

**Statement of
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**Before the
Subcommittee on the Constitution, Civil Rights and Property Rights
Committee on the Judiciary
and the
Subcommittee on Elections
Committee of the House Administration
United States House of Representatives**

**Joint Oversight Hearing
On Federal, State, and Local Efforts to
Prepare for the General 2008 Election**

September 24, 2008

Introductory Statement

The 2008 presidential election has invigorated voter participation in this country, with heightened levels of interest, excitement and participation. Voter registration and voter turnout have increased during the primaries.¹ In fact, 23 of 34 states that held nominating primaries for both parties recorded voter turnout records, and the overall turnout of the eligible electorate is the highest since 1972.² This increased interest and participation has further exposed the weakness of the election system's ability to handle the dramatic influx of voters. Come November 4, 2008, election officials will likely not be prepared to handle the influx, and even more problems will occur this election than during the last presidential election in 2004.

During the primaries, many complaints were lodged across the nation about problems with voting, including under-trained poll workers misapplying election rules, a lack of poll workers manning sites, election machinery breakdowns, registration roll problems (such as eligible voters

¹ See Martha T. Moore, *States see leap in voter registration*, USA Today, April 6, 2008, available at http://www.usatoday.com/news/politics/election2008/2008-04-06-voterregistration_N.htm; see also Scott Martelle, *Turnout is campaign's big winner*, LA Times, Feb. 10, 2008, available at <http://articles.latimes.com/2008/feb/10/nation/na-turnout10>.

² Curtis Gans, American University's Center for the Study of the American Electorate, *2008 Primary Turnout Falls Just Short of Record Nationally, Breaks Records in Most States (2008)*, available at <http://domino.american.edu/AU/media/mediarel.nsf/1D265343BDC2189785256B810071F238/C34358140EBD07B88525744E005AC5A6?OpenDocument>.

who submitted timely registration applications failing to appear on the registration rolls), and confusion over voter identification requirements. As in past elections, long lines at polls continued to be a huge problem during this past primary season, as well as ballot irregularities.³

These problems are exacerbated for language minority voters, who have to contend with additional language and cultural barriers when attempting to exercise their right to vote. Without a concentrated effort by DOJ to monitor and correct problems for language minority voters, there is a risk of excluding a significant portion of our voting public in these elections and likely deterring their participation in future elections. AAJC provides this written testimony to help elucidate what problems may confront language minority voters during the general election in November 2008 that DOJ must be vigilant about in the upcoming months.

Organizational Background

The Asian American Justice Center (AAJC), formerly known as the National Asian Pacific American Legal Consortium (NAPALC), is a national non-profit, non-partisan organization that works to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation.

AAJC has three affiliates: The Asian American Institute in Chicago; the Asian Law Caucus in San Francisco and; the Asian Pacific American Legal Center of Southern California in Los Angeles, all of which have been engaged in working with their communities to ensure compliance with the Voting Rights Act. AAJC also has over 100 Community Partners serving their communities in 24 states and the District of Columbia.

Together with our Affiliates and our Community Partners, AAJC has been extensively involved in improving the current level of political and civic engagement among Asian American communities and increasing Asian American access to the voting process. One of our top priorities was the reauthorization of the VRA because of the incredible impact it has had on the Asian American community in addressing discriminatory barriers to meaningful voter participation, particularly through Section 203, the language assistance provision. Since then, we have continued to be committed to the enforcement of the VRA and other voting statutes, protecting the vote, and working towards improving election administration.

To that end, AAJC is pleased to provide this written statement and respectfully requests that this written statement be formally entered into the hearing record.

Language Barriers to Voting for Language Minority Voters

According to the census, more than 4,100,000 voting-age citizens who are Latino, Asian American, American Indian and Alaska Native who speak English less than very well lived in

³ David Mark, *2008 Could See Turnout Tsunami*, Politico.com, March 24, 2008 (on file with the author); *see also* Lawyers' Committee for Civil Rights Under Law, *Election Protection 2008 Primary Report: Looking Ahead to November (2008)*, available at http://lccr.3cdn.net/b7d38d90b13908ec1c_tjm6byw6h.pdf ("EP 2008 Primary Report").

Section 203-covered jurisdictions in 2000.⁴ Voters who have difficulty speaking English often experience a major barrier when confronted by the daunting election process in America: the inability to speak or read English very well. This is the single greatest hurdle that many language minorities must overcome in exercising their right to vote.

Although many language minorities were born in this country or came here at a very young age, some have trouble speaking English fluently because of a substandard education that did not afford them the opportunity to learn English in school. Other language minorities immigrated to this country and have not had adequate learning opportunities to become fluent in English. Certain persons (such as the elderly who have resided in the United States for a lengthy period of time⁵, the physically or developmentally disabled, and certain Hmong veterans⁶ who helped to save American lives during the Vietnam War and came to the United States as refugees)⁷ are exempt from English literacy requirements when applying for citizenship because the United States encourages civic engagement. Additionally, some come from countries with no democratic systems and find voting to be a very overwhelming experience.

Many language minorities, particularly those who are also racial minorities, face discrimination when attempting to exercise their right to vote. Discrimination at the polls can manifest itself in different ways, including hostile and unwelcoming environments or the outright denial of the right to vote. LEP citizens can have difficulty understanding complex voting materials and procedures and are often denied needed assistance at the polls. While many of these voters understand that voting is the most important tool Americans have to influence government policies that affect every aspect of their lives – from taxes, to education, to health care – these barriers can depress their participation in the process.

Section 203 noncompliance as a barrier to voting

Section 203 overview

In recognizing that certain minority citizens who did not speak English proficiently and who had experienced historical discrimination were also being systematically disenfranchised, Congress broadened the protections of the Voting Rights Act of 1965 (VRA) on their behalf by enacting

⁴ Bruce Adelson, *Minority-Language Election Rules and the Public Lawyer*, *The Public Lawyer*, Vol. 15, N. 2 (Summer 2007), available at <http://electionlawblog.org/archives/adelson.pdf>.

