



**Testimony of  
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*For*

**Hearing on “Legislative Proposals to Strengthen the Voting Rights Act”**

**US House of Representatives  
Committee on the Judiciary  
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**Introduction**

The Voting Rights Act of 1965 (VRA) has been vital to the prevention of actual and threatened discrimination aimed at Asian Americans in national and local elections, and for increasing the community’s access to the ballot. And while the VRA continues to protect the voting rights of Asian Americans, its efficacy has been curtailed by the harmful and short-sighted decision by the Supreme Court in *Shelby County v. Holder*, 570 U.S. 2 (2013) (*Shelby County*). This testimony will detail the Asian American electorate and the discrimination Asian Americans face in the Post-*Shelby County* world as well as the need to restore and strengthen the VRA through modernizing how to determine coverage for Section 5 preclearance. While Asian Americans are the nation’s fastest growing racial group and are quickly becoming a significant electoral force, the community will not be able to maximize its political power without the full protection of their voting rights.

Based on the perception of Asian Americans as “outsiders,” “aliens,” and “perpetual foreigners,” Asian Americans were denied rights held by U.S. citizens, including the ability to vote for most of the country’s existence. Racist laws barring Asian Americans from entering the country, staying in the country or voting in the country, among other exclusionary laws, were often driven by fear of the “other” and the potential threat to the political livelihood of those in power. This is not only a problem of the past but one that rears its ugly head in present day and one that is poised to become even bigger due to the demographic shifts in America. As the fastest growing racial or ethnic group for almost the last two decades, Asian Americans are becoming more politically visible and viable in new jurisdictions across the country, including the South. With this growth is an increase in racial appeals against Asian American candidates and efforts to erect barriers to the ballot for Asian American voters. The practice-based

preclearance provision in the Voting Rights Advancement Act, in conjunction with a restored coverage formula, is critical to protecting the emerging political voice of Asian American voters. In targeting those practices that have been used through history to silence the political voice of minority communities just when they begin to reach critical mass and when they could begin to impact the outcome of elections, practice-based preclearance will ensure that these practices are reviewed in areas where Asian Americans and other communities of color are reaching the point where they are perceived as threats to ensure that the practice being proposed is not discriminatory or harmful to the minority community.

### **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.<sup>1</sup> Today there are over 22.6 million Asian Americans living in the United States.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> California's Asian American population remained by far the country's largest, with New York, Texas, New Jersey, and Hawai'i following in size.<sup>6</sup> Of the 19 states home to more than 225,000 Asian Americans, six are in the South (Texas, Florida, Virginia, Maryland, Georgia, and North Carolina) and four are in the Midwest (Illinois, Michigan, Minnesota, and Ohio).<sup>7</sup> The South was the fastest growing region for the Asian American population during the last decade.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup> This represented a 24.4% increase in registered Asian Americans and 29.2% increase in Asian Americans who

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<sup>1</sup> 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](http://www.advancingjustice.org/pdf/Community_of_Contrast.pdf) [hereinafter *Community of Contrasts*].

<sup>2</sup> 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).

<sup>3</sup> *Community of Contrasts* at 9.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 8.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 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](https://www.advancingjustice-aaajc.org/sites/default/files/2016-09/2014_Community%20of%20Contrasts.pdf).

<sup>9</sup> 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](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](https://www2.census.gov/programs-surveys/cps/tables/p20/580/table02_5.xls).

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

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*).<sup>11</sup> 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.<sup>12</sup>

**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
<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.<sup>13</sup> The 2018 elections also saw 18 additional races where the AAPI electorate was greater than the margin of victory.<sup>14</sup> This meant that “[i]n total, AAPI voters represented a significant portion of the electorate in 37 congressional races across 17 different states.”<sup>15</sup> As our communities continue to grow and expand in new areas, they will have even more relevance as it relates to electoral outcomes.

