nevertheless, all citizens who have difficulty with English, no matter where they live or what their native language is, have the right through Section 208 to an assistor of their choice to help them in the voting booth.^{li} Section 208's distinct advantage is its availability at every polling site throughout the nation.

Ongoing concerns and issues

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

For example, Idaho's Section 208 provision states that a voter "who is unable by reason of physical or other disability to record his vote by personally marking his ballot and who desires to vote, then and in that case such elector shall be given assistance by the person of his choice..."^{lii} The language is unclear about whether voters who cannot read or write English are included in this provision. This leaves open the possibility that poll workers would not consider an inability to read or write English as a reason to permit voters to have someone assist them. On the other hand, some states expand Section 208 language to clarify the statement "unable to read or write" to be inclusive of LEP voters. For example, Colorado's election code states that if "any elector requests assistance in voting, by reason of difficulties with the English language . . . the elector shall be entitled . . . to receive the assistance of . . . any person . . . provided that

the person rendering assistance can provide assistance in both the language in which the elector is fluent and in English.”^{liii}

Additionally, several states institute more stringent restrictions likely to create greater barriers for LEP voters. Restrictions such as time limits, limits placed on the person providing assistance, and the exercise of discretion by election officials to determine voters’ eligibility for assistance conflict with the intent of Section 208 and could lead to the denial of assistance to LEP voters. For example, several states limit the number of voters one person can assist. In Missouri, if a voter declares an inability to read or write English, the voter can be assisted by a person of the voter’s choice. But the person assisting can only assist one voter per election, unless that person is an immediate family member of the voter.^{liv} In Arkansas, a person chosen to assist a voter can help up to six voters to mark and cast a ballot in an election.^{lv} In Minnesota, the person providing assistance is only allowed to mark the ballots of up to three voters in an election.^{lvi} During the 2012 General Election in St. Paul, Minnesota, a group of Hmong LEP voters chose Election Protection volunteers to assist in casting their votes. Poll workers insisted on limiting each volunteer to three voters, in compliance with Minnesota law as they understood it.^{lvii} Advancing Justice | AAJC intervened and contacted the County Attorney’s office to allege a violation of Section 208. The county agreed to allow the assistors to help more than three voters as long as two election judges observed the assistance being provided.

We have also found that poll workers are often unfamiliar with the demands of Section 208. During the 2012 General Election, a poll worker at the Mary Queen of Vietnam Church polling location in New Orleans erroneously thought that only LEP voters of languages covered by Section 203 of the VRA were entitled to assistance in voting. Because Vietnamese is not a covered Section 203 language in the county or state, the poll worker did not allow LEP Vietnamese voters the assistance of their choice when voting.^{lviii}

Recommendations

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

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

important to provide comprehensive poll worker training on how to interact with voters requiring assistance.

Discriminatory Practices – Section 5

Section 5 of the Voting Rights Act prohibits the enforcement or administration by covered jurisdictions of “any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting” without first receiving approval, or “preclearance,” from DOJ or the U.S. District Court for the District of Columbia.^{lix} Section 5 applies to numerous voting changes in covered jurisdictions, including redistricting, annexation of other territories or political subdivisions, and polling place. Voting changes with a discriminatory purpose or with a retrogressive effect will not be pre-cleared and thus Section 5 prohibits the submitting jurisdiction from adopting the voting change.

A change is retrogressive if it puts minorities in a worse position than if the change did not occur. For example, a redistricting plan might be deemed retrogressive if it contains only two majority-minority districts where it previously contained three or if the line drawers reduce the minority population percentage of a district to a level that will make it more difficult or impossible for them to continue to elect candidates of their choice. Since 1995, 113 instances of Section 5 violations were entered, including changes regarding redistricting, methods of elections, annexations and ballot access.^{lx}

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

Impact on Asian American voters

Section 5 helped address discriminatory redistricting plans that continue to be drafted in states with large Asian American communities. As shown in *Perry v. Perez*, 132 S. Ct. 934 (2012), the Texas legislature drafted a redistricting plan, Plan H283, that would have had significant negative effects on the ability of minorities, and Asian Americans in particular, to exercise their right to vote.

