

CONTINUING NEED FOR SECTION 203'S PROVI-
SIONS FOR LIMITED ENGLISH PROFICIENT
VOTERS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

—————
JUNE 13, 2006
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Serial No. J-109-84

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CONTINUING NEED FOR SECTION 203'S PROVISIONS FOR LIMITED ENGLISH PROFICIENT VOTERS

TUESDAY, JUNE 13, 2006

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The hearing was convened, pursuant to notice, at 9:31 a.m., in room SD-226, Dirksen Senate Office Building,

Hon. Arlen Specter, Chairman of the Committee, presiding.

Present: Senators Cornyn, Coburn, Leahy, Kennedy, Feinstein, and Feingold.

OPENING STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. The Committee will come to order.

Senator Specter, by the way, is going to be delayed slightly, so I offered to open up for him so we could get started, and then he will be joining us as soon as he can.

Today we are holding the sixth in a series of hearings focusing on the proposed reauthorization of the expiring provisions of the Voting Rights Act.

Chairman Specter called a number of hearings prior to our last recess, but unfortunately that was during a time when we were addressing another important issue, and that is immigration reform, on the floor of the Senate and many of us were unable to attend the last two hearings on Section 5.

I am encouraged to hear that the Chairman is holding this hearing and plans to hold several additional hearings on the Voting Rights Act generally, as well as with problems such as voter fraud in elections.

It is imperative that we vet this issue fully in order to increase the likelihood that this legislation will pass Supreme Court muster, which no doubt will ultimately come, and to ensure that the Voting Rights Act continues to operate as Congress intended.

Before us today, of course, is the issue of reauthorization of Section 203, the provision that requires ballots and voting materials to be provided in a language other than English under certain circumstances.

Section 203 applies to States and localities where more than 10,000, or 5 percent, of the voting-aged citizens are Alaskan Native, American Indian, Americans of Spanish heritage, or Asian Americans who are limited- English proficient. These citizens have

a higher rate of illiteracy, as defined by failure to complete the fifth grade, than the national average.

I have previously stated my concerns about this particular provision. It seems to me that if we rightfully require proficiency in English to become a naturalized citizen in this country, that for the same reasons it is not only reasonable, but in fact entirely appropriate, for jurisdictions to offer ballots and voting materials in English.

Just a few weeks ago, the U.S. Senate overwhelmingly passed a provision declaring English our National language, as well as a second provision that overwhelmingly recognized English as a common and unifying language for our Nation.

Section 203 does not appear to unify us, and even more, it is not clear to me that Section 203, as currently drafted, is an effective method of protecting voting rights.

I know each of you have your own opinion about this important subject, and we are glad to have you here today, each of the witnesses, to help us learn more and to continue to build a record that will help us ensure the continued success of the Voting Rights Act.

Our witnesses today include Mr. John Trasviña, a graduate of the Harvard and Stanford Law Schools, and president and general counsel to the Mexican American Legal Defense and Education Fund. Mr. Trasviña once worked for this Committee as general counsel for the Senate Subcommittee on the Constitution, and we welcome you back.

Margaret Fung is a graduate of Barnard College and NYU Law School, and is executive director of the Asian American Legal Defense and Education Fund. Ms. Fung has testified before the House Judiciary Committee on issues related to voting rights and the need for bilingual voting materials.

Mauro E. Mujica. And forgive me if I have mispronounced your last name. Is that close?

Mr. MUJICA. Yes.

Senator CORNYN. I am sensitive. With a name like Cornyn, it gets butchered often and I am a little sensitive. So, I apologize if I missed at all.

Mr. Mujica is a graduate of Columbia University and is Chairman of the Board and CEO of U.S. English, a citizens' action group working to make English the official language of the United States. He testified before the 104th Congress during its consideration of official English legislation.

Deborah Wright is a graduate of the University of Missouri and Acting Assistant Registrar-Recorder and County Clerk of Election Services in Los Angeles County, the largest electoral jurisdiction in the United States.

Peter Kirsanow is a graduate of Cornell and Cleveland State Universities, and he currently serves as a Commissioner on the U.S. Commission on Civil Rights, and is a member of the National Labor Relations Board.

In addition, he is Chairman of the Board of Directors of the Center for New Black Leadership. Mr. Kirsanow frequently testifies before members of the U.S. Congress on matters affecting civil rights and labor-related issues, appearing most recently before the Senate Judiciary Committee to support the nominations of Chief Justice

John G. Roberts and Justice Samuel Alito to the U.S. Supreme Court.

Linda Chavez is a graduate of the University of Colorado and Chairman of the Center for Equal Opportunity, a nonprofit public policy research organization in Sterling, Virginia.

She also writes a weekly syndicated column that appears in newspapers across the country, and is a political analyst for Fox News Channel. She has held a number of appointed positions, and is an author and has testified on a variety of subjects on Capitol Hill.

We welcome each of you here today and look forward to your testimony.

Senator Kennedy, I might yield to you for any opening statement you would care to make.

**STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR
FROM THE STATE OF MASSACHUSETTS**

Senator KENNEDY. I thank you, Mr. Chairman. I thank the Chairman of our committee, Senator Specter, for convening these hearings and for continued commitment to keeping us on track for the reauthorization of the Voting Rights Act during this Congress.

We all understand that English is the common and unifying language of the United States, and becoming proficient in English is important to becoming part of American society and pursuing the American dream. There is no disagreement on that. We all understand that voting is a fundamental right, the right from which all others derive. Again, there is no disagreement on this point.

But we must also understand that not all citizens of the United States know English well enough to participate in English-only elections, and without bilingual ballots and assistance at the polls, there are millions of our fellow citizens who would be unable to vote effectively. These include many native-born Americans who, because of poverty and unequal educational opportunities, have high rates of illiteracy and limited English proficiency.

They also include many Puerto Ricans, who are U.S. citizens by birth and have given so much to this country: 65,000 Puerto Ricans served in World War II, 48,000 in Vietnam, and as of November, 2003, 3,500 Puerto Ricans were serving in Iraq or Afghanistan, and as of last February, 48 of them had died fighting in Iraq and Afghanistan. Since World War II, Puerto Rico has suffered more military casualties per capita than any other jurisdiction.

Puerto Ricans educated in classrooms where instruction was in Spanish should not be denied a ballot they can understand and voting instructions that they can understand, yet some States try to do that.

In the Voting Rights Act of 1965, Congress prohibited States from conditioning the right of Puerto Ricans to vote on their ability to read and write English, and the Supreme Court, in *Katzenbag v. Morgan*, upheld the constitutionality of that provision.

The same principle applies to Native Americans and Alaskan natives. On many Indian reservations and Alaskan villages, translators are necessary to translate ballots into unwritten languages for Native Americans and Alaskans who cannot read their ballots and could not vote effectively without assistance. We owe it to

these Americans to provide them the help they need to cast their votes.

The same principles should apply to naturalized U.S. citizens. They were attracted to our country by opportunity and the promise of democracy, and they are no less worthy to exercise their right to vote.

It is wrong to equate knowing enough English to become a naturalized citizen with knowing enough English to participate responsibly in an election. According to current Federal law on naturalizations, persons must be able to read or write simple words and phrases in English to become naturalized citizens. Naturalization law also exempts some Americans over 50 from having to satisfy an English-language requirement to become a citizen.

Even under the more demanding English-language requirements of the recent Senate immigration bill, applicants for naturalization will need to demonstrate a sufficient understanding of the English language for usage in everyday life.

But many elections require more than an understanding of everyday usage to participate effectively. Often ballots contain complex referenda and initiatives. Here is one example. It is an initiative that appeared on the ballot in Denver, Colorado in 2004. The county is required to providing voting materials in Spanish under Section 203.

Here is the text of the initiative, which will appear on the poster board: "Shall regional transportation district taxes be increased first full year, dollar increases annually and by whatever additional amounts are raised annually thereafter, increasing the rate of sales tax levied by the district by four-tenths of 1 percent from the current six-tenths of 1 percent to one percent, commencing January 1 the first calendar year, that commences after the election of which the ballot question is submitted, and in connection therewith, shall regional transportation district debt be increased, principal amount, with a repayment cost...with all the proceeds going to debt and taxes," et cetera, et cetera. That is just one sentence.

[Laughter.]

Even those who think we can speak English probably could use Cliff Notes for that version of the ballot.

Our limited-English proficient fellow citizens know the importance of learning English. We have now a two- year wait in my own city of Boston, 24,000 individuals who are working hard, paying their taxes, trying to learn English, and they have to wait, now, 2 years in order to see that.

We cannot get an increase in the appropriations by the Majority, who have professed such commitment in terms of learning English, which is certainly disappointing, at best.

Our limited-English proficient fellow citizens know the importance of learning English. Access to the franchise in their native language is not a disincentive to learn English. Their lives and struggles are a daily reminder of how important learning English is to succeed in this country. It should upset all of us here today that we are not meeting our obligation to help them learn English. They want to learn English.

I mentioned, in Boston, the waiting list to learn English now is 17,000 students, and the waiting period is as long as 3 years. Three

years. In New York, it is estimated that one million residents need English language instruction, yet there are only 41,000 slots.

The problem is national. In Albuquerque, Catholic Charities reports 1,000 people on their waiting list and a waiting time of 12 months for services. In Phoenix, the waiting list in Rio Saledo Community College is over 1,000, and the waiting time is 18 months.

Let us not punish American citizens who want to learn English by conditioning the fundamental right to vote on the ability to read and write in English. If we are sincere about including naturalized citizens in the American way of life and promoting American values and traditions, there is no better way than through the ballot box, and we need to continue Section 203 to make it possible.

Thank you, Mr. Chairman.

Senator CORNYN. We will go to the opening statements of the witnesses.

Senator KENNEDY. Mr. Chairman?

Senator CORNYN. Yes?

Senator KENNEDY. Could I ask, at the termination of the hearing today, there are a couple of excellent reports, one from Luis Fraga and Maria Ocampo entitled "More Information Requests" and "The Different Effect of Section 5 and the Voting Rights Act" be included in the record? There is an extensive report, and I do not think this should be included. It ought to be in the file of the committee. This is Jane Tucker's report.

I would ask the staff to reduce this to a manageable area and the whole report be included in the record and referenced in our record that this report is there. If I could ask for that inclusion.

Senator CORNYN. Certainly. Without objection.

Thank you for reminding me. I had three documents that, without objection, will also be made a part of the record at the end of the hearing transcript.

The first, is correspondence from Chris Norby, supervisor, Fourth District, Orange County Board of Supervisors, to Senator Specter regarding Orange County's administration of Section 203 of the Voting Rights Act.

The second, is a study by Anna Henderson and Chris Edley, Jr. of the Warren Institute entitled, "Voting Rights Act Reauthorization: Researched-Based Recommendations to Improve Voting Access."

The third, is from Jan Tyler, who served as Election Commissioner for the City and County of Denver for eight years, to Senator Specter and Senator Leahy. Those will also be made a part of the record.

Mr. Trasviña, if we could to you, please, for your opening statement.

We would like for you to please confine each of your opening statements to 5 minutes, then we will proceed with a round of questioning where we will be able to get further into the subject matter.

**STATEMENT OF JOHN TRASVIÑA, INTERIM PRESIDENT AND
GENERAL COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND (MALDEF), LOS ANGELES, CALI-
FORNIA**

Mr. TRASVIÑA. Thank you, Mr. Chairman and members of the committee.

On behalf of MALDEF, I want to thank the Committee for its leadership regarding the continuing need for Section 203 of the Voting Rights Act, and the opportunity to testify today. I am very pleased to be back before this Committee to testify about the critical importance of language assistance in elections.

One of my proudest moments during my service here for Senator Simon on the Constitution Subcommittee was working with Senator Hatch and many members of the Committee and your staffs on the 1992 Voting Rights Act language amendments.

When this Committee displays bipartisanship on language assistance as it did in 1992, you make a powerful statement to the American people, and the world, about the sanctity with which we hold the right to vote in the United States.

Protections against language discrimination in voting were included in the original Voting Rights Act of 1965, which prohibited the enforcement of English language literacy tests for voters.