⁵ This exemption recognizes the fact that language acquisition is more difficult for the elderly and has potentially a large impact. According to the Department of Homeland Security records, more than 2.25 million of naturalized citizens between 1986 and 2004 were age 50 or over and thus old enough to qualify for the exemption. Ana Henderson, *English Language Naturalization Requirements and the Bilingual Assistance Provisions of the Voting Rights Act (2006)* (on file with the author).

⁶ Up to 45,000 Hmong veterans who found with special guerrilla units or irregular forces in Laos and their spouses were admitted as refugees and were eligible to be exempt. *Id.*

⁷ These citizens are in particular need of language assistance while voting. For example, Asian American seniors age 65 years and older have the highest rates of LEP among the major racial and ethnic groups. A majority of Asian American seniors (58%) are LEP, including Filipino, Koreans, and Chinese. Five Asian American groups have senior populations that are more than 80% LEP, including Vietnamese, Hmong, Cambodians, Laotians, and Bangladeshi. Asian American Justice Center, *A Community of Contrasts: Asian Americans and Pacific Islanders in the United States Demographic Profile* 11 (2006).

Section 203 during the 1975 reauthorization of the VRA.⁸ In particular, Congress sought to protect the voting rights of Latinos, Asian Americans, American Indians, and Alaska Natives, 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.⁹

In enacting Section 203, Congress intended to remedy racial discrimination in the voting process that results in the disenfranchisement of language minorities from the four covered language groups.¹⁰

Section 203 requires covered jurisdictions to provide language assistance during the electoral process, thereby removing the language barrier to voting for the covered language minorities. A jurisdiction is covered under Section 203 when the number of limited English proficient United States citizens of voting age in a single language group within the jurisdiction who are Asian American, Latino, American Indian or Alaska Native is more than 10,000, more than five percent of all voting-age citizens, *or* exceeds five percent of all reservation residents on an Indian reservation; and has an illiteracy rate higher than the national illiteracy rate.¹¹ Once covered, the jurisdiction is obligated to provide “any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots” in the covered language as well as in English. Guidelines issued by the U.S. Department of

⁸ H.R. REP. NO. 109-478, at 9-10 (2006) (“In doing so, 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 ‘[b]ased on the extensive evidentiary record demonstrating the prevalence of voting discrimination and high illiteracy rates among language minorities, the [relevant] Subcommittee acted to broaden its special coverage to new geographic areas in order to ensure protection of the voting rights of language minority citizens.’”) (footnote omitted) (quoting H.R. REP. NO. 94-196, at 7, 16 (1975)). In 1975, Congress also enacted Section 4(f)(4) in response to its finding of pervasive voting discrimination against citizens of language minorities that was national in scope. Recognizing that these language minority citizens came from environments with non-English dominant languages and that these citizens have been denied equal educational opportunities, Congress found that English-only elections excluded language minority citizens from participating in the electoral process, which were aggravated by acts of physical, economic, and political intimidation in many areas of the country. Section 4(f)(4) has its own trigger formula that included redefining “test or device” within the Section 5/preclearance context to include English-only elections. This means that Section 4(f)(4) covered jurisdictions must get preclearance, or prior approval, from the Department of Justice or the U.S. District Court of the District of Columbia prior to implementation of any voting changes. Additionally, Section 4(f)(4) jurisdictions are required to provide the same language assistance as required under Section 203 for their covered languages. 42 U.S.C. § 1973b(f) (2006).

⁹ 42 U.S.C. § 1973aa-1a(a).

¹⁰ Congress has limited Section 203 protections to these four language groups because it has continually found that they have faced and continue to face significant voting discrimination because of their race and ethnicity. Other language groups have not been included because Congress has not found evidence that they experienced similar sustained difficulties because of their race and ethnicity in voting.

¹¹ 42 U.S.C. § 1973aa-1a(a), § 1973aa-1a(b)(2). The Director of the Census Bureau makes these determinations, which are effective upon publication in the Federal Register. The Director’s determinations are not subject to review in any court. *Id.* § 1973aa-1a(b)(4).

Justice (DOJ) clarifies that Section 203 compliance requires that materials and assistance be provided in a way “designed to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities” throughout all stages of the electoral process.

Success of Section 203 with proper implementation

When properly implemented, Section 203 has been successful in breaking down the language barrier and increasing the civic engagement of Latino, Asian American, American Indian, and Alaska Native citizens, with higher voter registration and turnout levels from each previous enactment or reauthorization period.¹² Increases in voter registration and turnout can be directly linked to Section 203 compliance.

For example, the efficacy of Section 203 can be seen in Harris County, Texas. After entering into a Memorandum of Agreement with the DOJ, Harris County saw the doubling of Vietnamese voter turnout, which resulted in the first Vietnamese candidate in history to be elected to the Texas legislature by defeating the incumbent chair of the Appropriations Committee.¹³ In San Diego County, voter registration among Hispanics and Filipinos rose by over 20 percent after one of DOJ’s lawsuits was filed. During that same period, Vietnamese registrations increased by 40 percent.¹⁴ In 2004, over 10,000 Vietnamese American voters registered in Orange County between the primary and general elections, which helped to lead to the election of the first Vietnamese American to California’s state legislature.¹⁵

The increased civic engagement of these groups has also led to increased political representation by candidates of choice. In recent years, more than 5,200 Latinos and almost 350 Asian Americans have been elected to office.¹⁶ Additionally, Native American candidates, who have traditionally been unrepresented, are being elected to local school boards, county commissions and State legislatures in ever-increasing numbers.¹⁷

Impact of Section 203 noncompliance

Unfortunately, Section 203 noncompliance perpetuates the language barrier for language minority voters and is far from uncommon. Through poll monitoring efforts, several organizations have documented evidence of discrimination by poll workers at polling sites throughout the country during the 2004 general election and in subsequent elections. Under the Access to Democracy Project, AAJC and its affiliates monitored polls during the November 2004 presidential election.

¹² H.R. REP. NO. 109-478, at 18-19. For example, the House Committee report notes that the number of registered Latino voters grew from 7.6 million in 2000 to 9 million in 2004 and, in certain cases, Native American voter turnout has increased by more than 50% to 150%. *Id.* at 19-20.

¹³ *Id.* at 19.

¹⁴ Alberto R. Gonzales, U.S. Attorney General, Prepared Remarks at the Anniversary of the Voting Rights Act, Lyndon B. Johnson Presidential Library Austin, Texas (Aug. 2, 2005) (on file with the author).