Since 2004, the Asian American community in Texas State House District 149 has voted as a bloc with Hispanic and African American voters to elect Hubert Vo, a Vietnamese American, as their state representative. District 149 has a combined minority citizen voting-age population of 62 percent.^{lxi} Texas

is home to the third-largest Asian American community in the United States, growing 72 percent between 2000 and 2010.^{lxii}

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

In addition to discrimination in redistricting, Asian American voters have also endured voting system changes that impair their ability to elect candidates of choice. For example, before 2001 in New York City, the only electoral success for Asian Americans was on local community school boards. In each election – in 1993, 1996, and 1999 – Asian American candidates ran for the school board and won.^{lxv} These victories were due, in part, to the alternative voting system known as “single transferable voting” or “preference voting.” Instead of selecting one representative from single-member districts, voters ranked candidates in order of preference, from “1” to “9.”^{lxvi} In 1998, New York attempted to switch from a “preference voting” system, where voters ranked their choices, to a “limited voting” system, where voters could select only four candidates for the nine-member board, and the nine candidates with the highest number of votes were elected.^{lxvii} This change would have put Asian American voters in a worse position to elect candidates of their choice.^{lxviii}

Furthermore, the ability of Asian Americans to vote is also frustrated by sudden changes to poll sites without informing voters. For example, in 2001, primary elections in New York City were rescheduled due to the attacks on the World Trade Center. The week before the rescheduled primaries, the Asian American Legal Defense and Education Fund (AALDEF) discovered that a certain poll site, I.S. 131, a school located in the heart of Chinatown and within the restricted zone in lower Manhattan, was being used by the Federal Emergency Management Agency for services related to the World Trade Center attacks. The Board chose to close down the poll site and no notice was given to voters. The Board provided no media announcement to the Asian language newspapers, made no attempts to send out a mailing to voters, and failed to arrange for the placement of signs or poll workers at the site to redirect voters to other sites. In fact, no consideration at all was made for the fact that the majority of voters at this site were limited English proficient, and that the site had been targeted for Asian language assistance under Section 203.^{lxix} With Section 5 no longer applicable in most jurisdictions, disruptive changes to polling sites, voting systems, and redistricting plans can now occur unfettered, wreaking havoc on Asian American voters’ ability to cast an effective ballot.

In jurisdictions covered by both Sections 5 and 203, Section 5 complements the enforcement of Section 203. Jurisdictions that are covered by both Sections 5 and 203 must obtain preclearance from the Justice Department before implementing any change in a language assistance program. For example, when the New York City Board of Elections refused to provide fully translated machine ballots, the Justice Department, acting pursuant to Section 5, compelled the Board to comply with Section 203 by providing machine ballots with all names transliterated into Chinese.^{lxx}

Ongoing concerns and issues

Asian American communities continue to grow and move to nontraditional cities and areas of the country. Previously-covered Section 5 jurisdictions in the South are also where the Asian American population is growing. Georgia and North Carolina are among the three fastest-growing Asian American populations.^{lxxi} In fact, five of the states covered in their entirety and another four states covered partially by Section 5 are among the top 20 states with the fastest-growing Asian American populations. The remaining covered states all experienced growth in their Asian American populations.^{lxxii} When groups of minorities move into or outpace general population growth in an area, reactions to the influx of outsiders can result in racial tension.^{lxxiii} As Asian American populations continue to increase rapidly, particularly in the South, levels of racial tension and discrimination against racial minorities can be expected to increase, including in the voting context.^{lxxiv} Such discrimination creates an environment of fear and resentment toward Asian Americans, which jeopardizes Asian Americans' ability to exercise their right to vote free of harassment and discrimination.

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

Unfortunately, the U.S. Supreme Court weakened the VRA in *Shelby County v. Holder* ("Shelby"). The Court ruled 5-4 that the formula used to determine Section 5 jurisdictions was based on "decades-old data and eradicated practices," despite the extensive record confirming that these jurisdictions continued to commit acts of voting discrimination.^{lxxviii} Thus, while the Court did not invalidate Section 5, it rendered it useless by invalidating the formula that determined what jurisdictions were required to submit voting changes for preclearance. But at the same time, the Court recognized that "no one doubts" that voting discrimination still exists, and invited Congress to pass legislation with a modernized formula.^{lxxix}

Since the Court invalidated the key enforcement provision of the Act in 2013, voting discrimination has become harder to stop. In states, counties, and cities across the country, legislators pushed through laws designed to make it harder for minorities to vote.