Congress enacted these protections to protect the rights of Puerto Rican U.S. citizens who were educated in American-flag schools in Puerto Rico where instruction took place in Spanish.

Section 203 was included during the 1975 reauthorization because Spanish-speaking Latino citizens in the Southwest and elsewhere, as well as other language minorities, were still being subjected to laws and practices that effectively denied them the right to vote, much as similar laws and practices denied the right to vote to African-Americans living in the South.

After hearing testimony about the denial of equal educational opportunities by State and local governments that had left many Latinos, Asian-Americans, and American Indians functionally illiterate in English, Congress found it necessary to eliminate such discrimination by prohibiting English-only elections and by prescribing other remedial devices.

Section 203, providing language assistance in the election process, was the remedy Congress devised to counter the effects of language-based discrimination on U.S. citizens' right to vote.

Unconstitutional discrimination in elections and education has created persistent, discriminatory conditions which continue to require the Congressional remedy of Section 203.

Many of the U.S. citizens subject to intentional discrimination in public education systems, which lasted well into the 1970's in Texas and other States, continue to require language assistance in order to cast a meaningful, informed vote.

In the State of Texas alone, the Census found, in 2002, that there were over 818,000 Latino voting-age citizens, nearly 1 of 4 Latino voting-age citizens in the State, not yet fully proficient in English.

Section 203 is a proper exercise of Congress's authority to enforce the 14th and 15th amendments, which grant Congress the power

to enforce equal protection of the laws and non-discrimination in voting through appropriate remedial legislation.

The Supreme Court has repeatedly found that Congress may adopt strong remedial and preventative measures to respond to the widespread and persisting deprivation of constitutional rights resulting from a history of racial discrimination.

Because language assistance required under Section 203 is, as required under *City of Boerne v. Flores*, congruent and proportional to the discrimination that it addresses and it is no broader than necessary to redress this discrimination, it is a proper exercise of Congress' constitutional authority under the 14th and 15th amendments.

Many Section 203 opponents argue that, because immigrants must speak English to become naturalized citizens, language assistance in voting is not needed. Complicated ballot provisions, however, demand a higher level of English language proficiency than do the naturalization requirements.

Even native speakers of English often find legalistic language—such as that stated by Senator Kennedy—of many ballot provisions difficult to interpret. Further, English-language naturalization requirements do not apply to native-born citizens, many of whom, as I have noted, suffer from limited-English proficiency as a result of discriminatory education systems.

Section 203 is not costly to implement. As Mayor Feinstein knew way back in the 1980's when she appointed me to the Citizens' Advisory Committee on Elections, bilingual ballots—and in San Francisco we have three languages—are able to be implemented on a cost-effective basis: less than 3 percent of all election costs, 16/10,000ths of 1 percent of the city budget.

A recent Arizona State University study found that Section 203 represents no additional costs to most jurisdictions and costs very little in those jurisdictions which do incur additional costs.

The Voting Rights Act removes barriers between the electoral process and U.S. citizens. It is easier and more cost effective than ever to provide language assistance for registration, and at the polls. The necessity to read and write English to get ahead every day is not diminished by getting a bilingual ballot on election day.

As a matter of sound public policy and as a constitutional remedy to discrimination in voting, we should facilitate these citizens' participation in American political systems and we should continue to provide language assistance in voting to those who are unable to participate fully without it.

Thank you.

Senator CORNYN. Thank you very much.

[The prepared statement of Mr. Trasviña appears as a submission for the record.]

Mr. Mujica, we would be glad to hear from you.

**STATEMENT OF MAURO E. MUJICA, CHAIRMAN OF THE BOARD
AND CEO, U.S. ENGLISH, INC., WASHINGTON, DC**

Mr. MUJICA. Thank you, Mr. Chairman and members of the committee, for giving me the opportunity to testify today regarding Section 203 of the Voting Rights Act.

My name is Mauro E. Mujica. I am the Chairman of the Board of U.S. English, Inc., a nonprofit organization based in Washington, D.C.

U.S. English was founded in 1983 by one of your former colleagues, Senator S.I. Hayakawa, and we have now grown to over 1.8 million members. Our organization focuses on public policy issues that involve language and national identity.

Mr. Chairman, I am a naturalized citizen. I speak Spanish regularly with my family and friends, and I am proud to speak four languages fluently. Our concerns about Section 203 do not reflect an opposition to other languages or the people who speak them.

I recognize that any section of any law that has been in effect for a generation has a presumption in favor of reauthorization. I also know that it will take political courage to revisit anything that is part of the admirable voting rights.

Still, we believe that if this Committee brings independent judgment to bear, it will see that the considerable costs of Section 203 outweigh its now-questionable benefits.

First, the law is at odds with an important legal tradition. In 1906, President Theodore Roosevelt signed a measure requiring candidates for naturalization to demonstrate their ability to speak English. Just last month, this body reaffirmed that policy when it voted overwhelmingly for the similar language in Senator Inhofe's amendment.

If English is a necessary condition for citizenship, and citizenship is a necessary condition for legal voting, then the purpose of foreign-language ballots must be questioned.

If we are naturalizing individuals who cannot speak English, we must address that issue. If we are failing to teach English to individuals born in this country, we must address that issue. Multilingual ballots should not be used as a way of covering up the fact that we are not adequately addressing other challenges.

Second, to the degree that law has a teaching effect, Section 203 sends exactly the wrong message. According to the Census, there are 54 different languages spoken in American homes by more than 50,000 people.

But in most places where Section 203 is triggered, government-translated voting materials send a message to Spanish speakers, and only Spanish speakers, that English is optional.

When a person steps into a voting booth, he or she is exercising the highest civic duty. Yet, at that very moment the government sends a signal that English is not really necessary to join our National political conversation.

Ironically, this message will not be sent to the Spanish speaker in Burlington, Vermont or the Chinese speaker in Wichita, Kansas. It will be sent only to those who live in high enough language concentrations to trigger Section 203's requirements. In short, it will be sent to the very immigrants who are likely to live in linguistic enclaves where an English-optional lifestyle is a real possibility.

Finally, Section 203 raises troubling questions about where we draw the lines in civil rights laws. Section 203's provisions were originally limited as a remedy for people of Hispanic, Asian, Native American, and Native Alaskan heritage, but the Congressional

findings that caused the lines to be drawn at those groups could well be anachronistic.

Let me respectfully ask this question: is there any evidence on the record that, in 2006, a Chinese speaker is more likely than an Arabic speaker to face such language-based discrimination? The Chinese speaker qualifies for a special ballot; the Arabic speaker does not.

The original Voting Rights Act is rooted in our belief as a Nation that all men are created equal. Regardless of one's race, the law protects a person from discrimination. But Section 203's message is that we will give you a government service, but only if there are enough of you to qualify.

Since this is at odds with our civil rights traditions, it seems that the real purposes of bilingual ballots is to satisfy political constituencies who are large enough to demand them.

Though Section 203 may have originated with the best of intentions, we should make the decision that binds us for the next generation on the conditions of today, not the conditions of 30 years ago. Today, Section 203 provides selected and questionable benefits at the cost of a Balkanizing message.

U.S. English opposes the reauthorization of Section 203's language in its current form. We respectfully urge this Committee to craft a policy that more closely reflects legal and economic sense and one which promotes what voting and being an American is all about.

Senator CORNYN. Thank you, Mr. Mujica.

Ms. Fung, we would be glad to hear from you.

**STATEMENT OF MARGARET FUNG, EXECUTIVE DIRECTOR,
ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND,
NEW YORK, NEW YORK**

Ms. FUNG. Good morning, Mr. Chairman and members of the committee.

My name is Margaret Fung and I am executive director of the Asian American Legal Defense and Education Fund, which is a 32-year-old New York-based national organization that does litigation, legal advocacy, and community education.

Since 1988, we have monitored elections and conducted multilingual exit polls to document barriers to voting faced by Asian-Americans. In November of 2004, we conducted the Nation's largest multilingual exit poll of 11,000 Asian-American voters in eight States to assess the needs of Asian-American voters with limited English proficiency and to document voting problems.

We have also litigated cases to defend the voting rights of Asian-Americans, most recently a lawsuit on behalf of groups and individual voters in a suit against the New York City Board of Elections for violating the language assistance provisions of the Voting Rights Act.

We have prepared a new report. It is called "Asian Americans and the Voting Rights Act: The Case for Reauthorization."

I have attached a copy of our 47-page report to this statement, and I am hoping that you will accept for the official record the report, as well as the appendices which are here, which includes a lot of original documentation and letters to registrars in eight

States where we describe exactly where the voting problems have occurred, how many voters have been affected, and our experience with these issues.

As you know, Asians in America were barred for over 150 years from becoming naturalized citizens and, thus, were not eligible to vote. Those citizenship restrictions were finally rescinded in 1943 for Chinese Americans, and for other Asian immigrant groups in 1952.

But as a result, this legacy of discrimination effectively blocked Asian-Americans from participating in the political process until the Civil Rights era of the 1960s. That is exactly why the Voting Rights Act has such significance for our community.

When the language assistance provisions of the Voting Rights Act were enacted in 1975, and then expanded in 1992, Section 203 helped to remove other obstacles for Asian-American voters not yet fluent in English. It has opened up the political process for Asian-Americans, especially first-time voters and new citizens.

At the most fundamental level, translated ballots in voting machines have enabled Asian-Americans to exercise their right to vote privately and independently. Almost one-third of the respondents in our 2004 exit poll of 11,000 Asian-American voters needed some form of language assistance in order to vote, and the greatest beneficiaries of this assistance, 46 percent, were first-time voters.

The Asian-American population, according to the Census, is now 14 million. Over half have acquired citizenship through naturalization, and 40 percent of our community is limited-English proficient.

We are now a growing part of the electorate, and this can be attributed in large part to Section 203, which covers 672,000 Asian-Americans in 16 jurisdictions in 7 States.

Behind the statistics, of course, are the real voters. One of our clients, Shiny Liu, is a Chinese-American voter from Queens County. This is what she said about the use of translated ballots: "The first time I voted was in 2003. I used an interpreter and a ballot that was translated into Chinese. Now I know how to vote, so I vote alone without any assistance. I have voted on ballots in English before, but I am not comfortable doing so because I am not confident that I properly understand the English. I would rather vote on ballots translated into Chinese because I can be sure of who, and what, I am voting for."

We also represented a Korean-American truck driver, Byung Soo Park, someone who was recently naturalized. He became a citizen in 2001. He registered to vote at a community organization, with bilingual assistance.

This is what he had to say: "Ever since I first registered to vote, I have never missed an election. Every time I vote, I need to use the assistance of an interpreter. I want to learn English, but I have no time because I am a truck driver and I work long hours on the road. Korean-Americans should be treated as U.S. citizens because that is what we are. I want us all to be treated equally." For Mr. Park and countless other new citizens, economic barriers have hindered their ability to learn English.

I just want to mention that voting discrimination against Asian-Americans still continues today. We have seen it at the polls on a repeated basis in the very explicit form of racist poll workers, har-

assessment, improper identification checks, and the outright refusal to provide language assistance, which is currently required by Federal law.

A basic tenet of our democracy is that all citizens should be able to elect candidates of choice and have a voice in governmental decisionmaking.

Section 203 has enabled the Asian-American community to participate in democracy and it has helped to promote meaningful civic participation. We hope that you will reauthorize Section 203, as well as the other temporary provisions of the Voting Rights Act.

Thank you.

Senator CORNYN. Thank you, Ms. Fung.

[The prepared statement of Ms. Fung appears as a submission for the record.]

Senator CORNYN. Mr. Kirsanow?

STATEMENT OF PETER N. KIRSANOW, MEMBER, NATIONAL LABOR RELATIONS BOARD, COMMISSIONER, U.S. COMMISSION ON CIVIL RIGHTS, CLEVELAND, OHIO

Mr. KIRSANOW. Thank you, Mr. Chairman and members of the committee.

I am Peter Kirsanow, member of the U.S. Commission on Civil Rights, and also a member of the National Labor Relations Board. I am here in my personal capacity.