<sup>11</sup> *Id.*

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

<sup>13</sup> 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/>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

## Discrimination Against the Asian American Electorate

Discrimination against Asian American populations is rooted in the perception of Asian Americans as “outsiders,” “aliens,” and “perpetual foreigners.”<sup>16</sup> Based on this perception, Asian Americans were denied rights held by U.S. citizens, including the ability to vote for most of the country’s existence. 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.<sup>17</sup> 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.<sup>18</sup>

Legally identified as aliens “ineligible for citizenship,” Asian immigrants were prohibited from voting and owning land.<sup>19</sup> Both immigrant and native-born Asian Americans also experienced pervasive discrimination in everyday life.<sup>20</sup> Perhaps the most egregious example of discrimination was the incarceration of 120,000 Americans of Japanese ancestry during World War II without due process.<sup>21</sup> White immigrant groups whose home countries were also at war with the United

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<sup>16</sup> See, e.g., Claire Jean Kim, *The Racial Triangulation of Asian Americans*, 27 *Pol. & Soc’y* 105, 108-16 (1999) (describing history of whites perceiving Asian Americans as foreign and therefore politically ostracizing them). Racial stereotyping of Asian Americans reinforces an image of Asian Americans as “different,” “foreign,” and the “enemy,” leading to stigmatization of Asian Americans, heightened racial tension, and increased discrimination. Spencer K. Turnbull, Comment, *Wen Ho Lee and the Consequences of Enduring Asian American Stereotypes*, 7 *UCLA Asian Pac. Am. L.J.* 72, 75 (2001); Terri Yuh-lin Chen, Comment, *Hate Violence as Border Patrol: An Asian American Theory of Hate Violence*, 7 *Asian L.J.* 69, 72, 74-75 (2000); Cynthia Kwei Yung Lee, *Beyond Black and White: Racializing Asian Americans in a Society Obsessed with O.J.*, 6 *Hastings Women’s L.J.* 165, 181 (1995); Note, *Racial Violence Against Asian Americans*, 106 *Harv. L. Rev.* 1926, 1930-32 (1993); see also Thierry Devos & Mahzarin R. Banaji, *American = White?*, 88 *J. Personality & Soc. Psychol.* 447 (2005) (documenting empirical evidence of implicit beliefs that Asian Americans are not “American”).

<sup>17</sup> 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).

<sup>18</sup> 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).

<sup>19</sup> See *Ozawa v. United States*, 260 U.S. 178, 198 (1922); see, 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”).

<sup>20</sup> *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); see also *Gong Lum v. Rice*, 275 U.S. 78 (1927) (upholding segregation of Asian schoolchildren).

<sup>21</sup> See Exec. Order 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942) (authorizing the internment); see also *Korematsu v. United States*, 323 U.S. 214 (1944) (upholding the internment under strict scrutiny review).

States during that time were not similarly detained and no assumptions were similarly made regarding their loyalty, trustworthiness and character.<sup>22</sup>

Racist sentiment towards Asian Americans is not a passing fad but a continuing reality, fueled in recent years by a growing xenophobic and racist backlash against immigrants.<sup>23</sup> Numerous hate crimes have been directed against Asian Americans either because of their minority group status or because they are perceived as unwanted immigrants.<sup>24</sup> Between 2104 and 2015, crimes targeting Asian-Americans tripled in Los Angeles county.<sup>25</sup> Nationally, FBI data anti-Asian bias crimes increased by around 20 percent, from 137 in 2016 to 165 in 2017.<sup>26</sup>

Discriminatory attitudes towards Asian Americans also manifest themselves in the political process as well. For example, during a 2009 Texas House of Representatives hearing, legislator Betty Brown suggested that Asian American voters adopt names that are “easier for Americans to deal with” in order to avoid difficulties resulting from voter identification laws.<sup>27</sup> This statement made clear that the Asian American community was unwelcome in American politics and notably cast Asian Americans apart from other “Americans.” At a campaign rally during the 2004 U.S. Senate race in Virginia, incumbent George Allen repeatedly called a South Asian volunteer for his opponent a “macaca” – a racial epithet used to describe Arabs or North Africans that literally means “monkey” – and simultaneously talked about the “war on terror.”<sup>28</sup>

We have also seen efforts to undermine the community’s political voice, such as what happened during the 2004 primary elections in Bayou La Batre, Alabama. Supporters of a White incumbent, facing a Vietnamese American opponent during the primaries, challenged the

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<sup>22</sup> 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 Japanese Americans, unlike German or Italian Americans, could be presumed disloyal by virtue of their national origin”).