In the lead-up to the 2014 election, a resurgence of laws to increase barriers to voting and dilute minority voting strength have put the right to vote in more danger than at any time in the past 50 years. For example, in 2013, just one month after the *Shelby County* decision, North Carolina – where the Asian American population increased by 85 percent between 2000 and 2010 -- passed H.B. 589. The legislation restricts voting through a ban on paid voter registration drives; elimination of same-day voter registration; allowing voters to be challenged by any registered voter of the county in which they vote, rather than just their precinct; reduction of early voting by a week; authorization of vigilante poll observers with expanded range of interference; an expansion of the scope of who may examine registration records and challenge voters; a repeal of out-of-precinct voting; elimination of flexibility in opening early voting sites at different hours within a county; and curtailing satellite polling sites for the elderly or voters with disabilities. This law is currently being challenged through litigation.^{lxxx}

Recommendations

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

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

On June 24, 2015, the Voting Rights Advancement Act (Advancement Act) was introduced in the Senate (S.1659) and the House (H.R.2867). The Advancement Act has received broad and vocal support from the civil rights community because it responds to the unique, modern-day challenges of voting discrimination

that have evolved in the 50 years since the Voting Rights Act first passed. The Advancement Act recognizes that changing demographics require tools that protect voters nationwide—especially voters of color, voters who rely on languages other than English, and voters with disabilities. It also requires that jurisdictions make voting changes public and transparent. The Voting Rights Advancement Act would modernize the preclearance formula to cover states with a pattern of discrimination that puts voters at risk, ensure that last-minute voting changes won't adversely affect voters, protect voters from the types of voting changes most likely to discriminate against people of color and language minorities, enhance the ability to apply preclearance review when needed, and expand the effective Federal Observer program and improve voting rights protections for Native Americans and Alaska Natives.

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

Discriminatory Practices – Section 2

Section 2 of the VRA applies nationwide and mandates that all jurisdictions avoid implementing any voting standard, practice, or procedure that results in the denial or abridgement of the right of any citizen to vote on account of their race, color, or membership in a language minority group.^{lxxxii} The 1982 VRA reauthorization added that a Section 2 violation exists “if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election... are not equally open to participation by... citizens protected by [Section 2] in that [they] have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.”^{lxxxiii} Section 2 has been utilized in “vote dilution” challenges to at-large election systems and redistricting plans, “vote denial” challenges to restrictive voting practices, and language discrimination challenges.

Section 2 prohibits minority vote dilution – that is, practices that have the effect of depriving minority voters of an equal opportunity to elect a candidate of choice. In the redistricting context, vote dilution most commonly occurs either when minority communities are drawn into a small number of districts (packing) or stretched across a large number of districts (cracking, fracturing, or splitting).

Section 2 can require states to create new majority-minority districts to avoid diluting minority voting strength during redistricting. For example, states that experience significant minority population growth since the last census may need to create new majority-minority districts to ensure Section 2 compliance. Additionally, Section 2 prohibits the enactment of redistricting plans that have a discriminatory effect or were adopted with a discriminatory purpose.

Section 2 protects minority communities of all sizes from redistricting plans drawn or implemented with a discriminatory purpose. Other practices that dilute the minority voting strength include: at-large election systems, multi-member election districts and annexations of white residential areas that either fence out minority residential areas or reduce a city’s minority population percentage in the context of at-large voting.^{lxxxiii}

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

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

Impact on Asian American voters

Redistricting

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

While race cannot be the predominant or controlling factor in drawing districts^{lxxxv}, race remains a permissible consideration so long as it does not subordinate “traditional race-neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions, or communities

defined by actual shared interests, to racial considerations.”^{lxxxvi} Utilizing the idea of communities defined by actual shared interests and needs, also known as "communities of interest," communities can argue that their community should be kept intact within a district during the redistricting process.^{lxxxvii} Communities of interest can be multi-racial and should be focused on commonalities between community members with respect to characteristics, needs and concerns.

