



**Testimony of
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For

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Introduction

The language barrier is one of the biggest impediments to the Asian American vote. Lagging behind non-Hispanic whites in voter participation, ensuring effective language assistance is paramount to closing that consistent gap. While the Voting Rights Act of 1965 (VRA) has been vital to ensuring language access and assistance to Asian Americans in national and local elections, and for increasing the community’s access to the ballot, more can be done to improve access to the ballot for limited English proficient Asian American voters. This testimony will detail the Asian American electorate and the language barriers facing Asian Americans as well as recommendations and best practices to providing language assistance. While Asian Americans are the nation’s fastest growing racial group and are quickly becoming a significant electoral force, the community will not be able to maximize its political power without access to the ballot.

Organizational Information

Asian Americans Advancing Justice – AAJC (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 of our nation’s oldest Asian American legal advocacy center located in San Francisco (Advancing Justice – ALC), our nation’s largest Asian American advocacy service organization located in Los Angeles (Advancing Justice – LA), the largest national Asian American policy advocacy organization located in Washington D.C. (Advancing Justice – AAJC), the leading Midwest Asian

American advocacy organization (Advancing Justice – Chicago), and the Atlanta-based Asian American advocacy organization that serves one of the largest and most rapidly growing Asian American communities in the South (Advancing Justice – Atlanta). Additionally, over 160 local organizations are involved in Advancing Justice – AAJC’s Community Partners Network, serving communities in 33 states and the District of Columbia. Advancing Justice - AAJC was a key player in collaboration with other civil rights groups regarding the reauthorization of the Voting Rights Act in 2006. In the 2012 election, Advancing Justice conducted poll monitoring and voter protection efforts across the country, including in California, Florida, Georgia, Illinois, Texas, and Virginia. And since the 2012 election, Advancing Justice – AAJC, in partnership with APIAVote, has run a multilingual Asian election protection hotline, 888-API-VOTE that provides in-language assistance to voters who have questions about the election process or are experience problems while trying to vote.

Asian American electorate

Since the passage of the 1965 Immigration Act and the end of race-based immigration quotas, Asian American communities in the United States have grown dramatically. According to Census 2010, Asian Americans are the nation’s fastest growing racial group, with a growth rate of 46% between 2000 and 2010, growing to over 17.3 million Asian Americans and making up 6 percent of the total population.¹ Today there are over 22.6 million Asian Americans living in the United States.²

Often viewed as a monolithic group, Asian Americans are exceedingly diverse with different needs. The country’s fastest growing Asian American ethnic groups were South Asian, with the Bangladeshi and Pakistani American populations doubling in size between 2000 and 2010.³ Chinese Americans continue to be the largest Asian American ethnic group, numbering nearly 3.8 million nationwide in 2010, followed in size by Filipino, Indian, Vietnamese, and Korean Americans.⁴

Asian Americans are also geographically diverse and are growing fastest in non-traditional gateway communities. Asian American populations in Nevada, Arizona, North Carolina, and Georgia were the fastest growing nationwide between 2000 and 2010.⁵ California’s Asian American population remained by far the country’s largest, with New York, Texas, New Jersey, and Hawai’i following in size.⁶ Of the 19 states home to more than 225,000 Asian Americans,

¹ Asian Pac. Am. Legal Ctr. & Asian Am. Justice Ctr., *A Community of Contrasts: Asian Americans in the United States: 2011*, 6, 16, http://www.advancingjustice.org/pdf/Community_of_Contrast.pdf [hereinafter *Community of Contrasts*].

² U.S. Census Bureau, 2018 Population Estimates, Table PEPALL5N: Annual Estimates of the Resident Population by Sex, Single Year of Age, Race Alone or in Combination, and Hispanic Origin for the United States: April 1, 2010 to July 1, 2018 (July 1, 2018).

³ *Community of Contrasts* at 9.

⁴ *Id.*

⁵ *Id.* at 8.