The U.S. Commission on Civil Rights was established pursuant to the Civil Rights Act of 1957 to, among other things, act as a national clearing house for matters pertaining to denials of voting rights and equal protection.

In furtherance of the clearing house function, the commission recently held a hearing on the reauthorization of the temporary provisions of the Act. The report that issued therefrom does not make any recommendations as to whether any or all the provisions should be reauthorized, nonetheless, I will respectfully submit to the Senate that, in its deliberations concerning the temporary provisions, it focus on at least four issues: 1) cost and waste; 2) fraud and error; 3) use of racial and ethnic profiling and stereotyping in administration of the Act; 4) constitutional compliance.

First, cost as a function of efficacy. The evidence shows that the cost to cover jurisdictions of Section 203 compliance is disproportionate to its utility. There have been a number of GAO reports—at least two—that have cited that the majority of covered jurisdictions barely use bilingual ballots at all.

In addition, a 1986 GAO report showed that in most covered jurisdictions not one voter used any form of language assistance whatsoever, and, moreover, 90 percent of jurisdictions report that no language assistance whatsoever is needed.

Now, the sparse usage is in stark contrast to the fairly substantial costs of compliance. The average covered jurisdiction spends an estimated 13 percent of all election costs on Section 203 compliance.

This is actually just the tip of the iceberg, because some jurisdictions spend as much as 50 percent on compliance, and that number is rising rapidly, by as much as 40 percent over just one election cycle for some jurisdiction.

The cited costs are monetary only. They do not include the effects of fraud and error. The use of bilingual and multilingual election materials necessarily increases the risk of both.

Non-English election materials can confound those who are the gatekeepers of voting integrity. There have been scores of reports, and reports abound about the false and misleading information that may be conveyed by ballots.

For example, in one jurisdiction a bilingual ballot transposed the party labels of the candidates so that a Democrat became a Republican, and vice versa; in another, the “yes” and “no” on a ballot proposition were reversed. Proofreaders simply missed these errors.

In addition, bilingual language requirements can facilitate voting by those ineligible to vote. There have been numerous instances, particularly in Florida and California, in which substantial numbers of non-citizens have voted, and it is unclear whether, or if, there has been an effect on the outcome.

A third issue that merits consideration is the use of racial profiling and stereotyping in administration and enforcement of the Act. It would be unlawful for local election officials to disenfranchise voters with ethnic surnames on the basis of suspect citizenship status, yet the review of surnames for enforcement of 203 purposes is done by the Federal Government itself.

Voter registration rolls are reviewed for surnames common to language minority groups to determine whether polling places in areas with presumed substantial numbers of language minority groups are adequately complying with Section 203’s bilingual requirements.

Now, the purpose may be benign, but it is racial and ethnic stereotyping, nonetheless. Ethnic surnames are not proxies for limited English proficiency. This racial profiling and stereotyping implicates constitutional issues of Section 203’s proportionality and congruence.

The rational and factual bases for eliminating discriminatory access to the polls by providing bilingual language assistance are, to say the least, underdeveloped.

One of the chief justifications cited for Section 203, and that is unequal educational opportunities provided to language minorities, could just as easily be applied to blacks and other groups that are not usually viewed as being of limited English proficiency.

Moreover, the coverage triggers related to literacy could also be applied to some black communities—even some white ones—yet they are not, and this raises a host of equal protection, as well as congruency and proportionality, concerns.

Mr. Chairman, it is respectfully submitted that prior to reauthorization of Section 203, Congress consider some of the recommendations that I think you cited in the letter from Mr. Edley, one of my former colleagues who is now dean at Boalt Law School.

With respect to Section 5, he suggested that Congress appoint a commission to study and report back on some of the concerns I just mentioned. I would respectfully submit that Congress consider doing the same for Section 203.

Thank you, Mr. Chairman.

Senator CORNYN. Thank you, Mr. Kirsanow.

[The prepared statement of Mr. Kirsanow appears as a submission for the record.]

Senator CORNYN. Ms. Wright, we would be glad to hear from you.

STATEMENT OF DEBORAH WRIGHT, ACTING ASSISTANT REGISTRAR-RECORDER, DEPARTMENT OF REGISTRAR-RECORDER, LOS ANGELES, CALIFORNIA

Ms. WRIGHT. Thank you, Mr. Chairman and members of the committee. Thank you for the invitation to appear before the Committee to offer testimony and to submit materials with regard to Los Angeles County's program that provides assistance to limited-English proficient voters.

My point of view is probably a little different than the other panelists. We do not really have a point of view and we do not have a recommendation about renewal, we just wanted to report on the actual experience of our jurisdiction.

Los Angeles County is the largest and most diverse local election jurisdiction in the United States. In compliance with Section 203, we provide assistance to voters in six languages in addition to English: Chinese, Japanese, Korean, Spanish, Tagalog, which is Filipino language, and Vietnamese. We provide both translated written election materials and oral assistance on election day.

The costs to Los Angeles County for the multilingual program, we believe, are reasonable in light of the challenges the county faces and are proportional to the numbers of people the Census reveals to be limited-English proficient.

Only eight States have more registered voters than our nearly 4 million voters. The 2000 Census reported that L.A. County has approximately 5 million voting-age citizens, 12.9 percent of whom are limited-English proficient in one of the six covered languages. Our cost for translation tends to run at or below about 10 percent of the cost of each election.

My own role with the county's program is to provide direct management and oversight of the multilingual assistance program and to coordinate community-based organization input and interface with the Department of Justice on these issues, so I am reporting to you from, sort of, on the ground.

As Senator Kennedy mentioned, often a high level of English proficiency is needed even by native speakers of English to understand some of the complex ballot initiatives, especially in California, and to cast an informed ballot. Appropriate targeted language assistance makes it much more likely than informed voter intent is realized.

There are three key facets to our multilingual program in Los Angeles County: 1) we provide translated written materials; 2) we provide oral assistance at voting locations; 3) we have an extensive program of collaboration with community-based organizations.

Our translation of written materials include: sample ballot booklets that are mailed to each voter; the State ballot pamphlet, which is also provided in all the languages; voter registration forms; absentee ballot application forms; instructions on how to use the voting system; provisional ballot instructions, and a wide variety of voter education materials.

We have realized considerable cost savings in Los Angeles County by restricting our printing to the exact precincts within the county where written materials are needed.

Our oral assistance program far exceeds legal requirements of targeting that would be based solely on U.S. Census data. We believe it is important for voters entering the polling place to see that election workers reflect the neighborhood, including the languages spoken in that community.

We target oral assistance based on several criteria: the Census data that is required by law; we consider the number of requests that are on our voter file from voters who have specifically asked for materials in another language; we take into consideration input from community-based organizations that tell us a neighborhood perhaps has been changing in its demographic since the last Census and that we need to look at providing assistance; and also information gathered directly from poll workers denoting how many requests they received for multilingual assistance on election day.

Our collaboration with community-based organizations is the third component in our outreach to multilingual voters. The groups we work with include NALEO, MALDEF, APALC, and many others, and they collaborate with the county in identifying neighborhoods and specific voting precincts that are in need of assistance in specific languages.

We do our best to get the word out to voters to make sure that they learn about the availability of these materials. Every registered voter in Los Angeles County gets a voter information pamphlet prior to every election day, and we make sure that every booklet contains a full page of information so that people can understand how to request services.

We make it easy. On the voter registration form, voters can request that their names be included in our list of voters who have a request on file to receive translations. We do public service announcements on cable TV and radio at no cost to the county, and we work back and forth with our community-based organizations to get the word out.

We believe that a comprehensive program is only as good as the results it achieves, and we believe that the program is successful based on a number of indices: first, the large number of precincts that are targeted for recruitment of poll workers who speak the identified languages. In most elections, we achieve better than 90 percent of our goal.

The number of voters that have called our office to request translated written materials, and in conversations back and forth with the Department of Justice, we have consistently been described as having a very good and comprehensive program.

In conclusion, Los Angeles County is proud of our proactive, multi-faceted, multilingual program that reaches beyond the minimum standards of legal compliance and focuses on a commitment to excellence in serving all the voters in our diverse community.

Thank you.

Senator CORNYN. Thank you, Ms. Wright.

[The prepared statement of Ms. Wright appears as a submission for the record.]

Senator CORNYN. Ms. Chavez, we would be glad to hear from you.

**STATEMENT OF LINDA CHAVEZ, CHAIRMAN, CENTER FOR
EQUAL OPPORTUNITY, WASHINGTON, DC**

Ms. CHAVEZ. Thank you very much, Mr. Chairman. Thank you also to members of the committee.

In that very nice introduction of my bio, Senator Cornyn, there was one job that I had that was missing in that list, and that was that I was a staff member of the House Judiciary Committee from 1972 to 1974, working, as Senator Kennedy will remember, for the then-Majority, the Democrats, and it was actually at that time that consideration of amending the Voting Rights Act of 1965 and adding the bilingual provision was under consideration. I would be happy, in the question and answer period, to go into that more.

I am not going to read my testimony. I would like it to be submitted for the record in full.

Senator CORNYN. Without objection.

[The prepared statement of Ms. Chavez appears as a submission for the record.]

Ms. CHAVEZ. And I obviously will summarize some of what I said. There were four points made in that written testimony, some of which seemed to neatly parallel Peter Kirsanow's testimony. I did deal with the subject of whether or not Section 203 is necessary; whether or not there are sufficient numbers of persons unable to speak English to require a change of this sort in the law; whether or not the expense of providing these ballots did not constitute an unfunded mandate; and whether or not some of the translations available, as Mr. Kirsanow testified, were not confusing.

I also dealt with the issue of voter fraud and the way in which bilingual ballots can facilitate voter fraud, and I dealt with the issue of whether or not Section 203 is, in fact, constitutional.

This goes back to my history at the Judiciary Committee because, in order to be constitutional, one would have to interpret "an English ballot" as proof of, evidence of, deliberate and intentional discrimination, and I do not think that providing ballots only in English does constitute deliberate discrimination.

But I would like to spend the few minutes I have with you here to talk about the fourth part of my testimony, and that dealt with the subject of Balkanization and whether or not the provision of multilingual ballots does not, in fact, further the Balkanization of this country.

I speak about this in the context of the current debate on immigration. Much to the chagrin of some of my fellow Republicans, I find myself more aligned in my views on immigration with Senator Kennedy than some of the members of my own party; as you know, I have been an outspoken commentator on the current immigration debate.

It has, frankly, puzzled me why we are, I believe, in the midst of a kind of national hysteria on immigration, given the fact that our immigration levels are not at an all-time high, given the fact that even illegal immigration was higher in 2000 than it was in

2004, the last date for which we have official figures of apprehensions at the border.

But one of the things that I believe has led the country to focus so much on immigration, is a fear that many of the Latino immigrants who are coming into the United States are not going to do what generations of immigrants have done before them: learn the language, assimilate into the mainstream, and become fully participating members of our civil society.

I have, as you know, written on this issue for more than 20 years, including a book called *Out of the Barrio*, which, in fact detailed—and this book was published 15 years ago—the assimilation of Hispanics into the American mainstream.

Hispanics are learning English, and they are doing so not just as rapidly as the Italians, Greeks, Poles, Jews and others before them, but I believe more quickly than those groups have. Senator Kennedy is correct, that there is a long waiting list for people to learn the language.

Eighty-six percent of second-generation Hispanics in the United States, for example, graduate from high school, so the notion that Hispanics have a much higher illiteracy rate and that they are unable to speak English, I think, is simply fallacious.

According to the Pugh Hispanic Center, which has some of the best statistics on this available, 78 percent of third-generation Hispanics in the United States speak only one language, and that language is English.

That is not to say that there are not pockets in parts of the country of newly naturalized citizens, or even in my home State of New Mexico, of some born in the United States who are not entirely proficient in the English language.

But I would contest that the way in which the Census Bureau currently measures that proficiency for the purposes of this section of the Act, namely constituting people who do not speak English at least “very well,” according to Census records, is not a good way of going about determining how many people it is that need such assistance.