During the 2011 redistricting cycle in California, Asian Americans successfully argued for keeping communities of interest together in the maps approved by the Citizens Redistricting Commission for California Assembly, Senate, Board of Equalization, and Congressional districts. The Coalition of Asian Pacific Americans for Fair Redistricting (CAPAFR), a statewide coalition of Asian American and Pacific Islander organizations and individuals working in 10 regions, worked diligently to incorporate community feedback and input related to keeping together specific communities of interest and neighborhoods and conveyed this information to the commission via testimony at the public hearings. On behalf of CAPAFR, Asian Americans Advancing Justice -- Los Angeles, the coalition’s anchor, developed state Assembly and Senate mapping proposals that incorporated the communities’ priorities around their communities of interest. These testimonies and maps influenced the final district configurations in all 10 regions in which it worked, including the creation of California’s first Asian American majority-minority state or federal district and the unification of many Asian American and Pacific Islander communities that were fragmented in the 2001 district maps.^{lxxxviii}

Minority Coalition Districts

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

A minority coalition district is one in which a) two minority groups (or more) have come together in coalition to constitute a politically cohesive voting bloc that could elect a representative of choice and b) where their numbers constitute a majority of their district. And under certain circumstances, the creation of minority coalition districts will be required under Section 2.^{lxxxix} An example of a minority coalition district strategy can be found in Prince William County, Virginia, one of the nation’s most diverse counties with a growth rate of 172 percent for Asian Americans and 204 percent for Latinos. There, local organizers argued that there was voter cohesion among Latinos, Asian Americans, and African Americans, and that if their numbers were fairly represented in the district maps, they would constitute minority coalition districts.^{xc}

Language assistance

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

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

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

Recommendations

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

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

CONCLUSION

The VRA recognizes the long history of disenfranchisement and pervasive discriminatory attempts to deny persons of color the right to vote. Despite gains that have been made over the 50 years since the enactment of the VRA, there is still more to be done. Voting discrimination and suppression are still very real and very current. Even the Chief Justice John Roberts notes that “voting discrimination still exists; no one doubts that.”

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

It is precisely for these reasons that voting rights have been an integral part of our portfolio of work since our inception in 1991. Indeed, one of our challenges in pursuing this work is that for many, both within and outside of our community, voting discrimination and suppression are not considered problems endemic to Asian Americans, but rather other communities of color. We hope that this report helps to dispel that myth. Even as we celebrate the promise of the Voting Rights Act and recount how it has already helped Asian Americans to cast their ballots every election day, we recommit to advocating to maintain, restore and strengthen the Voting Rights Act for another 50 years.

ⁱ *A Community of Contrasts: Asian Americans in the United States: 2011*, ASIAN PACIFIC AMERICAN LEGAL CENTER & ASIAN AMERICAN JUSTICE CENTER 7 (2011) [hereinafter *Community of Contrasts*].

ⁱⁱ *Id.* at 6.

ⁱⁱⁱ *See id.* at 8.

^{iv} *Id.*

^v Carl Hum, *The Invisible Vote*, ASIAN AMERICANS ADVANCING JUSTICE AAJC 1 (2014), http://www.advancingequality.org/sites/aaic/files/Issue%20Brief_1_2.pdf.

^{vi} *Id.* at 1.

^{vii} *Id.* at 2.

^{viii} *Id.*

^{ix} *Id.*

^x *Id.*

^{xi} *Id.*

^{xii} *Community of Contrasts*, *supra* note 1, at 17; *See also Behind the Numbers: Post-Election Survey of Asian American and Pacific Islander Voters in 2012*, ASIAN AMERICAN JUSTICE CENTER & ASIAN AND PACIFIC ISLANDER AMERICAN VOTE & NATIONAL ASIAN AMERICAN SURVEY 11 (April 2013),

http://www.advancingequality.org/sites/aaic/files/Behind_the_Numbers-2012_AAPI_Post-Election_Survey_Results.pdf.

^{xiii} James Thomas Tucker, *Enfranchising Language Minority Citizens: The Bilingual Election Provisions of the Voting Rights Act*, 10 N.Y.U. J. Legis. & Pub. Pol'y 195, 248 (2006).