⁶ *Id.*

six are in the South (Texas, Florida, Virginia, Maryland, Georgia, and North Carolina) and four are in the Midwest (Illinois, Michigan, Minnesota, and Ohio).⁷ The South was the fastest growing region for the Asian American population during the last decade.⁸

At the same time, we saw a parallel increase among Asian American voters. The number of eligible Asian Americans grew by over 2 million between 2012 and 2016, with almost an additional 1.14 million added to the electorate. This nearly doubles the average increase of 620,000 new voters in the prior three presidential cycles.⁹ 2018 showed a continuation of these record increases, with an increase of over 1.6 million eligible Asian Americans in 2018, and an even higher increase in Asian Americans who actually registered and voted.¹⁰ This represented a 24.4% increase in registered Asian Americans and 29.2% increase in Asian Americans who voted between the 2012 and 2016 presidential elections and a 21.3% increase and 43% increase respectively between the 2014 and 2018 midterm elections (*see table below*).¹¹ This growth will continue, with Asian American and Pacific Islander (AAPI) voters making up five percent of the national electorate by 2025 and 10 percent of the national electorate by 2044.¹²

Table: Asian American Electorate: 2012-2018

Presidential Elections

Year	Asian CVAP	Registered Asian	Asians Voted
2016	10,283,000	5,785,000	5,043,000
2012	8,254,000	4,649,000	3,904,000
<i>Growth in #s</i>	<i>2,029,000</i>	<i>1,136,000</i>	<i>1,139,000</i>
<i>Growth by %</i>	<i>24.6%</i>	<i>24.4%</i>	<i>29.2%</i>

Midterm Elections

Year	Asian CVAP	Registered Asian	Asians Voted
2018	11,128,000	5,898,000	4,519,000
2014	9,504,000	4,642,000	2,575,000

⁷ *Id.*

⁸ Asian Americans Advancing Justice, *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islander in the South: 2014*, 6, https://www.advancingjustice-aaajc.org/sites/default/files/2016-09/2014_Community%20of%20Contrasts.pdf.

⁹ See U.S. Census Bureau, Current Population Survey, Table 2. Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age, for the United States: November 2012, https://www2.census.gov/programs-surveys/cps/tables/p20/568/table02_5.xls. See also U.S. Census Bureau, Current Population Survey, Table 2. Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age, for the United States: November 2016, U.S. Census Bureau, https://www2.census.gov/programs-surveys/cps/tables/p20/580/table02_5.xls.

¹⁰ Author’s calculations of U.S. Census Bureau data available on voter participation in presidential and midterm elections through its Current Population Survey.

¹¹ *Id.*

¹² Center for American Progress and AAPI Data, “State of Asian Americans and Pacific Islanders” (2014), <http://ampr.gs/AAPIreports2014>.

<i>Growth in #s</i>	<i>1,624,000</i>	<i>1,256,000</i>	<i>1,944,000</i>
<i>Growth by %</i>	<i>14.6%</i>	<i>21.3%</i>	<i>43.0%</i>

The growing Asian American electorate is also starting to influence election outcomes. Of the 27 congressional districts in 11 states where Asian American and Pacific Islander voters could have maximum impact (as identified leading into the 2018 elections), 19 districts had an AAPI electorate that was larger than the margin of victory.¹³ The 2018 elections also saw 18 additional races where the AAPI electorate was greater than the margin of victory.¹⁴ This meant that “[i]n total, AAPI voters represented a significant portion of the electorate in 37 congressional races across 17 different states.”¹⁵ As our communities continue to grow and expand in new areas, they will have even more relevance as it relates to electoral outcomes.

Although there has been an increase in voter engagement by Asian Americans, voter discrimination, language barriers, lack of access to voter resources, and unfamiliarity with the voting process challenge Asian Americans’ ability to reach their full potential when it comes to civic engagement. There continues to be a consistent gap with White voters of 15-20% less in voter registration and turnout, election after election. For example, the last two presidential elections saw a 17% gap for voter registration and a 16% gap for voter turnout between Asian Americans and non-Hispanic whites.¹⁶

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

Year/Race	% Registered	% Turnout	% Turnout of those Registered
2016			
<i>Asian American</i>	56.3	49.0	87.2
<i>White</i>	73.9	65.3	88.3
2012			
<i>Asian American</i>	56.3	47.3	84.0
<i>White</i>	73.7	64.1	87.0
Existing Gap			
2016	17.6	16.3	1.1
2012	17.4	16.8	3.0

¹³ These were districts where AAPIs represent at least 5 percent of eligible voters, and where the Cook Political Report had declared the race to be competitive. Sono Shah, *AAPI Voters in 2018 Congressional Elections: Bigger Impact than Anticipated*, AAPIData, Nov. 20, 2018, <http://aapidata.com/blog/aapi-voters-post18-cd/>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Author’s calculations of U.S. Census Bureau data available on voter participation in presidential and midterm elections through its Current Population Survey.