¹⁵ Calculated from data provided by the Orange County Registrar of Voters (on file with author).

¹⁶ H.R. REP. NO. 109-478, at 19.

¹⁷ *Id.* at 20.

AAJC witnessed various degrees of Section 203 noncompliance in numerous jurisdictions, including the failure to fully translate and provide multilingual materials, as well as the failure to provide bilingual poll workers at polling sites. Even if multilingual materials were available at a polling site, they were frequently placed in such a way that voters were unable to see or reach them. Problems included poorly displayed ballots and other materials hidden in boxes under tables, hidden under other materials, not taken out of their original packaging, or placed behind poll workers where voters could not reach them.

Similarly, bilingual poll workers, even if present where they were actually needed¹⁸, were not always adequately utilized. The lack of signs indicating availability of interpreters, lack of identification of bilingual poll workers in a polling site, inconsistent quality in oral bilingual assistance, and an unwillingness of monolingual poll workers to utilize the bilingual poll workers across polling sites often left LEP voters confused as to who they could turn to for assistance on Election Day.

These types of issues were the basis of the most recent Section 203 enforcement action brought on behalf of Asian Americans by DOJ against the City of Walnut, California.¹⁹ DOJ's complaint alleged that the City of Walnut failed to comply with their Section 203 obligations by failing to translate written election materials and information into Chinese and Korean, including information about voter registration, polling place locations, dates of elections. The City of Walnut also failed to recruit, appoint, train, and assign sufficient bilingual poll workers on Election Day.²⁰ In the resulting consent decree, the City of Walnut has to meet their Section 203 obligations by, among other actions, translating all election related materials into Chinese and Korean and making such materials equally available to the language minority communities; recruiting, hiring and assigning bilingual poll workers in Chinese and Korean; and providing pre-election training to poll workers on the provisions of Section 203 and the requirements of Section 208.²¹

These failures are not limited to the Asian American community but also impact other covered language minority communities. For example, in a recent Section 203 enforcement action on behalf of Latino voters against Kane County, Illinois, DOJ alleged that the city failed to recruit, appoint, train, and assign sufficient bilingual poll workers on Election Day and failed to provide

¹⁸ Because many counties had no system to target where to recruit and place bilingual poll workers, they were often placed in a location that was not accessible or helpful to Asian American/LEP voters. Asian American Justice Center, *Sound Barriers: Asian Americans and Language Access in Election 2004* (2005), *available at* http://65.36.162.215/files/sound_barriers.pdf ("Sound Barriers").

¹⁹ *United States v. City of Walnut, CA* (C.D. Cal. 2007). Other recent Section 203 enforcement action brought on behalf of Asian Americans include *United States v. City of Rosemead, CA* (C.D. Cal. 2005) (DOJ alleged that the city failed to translate most of its election related materials into Spanish, Chinese, and Vietnamese or to provide bilingual assistance at the polls as required under Section 203) and *United States v. San Diego County* (S.D. Cal. 204) (DOJ alleged Section 203 noncompliance for Spanish and Filipino voters and secured an agreement for Spanish and Tagalog (Filipino language) language election program, as well as a Vietnamese language program to serve a language minority group that narrowly missed the threshold for Section 203 coverage.).

²⁰ *Complaint, United States v. City of Walnut, CA* (C.D. Cal. 2007), *available at* http://www.usdoj.gov/crt/voting/sec_203/documents/walnut_comp.htm.

²¹ Section 208 is discussed below as another problem language minority voters encounter at the polls. *Consent Decree, United States v. City of Walnut, CA* (C.D. Cal. 2007), *available at* http://www.usdoj.gov/crt/voting/sec_203/documents/walnut_cd.htm.

certain election related information in a manner that provides LEP Latino citizens an equal and effective opportunity to be informed about election related activities.²² The city and DOJ came to an agreement that will ensure compliance with Sections 203 and 208 of the Voting Rights Act by providing in Spanish any "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" that they provide in English and ensuring that all polling place personnel are provided and receive adequate training regarding Kane County's responsibility to comply with Section 203 and Section 208 of the Voting Rights Act.²³

Similarly, in Alaska, a legal challenge was brought by the Native American Rights Fund and the American Civil Liberties Union on behalf of four Alaska Natives and four tribal governments asserting violations of sections 203, 4(f)(4), and 208.²⁴ Evidence was offered that showed that the State had failed to:

provide print and broadcast public service announcements (PSA's) in Yup'ik, or to track whether PSA's originally provided to a Bethel radio station in English were translated and broadcast in Yup'ik; ensure that at least one poll worker at each precinct is fluent in Yup'ik and capable of translating ballot questions from English to Yup'ik; ensure that "on the spot" oral translations of ballot questions are comprehensive and accurate; or require mandatory training of poll workers in the Bethel census area, with specific instruction on translating ballot materials for Yup'ik-speaking voters with limited English proficiency.²⁵

Based on the evidence, the federal court concluded that the Alaska Native voters and tribes were likely to succeed on the merits of the language assistance claims and thus ordered Alaska to provide effective language assistance to citizens who speak Yup'ik, the primary language of a majority of voters in the Bethel region of Alaska.

As the poll monitoring and election protection efforts, as well as enforcement activity of the language minority provisions by the Voting Section, have shown, Section 203 noncompliance is still a significant problem for language minority voters. It is important that DOJ reminds jurisdictions about their obligations under Section 203 with the elections less than two months away, as well as continue to pursue enforcement action when there is noncompliance.

²² Complaint, *United States v. Kane County, IL* (N.D. Ill. 2007), available at http://www.usdoj.gov/crt/voting/sec_203/documents/kane_comp.htm.

²³ Over 25 language minority provisions (Section 203, Section 4(f)(4) and Section 4(e)) enforcement action have been brought by DOJ on behalf of Latino voters since 2000 in several states, including New Jersey, California, Pennsylvania, Massachusetts, Texas, Arizona, New York, Washington, and Florida. See, U.S. Department of Justice Civil Rights Division Voting Section Home Page, Cases Raising Claims Under the Language Minority Provisions of the Voting Rights Act, <http://www.usdoj.gov/crt/voting/litigation/recent203.htm>.