^{xiv} Terry Ao Minnis, *Asian Americans & Redistricting: The Emerging Voice*, THE JOURNAL OF LAW AND SOCIETY 25 (2011), http://law.wayne.edu/journal-of-law-society/terry_ao_minnis.pdf.

^{xv} *Critical Issues Facing Asian Americans and Pacific Islanders*, WHITE HOUSE INITIATIVE ON ASIAN AMERICANS AND PACIFIC ISLANDERS, <https://www.whitehouse.gov/administration/eop/aapi/data/critical-issues> (last visited July 27, 2015).

^{xvi} *See Bilingual Election Requirements*, 42 U.S.C.S. § 1973aa-1a (2014). Section 203 applies only to Latinos, Asian Americans, American Indians, and Alaskan Natives because Congress has continually found that these groups have faced and continue to face significant voting discrimination because of their race and ethnicity. For detailed information on how Section 203 applies to Asian American communities nationwide, *see Help Asian Americans Protect Their Voting Rights: A Guide to Ensure Language Assistance During Elections*, ASIAN AMERICAN CENTER FOR ADVANCING JUSTICE 4 (Feb. 2012).

^{xvii} 42 U.S.C. §§ 1973aa-1a(a); §§ 1973aa-1a(b)(2). The Census Bureau defines "illiteracy" for Section 203 threshold purposes as having less than a fifth grade education. The levels of English literacy necessary to pass naturalization tests, or possessed by many native-born citizens, are far below the level necessary to fully understand election materials. An analysis of voter materials, including voter registration and ballot measures, from all 50 states reveals that they are consistently written at high grade levels and use complex English, e.g., contain longer sentences and words as well as complicated vocabulary and grammar. Ana Henderson, *English Language Naturalization Requirements and the Bilingual Assistance Provisions of the Voting Rights Act* 3 (2006) (on file with the author). In that respect, the 203 coverage formula actually understates the need for language assistance.

^{xviii} The provision of minority language materials and assistance includes ensuring that the following are accessible to the applicable language minority group(s): materials provided by mail (or by some comparable form of distribution), public notices, registration system, polling place activities (such as providing bilingual poll works and translated signage and materials at the polling place) and publicity (of the availability of language assistance to the applicable language group(s) through effective mean, such as using ethnic media). 28 C.F.R. §55.18 (2011).

^{xix} 28 C.F.R. § 55.2(b)(1) (2011).

^{xx} Congress limited Section 203 protections to these four language groups because it continually found that they have faced and continued to face significant voting discrimination because of their race and ethnicity. Other language groups were not included because Congress did not find evidence that it experienced similar sustained difficulties because of their race and ethnicity in voting when they enacted the provision. 42 U.S.C. § 1973aa-1a(a); S. REP. NO. 94-295, at 31 (1975). Section 2 helps to provide protections for language minority groups that fall outside of the four covered groups as discussed later in the chapter.

^{xxi} JAMES THOMAS TUCKER, THE BATTLE OVER BILINGUAL BALLOTS, 86 (2009).

^{xxii} *Id.*

^{xxiii} The states with 203 coverage for Asian languages are: Alaska, California, Hawaii, Illinois, New York, Texas and Washington. The Asian languages covered by Section 203 during the 2002 determinations are languages for the Chinese, Filipino, Japanese, Korean, and Vietnamese populations. *Voting Rights Act Amendments of 1992, Determinations Under Section 203*, FEDERAL REGISTER (2002),

<https://www.federalregister.gov/articles/2002/07/26/02-19033/voting-rights-act-amendments-of-1992-determinations-under-section-203>.

^{xxiv} The breakdown for Asian ethnic groups was: Chinese American populations in sixteen jurisdictions; Filipino American populations in nine; Vietnamese American populations in seven; Korean American populations in four; Indian American populations in three; Japanese American populations in two; Bangladeshi American populations in one; and an unspecified Asian American population in one.

^{xxv} Tucker, *supra* note 21, at 229.

^{xxvi} Alberto R. Gonzales, *Prepared Remarks of Attorney General Alberto R. Gonzales at the Anniversary of the Voting Rights Act*, THE UNITED STATES DEPARTMENT OF JUSTICE (Aug. 2, 2005), <http://www.justice.gov/archive/ag/speeches/2005/080205agvotingrights.htm>.