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

Year/Race	% Registered	% Turnout	% Turnout of those Registered
2018			
Asian American	53.0	40.6	76.6
White	71.0	57.5	80.9
2014			
Asian American	48.8	27.1	55.5
White	68.1	45.8	67.2
Existing Gap			
2018	18.1	16.9	4.3
2014	19.3	18.7	11.7

Barriers to Access

A major obstacle facing Asian American voters is the language barrier. Of approximately 291 million people in the United States over the age of five, 60 million people, or just over 20%, speak a language other than English at home.¹⁷ Among those other languages, the top two categories are Spanish and Asian languages,¹⁸ at 37 million and 11.8 million people, respectively.¹⁹ This means, nationally, about 3 out of every 4 Asian Americans speak a language other than English at home and a third of the population is Limited English proficient (LEP)²⁰ -- that is, has some difficulty with the English language.²¹ 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.²²

Surveys conducted on Election Day show that language assistance is very important to Asian American voters. For example, 63 percent of Asian Americans surveyed in a 2012 post-election

¹⁷ U.S. Census Bureau, *Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for United States: 2009-2013*, <http://www2.census.gov/library/data/tables/2008/demo/language-use/2009-2013-acs-lang-tables-nation.xls> (released Oct. 2015) (“Languages Spoken at Home”).

¹⁸ “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.

¹⁹ Languages Spoken at Home.

²⁰ Community of Contrasts at 24, 26.

²¹ The current definition of LEP is persons who speak English less than “very well.” The Census Bureau has determined that most respondents overestimate their English proficiency and therefore, those who answer other than “very well” are deemed LEP. See H.R. Rep. No. 102-655, at 8 (1992), as reprinted in 1992 U.S.C.A.N. 766, 772.

²² Ana Henderson, *English Language Naturalization Requirements and the Bilingual Assistance Provisions of the Voting Rights Act*, 2-4 (2006) (unpublished manuscript) (on file with the author).

survey said in-language assistance would be helpful for them.²³ Thirty percent of Chinese Americans, 33 percent of Filipino Americans, 50 percent of Vietnamese Americans and 60 percent of Korean Americans in Los Angeles County used some form of language assistance in the November 2008 election. More than 60 percent of Vietnamese voters surveyed in Orange County for the November 2004 used language assistance to vote.

Unfortunately, language minority voters are often denied much-needed and federally required assistance at the polls and face numerous barriers at the polls. First, problems can arise from poll workers who do not fully understand voting rights laws. Specifically, poll workers have denied Asian American voters their right to an assistor of their choice under Section 208 of the VRA²⁴ or asked for ID when it is not needed.²⁵ For example, 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.²⁶

Poll workers have also been hostile to, or discriminated against, Asian American voters at the polls. For example, sometimes only Asian American voters have been singled out and asked for photo identification whether it was legally mandated or not. During the 2008 election, in Washington, D.C., an Asian American voter was required to present identification several times, while a white voter in line behind her was not similarly asked to provide identification.²⁷ Also in 2008, poll workers only asked a Korean American voter and his family, but no one else, to prove their identity in Centreville, VA.²⁸

With the continued rapid growth of the Asian American population, additional barriers, including increased discrimination against Asian American voters, are also likely to occur. Racial tensions are often the result when groups of minorities grow rapidly in an area and where there is an increase in political relevance of the minority community.²⁹ This can lead to fear of and

²³ Asian Americans Advancing Justice, *Strength in Numbers: Infographics from the 2012 AAPI Post-Election Survey* (2013), <http://naasurvey.com/wp-content/uploads/2015/10/2012-aapipes-national.pdf>.

²⁴ 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.

