



ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

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**Statement of the
Asian American Legal Defense and Education Fund
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**Before the
U.S. House of Representatives Committee on House Administration,
Subcommittee on Elections**

**Hearing
“Voting in America: A National Perspective on the Right to Vote, Methods of
Election, Jurisdictional Boundaries, and Redistricting”**

June 24, 2021

The Asian American Legal Defense and Education Fund (AALDEF), is a 47-year-old national civil rights organization based in New York City that promotes and protects the civil rights of Asian Americans through litigation, legal advocacy, and community education. AALDEF has monitored elections through annual multilingual exit poll surveys since 1988, and has conducted exit polls for every major election since 2008. Consequently, AALDEF has collected valuable data that documents both the use of, and the continued need for, protection under the federal Voting Rights Act (VRA). In 2018, AALDEF dispatched over 600 attorneys, law students, and community volunteers to 81 poll sites in 54 cities in 14 states to document voter problems on Election Day. The survey polled 8,058 Asian American voters. AALDEF has litigated cases around the country under the language access provisions of the VRA, and seeks to protect the voting rights of language minority, limited English proficient (LEP), and Asian American voters. AALDEF has litigated cases that implicate the ability of Asian American communities of interest to elect candidates of their choice, including lawsuits involving equal protection and constitutional challenges to discriminatory redistricting plans.¹

AALDEF has previously submitted testimony to Congress,² testified at hearings, submitted amicus briefs to the Supreme Court of the United States, and released detailed reports regarding Asian American voting experiences and the continued need for the full protections of the VRA, including Section 5 preclearance. AALDEF incorporates by reference the previously submitted documents and the attached documents, referred to as “Attachments A and B”, as well as the below:

- Complaint, *Detroit Action v. City of Hamtramck*, No. 2:21-cv-11315 (E.D. Mich. June 3, 2021)
- Amicus brief submitted to the Supreme Court in *Dep’t. of Commerce v. New York*, 18-966 (April 1, 2019)
- Submission to Magistrate Judge in *Favors v. Cuomo*, No. 11-cv-5632 (E.D.N.Y. Feb. 29, 2012)
- Attachment A (Asian American Neighborhood Maps) to submission to Magistrate Judge in *Favors v. Cuomo*, No. 11-cv-5632 (E.D.N.Y. Feb. 29, 2012)
- Attachment B (Asian American Communities of Interest Survey) to submission to Magistrate Judge in *Favors v. Cuomo*, No. 11-cv-5632 (E.D.N.Y. Feb. 29, 2012)
- Letter from AALDEF to Hamtramck and Michigan election officials, dated April 20, 2020
- Letter from AALDEF, Fair Elections Center, and LatinoJustice PRLDEF to Fairfax County officials, dated June 9, 2020
- Letter from AALDEF and Greater Boston Legal Services to Malden election officials, dated June 24, 2020

¹See, e.g., Complaint, *Detroit Action v. City of Hamtramck*, No. 2:21-cv-11315 (E.D. Mich. June 3, 2021), ECF No. 1; *Favors v. Cuomo*, 881 F. Supp. 2d 356 (E.D.N.Y. 2012); *Diaz v. Silver*, 978 F. Supp. 96 (E.D.N.Y. 1997); *OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017); Complaint, *All. of South Asian Am. Labor v. The Bd. of Elections in the City of New York*, No. 1:13-cv-03732 (E.D.N.Y. July 2, 2013), ECF No. 1; Complaint, *Chinatown Voter Education All. v. Ravitz*, No. 1:06-cv-0913 (S.D.N.Y. Feb. 6, 2006, ECF No. 1.)

² See Joint Statement of the Asian American Legal Defense and Education Fund and Asian Americans Advancing Justice before the Committee on the Judiciary, United States Senate Hearing “From Selma to *Shelby County*: Working Together to Restore the Protections of the Voting Rights Act,” submitted July 17, 2013.

AALDEF submits this testimony to describe the history and current landscape of enforcement of the Voting Rights Act in the United States, and its impact on Asian American³ voting rights in particular. AALDEF respectfully asks that this testimony be entered into the record. Thank you.