<sup>23</sup> See 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), [http://www.justice.gov/crt/publications/post911/post911summit\\_report\\_2012-04.pdf](http://www.justice.gov/crt/publications/post911/post911summit_report_2012-04.pdf).

<sup>24</sup> See, e.g., *Id.*, at 7-9 (discussing numerous incidents of post-9/11 hate crimes prosecuted by the DOJ).

<sup>25</sup> Jenny J. Chen, *First-Ever Tracker Of Hate Crimes Against Asian-Americans Launched*, NPR CodeSwitch, Feb. 17, 2017, <https://www.npr.org/sections/codeswitch/2017/02/17/515824196/first-ever-tracker-of-hate-crimes-against-asian-americans-launched> (referencing a Los Angeles County Commission on Human Relations report on hate crimes).

<sup>26</sup> This number likely under-represents the number of hate crimes and incidents due to underreporting of existing hate crimes and incidents. Chris Fuchs, *Hate crimes spiked in 2017. Community advocates think there's even more*, NBC News, Nov. 21, 2018, <https://www.nbcnews.com/news/asian-america/hate-crimes-spiked-2017-community-advocates-think-there-s-even-n938551>.

<sup>27</sup> R.G. Ratcliffe, *Texas Lawmaker Suggests Asians Adopt Easier Names*, Houston Chron., Apr. 8, 2009, <http://www.chron.com/news/houston-texas/article/Texas-lawmaker-suggests-Asians-adopt-easier-names-1550512.php>.

<sup>28</sup> See Tim Craig & Michael D. Shear, *Allen Quip Provokes Outrage, Apology; Name Insults Webb Volunteer*, Wash. Post, Aug. 15, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/14/AR2006081400589.html>.

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.<sup>29</sup> The losing incumbent's rationale was "if they couldn't speak good English, they possibly weren't American citizens."<sup>30</sup> DOJ's investigation found the challenges racially motivated and prohibited interference from the challengers during the general election.<sup>31</sup> That year, Bayou La Batre elected its first Asian American to the City Council.<sup>32</sup> Similarly, in Harris County (Houston), Texas, during the 2004 Texas House of Representatives race, accusations of non-citizen voting were implied in the request for an investigation by the losing incumbent into the election resulting in the victory of Hubert Vo, a Vietnamese American.<sup>33</sup> 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 in future elections.<sup>34</sup>

### **Need for Restoring and Strengthening Section 5 to Protect Asian American Voters**

Section 5 of the Voting Rights Act prohibits the implementation 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.<sup>35</sup> Section 5 applies to all voting changes in covered jurisdictions, including redistricting, annexation of other territories or political subdivisions, and polling place changes. Voting changes with a discriminatory purpose or with a retrogressive effect (i.e., where the change puts minorities in a worse position than if the change did not occur) will not be pre-cleared and the submitting jurisdiction would be prohibited from adopting the voting change.

In enacting the VRA in 1965, Congress recognized that previous efforts to litigate discriminatory voting practices were limited in their effectiveness as particularly recalcitrant jurisdictions

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<sup>29</sup> 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.

<sup>30</sup> 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](http://usatoday30.usatoday.com/news/opinion/editorials/2006-02-22-forum-voting-act_x.htm) (quoting defeated City Council incumbent Jackie Ladnier).

<sup>31</sup> See *Id.*

<sup>32</sup> 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](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.").

<sup>33</sup> 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>.

<sup>34</sup> See *Id.*; Thao L. Ha, *The Vietnamese Texans*, in *Asian Texans: Our Histories and Our Lives*, 263, 284-85 (Irwin A. Tang ed., 2007).