²⁵ Asian Am. Legal Def. and Educ. Fund, *Asian American Access to Democracy in the 2014 Elections*, 19, 26 (2014), <http://aaldef.org/2014AccessToDemocracyReport.pdf>; Asian Americans Advancing Justice, *Voices of Democracy: Asian Americans and Language Access During the 2012 Elections*, 14 (2013), <http://advancingjustice-aajc.org/sites/default/files/2016-10/Voices%20of%20Democracy.pdf> [hereinafter *Voices of Democracy*].

²⁶ Terry Ao Minnis & Mee Moua, *50 Years of the Voting Rights Act: The Asian American Perspective*, 16 (2015), <http://advancingjustice-aajc.org/sites/default/files/2016-09/50-years-of-VRA.pdf>.

²⁷ Asian American Legal Defense and Education Fund, *Asian American Access to Democracy in the 2008 Elections*, 25-26 (2009), <http://www.aaldef.org/docs/AALDEF-AA-Access-to-Democracy-2008.pdf>.

²⁸ *Id.*

²⁹ See generally Toni Monkovic, *Why Donald Trump Has Done Worse in Mostly White States*, New York Times, Mar. 8, 2016, http://www.nytimes.com/2016/03/09/upshot/why-donald-trump-has-done-worse-in-mostly-white-states.html?_r=0 ("Political scientists have written about the importance of tipping points in ethnic strife or resentment around the globe. It occurs when one group grows big enough to potentially alter the power hierarchy."); see also Audrey Singer, Jill H. Wilson & Brooke DeRenzis, Metropolitan Policy Program at Brookings, *Immigrants, Politics, and Local Response in Suburban Washington* (2009), <https://www.brookings.edu/wp->

resentment toward Asian Americans by those in power, which can then result in hampering the Asian American community's exercising of their right to vote free of harassment and discrimination.

We expect to see an increase in challenges to Asian American voters likely to occur with the purpose of undermining the community's political voice, such as what happened during the 2004 primary elections in Bayou La Batre, Alabama. Supporters of a White incumbent, who faced a Vietnamese American opponent during the primaries, challenged the eligibility of only Asian Americans at the polls by falsely accusing them of not being U.S. citizens or city residents, or of having felony convictions.³⁰ The losing incumbent's rationale was "if they couldn't speak good English, they possibly weren't American citizens."³¹ DOJ's investigation found the challenges racially motivated and prohibited interference from the challengers during the general election.³² That year, Bayou La Batre elected its first Asian American to the City Council.³³ Similarly, in Harris County (Houston), Texas, during the 2004 Texas House of Representatives race, accusations of non-citizen voting were implied in the request for an investigation by the losing incumbent in the election resulting in the victory of Hubert Vo, a Vietnamese American.³⁴ While both recounts affirmed Vo's victory, making him the first Vietnamese American state representative in Texas history, his campaign voiced concern that such an investigation could intimidate Asian Americans from political participation altogether.³⁵

a. Laws to Address Language Barriers to Voting

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

[content/uploads/2016/06/0225_immigration_singer.pdf](#) (noting that longtime residents of Prince William County, Virginia, perceived that their quality of life was diminishing as Latinos and other minorities settled in their neighborhoods); James Angelos, *The Great Divide*, New York Times, Feb. 20, 2009, http://www.nytimes.com/2009/02/22/nyregion/thecity/22froz.html?_r=3&pagewanted=1 (describing ethnic tensions in Bellerose, Queens, New York, where the South Asian population is growing); Ramona E. Romero & Cristóbal Joshua Alex, *Immigrants Becoming Targets of Attacks*, National Campaign to Restore Civil Rights, Jan. 26, 2009, <http://rollback.typepad.com/campaign/2009/01/it-has-happened-again----in-early-december-less-than-a-month-after-seven-teenagers-brutally-attacked-and-killed-marcelo-luc.html> (describing the rise in anti-Latino violence where the immigration debate is heated in New York, Pennsylvania, Texas, and Virginia); Sara Lin, *An Ethnic Shift Is in Store*, Los Angeles Times, Apr. 12, 2007, <http://articles.latimes.com/2007/apr/12/local/me-chinohills12> (describing protest of Chino Hills residents to Asian market opening in their community where 39% of residents were Asian).