I believe, moreover, that even if you believe that there are people who need such assistance, that it is possible to provide that assistance through other means other than having bilingual ballots required by the Federal Government in all jurisdictions that meet the provisions of Section 203.

Thank you very much.

Senator CORNYN. Thank you, Ms. Chavez.

We will now proceed to a round of questions of five minutes each.

I know each of you, during the immigration debate that we had here in the Senate a couple of weeks ago, are aware of this, but I just want to make this a part of the record.

There were two different amendments that were accepted by the U.S. Senate, one sponsored principally by Senator Ken Salazar, which declared English as “the common and unifying language of the United States, and to preserve and enhance the role of the English language,” and the second, which actually received 62 votes to 35 against, was principally sponsored by Senator Jim Inhofe, which was to amend Title IV of the U.S. Code to “declare

English as the national language of the United States and to promote the patriotic integration of prospective U.S. citizens.”

I can tell you that, from watching the news and listening to discussions afterwards, a lot of people were confused about what differences, if any there were, between those two amendments.

But I will just say that in both, under the “Findings,” there was this statement: “Unless otherwise authorized or provided for by law, no person has a legal entitlement to services authorized or provided for by the Federal Government in any language other than English.”

So, some of you have addressed this issue of, if in fact to become a naturalized citizen you must show English language proficiency, and in order to vote you must be a United States citizen, then why is there the need for multilingual ballots?

Senator Kennedy offered an example of some incomprehensible ballot language in English, which leads me to the conclusion that maybe what some people need is not a translator, but a lawyer when they go vote, because of the language.

Even for someone who speaks English only with some little smattering of Spanish, I think I am not alone in finding language like that, even in English, for native English speakers, to be incomprehensible. But that, to me, speaks to another issue about whether we insist that ballot language actually be comprehensible in English.

But it seems to me an indictment of our educational system, and perhaps even of the requirements of our naturalization laws, if we say that we are going to give up on this goal that the U.S. Senate—at least in these two amendments—overwhelmingly supports, and that is that English be the common and unifying language, or be the national language, or however you would want to say it.

For our educational system, for individuals who are educated in our public schools and our compulsory school system that graduate illiterate and are incapable of speaking the English language, that is a serious, serious problem, larger in some ways than the immediate issue before us here.

Certainly being able to engage in the political life of our Nation is absolutely important; there is no denying that, no dissension there. But if somehow we are graduating students from our public schools that cannot read the English language, and we are allowing people, as part of the naturalization process, to become American citizens without truly meeting some sort of basic English-language proficiency, then that is something we ought to look at as well.

Mr. TRASVIÑA, let me ask you, you mentioned the remedial nature of these provisions, in other words, suggesting this was a remedy required by historical discrimination and voting practices prejudicial to the rights of some non-English speaking minorities. I would just ask you if it is in fact designed to be remedial, is there any end to it? In other words, if it is remedial, should we say that this should be permanently part of the Voting Rights Act or should we do something else to try to make sure that the remedy is no longer required by addressing the underlying problem?

Mr. TRASVIÑA. It is the latter, Senator. The way we get beyond these provisions is, as we do and as many members of the Senate and House do on a daily basis, by addressing the educational in-

equities. We have litigation in our San Antonio office, in *U.S. v. Texas*, that has been around for many years, and we continue to see the disparities that Latino students face.

To address your larger question about a national language, the U.S. Supreme Court addressed this back in 1923. This is not a new issue about promoting a common language. The U.S. Supreme Court, in *Meyer v. Nebraska*, addressed this and said that, "The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue."

And perhaps it would be highly advantageous if everybody spoke the common language, but you do not reach that result—that desirable result—by limiting people's constitutional rights.

In that case, it was the right of German-speaking parents to have a say in their children's education. That is the case that the Congress relied on in 1975, and again in 1982 and 1992.

So education is the key to resolving many of these issues, but we continue to have the persistent effects of educational discrimination in your State and in other States as well.

Senator CORNYN. Well, certainly we need to make sure that people get the benefits of a compulsory education system so they are completely equipped not only to participate in our political life, but in the opportunities that our Nation provides.

I see my time has expired, so I will turn to Senator Kennedy.

Senator KENNEDY. Thank you. Thank you very much.

I do note that the support by the Congress, in terms of what they call the provision's English language provisions, "Educational" has declined from 2004, 2005, and then from 2005 to 2006 as the desire and the demand has gone up.

So it seems, in order to try and deal with the challenges, I think we have seen in my own State, which has a remarkable and long history in terms of immigration, is the desire of individuals to learn the language.

Certainly the indicators, as I had mentioned in my opening statement, show that is just as true today, with a recognition by those that are limited English speaking that they want to be able to learn English and understand it. That is really the key to their own success.

But there are some realities. The Puerto Rican reality is a prime example. We have more than 2.2 million Puerto Ricans in the United States over the age of 18 eligible to vote, educated in Puerto Rican schools where, primarily, Spanish is the language, and we have, obviously, the Native Americans and others on this.

I want to get to issues on the constitutionality, because ultimately the Supreme Court is going to be reviewing the Act and this aspect of the constitutionality.

John, you had commented briefly on this issue and it has been raised by other members of the panel. Perhaps you could just review a little bit about the strength of the constitutionality, because this, I think, is a key aspect of it. If there are others that differ with it, maybe we will get a chance to hear from them a well.

But what do you say is the strongest case in terms of justifying the constitutional provisions of Section 203?

Mr. TRASVIÑA. Thank you, Senator. The governing case is *City of Boerne v. Flores*, and that sets forth a three-part test to determine congruence and proportionality.

Congress must identify unconstitutional discrimination, develop a record that justifies a Congressional remedy, and implement only those remedies that are proportional to the constitutional injuries. Section 203 meets that test.

It remedies identified language-based discrimination in voting. Congress currently has before it, and has had before it in previous Congresses, a substantial record that documents significant present discrimination against language minority citizens living in Section 203 jurisdictions.

Finally, the record clearly demonstrates that discrimination in elections is longstanding, pervasive and continuing, while the remedy of language assistance in elections does not unduly burden State and local election officials. So, Section 203, in this regard, addresses and meets the governing Supreme Court standard.

Ms. CHAVEZ. Could I respond, Senator?

Senator KENNEDY. Yes.

Ms. CHAVEZ. Because I have a very different view of that, obviously. I do not believe that Section 203 does satisfy the constitutional requirement, and I so testified.

I can tell you, as someone who worked on this legislation, as I said earlier, in the House Judiciary Committee, there was no concern at that time that the provision of an English language ballot did constitute intentional discrimination.

There was an interest on the part of MALDEF, and some other organizations representing Mexican-Americans primarily, to have Hispanics included under other sections of the law, namely the sections that allow for pre-clearance and some of the other measures, special provisions.

The designation of an English ballot as a literacy test was, in fact, the key to being able to bring Hispanics in under the other provisions, and that was the reason. There was almost no testimony—in fact, considerable testimony to the contrary—that there was widespread intentional discrimination against Latinos.

At the time that the provision was enacted in 1975, the State of Arizona and the State of New Mexico both had Mexican-American Governors; Dennis Chavez, who as the Chairman of the commission that built this building, had served in the U.S. Senate from New Mexico for many, many years, one of the longest-standing members.

So there really was, I believe, absolutely no record of being able to demonstrate that there was intentional discrimination against Latinos, either because of their ethnicity or because of their inability to speak English.

Senator KENNEDY. My time is short. Could I ask Mr. Trasviña if he would comment on that? Then my time will be expired.

Mr. TRASVIÑA. The 1975 hearings that MALDEF did participate in and did demonstrate the record in the State of Texas and other parts of the Southwest of electoral discrimination. Senator Chavez and Senator Montoya were aberrations—historical—there were very, very few Hispanic Senators until today, where there are now three Latino U.S. Senators.

Throughout the successes of the Voting Rights Act in the Southwest, we see the first Latinos ever elected to city councils or as mayors in cities where the vast majority of the population were Latino, it was because they were not allowed to vote prior to the 1975 Act because of the English-only ballot.

Senator KENNEDY. My time is up.

Thank you very much, Mr. Chairman.

Senator CORNYN. Senator Coburn?

Senator COBURN. Thank you.

Mr. TRASVIÑA, you used the words “fully proficient.” What does that mean? In your testimony you used the words “fully proficient in English.” What does that mean?

Mr. TRASVIÑA. Fully proficient in English, for purposes of voting, is being able to understand the terminology on the ballot. There is a test called the Flesch-Kincaid test that evaluates, based upon the length of sentences, the word usage and the like. A lot of the State ballots are written at a tenth, eleventh, twelfth grade level of English or even higher; you can be fully proficient for naturalization at a fifth grade level of English.

You are determined literate or illiterate at a fifth grade level of English. So in terms of being fully proficient, fully proficient means a much higher level of English than for naturalization.

Senator COBURN. Well, I would pretend that most State questions on the ballots in Oklahoma, nobody is fully proficient unless they are a lawyer. Unless we are going to address that issue in the Voting Rights Act reauthorization or in the reauthorization of this bill, we are addressing the wrong problem.

Mr. TRASVIÑA. Senator, you are correct in one respect, and that is that, based on my experience in San Francisco, the Voting Rights Act implementation has promoted ballot simplification in English.

The same thing is true for court interpreters. The move for getting court interpreters to make things translatable has led to a movement of making things more understandable for English speakers in court or on the ballot. So, this is a good government tool as well.

Senator COBURN. Maybe we could just get lawyers to speak English instead of lawyerese.

Ms. CHAVEZ. Mr. Coburn, could I also just add something to that? The way in which the law is written, it is the Census Bureau that determines how many people qualify under the provision.

Senator COBURN. That is actually my next question, and it was coming to you.

Ms. CHAVEZ. All right.

Senator COBURN. What does “very well” mean in the Census questionnaire, and what are the instructions with the question that is asked to define what “very well” means?

Ms. CHAVEZ. Well, what the Census Bureau has decided to do, is to count people who self-identify—because that is what the Census data is, you determine how well you speak the language and you check a box on the long form of the Census—and to throw out all of the people who determined that they speak English “well” and they count them as limited-English proficient.

Senator COBURN. Which would include most Senators.

Ms. CHAVEZ. Right. Well, there are cultural factors here, too. I do not know how many people, particularly if it was not their first language, would say they speak a language "very well."

I am not sure that I would say I speak the language "very well," even though I make my living writing in English. So, I do think that this is a very, very slippery standard and not one sufficient to justify bilingual ballots.

Senator COBURN. All right.

Ms. Fung, I had a question for you. You gave the example in your testimony of this truck driver. I believe your words were, he did not have time to learn English because he was driving a truck. But the fact is, he had to at least know English at the fifth grade level to become a U.S. citizen to qualify for a vote.

So I have a real problem with this rub where we require, under 8 USC 1423, "Aliens and Nationality, Immigration Nationality": "No person, except as otherwise provided in this subchapter, shall hereinafter be naturalized as a citizen of the United States, upon his own application, who cannot demonstrate an understanding of the English language, including the ability to read, write and speak words in ordinary usage in the English language," and then there is a provision relating to "the ability to read and write shall be met if the applicant can read and write simple words and phrases and that a reasonable test of his literacy shall be made."

The point being, if by the very testimony that you give he is not proficient to a fifth grade level in English and therefore requires a ballot, a bilingual ballot or a translation of a ballot, yet he is a citizen, we need to redefine where the problem is.

Either we are not enforcing USC 1423, and if we are not we need to fix that problem rather than to fix the other one. If we really require people to have a fifth grade level of English proficiency to become a U.S. citizen, then it would seem to me that that would obviate some of the other needs.

Would you comment on that, please?

Ms. FUNG. I think there are important values in having English as the language that is in usage. I think it is clear that most people, most immigrants, most new citizens want to learn English and would like to be more proficient in English. But let me, first, deal with the point about the Census questionnaire.

Many times people also do not want to admit that they do not speak English very well, so they will state that they know English, but the reality is, they cannot function as well as they might like to. That is just a fact.

Senator COBURN. Sure.