<sup>35</sup> 52 U.S.C. § 10304. The following States are covered by Section 5: Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia. Only certain counties or towns in the following states are covered under Section 5: California, Florida, Michigan, New York, North Carolina, and South Dakota. It must be noted, however, that even if only a part of a jurisdiction is covered by Section 5, congressional and state legislative redistricting plans for the entire state must be submitted for review. For a detailed listing of counties and towns covered, please visit [http://www.justice.gov/crt/about/vot/sec\\_5/covered.php](http://www.justice.gov/crt/about/vot/sec_5/covered.php).

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. This infrastructure (preclearance) has been critical to a) prevent discriminatory voting practices from going into effect, b) provide notice to the community about potential discriminatory changes and c) provide a cost-effective and swift mechanism to determine whether a proposed voting change should be approved. As a result, voting became more accessible to all communities.

Because of the changing demographics of this country, Section 5 is needed more than ever. Racial tensions often occur when groups of minorities grow rapidly in an area and where there is an increase in political relevance of that minority community, such as Asian American communities across the country.<sup>36</sup> This can lead to fear of and resentment toward Asian Americans by those in power, which can then result in hampering the Asian American community’s exercising of their right to vote free of harassment and discrimination.

This has been seen throughout our country’s history. Concerns about the political impact of new immigrants to American ran rampant and drove many policy decisions around the contours of suffrage.<sup>37</sup> However, “[i]ntense as apprehensions about poor European immigrants may have been, they paled in comparison to American attitudes toward the Chinese and other east Asians: by the final quarter of the nineteenth century, most Americans—and especially those on the West Coast—wanted not only to keep the Chinese from voting but to halt Chinese immigration and even deport those who were already here.”<sup>38</sup> But the federal bar on Chinese (and eventually all Asian) immigration was not enough for some in the states. For example, in California in the late 1870s, an anti-Chinese political party promoted a “a slew of measures designed to remove the Chinese from the state’s economic and political life. One proposal even

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<sup>36</sup> 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](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 DeRenzi, Metropolitan Policy Program at Brookings, *Immigrants, Politics, and Local Response in Suburban Washington* (2009), [https://www.brookings.edu/wp-content/uploads/2016/06/0225\\_immigration\\_singer.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/0225_immigration_singer.pdf) (noting that longtime residents of Prince William County, Virginia, perceived that their quality of life was diminishing as Latinos and other minorities settled in their neighborhoods); James Angelos, *The Great Divide*, New York Times, Feb. 20, 2009, [http://www.nytimes.com/2009/02/22/nyregion/thecity/22froz.html?\\_r=3&pagewanted=1](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).

<sup>37</sup> Alexander Keyssar, *Right to vote: The contested history of democracy in the United States* (2008) (“Right to Vote”).

<sup>38</sup> *Id.* at 113.



called for disfranchising anyone who hired a Chinese worker.”<sup>39</sup> Their efforts resulted in “the California Constitutional Convention of 1878–1879...pass[ing] almost without objection a series of anti-Chinese articles. One delegate claimed that without such laws, California would become ‘the mercenary Mecca of the scum of Asia—a loathsome Chinese province.’ Although many of these measures were thrown out by the courts, the suffrage provision of the 1879 constitution remained in force until 1926. It specified that “no native of China” (the wording was aimed at circumventing the Fifteenth Amendment’s ban on racial barriers) ‘shall ever exercise the privileges of an elector in this State.’”<sup>40</sup>

Today, the Asian American population is growing rapidly in previously covered Section 5 jurisdictions. Georgia and North Carolina are among the three fastest-growing Asian American populations during the last decade.<sup>41</sup> 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 a growth in their Asian American populations.<sup>42</sup> As Asian American communities continue to grow and move to nontraditional cities and areas of the country, we have seen an increase in racial appeals and racial discrimination in elections. The aforementioned “perpetual foreigner” stereotype is embedded in the political process. Insidious manifestations of the stereotype can be found in the verbal attacks levied against Asian American candidates and voters, negative political ads that use the misconception of “Asia” as an enemy to the U.S., and manipulation of images of candidates to trigger negative stereotypes of minority candidates. As reported in previous testimony by Asian Americans Advancing Justice—AAJC, the following excerpt provides some incidents occurring in the South against Asian American candidates and voters:

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

. . .