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

³¹ See DeWayne Wickham, *Why Renew Voting Rights Act? Ala. Town Provides Answer*, USA Today, Feb. 22, 2006, http://usatoday30.usatoday.com/news/opinion/editorials/2006-02-22-forum-voting-act_x.htm (quoting defeated City Council incumbent Jackie Ladnier).

³² See *id.*

³³ See Press Release, U.S. Dep't of Justice, Justice Department to Monitor Elections in New York, Washington, and Alabama (Sept. 13, 2004), http://www.justice.gov/opa/pr/2004/September/04_crt_615.htm ("In Bayou La Batre, Alabama, the Department will monitor the treatment of Vietnamese-American voters.").

³⁴ See *Decided Victory: Heflin's Camp Swelled Store of Disinformation*, Houston Chronicle, Feb. 9, 2005, <http://www.chron.com/opinion/editorials/article/Decided-victory-Heflin-s-camp-swelled-store-of-1640120.php>.

³⁵ See *id.*; Thao L. Ha, *The Vietnamese Texans*, in *Asian Texans: Our Histories and Our Lives*, 263, 284-85 (Irwin A. Tang ed., 2007).

i. *Section 203*

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

[T]hrough the use of various practices and procedures, citizens of [the four covered groups] have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational 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.³⁶

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.³⁷ 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.³⁸ And in Harris County, Texas, the turnout among Vietnamese eligible voters doubled following the DOJ’s efforts in 2004.³⁹ That same year, Harris County elected the first Vietnamese American to the Texas state legislature after the county began fully complying with Section 203. Also, in

³⁶ Congress limited Section 203 protections to these four language groups because it continually found that they have faced and continued to face significant voting discrimination because of their race and ethnicity. Other language groups were not included because Congress did not find evidence that it experienced similar sustained difficulties because of their race and ethnicity in voting when they enacted the provision. See *Bilingual Election Requirements*, 52 U.S.C. § 10503; S. Rep. No. 94-295, at 31 (1975). Section 2 helps to provide protections for language minority groups that fall outside of the four covered groups as discussed later in the chapter.

³⁷ James Thomas Tucker, *The Battle Over Bilingual Ballots*, 229 (2009).

³⁸ 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>.

³⁹ *Id.*

2004, over 10,000 Vietnamese American voters registered in Orange County, which helped elect the first Vietnamese American to California's state legislature.⁴⁰

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 1978.⁴¹ Approximately 75 Asian American officials serve at the state legislative level. The VRA and particularly the passage of Section 203 have been instrumental in these gains. For example, the vast majority of Asian American elected officials at the time of the study, 75%, were elected in jurisdictions covered by Section 203 of the VRA.⁴² In the state legislatures, 65% of Asian Americans were elected from jurisdictions covered by the VRA.⁴³ In city councils, 79% of Asian Americans were elected from VRA-covered jurisdictions.⁴⁴ And among those serving on the school boards, 84% of Asian Americans were elected from covered jurisdictions.⁴⁵

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

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

⁴⁰ Martin Wisckol, *Little Saigon's Big Clout*, Orange County Register, Aug. 21, 2013, <http://www.ocregister.com/articles/vietnamese-188422-community-american.html>.

⁴¹ 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>.

⁴² *Id.* at 17.

⁴³ *Id.*

⁴⁴ *Id.* at 17-18.

⁴⁵ *Id.* at 18.

- Poll workers lacked knowledge about language assistance requirements and other voting laws, such as whether voters must present photo identification.

In 2016, the Census Bureau released an updated list of Section 203 jurisdictions based upon 2010–2014 American Community Survey data with parts of Alaska, California, Hawaii, Illinois, Massachusetts, Michigan, Nevada, New Jersey, New York, Texas, Virginia and Washington covered for at least one Asian language. The newly-covered language groups were: Asian Indian in Middlesex County, NJ; Cambodian in Lowell City, MA and Los Angeles County, CA; Chinese in Contra Costa County, CA, San Diego County, CA, and Malden City, MA; and Vietnamese in Tarrant County, TX and Fairfax County, VA. Today, 45 Asian American populations located in 27 counties, boroughs, census areas or cities, including six new Asian American populations have been added to Section 203 coverage since the last list was released in 2011.⁴⁶ Seven Asian ethnic groups are covered: Asian Indian, Bangladeshi, Chinese, Filipino, Korean, Cambodian and Vietnamese. After the 2016 determinations, there were no longer any jurisdictions covered for Japanese (where previously there were two) and Maui County, HI was no longer covered for the Filipino community.