Discrimination Against Asian Americans Creates a Barrier to Voting

Since Asian immigrants arrived in the United States more than a century ago, they have faced ongoing discrimination and the denial of basic rights. This shameful history of discrimination against the Asian American community in the United States is well known. Until 1943, federal policy barred immigrants of Asian descent from even becoming United States citizens, and it was not until 1952 that racial criteria for naturalization were removed altogether.⁴ Indeed, history is replete with examples of anti-immigrant sentiment directed towards Asian Americans, manifesting in legislative efforts to prevent Asian immigrants from entering the United States and becoming citizens.⁵ In the not-so-distant past, Asian immigrants were legally identified as aliens “ineligible for citizenship,” and were prohibited from voting and owning land.⁶

Both immigrant and native-born Asian Americans have experienced pervasive discrimination in everyday life.⁷ Perhaps the most egregious example of discrimination was the incarceration of 120,000 Americans of Japanese ancestry during World War II without due process.⁸ White immigrant groups whose home countries were also at war with the United States were not similarly detained; only Japanese Americans were forced to endure this extraordinary level of unfounded fear and accusation regarding their loyalty, trustworthiness, and character.⁹

³ The notion of “Asian American” encompasses a broad diversity of ethnicities, many of which have historically suffered their own unique forms of discrimination. Discrimination against Asian Americans as discussed here addresses both discrimination aimed at specific ethnic groups and discrimination directed at Asian Americans generally.

⁴ See Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, 58-61 (prohibiting immigration of Chinese laborers; repealed 1943); Immigration Act of 1917, ch. 29, 39 Stat. 874, 874-98, and Immigration Act of 1924, ch. 190, 43 Stat. 153 (banning immigration from almost all countries in the Asia-Pacific region; repealed 1952); Leti Volpp, *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 UCLA L. Rev. 405, 415 (2005).

⁵ See, e.g., Philippines Independence Act of 1934, ch. 84, 48 Stat. 456, 462 (imposing annual quota of fifty Filipino immigrants; amended 1946); Immigration Act of 1924, ch. 190, 43 Stat. 153 (denying entry to virtually all Asians; repealed 1952); Scott Act of 1888, ch. 1064, 1, 25 Stat. 504, 504 (rendering 20,000 Chinese re-entry certificates null and void); Naturalization Act of 1790, ch. 3, 1 Stat. 103 (providing one of the first laws to limit naturalization to aliens who were “free white persons” and thus, in effect, excluding African-Americans, and later, Asian Americans; repealed 1795).

⁶ See *Ozawa v. United States*, 260 U.S. 178, 198 (1922); see also, e.g., Cal. Const. art. II, § 1 (1879) (“no native of China . . . shall ever exercise the privileges of an elector in this State”); *Oyama v. California*, 332 U.S. 633, 662 (1948) (Murphy, J., concurring) (noting that California’s Alien Land Law “was designed to effectuate a purely racial discrimination, to prohibit a Japanese alien from owning or using agricultural land solely because he is a Japanese alien”).

⁷ See, e.g., *Gong Lum v. Rice*, 275 U.S. 78 (1927) (upholding segregation of Asian schoolchildren); *People v. Brady*, 40 Cal. 198, 207 (1870) (upholding law providing that “No Indian. . . or Mongolian or Chinese, shall be permitted to give evidence in favor of, or against, any white man” against Fourteenth Amendment challenge).

⁸ See Exec. Order 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942) (authorizing Japanese incarceration); see also *Korematsu v. United States*, 323 U.S. 214 (1944) (upholding the incarceration under strict scrutiny review).

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

Racist sentiment towards Asian Americans is not merely a matter of historical injustice but a continuing reality, fueled in more recent years by reaction to the COVID-19 pandemic¹⁰ and reactionary post-9/11 prejudice and a growing backlash against immigrants.¹¹ Numerous hate crimes throughout the country have been directed against Asian Americans, either because of their minority group status or because they are perceived as unwanted immigrants.¹² As the Asian American population grows, these incidents are likely to increase.

Asian Americans have become the fastest growing racial group in the United States. While the total population in the United States rose by 10 percent between 2000 and 2010, the Asian American population increased by 46 percent during that same time span.¹³ The Asian American population has grown most rapidly in the South, increasing by 69 percent from 2000 to 2010.¹⁴ The growth of the Asian American community has been especially notable in the State of Texas. From 2000 to 2010, the Asian American population in Texas grew by 72 percent, and Texas was the state that experienced the second largest numeric growth of its Asian American community (behind only California), increasing from a population of 644,000 in 2000 to 1.1 million in 2010.¹⁵

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.¹⁶ Thus, as Asian American populations continue to increase rapidly, particularly in Texas, levels of racial tension and discrimination

Japanese Americans, unlike German or Italian Americans, could be presumed disloyal by virtue of their national origin”).