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

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<sup>39</sup> *Id.* At 114.

<sup>40</sup> *Id.* Similar provisions appeared in the constitutions of Oregon and Idaho.

<sup>41</sup> Terry M. Ao, Alyson Hong, & Sophia Lai, *Census 2000: Asian Population Demographic Data*, 10 (2002), [http://www.advancingequality.org/files/census\\_handbook.pdf](http://www.advancingequality.org/files/census_handbook.pdf).

<sup>42</sup> *Id.*

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

. . .

In September 2010, State Senator Nancy King targeted an opponent in the Maryland primary race for state Senate, Maryland State Delegate Saqib Ali, by sending mailers in which Ali's photograph was altered with darker skin tone and hair. Despite the King campaign's denial, the difference was clear when comparing the mailer to the original photo (that was also included in the mailer).<sup>43</sup>

We have continued to see these racist attitudes and stereotypes permeate our political process over the last several election cycles:

- During the 2017 local and statewide elections in New Jersey, Asian American candidates were targets of racist propaganda. *First*, in Edison, New Jersey, two school board candidates, Jerry Shi and Falguni Patel were targeted with anti-immigrant mailers that said "Make Edison Great Again" and calling for their deportation.<sup>44</sup> The mailers said that "[t]he Chinese and Indians are taking over our town," and "Chinese school! Indian school! Cricket fields! Enough is enough."<sup>45</sup> *Next*, in Hoboken, New Jersey, Sikh mayoral candidate, Ravi Bhalla was targeted with racist flyers placed on car windshields in Hoboken with the message "Don't let TERRORISM take over our town!" above his picture.<sup>46</sup> Ultimately, despite these xenophobic attacks, all three Asian Americans won their elections.
- At a Congressional hearing on March 15, 2018, Japanese-American Congresswoman Hanabusa questioned Interior Secretary Ryan Zinke about why the Trump Administration "cancelled funding for a program to preserve the history of internment camps that held people of Japanese ancestry -- most of

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<sup>43</sup> *Testimony for the Senate Judicial Hearing on the Voting Rights Amendment Act of 2014*, S.1945, (June 25, 2014) (statement of Asian Americans Advancing Justice—AAJC) (footnotes omitted), <http://vrafortoday.org/wp-content/uploads/2014/07/AAJC-Testimony-for-6-25-14-Senate-Judiciary-Hearing-on-VRAA.pdf>.

<sup>44</sup> Amy B Wang, 'DEPORT': Racist campaign mailers target Asian school board candidates, *Washington Post*, Nov. 2, 2017, [https://www.washingtonpost.com/news/education/wp/2017/11/02/deport-racist-campaign-mailers-target-asian-school-board-candidates/?utm\\_term=.c84f7d1ab7a2](https://www.washingtonpost.com/news/education/wp/2017/11/02/deport-racist-campaign-mailers-target-asian-school-board-candidates/?utm_term=.c84f7d1ab7a2).

<sup>45</sup> *Id.*

<sup>46</sup> Alyana Alfaro, *Racist Campaign Literature Surfaces in New Jersey*, *Observer*, Nov. 6, 2017, <http://observer.com/2017/11/racist-campaign-literature-surfaces-in-new-jersey/>.

them Japanese-Americans -- during World War II.”<sup>47</sup> As part of her questioning, Representative Hanabusa began by detailing her own family’s experiences during this atrocious time in American history. In response, Secretary Zinke, began his response with an insensitive “Oh, Konnichiwa.”<sup>48</sup> “Konnichiwa is a Japanese expression that roughly translates to ‘good afternoon.’ This prompted Hanabusa to shoot back that it was still morning, which meant ‘ohayo gozaimasu’ would actually be the more appropriate greeting.”<sup>49</sup> Secretary Zinke’s remarks demonstrate the ongoing “perpetual foreigner” problem faced by Asian Americans; although she is a fourth-generation American-born member of Congress, Secretary Zinke somehow thought it appropriate to greet the Congresswoman in Japanese.