ii. *Section 208*

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

Nevertheless, all citizens who have difficulty with English, no matter where they live or what their native language is, have the right through Section 208 to an assistor of their choice to help them in the voting booth.⁴⁷ The only limitation on this rule is that the assistor cannot be one's employer or union representative. The assistor can even be a teenage child or a non-U.S. citizen and can be for any language. Section 208's distinct advantage is its availability at every polling site throughout the nation.

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[.]"⁴⁸ 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

⁴⁶ The breakdown for Asian ethnic groups was: Chinese American populations in 18 jurisdictions; Filipino American populations in 8; Vietnamese American populations in 9; Korean American populations in 4; Indian American populations in 3; Bangladeshi American populations in 1; and Cambodian American population in two. <https://advancingjustice-la.org/sites/default/files/2016-Section-203-Fact-Sheet.pdf>

⁴⁷ *Voices of Democracy* at 5.

⁴⁸ S. Rep. No. 97-417 at 2 (1982).

influenced or manipulated, and thus were more likely to be discriminated against at the polls.⁴⁹ 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.⁵⁰ 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.⁵¹

iii. Section 2

Section 2 of the VRA applies nationwide and mandates that all jurisdictions avoid implementing any voting standard, practice, or procedure that results in the denial or abridgement of the right of any citizen to vote on account of their race, color, or membership in a language minority group.⁵² In addition to being utilized in "vote dilution" challenges to at-large election systems and redistricting plans and "vote denial" challenges to restrictive voting practices, Section 2 has also been used to address the needs of LEP language minority voters. As previously mentioned, while Section 203 has been able to break down the language barriers for Asian American, Latino, American Indian and Alaska Native voters in certain jurisdictions, many language minority voters still face language barriers at the polls. Voters of other language groups not covered have not benefited from Section 203, whether because the community is not populous enough to trigger Section 203 coverage or because the community is not one of the four protected language groups under Section 203.⁵³ 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.

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 2005.⁵⁴ 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

⁴⁹ *Id.* at 62.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² 52 U.S.C. § 10301.

⁵³ Other language groups have not been included in the Section 203 framework because Congress has not found evidence that they experienced similar sustained difficulties because of their race and ethnicity in voting. 52 U.S.C. § 10503; S. Rep. No. 94-295 at 31.

⁵⁴ *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.

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.⁵⁵

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.⁵⁶ 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.⁵⁷

Recommendations & Best Practices To Improve Language Assistance⁵⁸

Section 203 Recommendations

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

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

⁵⁵ Consent Order, *United States v. City of Boston, Mass.*, (No. 05-11598, D. Mass., Oct. 18, 2005), http://www.justice.gov/crt/about/vot/sec_203/documents/boston_cd2.pdf.

⁵⁶ *United States v. City of Hamtramck, Michigan* (E.D. Mich. 2000).

⁵⁷ *Id.*

⁵⁸ For more in-depth analysis on best practices for language assistance, please reference language access guides developed by Advancing Justice – AAJC, NALEO and the Fair Elections Center, available at <http://www.naleo.org/languageaccess>.

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

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

Section 208

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.

Poll worker training

When a language-minority voter cannot communicate effectively with poll workers, the voter may not be able to cast a ballot. Bilingual poll workers stationed in polling locations with concentrations of language-minority voters could address that issue but only if they are

properly trained. Election officials should provide bilingual poll workers with separate training on language assistance, some of which should be done in the covered languages. Bilingual poll workers should be trained to provide proactive assistance, greeting voters and guiding them through the elections process. Trainings for bilingual poll workers should also include a review of all voting materials in all the languages in which they are provided to ensure not only that the materials is understood but that the bilingual poll worker will be able to provide clear, complete, and accurate translations to voters. Role-playing exercises in-language for common scenarios, such as voters showing up at the wrong precinct or bringing someone with them to provide assistance will help familiarize the bilingual poll workers with what to expect at the polls and how best to address the needs of the language minority voter. Additionally, all poll workers must be properly trained to ensure they are able to assist language minority voters in culturally and linguistically appropriate ways. Regardless of whether the jurisdiction is covered under Section 203, every poll worker should be trained in understanding the needs of language minority voters and how the poll worker can best to assist their needs from a customer-service standpoint. For example, every poll worker should be familiarized with Section 208 of the Voting Rights Act and walked through a role-playing exercise on how to properly assist a voter seeking to bring in assistance of their own choosing.