^{xxvii} *Id.*

^{xxviii} Martin Wisckol, Little Saigon's Big Clout, THE ORANGE COUNTY REGISTER (Aug. 21, 2013), <http://www.ocregister.com/articles/vietnamese-188422-community-american.html>.

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

^{xxx} *Id.* at 17.

^{xxxi} *Id.*

^{xxxii} *Id.* at 17-18.

^{xxxiii} *Id.* at 18.

^{xxxiv} S. Rep. No. 97-417, at 2 (1982) (hereinafter "Senate Report").

^{xxxv} *Ibid.* at 62.

^{xxxvi} *Ibid.*

^{xxxvii} *Ibid.*

^{xxxviii} Angelo N. Ancheta, *Language Accommodation and the Voting Rights Act in VOTING RIGHTS ACT REAUTHORIZATION OF 2006: PERSPECTIVES ON DEMOCRACY, PARTICIPATION, AND POWER*, 293, 304 (Ana Henderson ed., 2007).

^{xxxix} 42 U.S.C. § 1973j(d). See also *U.S. v. Berks County, Pennsylvania*, 277 F. Supp. 2d 570, 577 (E.D. Pa 2003).

^{xl} See generally http://www.justice.gov/crt/about/vot/litigation/recent_208.php (last visited June 25, 2014).

^{xli} *U.S. v. Berks County, Pennsylvania*, *supra* note 32, at 530-31 (illustrates incidents of poll workers denying assistors of choice for LEP Hispanic voters).

^{xlii} *Id.* at 580.

^{xliii} See *id.* at 575-577.

^{xliv} *Id.* at 580.

^{xliv} *Id.* at 584.

^{xlvi} *Id.*

^{xlvi} Consent Order, *United States v. Miami-Dade County* (No. 02-21698, S.D. Fla., June 17, 2002), available at http://www.justice.gov/crt/about/vot/sec_2/miamidade_cd.php (last visited May 23, 2014).

^{xlviii} *Id.* at ¶¶ 2-3.

^{xliv} See *id.*

^l *Id.* at ¶¶ 5-6.

^{li} Asian Americans Advancing Justice, *Voices of Democracy: Asian Americans and Language Access During the 2012 Elections*, 5 (2013) [*hereinafter* *Voices of Democracy*], <https://www.supportthevoter.gov/files/2013/06/FOCE.10-Asian-Americans-Advancing-Justice.national-report.aug2013.pdf>.

^{lii} Conduct of Elections, Idaho Code § 34-1108 (2014).

^{liii} Elections, C.R.S. 1-7-112(1)(a) (2013).

^{liiv} Election Authorities and Conduct of Elections, § 115.445(3) R.S.Mo. (2014).

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

^{lvi} Minn. Stat. § 204C.15 (2014).

^{lvii} *Ibid.*

^{lviii} Lawyers Committee for Civil Rights Under Law, *The 2012 Election Protection Report: Our Broken Voting System and How to Repair It*, 44 (2013), <http://www.866ourvote.org/newsroom/publications/document/EP-2012-Full-report.pdf>.

^{lix} 42 U.S.C. § 1973c. The following States are covered by Section 5: Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia. Only certain counties or towns in the following states are covered under Section 5: California, Florida, Michigan, New York, North Carolina, and South Dakota. It must be noted, however, that even if only a part of a jurisdiction is covered by Section 5, congressional and state legislative redistricting plans for the entire state must be submitted for review. For a detailed listing of counties and towns covered, please visit http://www.justice.gov/crt/about/vot/sec_5/covered.php.

^{lx} National Commission on Voting Rights, Protecting Minority Voters 2014: Our Work Is Not Done, 42 (2014), <http://votingrightstoday.org/ncvr/resources/discriminationreport>.

^{lxi} See United States and Defendant-Interveners Identification of Issues 6, *Texas v. United States*, C.A. No. 11-1303 (D.D.C.), Sept. 29, 2011, Dkt. No. 53.

^{lxii} Asian American Center for Advancing Justice, *A Community of Contrasts: Asian Americans in the United States 2011*, App. B, at 60 (2011), available at http://www.advancingjustice.org/sites/default/files/Community_of_Contrast.pdf. (hereinafter “*Community of Contrasts*”).