The community’s population growth will also 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.<sup>50</sup> Asian Americans are potential swing voters<sup>51</sup> and are becoming numerous enough to make the difference in certain races, and they will be facing new, more aggressive tactics to minimize their political impact.

Unfortunately, the U.S. Supreme Court weakened the VRA in *Shelby County*. The Court ruled 5-4 that the formula used to determine Section 5 jurisdictions was based on “decades-old data and eradicated practices,” despite the extensive record confirming that these areas continued to commit acts of voting discrimination.<sup>52</sup> 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.<sup>53</sup>

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<sup>47</sup> Interior Secretary Ryan Zinke criticized for internment camp remarks, CBS News, March 16, 2018, <https://www.cbsnews.com/news/interior-secretary-ryan-zinke-criticized-for-internment-camp-remarks-colleen-hanabusa/>.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> See Ari Berman, *Texas Voter ID Law Discriminates Against Women, Students and Minorities*, The Nation, Oct. 23, 2013, <http://www.thenation.com/blog/176792/texas-voter-id-law-discriminates-against-women-students-and-minorities#> (noting that Texas’ voter ID law likely would have an extremely disproportionate impact on Hispanic voters); Emily Deruy, *Could New Voter ID Laws Really Disenfranchise 10 Million Latinos?*, Fusion, Sep. 24, 2012, <http://fusion.net/justice/story/voter-id-laws-hinder-10-million-eligible-latinos-11471> (arguing that recent proof of citizenship and photo identification requirements and voter roll purges had the potential to disenfranchise millions of Latino voters); and Christopher Ingraham, *Study Finds Strong Evidence for Discriminatory Intent Behind Voter ID Laws*, Washington Post, Jun. 3, 2014, <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/06/03/study-finds-strong-evidence-for-discriminatory-intent-behind-voter-id-laws/> (finding that state legislators who had supported voter ID laws were less likely to respond to emails sent from voters with Hispanic-sounding names).

<sup>51</sup> See Caitlin Yoshiko Kandil, *Asian Americans’ numbers and political influence are growing*, Los Angeles Times, Sept. 22, 2016, <http://www.latimes.com/socal/daily-pilot/entertainment/tn-wknd-et-0925-asian-american-voting-20160903-story.html>; Seung Min Kim, *The one big Senate race that Asian-Americans could decide*, Politico, Aug. 25, 2016, <https://www.politico.com/story/2016/08/senate-nevada-asian-american-voters-227366>.

<sup>52</sup> *Shelby Cnty. v. Holder*, 133 S.Ct. 2612, 2627 (2013).

<sup>53</sup> *Id.* at 2619.

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. For example, in 2013, mere months 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 restricted voting through a ban on paid voter registration drives; eliminated same-day voter registration; allowed voters to be challenged by any registered voter of the county in which they vote, rather than just their precinct; reduced early voting by a week; authorized vigilante poll observers with expanded range of interference; expanded the scope of who may examine registration records and challenge voters; repealed out-of-precinct voting; eliminated the flexibility in opening early voting sites at different hours within a county; and curtailed satellite polling sites for the elderly or voters with disabilities. In striking down the law, the Fourth Circuit found that the legislature purposefully and selectively decided to attack specific election laws that benefit African American voters in order to impede their political participation. In fact, the court noted that “the new provisions target African Americans with almost surgical precision” and “impose cures for problems that did not exist.”<sup>54</sup> This litigation would not be necessary if Section 5 were still in full force. Indeed, one state senator noted that it was because of the Court’s decision in *Shelby County* that the legislature was free to “go with the full bill,” indicating his full awareness that they would never have received approval for the bill under the full protections of the VRA. In 2016, 14 states, including Alabama, Arizona, Mississippi, South Carolina, Texas, and Virginia, which were previously covered in full or in part by Section 5, had new voting restrictions that include strict photo ID requirements and registration restrictions in place for the first time in a presidential election.<sup>55</sup>