¹⁰ Hate crimes against Asian Americans in 16 cities rose by 150 percent in 2020, a recent report from the Center for the Study of Hate and Extremism at California State University, San Bernardino revealed. See Li Zhou, Anne Anlin Cheng and Manju Kulkarni, *The Rise In Anti-Asian Attacks During The COVID-19 Pandemic*, NPR (March 10, 2021), available at <https://www.npr.org/2021/03/10/975722882/the-rise-of-anti-asian-attacks-during-the-covid-19-pandemic>

¹¹ See, e.g., U.S. Dep’t of Justice, *Confronting Discrimination in the Post-9/11 Era: Challenges and Opportunities Ten Years Later*, at 4 (Oct. 19, 2011) (noting that the FBI reported a 1,600 percent increase in anti-Muslim hate crime incidents in 2001), available at https://www.justice.gov/sites/default/files/crt/legacy/2012/04/16/post911summit_report_2012-04.pdf.

¹² See, e.g., *id.* at 7-9 (discussing numerous incidents of post-9/11 hate crimes prosecuted by the DOJ).

¹³ U.S. Census Bureau, *The Asian Population: 2010*, at 1, 3 (2012), available at <https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf>. These figures include people who reported themselves as belonging to only one Asian group, as well as members of the Asian American community’s rapidly growing multiracial population; this population is collectively referred to as “Asian alone or in combination.” From 2000 to 2010, the “Asian alone” population increased by only a slightly lower rate of 43 percent.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 8.

¹⁶ See, e.g., 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/mechinohills12>.

against this community can also be expected to increase. In fact, many hate crimes and other racist incidents have been reported in Texas in recent years.¹⁷

Even a Texas lawmaker, Betty Brown, publicly commented that Asian American voters should change their names to accommodate poll workers. At a hearing regarding voter identification, Brown stated: “Rather than everyone here having to learn Chinese—I understand it’s a rather difficult language—do you think that it would behoove *you and your citizens* to adopt a name that *we* could deal with more readily here? . . . Can’t you see that this is something that would make it a lot easier for you and the people who are poll workers if you could adopt a name just for identification purposes that’s easier for *Americans* to deal with?”¹⁸ Beyond the indignity of this request and the implications that Chinese Americans are not really *Americans*, this statement also demonstrates ignorance of an obvious and significant problem faced by many Asian American voters: by sometimes using their legal names and sometimes using names that are “easier for Americans to deal with,” the names listed on these voters’ various forms of identification may not match with their names on the voter rolls, and this inconsistency may prevent them from voting.

Such discrimination creates an environment of suspicion and resentment towards Asian Americans, who are often still perceived as perpetual “outsiders,” “aliens,” or “foreigners,”¹⁹