Ms. FUNG. So in terms of the level of proficiency needed for a naturalized citizen, there is a big gap between that and what is needed in order to cast a ballot. It is not just the casting of the ballot, it is the instructions for using the voting machine, it is dealing not only with voting for a particular candidate, but whether or not you can read the 100-word referendum that was given as an example, or any other number of referenda.

Senator COBURN. So that would follow my question. Your testimony is, the requirement to become a U.S. citizen in terms of English proficiency is not enough, not proficient enough, to be able to be a voter. That is your testimony?

Ms. FUNG. The reality is that many items on a ballot are not understandable.

Senator COBURN. No. I am going to ask you for a “yes” or “no” answer. Is it your testimony that the requirement for becoming a U.S. citizen, in terms of language, does not give you the skills to be able to vote as a U.S. citizen?

Ms. FUNG. Yes. I think there are different levels of usage. Voting occurs on one day or two days in the year. It involves the exercise of a fundamental right. Any kind of assistance that is needed in order for citizens who have that right—they ought to be able to have access to language assistance.

Senator COBURN. Mr. Chairman, I would just suggest that we are fixing the wrong problem.

I have one other question—I need to leave—if I could just offer it.

Would you all comment, and you can do it in writing, about the possibility for opt-out provisions for areas where they have demonstrated they have prepared tremendous amounts for bilingual voting, and yet it has not been utilized?

Would you please respond to the Committee on your thoughts on giving areas which by Census data require it, but by practical nature show that there is no need, an opt-out provision to Section 203? If you would respond to that in writing, I would appreciate that very much.

Thank you, Mr. Chairman.

Senator CORNYN. We have been joined by the Chairman, Senator Specter. Senator Specter, Senator Feinstein is next in order, and I will turn that over to you.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Chairman SPECTER. Thank you very much, Senator Cornyn, for presiding in my absence. I regret my late arrival, but I was occupied on the issue of cancer research and cancer funding.

In addition to chairing this committee, I chair the Subcommittee on Labor, Health, Human Services and Education. If my parents had been a little more perspicacious, they would have made me twins so I could have been in both places. But I know you have been in good hands.

This is a very, very important subject, renewal of the Voting Rights Act. I know we have a very distinguished panel here today. I know a number of you personally and admire the work you have done. I will be reviewing the transcript. We are going to move ahead as expeditiously as we can to complete this important assignment.

Now let me yield to the distinguished Senator from California, Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

John, it is very good to see you again. The years have been good to you, I must say that.

Mr. TRASVIÑA. I had a good start, Senator. Thank you.

Senator FEINSTEIN. I was thinking, when you mentioned that appointment, how many years ago it was. It is just great to see you again, so welcome.

I was listening to Senator Coburn's questions and I was thinking back in my own life. My mother was an immigrant from Russia. She came here very young, I would say 4 years old.

She had just a primary education; the family was very poor. She was a naturalized citizen. She studied English. She passed the test. I helped her with her ballot. She could never really fully understand propositions, which even then were complicated and filled with legalese.

I think the issue really is whether 203 enables the full comprehension of a ballot, which I think is very important. California's ballots can be arm long, and despite ballot simplification they can be extraordinarily complicated.

I, myself, often read a proposition two and three times before I can understand it, and even then sometimes I do not fully understand it. I look to other things to clarify it.

So it seems to me, that because we are in a day where initiatives and propositions really become integral parts of ballots, that it is much more important to add that bilingual help to an individual.

My response to Senator Coburn would be, you might be able to understand the difference between the candidates through the English courses provided in naturalization, but I very much doubt whether you can understand the complexity, fully, of propositions which often line our ballots.

I would like to hear from anyone on that precise point, either pro or con. Yes, Mr. Mujica?

Mr. MUJICA. Yes. I am an immigrant. I live in Maryland. I have the same problem. I see it all the time, every time I have to vote. I have two degrees from Colombia University and one from Cambridge in England, and I cannot read those propositions.

Frankly, I read them three and four times and I end up not voting for half of them because I do not understand what they say. I do not think that any amount of translation is going to help.

Senator FEINSTEIN. But do you not think it is a good aid to have?

Mr. MUJICA. If I had it in Spanish, I would be laughing out of the booth because the Spanish of Chile is very different from the Spanish of Puerto Rico or Mexico. There is no way that someone could translate what Senator Kennedy showed into Spanish that would be understood by a Spanish speaker from any country in Latin America. So, I do not think it is a solution. I think the solution is to prohibit that kind of language in the propositions.

Senator FEINSTEIN. So, in other words, you have to kind of "dumb down" the ballot to be able to achieve a level of comprehension.

Mr. MUJICA. Unfortunately, yes. Even Americans who have a low education could not understand that huge proposition.

Senator FEINSTEIN. I just profoundly disagree with that. I think it is important to enable everybody that votes to have the largest comprehension possible. If language is one aid, that is fine. If simplification is another aid, that is fine. But a democracy, in my view, depends on an enlightened electorate, and that means being able to understand what you are voting on.

So it seems to me, the language help that the government might provide to an individual, in a democracy, is most important when it comes to a ballot.

Mr. MUJICA. Well, I agree with that. But maybe some sort of seminar held the day before the election would help, someone who could come and explain in as many languages you want what exactly is in the propositions. Maybe that would help.

Ms. CHAVEZ. Senator, could I just briefly address that?

Senator FEINSTEIN. Yes, Ms. Chavez.

Ms. CHAVEZ. Because I think you provided the answer in your description of you helping your mother. I do not think it would be fair. There are a lot of instances where somebody is totally illiterate but has the right to vote, or someone who is blind but has the right to vote, or you were allowed to take someone into the polling booth with you to provide assistance.

In terms of language difficulties, the ethnic press serves a very useful function. Anybody who saw all of those people out in the streets demonstrating for immigration reform knows that the ethnic Spanish-speaking press is alive and well and very active politically, so they can provide that kind of assistance.

And, by the way, even if this 203 were not included in the Voting Rights Act, it would not prohibit States from deciding on their own to provide bilingual ballots if they thought it was necessary.

Mr. TRASVIÑA. Senator, if I could add on that point, it is the exact wrong move to go to privatization of this issue. The reason we have a Voter Information Handbook for English-speaking citizens is so that each voter will get information on both sides of the proposition. We do not want to have someone go in with an interpreter if that person is their spouse, or their union leader, or their boss.

The newspapers. I respect the ethnic press, but there is no guarantee that they are going to have both sides of an issue in any newspaper. The important thing is having the Voter Information Handbook for all the voters—not just those that speak English, but for all the voters.

Senator FEINSTEIN. Thank you.

My time is up. Thank you, Mr. Chairman.

Chairman SPECTER. Thank you very much, Senator Feinstein.

Mr. Chris Norby, an election official from Orange County, California, wrote to Senator Leahy and me, reporting: "Department of Justice agents have given our registrar a list of Spanish, Vietnamese, Korean, and Chinese surnames. Based on surnames alone, we are to assume that 25 percent of voters with these surnames are limited in English speaking."

Ms. Jan Tyler, an election official from Denver, says about the same thing: "The Department of Justice uses a form of ethnic profiling called a Surname Analysis to identify locations for bilingual polling districts in covered jurisdictions."

The Justice Department also compels covered jurisdictions to conduct voter outreach efforts—that is, mass mailings—targeting limited-English proficient voters based on analysis of the surnames of voters in covered jurisdictions."

I would be interested to know if you ladies and gentlemen have any knowledge or jurisdiction using surname analysis, or being encouraged to use surname analysis. Would you think it worthwhile to amend Section 203 to prohibit such racial profiling by DOJ? Ms. Chavez, what do you think about that?

Ms. CHAVEZ. Well, I can only assume that there has been surname analysis because I routinely get material sent to me in Spanish. As anyone who knows me knows, English is my one and only language; I am not proficient in Spanish. I know in the District of Columbia I received such material, and I believe I have received such material in Virginia as well.

Chairman SPECTER. Ms. Wright, does that smack of racial profiling to you?

Ms. WRIGHT. Mr. Chairman, my perspective is a little different. I would not want to state an opinion on whether it is racial profiling, but I would submit that, in our experience, it is not the most efficient way to determine who in your jurisdiction actually needs assistance.

It can be very misleading in both directions, actually. We have had some evidence that you can end up under-serving a population if you do not pay attention to voters who actually request materials.

I think that is an extremely objective, reliable indicator. If a person checks off on their voter registration form that they would like to receive materials in Chinese, I think you can presume that they do want those. When you accumulate a number of those within a voting precinct, then you know that oral assistance would be a good idea in that area.

Chairman SPECTER. Mr. Kirsanow, do you think it would be a good idea to amend Section 203 to prohibit those approaches to identification?

Mr. KIRSANOW. Absolutely, Mr. Chairman. It absolutely qualifies as racial profiling. Just conduct the thought experiment of reversing the proposition so that it is used for malevolent purposes. We would have a flurry of lawsuits sounding under a number of different sections of the Code, 1982, you name it, and we would be knee deep in such litigation.

It is imperative to amend, for reasons that have to do with constitutional implications, because we have here over-inclusiveness and under-inclusiveness in terms of the definitional predicates to the Act, and also from the standpoint of policy issues.

Normally, Americans are offended by anything that smacks of racial profiling that is not tethered to matters of national security. Here, as Ms. Chavez had testified before, the House, at least, did not adduce a factual predicate for substantiating the need, at least in terms of a constitutional basis, for Section 203. So, I think it is very important that we do away with anything that smacks of this offensive type of stereotyping.

Chairman SPECTER. My red light is going to go on before you finish your answer, Ms. Fung. So I would like to have your comments, and I would like to observe the rule of Senators not asking questions after the red light goes on.

So you have the question, Ms. Fung, and if you would follow, Mr. Mujica and Mr. Trasviña, on the basic point of whether you consider it racial profiling, and whether you think it would be wise to bar that kind of an approach under Section 203.

Ms. FUNG. Yes. I could not disagree more with respect to a ban on the use of surnames. Obviously it is not a precise tool, but many

of the panelists, as well as members, have expressed concerns about the costs of Section 203.

Section 203 does permit, and there are regulations that deal with, targeting so that local registrars can determine which areas need to have materials sent or which precincts need to have interpreters on election day.

I think surname analysis should be one of the tools that is used, but not the only tool, and there should be much greater reliance placed on outreach to community groups that can help to identify where limited-English proficient voters are located.

Mr. MUJICA. Actually, you touched one of my biggest problems in this country. I have been here 40 years and I am still profiled as an Hispanic. It really bothers me. I get mail all the time, as Linda said, offers in Spanish, the PEPCO bill, bills in Spanish, you name it.

The funny thing is, my last name is not even Spanish, it is Basque. I always write back and say, why do you not send me a letter in Basque? I am a part-time genealogist, and I will tell you, segregating people using last names is a very bad way of segregating people.

Half of the time they do it wrong. For instance, I have friends with names like Tom Evans in Chile. He probably gets everything in English, and he does not speak a word of English. The last name does not mean anything.

I am sure your mother received things in Russian when she got mail. It is a shame. I think we are all Americans and we should get things in the common language of this country.

If we have a problem, then we can write back and say, look, I cannot understand what you are offering me, would you mind sending me something in Spanish, or in Russian, or in Polish, or whatever. But every single day of my life I feel profiled.

Chairman SPECTER. Mr. Trasviña?

Mr. TRASVIÑA. Mr. Chairman, I do not think this surname analysis is a particularly effective device for targeting. I would be surprised even if the Assistant Attorney General for Civil Rights had approved it. I do not think you need to clutter up the statute with a provision prohibiting it.

Most of the registrars do targeting and they work with the community organizations. The effective ones do that, and there is a lot of cooperation so they will know to send the materials to the right neighborhoods.

But there have been interpretive guidelines on the Voting Rights Act since 1976 that the Ford administration put out, and there are a wide variety of vehicles and tests that the registrars can use. This is one of many. It may be something that other administrations would not want to use. I do not think it really needs to be put into the statute to prohibit it.

Chairman SPECTER. Thank you.

Senator Cornyn?

Senator CORNYN. Thank you, Mr. Chairman.