Voluntary assistance

Jurisdictions have proactively, and voluntarily, provided language assistance to any size group of language minority voters that they believe has a need for such assistance. For example, in the 2004 Section 203 enforcement action by DOJ against San Diego County on behalf of Filipino and Latino voters resulted in the county agreeing to provide voluntary language assistance to Vietnamese voters as they were 85 persons away from meeting the numerical threshold during the most recent determination at that time.⁵⁹ In 2015, after engagement by community advocates, the Cook County Clerk's Office initially, and the Chicago Board of Elections subsequently, agreed to provide Korean language assistance in Chicago's highest areas of need. This voluntary language assistance benefitted 37,000 Korean Americans in Cook County, over 40 percent of whom are limited-English proficient.⁶⁰ After the 2016 determinations were released, Fairfax County, Virginia realized that they just missed Section 203 coverage threshold for the Korean language. As a result, the Fairfax County Electoral Board decided to voluntarily provide Korean language assistance in addition to the Section 203-covered Vietnamese language assistance, resulting in assistance be available to the county's 35,000 Korean-speaking residents, where over half were LEP.⁶¹

Jurisdictions can also choose to provide language assistance to those who are not near the 203 threshold as well as to groups outside of the four covered Section 203-language groups. This

⁵⁹ Angelo N. Ancheta, Language Assistance and Local Voting Rights Law, 44 Ind. L. Rev. 161, 178 (2010).

⁶⁰ Asian Americans Advancing Justice – AAJC, National Association of Latino Elected and Appointed Officials, and The Fair Election Center, Community Leaders' Guide to Providing Language Access in Elections (2018), <https://d3n8a8pro7vhmx.cloudfront.net/naleo/pages/1433/attachments/original/1533687334/community-full-6.pdf>.

⁶¹ *Id.*

becomes more critical as the language minority population grows across different communities. Anywhere there is a sizeable population of language minority speakers who have need for language assistance, jurisdictions can and should take steps to ensure these populations can effectively vote. For example, working with local language-minority-serving organizations, the Pennsylvania Department of State translated the State's voter registration form into five languages beyond Spanish (which was covered by Section 203 in three of Pennsylvania's jurisdictions) – French, Khmer, Korean, Russian, and Vietnamese. These forms were made available for download and print through the Department of State's election website. In 2016, Mayor de Blasio announced that New York City had translated the state voter registration form into eleven new languages – Russian, Urdu, Haitian Creole, French, Arabic, Albanian, Greek, Italian, Polish, Tagalog, and Yiddish – bringing the total number of translated forms to fifteen languages in addition to English.⁶² This meant that 90 percent of the State's limited-English proficient population is now covered by the translated voter registration forms.

There could be federal support to encourage the provisions of language assistance. A funding infrastructure could be established to incentivize the voluntary provision of language assistance by jurisdictions that is administered through the Election Assistance Commission (EAC). For example, stipends could be provided to jurisdictions to expand their website to include translations, with the criteria for such expansion established by the EAC (e.g. translation protocol, the extent of translations, and so forth). The EAC could provide model poll worker training modules that are focused on assisting language minority voters, including in-language role-playing exercises for localities to utilize.

Conclusion

Language barriers remain one the greatest obstacles for Asian American voters in exercising their fundamental right to vote. The U.S. Census Bureau forecasts that the number of Asian immigrants will grow between now and 2040. It is likely that voter participation rates among the Asian American community, including of newly naturalized Asian Americans, will only increase. There will continue to be a need to ensure that proper language assistance is provided and that proactive measures are undertaken to meet the needs of the language minority population.

⁶² The translated forms are <http://www.nycfb.info/nyc-votes/registering>. Also, New York City is required to provide the translation in Russian pursuant to state law. N.Y. Elec. Law § 3-506.