²⁴ *Nick v. Bethel*, No. 3:07-cv-0098 TMB (D. Alaska July 30, 2008), available at http://www.aclu.org/pdfs/votingrights/nickvbethel_order_20080730.pdf.

²⁵ *Id.*

Jurisdictions discriminating against language minority voters

Even when a jurisdiction has no Section 203 obligation to provide language assistance at the polls, it does have the general obligation under Section 2 of the Voting Rights Act to 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 race, color, or membership in a language minority group.²⁶ Unfortunately we have seen jurisdictions fail to meet this obligation by denying the right of language minority voters to vote because of their limited English proficiency.

DOJ recently filed a complaint against the Borough of Penns Grove, NJ alleging that it violated Section 2 of the Voting Rights Act against Latino voters. This included disparate treatment, lack of Spanish-language materials and denying voters the right to choose their assistor of choice. This resulted in Latino voters having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. In addition, poll workers directed hostile or discriminatory remarks at, or otherwise acted in a hostile manner toward, Latino voters; failed to communicate effectively with Latino voters regarding necessary information about their eligibility to vote; required more identification from them than Caucasian voters; and failed to protect Latino voters from unfounded or discriminatory challenges.²⁷ Penns Grove and DOJ came to a settlement agreement that requires the borough to ensure that elections are equally open to Latino voters, that Spanish language assistance and materials are available at the polls, and that Spanish-speaking voters be allowed to select the assistor of their choice.²⁸

In 2005, DOJ brought a Section 2 case against the City of Boston on behalf of Chinese and Vietnamese-speaking voters.²⁹ While the City of Boston was required under Section 203 to provide language assistance to Spanish speakers, the Chinese and Vietnamese populations did not meet the Section 203 threshold during the last determination. However, DOJ's investigation found that the city discriminated against Spanish, Chinese and Vietnamese voters and denied them an equal opportunity to participate in the political process and elect candidates of their choice. DOJ found that poll workers treated LEP Latino and Asian American voters disrespectfully; refused to permit them to be assisted by a person of their choice; improperly influenced, coerced or ignored their ballot choices; failed to make available multilingual personnel to provide effective assistance and information; and refused or failed to provide provisional ballots to LEP Latino and Asian American voters.³⁰ DOJ and Boston came to an agreement that included the additional provision of language assistance to Chinese and Vietnamese voters.

²⁶ 42 U.S.C. § 1973.

²⁷ Complaint, *United States v. Salem County and the Borough of Penns Grove, NJ, et al* (D.N.J. 2008), *available at* http://www.usdoj.gov/crt/voting/sec_203/documents/pennsgrove_comp.htm.

²⁸ Justice Department Announces Agreement Protecting Puerto Rican and Spanish-Speaking Voters in Penns Grove, New Jersey, Webwire, Tuesday, July 29, 2008, <http://www.webwire.com/ViewPressRel.asp?aId=71216>.

²⁹ *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.

³⁰ Complaint, *United States v. City of Boston, MA* (D. Mass. 2005), *available at* http://www.usdoj.gov/crt/voting/sec_203/documents/boston_comp.html.

Poll workers Hostile to Language Minority Voters and Language Assistance as barrier

As cases, enforcement action and poll monitoring efforts have found, poll workers are often reluctant to implement Section 203 properly and can exhibit outright hostility towards language minority voters. Based on our poll monitoring in the last presidential election, we found that poll workers were frequently reluctant to help language minority voters, were unaware of how to help, and were suspicious of bilingual poll workers or LEP voters. These poll workers clearly demonstrated that they had no understanding about why language assistance was needed, which often manifested itself in talking down to voters, berating them, or simply treating them generally as lesser voters.³¹

For example, one election judge in Cook County, Illinois, commented during the last presidential election that a voter whom he was unable to understand should “learn to speak English.” In Los Angeles County, CA, during the 2004 elections, a poll worker sent an Asian American voter to the back of the line for “causing too much trouble,” simply because the voter was LEP.³² This also occurred in Koreatown, New York during the 2004 general elections, where a precinct inspector gave certain Asian American voters time limits and sent at least one Asian American voter to the back of the line.³³ This mentality ensures that poll workers not only fail to help language minority voters but often actually create a new barrier for them to overcome.

Even more problematic are poll workers who are openly hostile and discriminate against language minority voters and voters of color. During the last presidential election, a number of disturbing incidents occurred across the country. For example, in West Palm Beach, Florida, an election poll worker told a voter that the city was not handling Latino, Black or Asian voters at that particular polling place.³⁴ In Jackson Heights, Queens, one poll worker said, “You Oriental guys are taking too long to vote.” At another site in Queens, when a poll worker was asked about the availability of translated materials, he replied, “What, are we in China? It’s ridiculous.”³⁵ Additionally, poll workers at a site in Boston segregated voters by race and made minority voters form a separate line to vote. Election officials claimed that creating a separate line for LEP voters would speed up the voting process for monolingual voters.³⁶ These problematic poll workers were not anomalies that only occurred in the last presidential election. In subsequent elections, problematic poll workers continued to discriminate against language minority voters. As previously mentioned, poll workers in Penns Grove, NJ directed hostile or discriminatory remarks at, or otherwise acted in a hostile manner toward, Latino voters, which in many instances made them feel unwelcome at the polls in the recently filed DOJ complaint against Borough of Penns Grove, NJ.³⁷ During the 2008 primary elections, a poll

³¹ Sound Barriers.

³² *Id.*

³³ Tr. 11/8/05 (App.), at 1433 (Written Testimony of Eunsook Lee, Sept. 25, 2005).

³⁴ Lawyers’ Committee for Civil Rights Under Law, 2004 Election Protection Election Incident Reporting System: 1-866-Our-Vote.

³⁵ Asian American Legal Defense & Education Fund, Asian American Access to Democracy in the 2004 Election: Local Compliance with the Voting Rights Act and Help America Vote Act (HAVA) in NY, NJ, MA, RI, MI, PA, VA, (2005), available at http://www.aaldef.org/articles/2005-08-18_189_AsianAmericanA.pdf.