As noted in our forthcoming joint report with the Mexican American Legal Defense and Education Fund (MALDEF) and the National Association of Latino Elected and Appointed Officials (NALEO), a legislative fix to the *Shelby County* decision must include both a substitute coverage formula and a mechanism that also addresses the needs of emerging communities of color that face discrimination aimed to silence their political influence by those currently in power. A history-based coverage formula alone is not enough to protect the voting rights of emerging minority populations. The practice-based preclearance mechanism in HR 4 focuses on suspect practices that have historically been utilized to silence the political voice of communities of color and would require preclearance review (performed by either the Department of Justice or the federal District Court in Washington, DC) prior to implementation of the known practice.<sup>56</sup> The coverage for Practice-Based Preclearance as contemplated by HR

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<sup>54</sup> Robert Barnes and Ann E. Marimow, *Appeals Court Strikes Down North Carolina’s Voter-ID Law*, Washington Post, July 29, 2016, [https://www.washingtonpost.com/local/public-safety/appeals-court-strikes-down-north-carolinas-voter-id-law/2016/07/29/810b5844-4f72-11e6-aa14-e0c1087f7583\\_story.html?utm\\_term=.8e86e5a8273c](https://www.washingtonpost.com/local/public-safety/appeals-court-strikes-down-north-carolinas-voter-id-law/2016/07/29/810b5844-4f72-11e6-aa14-e0c1087f7583_story.html?utm_term=.8e86e5a8273c). See also Complaint, *North Carolina State Conference of the NAACP et al. v. McCrory et al.*, No. 1:13-cv-658 (M.D.N.C. Aug. 12, 2013)., Complaint, *League of Women Voters et al v. North Carolina et al.*, No. 1:13-cv-00660 (M.D.N.C. Aug. 12, 2013)., and, Complaint, *U.S. v. The State of North Carolina*, No. 13-cv-861 (M.D.N.C. Sept. 30, 2013).

<sup>55</sup>Brennan Center for Justice, Webpage on New Voting Restrictions in America, [https://www.brennancenter.org/sites/default/files/analysis/New\\_Voting\\_Restrictions.pdf](https://www.brennancenter.org/sites/default/files/analysis/New_Voting_Restrictions.pdf).

<sup>56</sup> See the forthcoming joint report from Advancing Justice – AAJC, MALDEF and NALEO on practice-based preclearance for a deeper analysis of the specific practices.

4 would apply to diverse jurisdictions throughout the country, generally defined as those states and political subdivisions in which two or more racial, ethnic, or language minority groups each represent 20 percent or more of the citizen voting-age population or in which a single language minority group represents 20 percent or more of the voting-age population on Indian lands located in whole or in part in the political subdivision. These jurisdictions would only be required to seek preclearance if they are making one of the covered changes and not all voting changes. This is important for Asian American communities that are growing exponentially in new cities and counties, where they are beginning to emerge as a potential political power. Preclearance has been proven to protect the voting rights of Asian Americans and is needed today.

Section 5 has 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.<sup>57</sup> Texas is home to the third-largest Asian American community in the United States, growing 72 percent between 2000 and 2010.<sup>58</sup> 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.<sup>59</sup> 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.<sup>60</sup>

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

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<sup>57</sup> 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.

<sup>58</sup> See Community of Contrasts, Appendix B.

<sup>59</sup> 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>.

<sup>60</sup> In fact, it was only due to Section 5 that the Texas Legislature was not able to dilute the Asian American community's right to vote. Advancing Justice-AAJC's partner, the Texas Asian-American Redistricting Initiative (TAARI), working with a coalition of Asian American and other civil rights organizations, participated in the Texas redistricting process and advocated on the District 149 issue. Despite the community's best efforts, the Texas Legislature pushed through this problematic redistricting plan. However, because of Section 5's preclearance procedures, Asian Americans and other minorities had an avenue to object to the Texas Legislature's retrogressive plan, and Plan H283 was ultimately rejected as not complying with Section 5. See *Texas v. United States*, C.A. No. 11-1303 (D.D.C.), Sept. 19, 2011, Dkt. No. 45, ¶ 3. Indeed, AALDEF submitted an amicus brief to the D.C. District Court illustrating how the Texas plan retrogressed the ability of Asian Americans to elect a candidate of their choice and violated Section 5. However, the U.S. Supreme Court vacated the District Court of the District of Columbia's ruling suspending Texas' redistricting map as moot in light of their decision in *Shelby*.