¹⁷ See, e.g., Margaret Kadifa, *Houston man charged with hate crime after attacking Lyft driver*, HOUSTON CHRONICLE (Sept. 21, 2017), <https://www.houstonchronicle.com/neighborhood/champions-klein/news/article/Man-charged-with-hate-crime-after-attacking-Lyft-12217494.php> (verbal and physical assault of Lyft driver due to Pakistani background); Alex Zielinski, *Fake Cards Appear in San Antonio, Offering \$100 to Anyone Who Reports Undocumented Immigrants to ICE*, SAN ANTONIO CURRENT (Aug. 10, 2017), <https://www.sacurrent.com/the-daily/archives/2017/08/10/fake-cards-appear-in-san-antonio-offering-100-to-anyone-who-reports-undocumented-immigrants-to-ice?media=AMP+HTML> (distribution of unofficial business cards in San Antonio offering \$100 reward for reporting an “undocumented alien” to ICE who would then be arrested and deported); Lindsay Ellis, *Posters at UT latest display of campus post-election racism*, HOUSTON CHRONICLE (Feb. 14, 2017), <https://www.chron.com/local/education/campus-chronicles/article/Racist-posters-at-UT-latest-post-election-10931366.php> (anti-immigrant fliers posted at University of Texas-Austin campus stating: “A notice to all citizens of the United States of America, it is your civic duty to report any and all illegal aliens to U.S. Immigration and Customs Enforcement[.] They have broken the law”); Sanya Mansoor, *Students at Plano East allege racial slurs after Trump victory*, DALLAS NEWS (Nov. 2016), <http://www.dallasnews.com/news/education/2016/11/10/students-plano-east-allege-racial-slurs-trump-victory> (Texas high school teacher’s remarks to Asian American student that “Trump [will] build a wall and deport him”); Lindsay Wise, *Family says attack on Muslim man in Tomball should be hate crime*, HOUSTON CHRONICLE (Dec. 18, 2011), <https://www.chron.com/news/houston-texas/article/Islamic-group-family-say-attack-on-Muslim-may-be-2407967.php> (Pakistani man assaulted after being asked about the origin of his name and where he was from, resulting in partially bitten ear and ten broken ribs); *Marl Stroman Executed: Texas Man Received Death Penalty for Killing Store Clerk*, HUFFINGTON POST (Sept. 19, 2011), https://archive.fo/20130125231423/http://www.huffingtonpost.com/2011/07/20/mark-stroman-executed_n_905292.html?icid=maing-grid7 (execution of Texas inmate who killed two South Asian men and injured third South Asian man in “retaliation for the Sept. 11 terrorist attacks”); Jasmine K. Singh, *Everything I’m Not Made Me Everything I Am: The Racialization of Sikhs in the United States*, 14 ASIAN PAC. AM. L.J. 54, 85 (2008) (describing police violence against Sikh family in Houston, where police officers questioned family member about kirpan, ordered her to “shut up,” aimed taser at her head, forced her to the ground with a “knee . . . put to her back,” handcuffed her and her other family members, and asked if family members had “heard about the bombings in Bombay”).

¹⁸ R.G. Ratcliffe, *Texas lawmaker suggests Asians adopt easier names*, HOUSTON CHRONICLE (Apr. 8, 2009), <https://www.chron.com/news/houston-texas/article/Texas-lawmaker-suggests-Asians-adopt-easier-names-1550512.php>. (emphasis added)

¹⁹ See, e.g., Claire Jean Kim, *The Racial Triangulation of Asian Americans*, 27 Pol. & Soc’y 105, 108-16 (1999) (describing history of whites perceiving Asian Americans as foreign and therefore politically ostracizing them). In

based on their physical and cultural attributes. This perception, coupled with the growing sentiment that foreigners are destroying the country, could threaten Asian Americans' ability to exercise their right to vote free of harassment and discrimination.

Asian American voting rights are in even greater jeopardy since the Supreme Court gutted the Voting Rights Act in *Shelby County v. Holder*²⁰ in 2013, by effectively eviscerating the Section 5 preclearance requirement for proposed changes in certain states' election practices or procedures. In the past, the federal preclearance process worked extremely well to prevent states from enacting discriminatory voting laws and procedures, and also allowed covered jurisdictions to "bail-out" from preclearance coverage if they could show that they no longer discriminated. For Texas alone, the Department of Justice has issued dozens of objection letters regarding proposed election practices and procedures under Section 5 of the Voting Rights Act.²¹ Unfortunately, without any current Section 5 coverage for Texas (or any other state), Asian Americans are susceptible to extensive discrimination in voting. Voters in Texas were particularly vulnerable under the former administration, because AALDEF is unaware of *any* VRA actions brought by the Department of Justice to protect voters.²²

In the years since *Shelby County*, multiple federal circuit and district courts have found intentional racial discrimination in state legislation in formerly covered jurisdictions, including Texas. This is precisely why these jurisdictions could not "bail-out" of coverage pre-*Shelby*, and illustrates why Congress must enact a new coverage formula now to prevent continued and pervasive voting discrimination.

Additionally, limited English proficient (LEP) voters, including many Asian American voters, face additional barriers at the polls. Section 203 of the Voting Rights Act requires some jurisdictions to provide translated ballots and voting materials as well as oral language assistance for LEP voters.

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

²⁰ 570 U.S. 529 (2013).

²¹ See *Section 5 Objection Letters*, Dep't of Justice, available at http://www.justice.gov/crt/records/vot/obj_letters/index.php.