³⁶ *Id.*

³⁷ Complaint, United States v. Salem County and the Borough of Penns Grove, NJ, et al (D.N.J. 2008), available at http://www.usdoj.gov/crt/voting/sec_203/documents/pennsgrove_comp.htm.

worker in Los Angeles County in response to overhearing a conversation between two Chinese American voters stated, “Gosh, you’d think they’re yelling at each other in their language. So loud.” and called the voters “Orientals.”³⁸

Poll workers who are hostile to language minority voters and language assistance will not only lead to the disenfranchisement of LEP voters during this election but lead to turning LEP voters off from voting in future elections as well. DOJ must be vigilant about problematic poll workers and hold jurisdictions accountable for them. Jurisdictions should do a better job of screening their potential poll workers for problematic attitudes about language minority voters as well as work with community organizations that serve language minority communities to outreach into those communities for poll workers in order to have a more diverse pool of poll workers. Additionally, jurisdictions must properly train poll workers about language minority voters and how to appropriately assist them on Election Day. Poll workers who prove themselves to be hostile or unwilling to assist language minority voters should not be tolerated or utilized by the jurisdictions.

Under trained poll workers as a barrier to voting

Poll monitoring and election protection efforts also showed that even when poll workers were not outright hostile, problems existed with poll workers who were under trained. During poll monitoring and election protection efforts for the last presidential election, we saw poll workers who were often unaware of what the law required and thus were either unable to help LEP voters outright or simply provided misinformation about the voting process to them. Sources of confusion included how to implement the ID provision under the Help American Vote Act (HAVA) and how to use provisional ballots.

Provisional Ballots

Many poll workers were unaware of the existence of provisional ballots or when to use them. Some who were aware of them were reluctant to let voters vote with them despite the fact that the purpose of provisional ballots is to provide a fail-safe for voters who believed they were eligible and registered to vote but where there were questions about their eligibility at the polling site. As a result, in election after election, voters were at times erroneously forced to vote on provisional ballots or worse, left without being allowed to vote at all.³⁹

Voter Identification

As confused as poll workers were about voter identification under HAVA during the last presidential election, the confusion is sure to intensify this November with 24 states having broader voter identification requirements than what HAVA requires, seven of which require a

³⁸ Letter from Eugene Lee, Voting Rights Project Director, Asian Pacific American Legal Center of Southern California, to Dean Logan, Registrar-Recorder/County Clerk, Los Angeles County (March 26, 2008) (on file with author).

³⁹ See, i.e., *United States v. City of Boston*, MA (D. Mass. 2005). See also, Sound Barriers and EP 2008 Primary Report.

photo ID.⁴⁰ The U.S. Supreme Court's decision this year on the Indiana voter identification case has been much publicized and misunderstood by many in the public. Under training of poll workers will likely leave quite a few poll workers confused as to what the ID requirements are in their polling site. Poll workers are equally likely to erroneously ask people for voter ID across the country. For example, during the 2008 primary election in California, a poll worker in Baldwin Park went down a long line of voters demanding they show identification in order to vote, despite no identification being required.⁴¹

Unfortunately, sometimes the problem is more malicious in nature, whereby poll workers discriminate by only asking LEP voters or other voters of color for their photo identification. This was the case in the recent DOJ enforcement action against Penns Grove, NJ where poll workers required more identification from Latino voters.⁴² During the South Dakota's June 2004 primary, Native American voters were prevented from voting after they were challenged to provide photo IDs, which was not required under state or federal law.⁴³ Such discriminatory targeting of language minority voters can happen because of the false assumption LEP voters are not citizens and the suspicious nature of poll workers against LEP voters. DOJ should be vigilant that poll workers are not discriminatorily asking for photo identification of voters.

Section 208

Section 208 of the Voting Rights Act is the provision for voters requiring assistance to vote by reason of blindness, disability, or inability to read or write. Any such voter may be given assistance by a person of the voter's choice, other than the voter's employer or agent of the employer or officer or agent of the voter's union.⁴⁴ Section 208 applies nationwide and is particularly important for all language minority voters because it allows them to take the person of their choice into the voting booth with them to assist them in understanding the ballot. Unfortunately, many poll workers refuse to allow language minority voters to take an assistor of choice into the voting booth, often expressing suspicion about the voter. DOJ has brought Section 208 enforcement actions in many of their section 2 and 203 cases regarding language minority voters, such as in the Penns Grove action and the Kane County action discussed previously.⁴⁵ Other Section 208 enforcement actions have been brought against Philadelphia and Berks County, PA; Springfield, MA; Brazos County and Hale County, TX, and Miami-Dade

⁴⁰ National Conference of State Legislatures, Requirements for Voter Identification (updated June 18, 2008), available at <http://www.ncsl.org/programs/legismgt/elect/taskfc/voteridreq.htm>.

⁴¹ EP 2008 Primary Report.

⁴² Complaint, United States v. Salem County and the Borough of Penns Grove, NJ, et al (D.N.J. 2008), available at http://www.usdoj.gov/crt/voting/sec_203/documents/pennsgrove_comp.htm.

⁴³ People For the American Way and National Association for the Advancement of Colored People, The Long Shadow of Jim Crow: Voter Suppression in America (2004), available at http://site.pfaw.org/site/PageServer?pagename=report_the_long_shadow_of_jim_crow.

⁴⁴ 42 U.S.C. 1973aa-6.

⁴⁵ Complaint, United States v. Salem County and the Borough of Penns Grove, NJ, et al (D.N.J. 2008), available at http://www.usdoj.gov/crt/voting/sec_203/documents/pennsgrove_comp.htm. Complaint, United States v. Kane County, IL (N.D. Ill. 2007), available at http://www.usdoj.gov/crt/voting/sec_203/documents/kane_comp.htm.

County and Osceola County, FL.⁴⁶ DOJ should continue to monitor for, and bring enforcement action against, Section 208 noncompliance.