Chairman Specter read a little bit from a letter that has been made a part of the record already by Chris Norby, supervisor from the Fourth District Orange County Board of Supervisors, and he notes, as Senator Specter did, that the current interpretation of the

Voting Rights Act requires his county to provide translations in Spanish, Vietnamese, Chinese, and Korean.

He goes on to note that if the standards of the Voting Rights Act are unchanged, after the 2010 Census his county could be required to print ballots in Tagalog, Hindi, Punjabi, Urdu, and Farsi, depending on immigration patterns.

My question really goes to, again, the remedial nature of this provision. If this is supposed to be a permanent part of our legal requirements, whether it really is consistent with what Justice O'Connor said in the Michigan affirmative action cases where she said, "We expect that race-based remedies for past racial and ethnic discrimination would not be necessary after 25 years in the future." And that was, I believe, in 2003.

Mr. Kirsanow, do you have any thoughts about that? I understood your testimony to criticize the current standard. But if the Congress were to embrace the current standard, whether there would be some sunset provision or something that would lead us in that direction toward a unified country.

Mr. KIRSANOW. Yes, Senator. In order to incorporate immigrants into the national fabric, I think it is important to establish a certain baseline. The presumption is, apparently, that English speaking is an immutable characteristic, that is, there is no evolution toward speaking English once you have arrived in the United States.

I know, for example, my father was an immigrant. It took him a few years to get proficient in speaking English. But I think everybody does after a certain point. It is one of the easiest languages to understand, if you get away from transitive verbs, and everything like that that we learn in class. But at least in terms of fundamentals, it is something that you can comprehend sufficient to cast a ballot.

Some of these opaque ballot provisions at the State level—as you have indicated, I think John Roberts might have a difficult time understanding. But it is important to have a terminal point so that we have decided that, finally, everybody has been incorporated.

There may be a standard by which you could say, for recent arrivals, we are going to give them a prescribed period of time in which to learn English, but it should not go on into perpetuity, especially considering that Congress is contemplating expanding immigration.

If that is the case, as with the Los Angeles example, it is going to continue on and expand to the point where it becomes, not the United States, but the United Nations, at least in terms of ballot language requirements.

Senator CORNYN. Ms. Wright—and we will come to you, Mr. Mujica, after that—you administer this election system in Los Angeles. How much does that cost for you to comply with the provisions of 203?

Ms. WRIGHT. Roughly somewhere, plus or minus, about 10 percent of our election costs, which is fairly proportional to the numbers of people that we serve.

Senator CORNYN. And what is your total cost?

Ms. WRIGHT. About \$30 million per election.

Senator CORNYN. So you figure it would cost you about \$3 million to comply with the multiple language requirements?

Ms. WRIGHT. Yes.

Senator CORNYN. Mr. Mujica, you had a comment?

Mr. MUJICA. Yes. I have a comment about what was said before. Israel has a fantastic system called ULPAN. When immigrants arrive in the country, they are given enough money to survive five or 6 months so they do not have to work.

They go to an ULPAN, which is a school that will help them assimilate into their new country, will teach them Hebrew, will teach them what it is to be an Israeli, will help them survive in the new country.

That is what we need here, some sort of safety net for new immigrants that will be taken in. They do not have to have three jobs to survive. They can get enough money at the very beginning so they can survive, they can go to a school where they will learn English, they will learn how to apply for a job, they will learn how to open a bank account, how to cash checks, et cetera, without being exploited by those people who are very happy to take in people who do not speak a word of English.

Senator CORNYN. Thank you.

Ms. Fung, my time is almost up. But let me ask you, in your written comments you cite some language discrimination against Asian-Americans in Queens County, New York.

I note that Queens County is covered obviously by Section 203, but it is not covered by Section 4(f) the pre-clearance requirements that were adopted in 1975 for those jurisdictions with a history of disenfranchising language minorities. Would you support expanding 4(f) to include counties like Queens?

Ms. FUNG. Well, as a practical matter, because New York City has three other covered counties under Section 5, when a language assistance plan is being reviewed—which includes language assistance in New York and in Kings County—then the rest of the plan is also considered.

Senator CORNYN. So are you saying that it is required to be pre-cleared?

Ms. FUNG. So I think there is no need to expand Section 4(f) further. The fact that Section 203 covers Queens County means that language assistance can be provided. If there are problems with the implementation of a language assistance program city-wide, then that would be submitted to the Justice Department under Section 5, currently.

Senator CORNYN. Do you believe it should be compulsory pre-clearance?

Ms. FUNG. I believe that Section 5 has played an important role in helping to secure effective implementation of language assistance. Our experience has been that, if you are going to have a program which is carefully tailored to meet the problems that voters are facing, that citizens are facing, then it is important to have a comprehensive program.

Senator CORNYN. I am still not sure what the answer is, but I will give up.

Thank you, Mr. Chairman.

Chairman SPECTER. Thank you, Senator Cornyn.

Senator Feingold?

Senator Feingold. Thank you, Mr. Chairman. I am pleased that the Committee is finally moving forward on this, and I appreciate the witnesses joining us today to testify regarding the important provisions of the Voting Rights Act.

Let me start with Ms. Fung and Mr. Trasviña. We have heard testimony today from some who think that Section 203 somehow discourages language minorities from learning English. What do you make of this argument based on your experience working with language minorities?

Do you agree that enabling language minority citizens to fully participate in the electoral process actually facilitates further integration into American society and culture? I will start with Ms. Fung.

Ms. FUNG. Well, voting occurs a few days in every year. Language assistance clearly does encourage political participation. It is good not only for the voters, but also for the decisionmaking processes themselves. Elected officials, government officials, do not pay attention to communities if they are not voting. It actually improves and expands the process for consideration of various public policies.

In fact, even though language assistance is used for voting, it does not limit the desire for individuals who are not fully proficient in English to learn English and to be more comfortable in English.

Another question that was raised earlier with respect to how many languages keep coming under coverage for Section 203, as people do not need to have language assistance, then that is fine, they will not be using the bilingual ballots. But there may still be others who do need the language assistance. There is a constantly changing population.

I am glad that, in the bill, there is going to be more periodic review of Section 203 coverage based on updated Census data. That is a very important addition to the bill.

Senator FEINGOLD. Thank you.

Mr. Trasviña.

Mr. TRASVIÑA. I would concur with Ms. Fung, and that is that community colleges, districts, school boards of education are much more responsive when they know their language minority citizens are voting in their elections, and they provide more opportunities and more resources for English classes rather than fewer.

Beyond that, the long waiting list for adult English classes, those waiting lists went up after 1975, they did not decrease. Just because you get a bilingual ballot on election day certainly does not discourage English the rest of the time.

In fact, even U.S. English has cited data that shows that Latinos in Miami more often have a greater percentage of individuals saying it is essential for people to read and write English perfectly than non-Latinos, so I think the love of English is certainly there within the Latino community and other language minority communities. Bilingual ballots certainly do not discourage that.

Senator FEINGOLD. Ms. Wright, how has the Justice Department helped your county comply with Section 203 in a cost-effective manner?

Ms. WRIGHT. We meet, and we have met for many years, on a regular basis with representatives from the Justice Department.

They review our data. I think they learn from us, as we learn from them. We have a very complex jurisdiction.

I am not sure that I would say that they have been of assistance to us. We have a very comprehensive program, very professionally administered. They review it and they have sort of put their seal of approval on that over the years, that it is a good and comprehensive program.

Senator FEINGOLD. All right. Thank you.

Let me go back to Ms. Fung and Mr. Trasviña. The argument has been made that we do not need Section 203 because knowledge of English is a prerequisite to naturalized citizenship.

But among other difficulties, this appears to completely ignore an entire population of Americans who qualify for language assistance under Section 203 and whose ancestors were in this country long before those of most Americans.

During a previous hearing on the Voting Rights Act, we heard very powerful testimony from Natalie Landreth, an attorney with the Native American Rights Fund, who spoke about the plight of certain Native American populations in terms of participating in elections.

I raise this because I think it underscores the point that this is not an immigration issue, this is about the fundamental right of American citizens, naturalized and native-born, to participate in the electoral process.

So Mr. Trasviña and Ms. Fung, would you like to respond to the argument that Section 203 is unnecessary because of the English requirements for naturalization? Mr. Trasviña?

Mr. TRASVIÑA. Yes, Senator. The language requirement for naturalization is less than it is for understanding the ballot and understanding it effectively.

Beyond that, as you note, there are many native-born citizens who are not fully proficient, that is, reading and writing English. We are not talking about speaking English for this purpose, we are talking about reading and writing English in order to understand the ballot and be able to fill out the forms. So, there is no discrepancy between the naturalization level of English and the voting level of English.

It seems that the tenor is, well, the naturalization levels should be same as the level for voting. We decided, in 1965, that we would not have a literacy test for voting.

If you suddenly decided the only people who could vote are those that can understand the ballot measures, we would wipe out hundreds and thousands of voters, hundreds of thousands of citizens, and we do not want to do that in this Nation.

Senator FEINGOLD. Thank you.

Ms. CHAVEZ. Could I just add one thing to that, Senator Feingold? Because I think you have touched on a very interesting point. I would direct the Committee to note that the Native American languages that are covered by the Voting Rights Act, some of them were not, in fact, written languages.

One of, I think, the true ironies of the Voting Rights Act is that the Justice Department essentially had to oversee the creation of written forms of some Native American languages in order to provide ballots in those languages.

The kind of assistance that could have been provided orally or through other means, frankly, would have been more appropriate in those cases than having to actually try to create written forms of a language that historically had no written form.

Chairman SPECTER. Thank you, Senator Feingold. Referring again to the letter from Ms. Jan Tyler, who is an election official in Denver, she raises a question that the Census Bureau interprets "limited English proficiency" to include persons who self-identify themselves as speaking English "not at all," "not well," or even "well," or to see how someone who identifies themselves as speaking English "well" would be included, but that is at least her assertion.

She then goes on to say that she doubts that the truly limited English-proficient population of Denver County meets the 5 percent threshold that would require triggering under the law.

But since the Census Bureau's threshold includes broad interpretation of limited English proficiency and there is no judicial review, should there be judicial review to correct such errors by the Census Bureau? What do you think, Mr. Mujica?

Mr. MUJICA. Well, I do not see how they arrived at the 5 percent. On the other hand, why do you not just print everything in 322 languages, all the languages that are spoken in this country? I mean, how do we draw the line? Why does a Russian not get help, or a Pole, or an Italian?

Chairman SPECTER. How would you draw the line?

Mr. MUJICA. I would have it in English and I would spend money teaching English to the immigrants. That is the only thing that can help. That is the way it used to be here before this political correctness sickness came to the county.

Chairman SPECTER. Mr. Trasviña, do you think there ought to be judicial review of this issue?

Mr. TRASVIÑA. The mechanism to cover Section 203 is appropriate, with the Census Bureau determining both the number as well as the language proficiency. There is not a need for judicial review because it is a mathematical compilation of the data.

Chairman SPECTER. It is mathematical if they apply the standards correctly.

Mr. TRASVIÑA. I do not think there is a question about the standards being applied correctly. The Census Bureau looked at this during the last reauthorization in 1992 and determined that that was the appropriate line to draw, at "very well" versus "well," because people tended to over-emphasize or overstate their ability to speak English.

I would say also, in 1982 when Congress reauthorized the Act, it raised the standards and cut out a lot of jurisdictions. For those individuals who say, the jurisdictions are just going to do it anyway, that was not the case. A lot of jurisdictions dropped bilingual election services when they were no longer required to by the Federal Government. We also lost a lot of Federal enforcement of the Act.

Chairman SPECTER. Does anybody on the panel think there ought to be judicial review? Mr. Chavez, you are nodding in the affirmative. We will give you the last word.

Ms. CHAVEZ. I can almost assure you that if Congress does reenact Section 203, that there will be a judicial challenge. There will be litigation on this issue.

Chairman SPECTER. Whether or not we allow for judicial review?

Ms. CHAVEZ. Well, I believe that Section 203, as written, is unconstitutional and I can almost assure you, it will be challenged.