²² See U.S. Dep't of Justice, *Voting Section Litigation, Cases Raising Claims Under Section 2 of the Voting Rights Act*, <https://www.justice.gov/crt/voting-section-litigation> (last updated Sept. 27, 2018) ("*Voting Section Litigation*"). The DOJ's last listed complaint under Section 2 of the VRA was filed on January 10, 2017, before former Attorney General Jeff Sessions was sworn into office. As far as Amici are aware, the only VRA-related action taken by the current DOJ administration was the voluntary withdrawal of a key argument in a Section 2 discriminatory purpose claim in an existing case involving Texas voter identification laws. The court granted the DOJ's motion, but specifically rejected the basis of DOJ's given reasoning for withdrawing the claim. See *Veasey v. Abbott*, 248 F. Supp. 3d 833 (S.D. Tex. 2017).

Section 203 of the VRA

Since its enactment in 1975, Section 203 of the Voting Rights Act has proven to be a clear and effective measure to ensure access to LEP voters through language assistance. Based on AALDEF's analysis of covered jurisdictions required to provide Asian language assistance under Section 203, the jurisdiction with the most significant violations appears to be Hamtramck, Michigan.

Hamtramck, Michigan is required to provide translations of all voting information and materials (including election websites) and oral language assistance for Bangladeshi voters (in Bengali); however, no portion of Hamtramck's election website is translated. AALDEF submitted a demand letter to the City Clerk, August Gitschlag, regarding his failure to comply on April 20, 2020,²³ but as of the date of this submission, Hamtramck's election website still does not show signs of any effort at Bengali translation.²⁴ It is also important to note that the representative of Michigan's 4th House District, which includes the entire City of Hamtramck, tragically passed away due to COVID-19. The governor set a special primary election for August 4, 2020, and the petitioning deadline for Republican and Democratic candidates was set for April 21, 2020. At the time of that deadline, none of the candidate qualifying information was translated into Bengali, despite the fact that the special election for this house district covers the entire City of Hamtramck, which is covered for Bengali language assistance under Section 203 of the Voting Rights Act. AALDEF never received a response to the August 20, 2020 letter that was sent, and ultimately ended up filing a federal Complaint on June 3, 2021 to enjoin the City Clerk from continuing to violate Section 203.²⁵

Under Section 203, Fairfax County, Virginia is required to provide language assistance to Spanish and Vietnamese voters. While Fairfax County's election website has an option to use Google Translate's "machine translation" service, its own disclaimer acknowledges that the translation is "not context-sensitive and may not fully convert text into its intended meaning. Fairfax County Government cannot guarantee the accuracy of the converted text nor are we liable for any resulting issues."²⁶ Moreover, Fairfax County's website only provided a link to an English absentee ballot request form.²⁷ AALDEF, Fair Elections Center, and LatinoJustice PRLDEF corresponded with Fairfax County election officials regarding Section 203 compliance, and submitted a demand letter on June 9, 2020, in light of the likely increase in voters (including

²³ For more information, see the attached letter from AALDEF to Hamtramck and Michigan election officials, dated April 20, 2020.

²⁴ See <https://hamtramck.us/departments/city-clerk/elections/>. AALDEF also pointed out the lack of a translated Bengali absentee ballot request form on Michigan's Secretary of State's website, but we are pleased to see that the state website has since been updated with a Bengali version of the absentee ballot application. See https://www.michigan.gov/sos/0,4670,7-127-1633_8716---,00.html. The state website also provides a Bengali version of the voter registration form, but Hamtramck still only provides a link to the English version of this form.

²⁵ See Complaint, *Detroit Action v. City of Hamtramck*, No. 2:21-cv-11315 (E.D. Mich. June 3, 2021), attached.

²⁶ See <https://www.fairfaxcounty.gov/elections/> (Google Translate option in top right corner of page).

²⁷ See <https://www.fairfaxcounty.gov/elections/absentee> (under "ABSENTEE VOTING BY-MAIL").