Impact of Anti-Immigrant Rhetoric as Barrier to Voting

Anti-immigrant sentiments and rhetoric have been growing in the United States as of late. In 2006, at the height of the comprehensive immigration debate, “more than 550 bills relating to illegal immigration were introduced in statehouses [that] year, and at least 77 were enacted.”⁴⁷ Anti-immigrant groups, such as the Arizona-based Minuteman Civil Defense Corps and The American Border Patrol (civilian volunteer groups that patrol the border and turn immigrants crossing the U.S.-Mexican border over to authorities), saw a surge in popularity, with growing memberships and donations for their efforts to restrict immigration.⁴⁸ Additionally, hate crimes have been on the rise, particularly those against Latinos, and these crimes have been linked to the national immigration debate.⁴⁹ Despite claims by anti-immigration groups and hate groups that their problem is with “illegal immigrants” (i.e., undocumented persons), actions have proven that such groups have a problem with all immigrants, or all persons who are perceived to be immigrants, or foreigners—as determined by the color of their skin or the accent in their speech.⁵⁰ In a national poll of legal immigrants from Latin America, Asia, Africa, and Europe (who now number around 14 million Americans), a majority felt the anti-immigrant sentiment was growing in America and that anti-immigrant sentiment had detrimentally affected their families.⁵¹

⁴⁶ See, U.S. Department of Justice Civil Rights Division Voting Section Home Page, Cases Raising Claims Under Section 208 of the Voting Rights Act,

<http://www.usdoj.gov/crt/voting/litigation/recent203.htm>.http://www.usdoj.gov/crt/voting/litigation/recent_208.html.

⁴⁷ Erik Schelzig, *States' Immigration Bills May Be Moot*, Az. Daily Star, Aug. 20, 2006,

<http://www.azstarnet.com/news/142934>. Nearly thirty municipalities across the nation have proposed or introduced legislation punishing businesses who employ undocumented immigrants and landlords who rent to undocumented immigrants. Daniel Patrick Sheehan & Kevin Penton, *Group Sues Pa. City Over Anti-immigrant Law*, The Morning Call (Allentown, Pa.), Aug. 15, 2006,

<http://www.montereyherald.com/mld/montereyherald/news/nation/15282611.htm>.

⁴⁸ Rachel Uranga, *Anti-Illegal-Immigrant Groups Multiply*, Daily News, Aug. 12, 2006, at N1.

⁴⁹ See Tyler Lewis, *Report: Hate Violence and Rhetoric on the Rise against Latinos*, May 17, 2006,

<http://www.civilrights.org/issues/hate/details.cfm?id=43360> (last visited Nov. 2, 2006); Kevin Johnson, *Center Ties Hate Crimes to Border Debate*, USA Today, May 17, 2006, at 3A; Anti-Defamation League, *Extremists Declare 'Open Season' on Immigrants: Hispanics Target of Incitement and Violence* (2006),

http://www.adl.org/main_Extremism/immigration_extremists.htm (“While white supremacists have for many years attempted to exploit rising anti-immigration sentiments in the U.S., the level and intensity of their attacks against Hispanics has reached dangerous new highs, with right-wing extremists joining anti-immigration groups, distributing anti-immigrant propaganda and holding frequent anti-immigration rallies and protests.”).

⁵⁰ Alonso Heredin, Op-Ed., *Anti-Immigrant Law Codifies Intolerance*, Courier Post, Aug. 9, 2006,

<http://www.courierpostonline.com/apps/pbcs.dll/article?AID=/20060809/COLUMNISTS27/608090334>. During the public portion of a committee meeting in Riverside, New Jersey, proponents of a law to persecute undocumented persons claimed that they did not reject all immigrants, rather only those who were undocumented. *Id.* However, these same people booed other citizens who attempted to speak at that same meeting in opposition to the law, making it difficult for their views to be heard. *Id.* Worse yet, a Latina citizen was greeted with “[t]hese chairs are for whites only,” when she tried to sit down next to English-speaking women. *Id.* (internal quotation marks omitted).

⁵¹ New America Media, *Legal Immigrants: A Voice of Reason in the Immigration Debate 3* (2006),

http://media.newamericamedia.org/images/polls/imm_poll/Immigration_exec_summary.pdf.

This current resurgence in anti-immigrant sentiments occurring at the local, state and federal levels has exacerbated barriers for language minority voters. Not only do language minority voters have to deal with hostile and unfriendly poll workers who equate any voter with limited English proficient as immediately suspect, they also have to deal with others in the community questioning their right to participate and ridiculing their language barriers.

For example, on April 25, 2005, Trenton, New Jersey radio hosts denigrated Asian Americans by using racial slurs and speaking in mock Asian gibberish during an on-air radio show. The hosts demeaned a Korean American mayoral candidate and made various other derogatory remarks. One of the hosts, Craig Carton, made the following remarks:

Would you really vote for someone named Jun Choi [said in fast-paced, high-pitched, squeaky voice]? ... And here's the bottom line. . . no specific minority group or foreign group should ever dictate the outcome of an American election. I don't care if the Chinese population in Edison has quadrupled in the last year, Chinese, should never dictate the outcome of an election, Americans should... And it's offensive to me... not that I have anything against uh Asians... I really don't... I don't like the fact that they crowd the goddamn black jack tables in Atlantic City with their little chain smoking and little pocket protectors.⁵²

The discriminatory attitudes expressed by the hosts in Trenton are by no means unique. In 2005 in Washington state, a citizen named Martin Ringhofer challenged the right to vote of more than one thousand people with “foreign-sounding” names. Mr. Ringhofer targeted voters with names that “have no basis in the English language” and “appear to be from outside the United States” while eliminating from his challenge voters with names “that clearly sounded American-born, like John Smith, or Powell.”⁵³ Mr. Ringhofer primarily targeted Asian and Latino voters.⁵⁴

Even worse, these anti-immigrant sentiments have led to harassing and intimidating of language minority voters at polls because of the erroneous assumption that LEP voters could not be citizens. DOJ alleged in its Penns Grove, NJ complaint that political campaigns in Penns Grove, including 2006 and 2007 campaigns for mayor and city council, had been characterized by racial appeals as well as attempts to intimidate Latino voters.⁵⁵ DOJ also brought a Section 2 claim against Long County, Georgia because three candidates running for office in the 2004 primary election in Long County filed 45 challenges against Latino or Spanish-surnamed voters on grounds that they were not citizens based on no credible evidence for calling into question their status.⁵⁶ In South Dakota, Republican poll workers in Lake Andes were intimidating Native

⁵² <http://www.asianmediawatch.net/jerseyguys/>.