school boards. In each election – in 1993, 1996, and 1999 – Asian American candidates ran for the school board and won.<sup>61</sup> 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.”<sup>62</sup> 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.<sup>63</sup> This change would have put Asian American voters in a worse position to elect candidates of their choice.<sup>64</sup>

Furthermore, the ability of Asian Americans to vote is also frustrated by sudden changes to poll sites without informing voters. For example, in 2001, primary elections in New York City were rescheduled due to the attacks on the World Trade Center. The week before the rescheduled primaries, AALDEF discovered that a certain poll site, I.S. 131, a school located in the heart of Chinatown and within the restricted zone in lower Manhattan, was being used by the Federal Emergency Management Agency for services related to the World Trade Center attacks. The Board chose to close down the poll site and no notice was given to voters. The Board provided no media announcement to the Asian language newspapers, made no attempts to send out a mailing to voters, and failed to arrange for the placement of signs or poll workers at the site to redirect voters to other sites. In fact, no consideration at all was made for the fact that the majority of voters at this site were limited English proficient, and that the site had been targeted for Asian language assistance under Section 203.<sup>65</sup> 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.

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<sup>61</sup> See Lynette Holloway, *This Just In: May 18 School Board Election Results*, New York Times, June 13, 1999, <http://www.nytimes.com/1999/06/13/nyregion/making-it-work-this-just-in-may-18-school-board-election-results.html>; Jacques Steinberg, *School Board Election Results*, New York Times, June 23, 1996, <http://www.nytimes.com/1996/06/23/nyregion/neighborhood-report-new-york-up-close-school-board-election-results.html>; Sam Dillon, *Ethnic Shifts Are Revealed in Voting for Schools*, New York Times, May 20, 1993, <http://www.nytimes.com/1993/05/20/nyregion/ethnic-shifts-are-revealed-in-voting-for-schools.html>.

<sup>62</sup> See Thomas T. Mackie & Richard Rose, *The International Almanac of Electoral History*, 508 (3d ed. 1991).

<sup>63</sup> See 1998 N. Y. Sess. Laws 569-70 (McKinney).

<sup>64</sup> See Letter from M. Fung, AALDEF Exec. Dir., and T. Sinha, AALDEF Staff Attorney, to E. Johnson, U.S. Dep’t of Justice (Oct. 8, 1998) (submitted to Congress and on file with counsel). See also, Voting Rights Act: Section 5 of the Act-History, Scope, and Purpose, Hearing Before the H. Subcomm. on the Const., H. Judiciary Comm., 109th Cong. 1664-66 (2005) (appendix to statement of the Honorable Bradley J. Schlozman, U.S. Dep’t. of Justice) (providing Section 5 objection letter to Board and summarizing changes made to the voting methods, along with overall objections to the changes).

<sup>65</sup> The voters were only protected from this sudden change that would have caused significant confusion and lost votes because DOJ issued an objection under Section 5 and informed the Board that the change could not take effect. The elections subsequently took place as originally planned at I.S. 131, and hundreds of votes were cast on September 25. See Asian American Legal Defense and Education Fund, *Asian Americans and the Voting Rights Act: The Case for Reauthorization*, 41 (2006), <http://www.aaldef.org/docs/AALDEF-VRARReauthorization-2006.pdf>.

## **Conclusion**

Despite the gains that have been made since the enactment of the VRA, more is left to be done. Voting discrimination, as Chief Justice Roberts acknowledged in his opinion, is still very real and very current. 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 high naturalization rate and in increase of U.S.-born Asian Americans in the coming years. It is likely that voter participation rates among the Asian American community, and indeed its political visibility, will only increase. It is precisely for these reasons that restoring and strengthening the Voting Rights Act is a top priority for our organization.