LEP voters) who would seek to vote absentee in upcoming elections in the midst of a pandemic.²⁸

Jurisdictions also fail to ensure equal access to minority voters (including LEP voters) by failing to provide access to interpreters, or through hostile or discriminatory treatment of these voters by poll workers. When AALDEF monitored the March 3, 2020 primary election in Malden, Massachusetts (a jurisdiction covered under Section 203 for Chinese language assistance), we discovered numerous such problems.²⁹

Redistricting

Perry v. Perez

Before the Supreme Court effectively eviscerated the preclearance requirement of Section 5 of the Voting Rights Act in its *Shelby County* decision, the Court considered the discriminatory intent and effect of a proposed Texas redistricting plan in *Perry v. Perez*. AALDEF submitted an *amicus* brief urging the Supreme Court to affirm the Texas district court's interim redistricting plan after the Department of Justice contended that the Texas state legislature's plan diluted the voting power of Asian Americans and other people of color.

At the time of this case, Texas State House District 149 had a combined minority citizen voting-age population of around 62 percent.³⁰ Since 2004, the Asian American community in District 149 has voted as a bloc with Hispanic and African American voters to elect Hubert Vo, a Vietnamese American, as their state representative. Vo's election was particularly significant for the Asian American community because he was the first Vietnamese American state representative in Texas history.³¹

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.³² Plan H283 would have thus hindered the Asian American community's right to vote in Texas by diluting the large Asian American populations across the state.

Following a trial in January of 2012, the three-judge district court in Washington, D.C. denied Section 5 preclearance on August 28, 2012, in a comprehensive and mostly unanimous opinion. The court found that the congressional and state redistricting plan had both a retrogressive effect

²⁸ For more information, see the attached letter from AALDEF, Fair Elections Center, and LatinoJustice PRLDEF to Fairfax County officials, dated June 9, 2020.

²⁹ For more information, see the attached letter from AALDEF and Greater Boston Legal Services to Malden election officials, dated June 24, 2020.

³⁰ See United States and Defendant-Intervenors Identification of Issues 6, *Texas v. United States*, C.A. No. 11-1303 (D.D.C.), Sept. 29, 2011, Dkt. No. 53.

³¹ See Test. of Ed Martin, Trial Tr. at 350:15-23, *Perez v. Perry*, 835 F. Supp. 2d 209 (W.D. Tex. 2011) (hereinafter "Martin Test."); Test. of Rogene Calvert, Trial Tr. at 420:2-421:13, *Perez*, 835 F. Supp. 2d 209; Test. of Sarah Winkler, Trial Tr. at 425:18-426:10, *Perez*, 835 F. Supp. 2d at 209.

³² 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 Plan H283, available at <http://gis1.tlc.state.tx.us/download/House/PLANH283.pdf>.

and a racially discriminatory purpose (though this decision later had to be vacated and remanded in light of the Supreme Court's decision in *Shelby County* and its implications for all Section 5 preclearance claims). Since Section 5 of the Voting Rights Act no longer applies to the State of Texas, disruptive changes to redistricting plans, polling sites, and voting systems can now occur unfettered, wreaking havoc on Asian American voters' ability to cast an effective ballot. As mentioned above, the DOJ under the former administration had not brought a single VRA case, so it will fall on AALDEF and other such groups to continue to identify and litigate each individual discriminatory act or action to protect naturalized citizen voters, LEP voters and other targeted groups.

AALDEF's *amicus* brief has been submitted for the record, in Attachment B.

Favors v. Cuomo

Asian Americans have been historically disenfranchised in the redrawing of district boundaries and in their right to vote.³³ AALDEF has a long history in defending the voting rights and political representation of Asian Americans.

In the past, redistricting plans have diluted Asian American voting strength by fragmenting communities into multiple districts.³⁴ Even in places like New York City, past and current congressional district boundaries have divided Asian American communities.³⁵ In the *Favors v. Cuomo* litigation, AALDEF submitted Asian American Neighborhood Maps, for 15 Asian American Communities of Interest (COI) in New York City.³⁶ On the last three pages of this document, AALDEF superimposed the then existing State Assembly, Senate and Congressional district lines over the Asian American COIs, revealing how divided each of these COIs were among multiple legislative districts, essentially denying this community the ability to elect candidates of their choice.³⁷ Some Asian American neighborhoods, such as Richmond Hill/South Ozone Park, were divided among six (6) different state assembly districts and is currently divided among five (5) districts.

AALDEF was ultimately able to convince the Special Master to draw a fair congressional district in Queens that kept Asian American COIs whole, and together.³⁸ Several months later that district elected the first Asian American to Congress from New York State, and it was primarily because the community was finally allowed the opportunity to elect a candidate of its choice. This result was likely only possible through federal litigation.