⁵³ Jim Camden, *Man Says Votes from Illegal Immigrants*, March 31, 2005, available at <http://www.spokesmanreview.com/local/story.asp?ID=61944>.

⁵⁴ *Id.*

⁵⁵ Complaint, *United States v. Salem County and the Borough of Penns Grove, NJ, et al* (D.N.J. 2008), available at http://www.usdoj.gov/crt/voting/sec_203/documents/pennsgrove_comp.htm.

⁵⁶ Complaint, *United States v. Long County, GA*, (S.D. Ga. 2006), available at http://www.usdoj.gov/crt/voting/sec_2/long_comp.htm.

American voters by writing down license plate numbers and following Native Americans from polling places on Election Day during the 2004 elections.⁵⁷

In 2004, an Asian American candidate ran for City Council in Bayou La Batre, Alabama, a fishing village of about 2,750 residents, about one-third of who are Asian Americans. In a concerted effort to intimidate supporters of this candidate during the 2004 primary elections, supporters of a white incumbent challenged Asian American voters at the polls. The challenges, which were permitted under state law, included complaints that the voters were not U.S. citizens or city residents, or that they had felony convictions. The challenged voters had to complete a paper ballot and have that ballot vouched for by a registered voter. The DOJ investigated the allegations and found them to be racially motivated.⁵⁸

In another example, a major party congressional candidate's campaign in Orange County, California mailed a letter to 14,000 registered Latino voters that was specifically designed to intimidate them and keep them from voting in the 2006 elections. The letter, written in Spanish, falsely stated that immigrants may not vote (when, in fact, eligible naturalized immigrants may freely participate in U.S. elections). The letter also declared that "there is no benefit to voting" in U.S. elections.⁵⁹

Also during the November 7, 2006 general election, Mexican American Legal Defense and Educational Fund attorneys witnessed anti-immigrant activists aggressively intimidating Latino voters in Tucson, Arizona. One of these activists wore dark clothing with a badge-like emblem and carried a handgun in a holster, giving the false impression that he was a law enforcement official. The men attempted to ask Latino voters questions, write down their personal information, and videotape them as they went to cast their vote. The Arizona Republic has reported that Tucsonan Russell Dove, a local anti-immigrant activist, has proudly acknowledged his participation in this effort to intimidate Latino voters.⁶⁰

It is clear that DOJ must pay special attention to areas where there have been heavy anti-immigrant sentiments or debates occurring to ensure that such animosity is not bleeding over to the voting context. Additionally, DOJ needs to make sure that language minority voters are not being attacked at the polls either through unwarranted challenges or hostile poll workers who assume that they could not be citizens.

⁵⁷ Mike Madden, Judge orders GOP to halt poll tactics, *Argus Leader*, November 2, 2004, at 1A (on file with author).

⁵⁸ As a result, the challengers were prohibited from interfering in the general election, and ultimately the town, for the first time, elected an Asian American to the City Council. DeWayne Wickham, *Why Renew Voting Rights Act? Alabama Town Provides Answer*, *USA Today*, Feb. 22, 2006, 13A available at http://www.usatoday.com/news/opinion/editorials/2006-02-22-forum-voting-act_x.htm.

⁵⁹ Mexican American Legal Defense and Educational Fund and NAACP Legal Defense and Educational Fund, Inc., NAACP LDF and MALDEF Uncover Significant Voter Intimidation Attempts During Recent 2006 Election Cycle (2006), available at

http://www.naacpldf.org/content/pdf/barriers_to_voting/Voter_Intimidation_Statement_MALDEF_LDF.pdf

⁶⁰ *Id.*

Outstanding issues for Asian American voters

Transliteration

AAJC remains concerned about the lack of transliteration in Boston despite the agreement to provide language assistance to Chinese voters under the Section 2 case referenced above. Transliteration is the selection of Chinese characters to represent the phonetic equivalent of the syllables of an English name, or a name in any other language that is not traditionally written using Chinese characters.⁶¹ At issue in Boston is whether the Secretary of the Commonwealth is willing to transliterate candidates' names on their ballots (official and absentee). AAJC believes that the Secretary of the Commonwealth should transliterate candidates' names on their ballots (official and absentee).

Transliteration of candidates' names is critical to providing a fully bilingual ballot. Candidates' names are the most important part of the ballot for voters. Because the Chinese language does not use an alphabet, it is important to utilize a method that allows voter to receive a fully bilingual ballot. A ballot that is translated into Chinese with English candidate names is not fully bilingual.

Without a fully bilingual ballot (that is, one that does not have transliterated candidate names), voters are unable to fully read their ballots and are left to guess which candidates are the ones they want to vote for or give up their right to an independent vote by requiring them to ask for assistance. For example, in Boston a voter tried to memorize the first two letters of the English name of the candidate that he wanted to vote for in order to try and recognize the name on the ballot. Unfortunately, he believes that despite his efforts he may have voted for the wrong candidate when there were several names on the ballot.⁶² Transliterated candidates names provide voters with the ability to vote without assistance, often for the first time in an LEP voter's life. It certainly makes voting much easier for LEP voters.

Transliteration has been utilized far and wide. Many other jurisdictions have utilized transliteration for candidates' name on Chinese bilingual ballots, including in New York City for 13 years.⁶³ It has also been utilized successfully in Los Angeles County, Alameda County, Orange County, San Francisco County, and even in Boston during their municipal elections.⁶⁴ Boston has developed a thoughtful and thorough procedure for transliterating candidates name that take into account feedback from the candidates, the community itself, and the media.⁶⁵ Additionally, transliteration of the candidates' names helps to avoid confusion by creating a single transliterated name for each candidate that is used by the candidates, the media and the community groups.

⁶¹ Statement to the Court at 4, *United States v. City of Boston*, No. 05-11598 (Mass. Dist. Ct. July 10, 2007).

⁶² Response to Opposition to the Unopposed Motion to Clarify at 5, *United States v. City of Boston*, No. 05-11598 (Mass. Dist. Ct. July 23, 2007).

⁶³ See Coalition for Asian American Voting Rights, *Protect Asian American Voting Rights*, available at <http://www.cpaboston.org/ftp/orgfactsheet%206-20-08.doc>.