Chairman SPECTER. All right. We do not have to provide for judicial review if it is unconstitutional. That will take care of itself.

Well, thank you very much, ladies and gentlemen, for coming in today.

Just a couple of closing comments. We have had many hearings on the reauthorization of the Voting Rights Act. We face the potential for a court challenge. We have seen the Supreme Court, in recent years, find it very difficult to satisfy on an adequate record.

In *U.S. v. Morrison*, the legislation involving protecting women against violence, the Chief Justice wrote a 5 to 4 opinion declaring part of the Act unconstitutional because of the Congressional "method of reasoning." Until I read his opinion, I did not know that there was a deficient Congressional "method of reasoning."

Maybe I should have, but I had not noticed that. At least let me say, with a speech and debate clause and the right to say whatever I want to here in this Committee room, I had not noticed any difference between the method of reasoning of the Supreme Court and Congress. It seemed to be a little, candidly, high-handed to say our method of reasoning was deficient, but since they have the last word, we have to be pretty careful.

Then they came up with the test of whether the statute was proportionate and congruent. I had an occasion recently to talk to the author of that standard, which was plucked out of thin air. The air is very thin over at the Supreme Court; I do not know if you have noticed it. [Laughter.]

But that standard was plucked out of thin air. I do not know what "proportionate and congruent" means. We had two cases under the Americans With Disabilities Act; in one case they decided it was constitutional on access to a courtroom, the other case, on discrimination, they decided it was unconstitutional, 5 to 4. So we have to be pretty careful.

Now, there are strong views about concluding a mark-up before the 4th of July. We will do our very best. It is sort of like scheduling the Supreme Court hearings. We are going to do it right, as opposed to doing it fast. There are others who want to be sure that we have a very expansive record, so it is a balancing act.

But I wanted to make those comments because I have had some discussions with people about this and I thought I ought to put it on the record and let everybody know what the thinking is as to how we are proceeding.

But there is no doubt about the importance of the Voting Rights Act. It is highly desirable to reauthorize it at an early date, although it does not expire until next year, but we are very mindful of that responsibility.

At the same time, we are now in conference on the immigration bill. We are considering legislation on the constitutionality of the NSA program on electronic surveillance. We are trying to determine what is going on with telephone companies providing records.

We have an important shield law for journalists before us. We are looking to bring asbestos back to the floor. It has been a very, very active season, but I want to assure you that the Voting Rights Act is at the top of the agenda.

Thank you all. That concludes the hearing.

[Whereupon, at 11:15 a.m. the hearing was adjourned.]

[Questions and answers and submissions for the record follow.]

[Additional material is being retained in the Committee files.]

QUESTIONS AND ANSWERS

July 7, 2006

The Honorable Arlen Specter
Chairman, U.S. Senate Judiciary Committee
Washington, D.C.

Dear Senator Specter:

I am responding to the follow-up questions sent by you and by Senator Coburn after my testimony before the Senate Judiciary Committee on June 13 regarding the extension of Section 203 of the Voting Rights Act.

With regard to your question, I of course agree with its premise--that Congress must have a predicate of state discrimination before it can extend Section 203--and I am aware of no instances "in which a State or jurisdiction acted unconstitutionally to infringe on language-minority citizens' right to vote." What's more, as I discussed in my written testimony, I do not believe that this predicate *ever* existed. Rather, I think that the impetus for Section 203 was identity politics, not the remediation of discrimination. I have documented this point in more detail in chapter two of my book *Out of the Barrio* (a copy of that chapter is enclosed, and I request that it be included in the Committee's record), and it is further documented in Abigail Thernstrom's book *Whose Votes Count?*

Let me also point out that I think there may be real problems in the way that "language minority" population is being calculated for the purpose of triggering Section 203's coverage, and I urge the Committee to look into these problems. My understanding is that the Census includes in its tally people who self-identify as speaking English "well," which is dubious; moreover, it is not clear to me that the Census limits its tally to "voting age citizens" (as the statute says), since, while the Census long forms have a question on citizenship status, the short forms do not. Since the short form does not include questions on language, a calculation would have to be made on the basis of the long-form subsample, and that extrapolation may well be inaccurate because the sample size when broken down by voting district could be too small. Finally, we are not sure that the Census cross-tabs for language and citizenship anyway.

With regard to Senator Coburn's questions, I believe that my letter of June 21 to Senator Coburn (which crossed in the mail with your letter) addresses those inquiries. I am attaching a copy of that letter.

Thank you again for the opportunity to address the Committee, and for your and Senator Coburn's thoughtful follow-up questions.

Sincerely,

Linda Chavez
Chairman

Enclosures

June 14, 2006

Senator Thomas Coburn
U.S. Senate
Washington, D.C.

Dear Senator Coburn:

At the Senate Judiciary Committee hearings yesterday on whether to extend Section 203 of the Voting Rights Act, you asked the witnesses if they would support an opt-out provision for it. I want to respond by saying that I would, although I would also caution that such a provision, while desirable, would not solve the fundamental problems with Section 203 that I discussed at the hearings: its balkanizing force, its needless expense, its encouragement of voter fraud, and its unconstitutionality.

There are a number of ways an opt-out provision could be drafted. One possibility would be to allow jurisdictions to become exempt if they showed a lack of interest in their voters over a period of time in foreign-language ballots. Another would be to allow exemption on a showing of untoward expense, probably on a per (language-minority voter) capita basis. Still another would focus on a showing that the jurisdiction had for some period of time no record of discrimination (in voting and/or public education).

Finally, let me take this opportunity to clarify my answer toward the end of yesterday's hearings to Senator Specter's question on the availability of judicial review. I gave a general answer, but it occurs to me that he was probably talking specifically about whether the Census Bureau's coverage determinations should be reviewable. It seems to me that, while factual determinations by the Bureau should not be the subject of litigation, questions of law (i.e., whether the Bureau is defining "language minority" in a way consistent with the statute itself) ought to be.

Thank you very much for giving me the opportunity to present the views of the Center for Equal Opportunity to the Committee.

Sincerely,

Linda Chavez
Chairman
Center for Equal Opportunity

cc: Senator Arlen Specter
Senator Patrick Leahy

**Responses to Written Questions
Submitted by Senate Judiciary Committee Members
to Margaret Fung, Asian American Legal Defense and Education Fund**

**Hearing on S. 2703
“Examining the Continuing Need for Voting Rights Act Section 203’s Provisions
Regarding Bilingual Election Materials” - June 13, 2006**

I. Question from Senator Arlen Specter

Before Congress may enact preventive legislation under the Fourteenth and Fifteenth Amendments, it must establish a record of State misconduct that violates the Constitution. See *City of Boerne v. Flores*, 521 U.S. 507, 530 (1997); *Fla. Prepaid Postsecondary Education Expense Bd. v. College Savings Bank*, 527 U.S. 627, 644-46 (1999); *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 64-65 (2000). Please provide all instances of which you know in which a State or jurisdiction acted unconstitutionally to infringe on language-minority citizens’ rights to vote.

At the outset, it should be noted that the Supreme Court in *Boerne* acknowledged that Congress has broad enforcement powers under the Fourteenth and Fifteenth Amendments to protect the fundamental right to vote. The *Boerne* Court specifically reaffirmed an earlier ruling in *Katzenbach v. Morgan*, 384 U.S. 641 (1966), which upheld the ban on literacy tests used to deny the right to vote to individuals educated in Puerto Rico in languages other than English.

Moreover, English-only election procedures clearly have a disparate impact on Asian Americans and other language minority groups. The validity of congressional action to further anti-discrimination goals by outlawing practices that have a disparate impact has been upheld in many contexts. See, e.g. *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) (employment discrimination); *Alexander v. Sandoval*, 532 U.S. 275, 281-282 (2001) citing *Guardians Association v. Civil Service Commission*, 463 U.S. 482, 591-592 (1983) (discrimination by recipients of federal financial assistance).

At the Senate Judiciary Committee hearing on June 13, 2006, I submitted the AALDEF report, *Asian Americans and the Voting Rights Act: The Case for Reauthorization*, as part of my testimony (see attached).¹ In that report, there are numerous incidents describing the disenfranchisement of language minority citizens. It is evident that racially discriminatory tactics are still used today to intimidate Asian American voters:

- In Hamtramck, Michigan during the 1999 elections, police officers escorted Arab and Bangladeshi voters from voter lines to interrogate them about their eligibility to vote and required them to provide multiple forms of identification and proof of citizenship.

¹ ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND (AALDEF), ASIAN AMERICANS AND THE VOTING RIGHTS ACT: THE CASE FOR REAUTHORIZATION (2006).

The Justice Department sued the city and law enforcement officials, resulting in a consent decree that mandated language assistance in Arabic and Bengali as a remedy for voter intimidation and harassment. (*United States v. City of Hamtramck*, No. 00-73541 (E.D. Mich. Aug. 7, 2000)).

- In the 1999 City Council elections in Palisades Park, New Jersey, then-mayoral incumbent, Sandy Farber, warned voters about Korean Americans “attempting to take over our town and change it inside out.” In attacking a Korean American candidate for City Council, Farber wrote: “Now we are faced with a new problem – one that threatens to wipe out our history and our heritage . . . Our quality of life will be brought to an abrupt and chaotic end.”²
- In 2004 in New York City’s Chinatown, a police officer sat at a table inside the polling place and required Asian American voters to show photo identification, which is not required in New York elections. If voters could not produce a photo ID, the officer turned them away from the polls and told them to go home. The improper police involvement also caused long lines among those Asian American voters who had to wait and show the officer their identifications.³
- In Boston in 2004, election officials reported that poll workers at one site segregated voters and formed two separate lines for minority voters and white voters. City officials claimed that separate but equal lines for those who were limited English proficient would speed up the voting process for others. The Justice Department sued, alleging that the City violated the voting rights of Latino, Chinese and Vietnamese American voters. A settlement agreement resulted in Chinese and Vietnamese language assistance being provided as a remedy for discrimination against limited English proficient voters. (*United States v. City of Boston*, No. 05-11598 WGY (D. Mass. 2005)).

The record before the Senate contains thousands of pages of evidence of voting discrimination against Asian Americans and fully supports the proposition that Section 203 of the Voting Rights Act is congruent and proportional to the harms that it seeks to remedy.

II. Questions from Dr. Tom Coburn

Question 1 - Please give the Committee your thoughts on amending the current bill to allow covered jurisdictions that can demonstrate a reasonably low use of bi-lingual assistance, a way to opt-out of Section 203 coverage.

It would not be a good idea to create a new statutory opt-out provision, since the issue of “low use of bi-lingual assistance” can be addressed effectively through existing

² Letter from Sandy Farber, Mayor, Borough of Palisades Park, NJ (November 1999).

³ Letter from Glenn D. Magpantay, Staff Attorney, AALDEF, to John Ravitz, Exec. Dir., New York City Bd. of Elections (June 16, 2005).

regulations enforcing Section 203 of the Voting Rights Act.⁴ Under the regulations, jurisdictions may “target” minority language materials or assistance so that they are provided to fewer than all persons or registered voters.⁵ The goal is to ensure that language assistance programs required under Section 203 are “designed and implemented in such a way that language minority group members who need minority language materials and assistance receive them.”⁶ By utilizing these targeting provisions, jurisdictions can avoid wasting resources on language assistance programs that are not actually needed. The existence of effective targeting mechanisms obviates the need for a statutory “opt-out” provision for Section 203 coverage.

I should add that in AALDEF’s experience, the “low use” of language assistance may actually reflect a jurisdiction’s failure to publicize the availability of language assistance to covered minority groups or a lack of compliance with Section 203. For example, in New York City, where Asian-language assistance is required in three counties, we have observed in several elections that packets of translated materials were left unopened behind voting machines. Bilingual signs, indicating the availability of interpreters, were never displayed in the polling place. Many poll sites also did not have a sufficient number of interpreters. In the November 2000 elections, 40 election districts in New York City were missing specific Chinese language materials. In the 2004 elections, 82 of the 116 poll sites monitored in New York City fell short of the requisite number of assigned Chinese or Korean interpreters, often creating long lines and confusion for Asian American voters in need of language assistance. When a covered jurisdiction does not publicize its language assistance program, or when there are shortages of interpreters at polling places on Election Day, a false impression of “low use” of language assistance may be created.