³³ Cf. S. Rep. No. 94-295, 94th Cong., 1st Sess. 28-30 & n. 21 (1975) (noting that “[d]iscrimination against Asian Americans is a well known and sordid part of our history.”); 42 U.S.C. §§ 1973b(f), 1973l(c)(3) (extending the Voting Rights Act to cover “language minorities,” including “persons who are . . . Asian American.”).

³⁴ See U.S. Comm. on Civil Rights, *Civil Rights Issues Facing Asian Americans in the 1990s*, 159-161 (1992).

³⁵ Submission to Magistrate Judge in *Favors v. Cuomo*, No. 11-cv-5632 (E.D.N.Y. Feb. 29, 2012)

³⁶ Attachment A (Asian American Neighborhood Maps) to submission to Magistrate Judge in *Favors v. Cuomo*, No. 11-cv-5632 (E.D.N.Y. Feb. 29, 2012)

³⁷ Attachment B (Asian American Communities of Interest Survey) to submission to Magistrate Judge in *Favors v. Cuomo*, No. 11-cv-5632 (E.D.N.Y. Feb. 29, 2012)

³⁸ See AALDEF *Commends Court-Drawn Congressional Redistricting Plan For Keeping Asian American Communities Together*, available at <https://www.aaldef.org/press-release/aaldef-commends-court-drawn-congressional-redistricting-plan-for-keeping-asian-american-communities/>

The DOJ should be playing a major role in protecting minority voters, as it has in the past.³⁹ Racial justice and good government groups have limited resources, and because of the *Shelby County* ruling, do not have notice of many discriminatory voting changes that affect minority voters. Individual affirmative cases require a large amount of human and financial resources, which limit the reach and scope of work that organizations like AALDEF can do. For example, in the *OCA v. Texas* case that AALDEF brought against the state of Texas for violating Section 208 of the Voting Rights Act, it took more than three years to litigate from client intake to final decision, and required hundreds of hours of attorney time. Redistricting cases typically require massive amounts of attorney time and millions of dollars in expert fees for an affirmative Section 2 litigation. These extreme financial costs and diversion of attorney time limit what groups like AALDEF can do alone, to protect the rights of minority voters, and thus demands that the DOJ play a significant role in protecting minority voters. The assistance and active involvement of the DOJ in initiating affirmative litigation is essential to protect minority voters around the country. In addition, it has been our experience that it is advantageous to have the support of the DOJ as a party or amici when litigating a potential violation of the Voting Rights Act against a jurisdiction.

It is critical for the DOJ to exercise its existing authority to ensure equal access to voting by vigilantly enforcing Section 2, Section 203 and Section 208 of the Voting Rights Act, among other provisions, to ensure that language minority voters are not discriminated against, and that these provisions are fully complied with. Since the *Shelby County* decision, AALDEF has litigated Section 203 and Section 208 cases in jurisdictions formerly covered by Section 5. The active enforcement of these provisions by the DOJ is needed, particularly in these formerly covered jurisdictions.

Conclusion

American citizens of Asian ancestry have long been targeted as “foreigners” and unwanted immigrants, and racism and discrimination against this community persists to this day. These negative perceptions have real consequences for the ability of Asian Americans to fully participate in the electoral and political process. The Voting Rights Act has offered crucial protections for minority group voters, including many Asian American voters. AALDEF has witnessed firsthand the immense value of federal protection of voting rights under Sections 2, 203, and 208 of the Voting Rights Act. Section 5 of the Voting Rights Act was also a particularly effective tool in protecting Asian American voters against a host of actions that threaten to curtail their voting rights. However, the Supreme Court’s *Shelby County* decision dismantling the coverage formula has left a large gap in protections for Asian American voters that requires Congressional action and renewed DOJ enforcement of remaining VRA provisions. We look to Congress to work in a bipartisan fashion to respond to the Court’s ruling and strengthen the Voting Rights Act as it did during the 2006 reauthorizations and each previous reauthorization. AALDEF respectfully offers its assistance in such a process.

³⁹ See U.S. Dep’t of Justice, *Voting Section Litigation*, available at <https://www.justice.gov/crt/voting-section-litigation#sec203cases>