⁶⁴ *Id.* Because the City of Boston is willing to transliterate candidates names, the very same LEP voters who can vote independently during municipal elections cannot during the upcoming presidential election.

⁶⁵ Statement to the Court at 5, *United States v. City of Boston*, No. 05-11598 (Mass. Dist. Ct. July 10, 2007).

AAJC believes that transliteration is an important voting rights issue for Asian American voters and urges DOJ to work with the Secretary of the Commonwealth to ensure that Chinese voters receive a fully bilingual ballot in Boston.

Recent Monitoring of Elections

AAJC does, however, commend the Department of Justice for monitoring the primary election in Boston on September 16, 2008 under the federal order entered in 2005 as referenced above. It is particularly important in light of the transliteration issue and the history of problems at the polls for language minority voters that warranted the Section 2 case being brought. For example, numerous voters have experienced coercion and improper influence while voting, including being told who to vote for by poll workers and having poll workers mark voters' ballots without consulting the voters or getting their consent.⁶⁶ As referenced above, poll workers at a site in Boston also segregated voters by race and made minority voters form a separate line to vote.⁶⁷ AAJC recommends that DOJ monitor Boston during the upcoming general election as well.

Outstanding questions raised regarding DOJ plans for upcoming elections on behalf of Asian American voters

AAJC is also concerned about questions raised with DOJ by the Congressional Asian Pacific American Caucus (CAPAC) on behalf of language minority voters and those community-based organizations that serve them⁶⁸, including:

- “How is DOJ collaborating with and providing guidance to state and local election officials to ensure that the rights of language minorities under Section 203, 4(e), 4(f), and 208 of the VRA are enforced? In particular, how is DOJ working with the jurisdictions that proved problematic in the reports listed [in the letter]?”
- How is DOJ collaborating with and providing guidance to state and local election officials to ensure that there is no discrimination under Section 2 of the VRA? In particular, how is DOJ working with the jurisdictions that proved problematic in the reports listed [in the letter]?”
- How is DOJ working with ethnic and language minority advocacy groups and community members to ensure that common problems documented in the last two election cycles for AAPI voters with limited English proficiency are not repeated, particularly in jurisdictions that proved problematic in the reports listed [in the letter]?”
- What is DOJ’s plan to monitor and respond to problems facing AAPI and LEP voters on Election Day? What jurisdictions will be given particular attention? Will there be a

⁶⁶ Response to Opposition to the Unopposed Motion to Clarify at 4-5, *United States v. City of Boston*, No. 05-11598 (Mass. Dist. Ct. July 23, 2007).

⁶⁷ *Id.*

⁶⁸ Letter from the Congressional Asian Pacific American Caucus to the Department of Justice (Aug. 22, 2008) (on file with author)

troubleshooting system to ensure that any problems that arise will be addressed in a timely manner?”

Specific jurisdictions of concern mentioned in CAPAC’s letter to DOJ include⁶⁹:

- New York, NY – Why did DOJ preclear a plan under Section 5 that will reduce the number of Chinese and Korean interpreters at poll sites? What is guiding DOJ’s decision making regarding these plans? Are there other similar plans to reduce interpreters at polling sites currently being reviewed?
- Boston, MA – As mentioned above, what is DOJ’s plan for ensuring full access to the polls for LEP voters through translated Chinese ballots, including the transliteration of candidate names?
- Philadelphia, PA – Poll monitoring results showed problems at polling sites for Asian American voters with slow poll workers, extremely long lines (up to four hours), inadequate signage, denial of provisional ballots, insufficient number of interpreters and improper demands for identification. What is DOJ’s plan for Philadelphia?
- Annandale, VA – In conducting an exit poll it was discovered that “there may have been a partisan campaign worker who steered several unsuspecting Korean American senior citizen voters into applying for absentee ballots without their full consent or understanding... [as well as the campaign worker filling] out some of these absentee ballots in favor of particular candidates without the voters’ knowledge or consent.” As a result, when these voters went to vote, they were turned away as having already voted. Does DOJ plan to send any monitors or observers to Annandale, VA to address this issue?
- Dearborn and Hamtramck, MI – South Asian voters disproportionately experienced inadequate language assistance, hostile and poorly trained poll workers, incomplete voter lists, and improper demands for identification. What is DOJ’s plan to monitor and prevent discrimination against South Asian voters during the upcoming elections (and beyond)?

To date there has been no response from DOJ on these questions. AAJC believes that is important that DOJ respond to CAPAC’s questions to provide some transparency and clarity as to how DOJ intends to protect the rights of language minority voters this upcoming election and that the response be provided within the following weeks as the elections are now less than two months away.

AAJC would also like to call attention to concerns expressed by its Affiliate the Asian Pacific American Legal Center of Southern California and its Community Partner the Asian Law Alliance about the decrease in the number of bilingual poll workers being recruiting for elections in Santa Clara County.

⁶⁹ *Id.* (referencing questions raised with DOJ by the Asian American Legal Defense and Education Fund).

Santa Clara County Bilingual Poll Worker Numbers

	Vietnamese	Chinese	Tagalog
June 2006	264	258	97
November 2005	339	343	226
November 2004	307	309	230
March 2004	250	265	192

AAJC requests that DOJ looks into why there has been a decrease, including the Santa Clara County Registrar's methodology for determining how many bilingual poll workers are needed, and whether or not there is Section 203 noncompliance occurring in Santa Clara County.

Finally, AAJC would also like to echo the Subcommittee's concern about recent media reports that the Chairman of the Republican Party in Macomb County, MI, is planning to use a list of foreclosed homes as a basis for challenging voters and blocking their participation in the upcoming election. We support the Subcommittee's call for the DOJ to launch a full scale investigation into these reports.

Conclusion

On behalf of AAJC, I want to thank the Subcommittees for the opportunity to provide a written statement on the problems and barriers facing language minority voters. As the general election gets closer, DOJ must be mindful of how jurisdictions and outside persons are treating language minority voters, as well as how they are dealing with the influx of new voters. AAJC looks forward to working with you as well as the Justice Department to ensure language minority voters do not have their voices stifled at the polls.