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

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

^{lxv} See Lynette Holloway, *This Just In: May 18 School Board Election Results*, N.Y. Times, June 13, 1999, available at <http://www.nytimes.com/1999/06/13/nyregion/making-it-work-this-just-in-may-18-school-board-election-results.html>; Jacques Steinberg, *School Board Election Results*, N.Y. Times, June 23, 1996, available at <http://www.nytimes.com/1996/06/23/nyregion/neighborhood-report-new-york-up-close-school-board-election-results.html>; Sam Dillon, *Ethnic Shifts Are Revealed in Voting for Schools*, N.Y. Times, May 20, 1993, available at <http://www.nytimes.com/1993/05/20/nyregion/ethnic-shifts-are-revealed-in-voting-for-schools.html>.

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

^{lxvii} See 1998 N. Y. Sess. Laws 569-70 (McKinney).

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

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

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

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

^{lxxii} *Id.*

^{lxxiii} See Gillian Gaynair, *Demographic shifts helped fuel anti-immigration policy in Va.*, The Capital (Feb. 26, 2009), available at <http://www.hometownannapolis.com/news/gov/2009/02/26-10/Demographic-shifts-helped-fuel-anti-immigration-policy-in-Va.html> (noting that longtime residents of Prince William County, Virginia, perceived that their quality of life was diminishing as Latinos and other minorities settled in their neighborhoods); James Angelos, *The Great Divide*, N.Y. Times, Feb. 22, 2009 (describing ethnic tensions in Bellerose, Queens, New York, where the South Asian population is growing), available at http://www.nytimes.com/2009/02/22/nyregion/thecity/22froz.html?_r=3&pagewanted=1; Ramona E. Romero and Cristóbal Joshua Alex, *Immigrants becoming targets of attacks*, The Philadelphia Inquirer, Jan. 25, 2009 (describing the rise in anti-Latino violence where the immigration debate is heated in New York, Pennsylvania, Texas, and Virginia); Sara Lin, *An Ethnic Shift is in Store*, L.A. Times, Apr. 12, 2007, at B1 (describing protest of Chino Hill residents to Asian market opening in their community where 39% of residents were Asian), available at <http://articles.latimes.com/2007/apr/12/local/me-chinohills12>.

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

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

^{lxxvi} *Latino VRA Report*, *supra* note 65, at 3.

^{lxxvii} See Asian American Survey, *supra* note 24, at 14-15.

^{lxxviii} *Shelby County v. Holder* – p for “decades-old data”

^{lxxix} *Shelby County v. Holder* – p for “At the same time, voting discrimination still exists; no one doubts that”

^{lxxx} Complaint, North Carolina State Conference of the NAACP et al. v. McCrory et al., No. 1:13-cv-658 (M.D.N.C. Aug. 12, 2013), Complaint, League of Women Voters et al v. North Carolina et al., No. 1:13-cv-00660 (M.D.N.C. Aug. 12, 2013), and, Complaint, U.S. v. The State of North Carolina, No. 13-cv-861 (M.D.N.C. Sept. 30, 2013).

^{lxxxi} 42 U.S.C. § 1973.

^{lxxxii} National Commission on Voting Rights, *Protecting Minority Voters 2014: Our Work Is Not Done*, 29 (2014), <http://votingrightstoday.org/ncvr/resources/discriminationreport>.

^{lxxxiii} See *id.* at 34.

^{lxxxiv} Other language groups have not been included in the Section 203 framework because Congress has not found evidence that they experienced similar sustained difficulties because of their race and ethnicity in voting. 42 U.S.C. § 1973aa-1a(a); S. REP. NO. 94-295 at 31.

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

^{lxxxvi} *Miller v. Johnson*, 515 U.S. 900, 916 (1995).

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

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

^{lxxxix} Thornburg v. Gingles, 478 U.S. 30, 50-51 (1986).

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

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

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

^{xciii} United States v. City of Hamtramck, Michigan (E.D. Mich. 2000).

^{xciv} *Id.*

^{xcv} Thornburg v. Gingles, 478 US 30, 84 (1986).