Thus, an opt-out provision for “low use” would have the negative effect of creating incentives for jurisdictions to violate Section 203. If language assistance programs were not well publicized and fewer voters used translated materials or interpreters, jurisdictions would likely seek to “opt out.” As a result, limited English proficient voters would be deterred from exercising their fundamental right to vote.

Question 2 - Describe how you would craft a bail-out provision for jurisdictions covered by Section 203, such that it would allow jurisdictions that can demonstrate that the bilingual voting assistance prepared by the jurisdiction has not been reasonably utilized.

Section 203(d) currently contains a bailout provision for jurisdictions in which “the illiteracy rate of the applicable language minority group...is equal to or less than the national illiteracy rate.” This enables jurisdictions that have made substantial progress in eradicating barriers to educational opportunity to be removed from Section 203 coverage. This bailout provision, together with the existing regulations on targeting described above, make it unnecessary to amend Section 203.

⁴ See 28 C.F.R. § 55.17 “Targeting.”

⁵ *Id.*

⁶ *Id.*

III. Questions from Senator Patrick Leahy

Question 1 - Between 1996 and 2004, Asian-Americans had the highest increase of new voter registration (58.7%). What kinds of discrimination and other barriers to electoral participation do Asian-Americans continue to face despite this increasing registration?

The AALDEF report, *Asian Americans and the Voting Rights Act: The Case for Reauthorization*, which was submitted as part of my testimony at the June 13 hearing, provides numerous examples of continuing barriers to Asian American electoral participation. They include racially disparaging remarks by hostile poll workers and elected officials, excessive or inappropriate demands for identification from Asian American voters, and inadequate language assistance to limited English proficient voters.

Hostile Behavior and Racist Remarks by Poll Workers

Poll workers who make racist remarks to Asian American voters create a hostile environment at the polling place, making Asian Americans feel as if they do not have the same right to vote as other American citizens. For example, a poll site supervisor in Richmond Hills, Queens, NY said, "I'll talk to [Asian voters] the way they talk to me when I call to order Chinese food," followed by random English phrases spoken in a mock Chinese accent.⁷ Another site supervisor in Borough Park, Brooklyn, NY asked: "How does one tell the difference between Chinese and Japanese?" and brought her fingers to each side of her eyes and moved her skin up and down.⁸ A poll worker in Edison, NJ said: "If you're an American, you'd better lose the rest of the [Asian] crap." A poll worker in Falls Church, VA commented to other poll workers, after he offered candy to a Pakistani American voter who politely declined in observance of Ramadan: "If you think certain cultures are weird, you should read about [Muslims]. They're really weird."⁹

Asian American voters have also complained that they were treated differently than white voters. Election officials in Boston, MA reported that poll workers at one site segregated voters by race and made minority voters form one line apart from white voters in order to vote.¹⁰ They claimed that 'separate but equal' lines for those who were limited English proficient would speed up the voting process for others.¹¹ A poll worker in Jackson Heights, Queens, NY approached AALDEF's poll monitor to demand that he tell Asian American voters to vote faster because "one of his people" was waiting to vote.¹² Another poll worker blamed Asian American voters for holding up the lines saying: "You Oriental guys are taking too long to vote." Asian American voters complained that they

⁷ AALDEF, ASIAN AMERICAN ACCESS TO DEMOCRACY IN THE 2004 ELECTIONS: LOCAL COMPLIANCE WITH THE VOTING RIGHTS ACT AND HELP AMERICA VOTE ACT (HAVA) IN NY, NJ, MA, RI, MI, IL, PA, VA 16 (2005) [hereinafter ACCESS TO DEMOCRACY 2004].

⁸ *Id.*

⁹ *Id.*

¹⁰ The U.S. Department of Justice brought a lawsuit against the City of Boston for such discriminatory treatment. *United States v. City of Boston*, Civ. 05-11598 WGY (D. Mass. 2005).

¹¹ *Id.*

¹² ACCESS TO DEMOCRACY 2004, *supra* note 7, at 17.

felt unduly rushed to vote.¹³ In Edison, NJ, federal observers reported that a poll worker said that when a Gujarati or Hindi-speaking voter appeared, she would “send them to the nearest gas station.”¹⁴

Improper Demands for Identification

AALDEF found that poll workers made improper or excessive demands for identification—often only of Asian American voters—and misapplied the Help America Vote Act’s ID requirements.¹⁵ In the 2004 elections in New York City, an Asian American voter in Flushing, Queens was asked to show her naturalization certificate to prove her eligibility to vote. She was not a first-time voter and was not required to show ID under HAVA. Poll workers in Sunset Park, Brooklyn told some Asian American voters that in addition to showing photo IDs, they had to produce their social security numbers and passports. In Palisades Park, NJ, an elderly first-time Korean American voter was asked to provide several forms of identification. After showing the poll worker his voter registration and poll site letter from the Board of Elections, the poll worker still asked the voter to present a driver’s license, utility bills and other forms of ID.¹⁶

Furthermore, in the 2004 elections in New York, 69% of Asian American voters who were required to show identification were not required to do so. In New Jersey, 51% of Asian American voters required to produce identification were not required to do so. And in Massachusetts, 57% of Asian American voters who were required to provide identification were actually eligible voters exempt from the ID requirements.¹⁷ Misinformed poll workers who demand identification from otherwise eligible Asian American voters may discourage others who hear, by word of mouth, that poll workers are harassing voters with excessive demands for identification.

Inadequate Language Assistance

Noncompliance with Section 203 of the Voting Rights Act has contributed to the disenfranchisement of large numbers of American citizens who have the right to vote but are prevented from doing so only because they have some difficulty speaking the English language. In particular, interpreters play an important role in helping Asian Americans cast an informed vote. A survey of 113 New York City poll sites in 2004 found that 82 fell short of the required Chinese and Korean interpreters.¹⁸ As recently as 2005, 11 of 18 poll sites in Manhattan, and 10 of 19 poll sites in Queens, fell short of the assigned number of interpreters.¹⁹ The shortage of interpreters in New York City in 2005 was

¹³ *Id.*

¹⁴ Jerry Barca, *Feds to Watch Edison Vote*, NEW BRUNSWICK HOME NEWS TRIBUNE, Nov. 2, 2005.

¹⁵ Help America Vote Act § 301(a)(5), 42 U.S.C. § 15301 (2002).

¹⁶ ACCESS TO DEMOCRACY 2004, *supra* note 7, at 19.

¹⁷ *Id.* at 18-19.

¹⁸ Letters from AALDEF to New York City Bd. of Elections (Dec. 9, 2005 and Oct. 13, 2005).

¹⁹ Letter from Glenn D. Magpantay, Staff Attorney and Phillip A. Olaya, Voting Rights Pub. Educ. Coordinator, AALDEF, to John Ravitz, Exec. Dir., New York City Bd. of Elections (Dec. 9, 2005); *See also* AALDEF, ASIAN AMERICAN ACCESS TO DEMOCRACY IN THE 2003 ELECTIONS IN NYC: AN ASSESSMENT OF NEW YORK CITY COMPLIANCE WITH THE LANGUAGE PROVISIONS OF THE VOTING RIGHTS ACT 10 (2004) [hereinafter ACCESS TO DEMOCRACY 2003] (finding 78 of 120 Chinese interpreters, and 54 of 77 Korean interpreters, reported for work in the November 2003 Elections); AALDEF, ASIAN AMERICAN ACCESS TO DEMOCRACY IN THE 2002 ELECTIONS IN N.Y.C.: AN ASSESSMENT OF NEW YORK

further punctuated when voting machines at a particularly busy poll site in Chinatown were shut down by the Board of Elections after the discovery that Chinese-translated ballots were unavailable. With just one Chinese interpreter, voters waited for assistance, and the interpreter estimated that he assisted 60 to 70 voters in the half hour that machines were shut down.

These examples underscore the continuing need for Section 203 of the Voting Rights Act to enable the fast-growing numbers of Asian American voters to participate fully in the electoral process.

Question 2 - What voting practices, procedures, and educational barriers demonstrate the continued need for Section 203? Can you provide recent examples where these types of obstacles had an impact on the ability of language minorities to participate in the electoral process? Have successful Section 203 lawsuits, like those to which AALDEF has been a party, had an impact on the ability of Asian-Americans to exercise their right to vote?

In addition to discriminatory voting practices described above, educational barriers also adversely affect the ability of language minorities to participate in the electoral process. The U.S. Census Bureau found that a high correlation exists between the level of educational attainment and voter turnout.²⁰ Educational barriers in the Asian American community – despite the “Model Minority Myth” that categorically portrays Asian Americans as the epitome of the immigrant success story – remain significant obstacles to the full enfranchisement of Asian Americans.

In a comprehensive national study on cultural backgrounds and educational issues, the National Education Association (NEA) documented the barriers, including the “Model Minority Myth,” that hinder the educational opportunities of Asian and Pacific Islander Americans.²¹ While educational attainment among East Asian and South Asian groups is high, educational attainment among Pacific Islanders and Southeast Asian groups is relatively low. For example, 59.6% of Hmong American adults over the age of 25 have less than a high school education, and compared to Vietnamese and Hmong students, Cambodian students score lower on standardized tests, receive relatively lower grade point averages, and have higher dropout rates.²² Furthermore, the NEA study found that

CITY COMPLIANCE WITH THE LANGUAGE ASSISTANCE PROVISIONS OF THE VOTING RIGHTS ACT 15-17 (2003) [hereinafter ACCESS TO DEMOCRACY 2002]; AALDEF, ASIAN AMERICAN ACCESS TO DEMOCRACY IN THE N.Y.C. 2001 ELECTIONS: AN ASSESSMENT OF THE N.Y.C. BOARD OF ELECTIONS COMPLIANCE WITH THE LANGUAGE ASSISTANCE PROVISIONS OF THE VOTING RIGHTS ACT 11 (2002) [hereinafter ACCESS TO DEMOCRACY 2001] (detailing the rejection of Korean volunteers and the resulting shortage of interpreters on Election Day, including 5 major poll sites where Korean interpreters did not show up); ACCESS TO DEMOCRACY 2001, at 8 (noting the shortage of Chinese interpreters).

²⁰ AMIE JAMIESON ET AL., U.S. CENSUS BUREAU, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2000 5 (2002) (finding that “people with more education, higher incomes, and jobs [were] more likely to vote.”).

²¹ STACEY J. LEE & KEVIN K. KUMASHIRO, NAT’L EDUC. ASSOC., A REPORT ON THE STATUS OF ASIAN AMERICANS AND PACIFIC ISLANDERS IN EDUCATION: BEYOND THE “MODEL MINORITY” STEREOTYPE (2005).

²² *Id.* See also M. ZHOU & C. BANKSTON, GROWING UP AMERICAN: HOW VIETNAMESE CHILDREN ADAPT

the percentage of Southeast Asian Americans who have earned a bachelor's degree is lower than the percentages for Black, Hispanic, and American Indian/Alaska Native adults.²³

In a study of the Korean American community, high achieving students came from families whose parents were well-educated professionals, though they may have been unable to secure positions in their respective professions with the corresponding compensation that would have allowed for greater educational opportunities for their children.²⁴ By contrast, the study found that working class and poor Korean parents worked long hours and were excluded from Korean social networks established to assist students to succeed.²⁵ Likewise, middle-class Chinese American parents prepared their children for the college preparation and admissions process, while working class parents, who worked long hours and had a limited education, were unable to provide their children with the same guidance.²⁶

These studies reveal the disparate levels of educational achievement among Asian American communities. More examples of education discrimination and the lack of adequate English as a Second Language programs are detailed below (see section IV. Questions for Senator Edward M. Kennedy, Question 2). In short, the challenges educators face in working with students of diverse languages, cultures, religions, socio-economic status, and political experiences among multiple Asian ethnic groups still persists and needs ameliorating. Section 203 of the Voting Rights Act, however, allows those Asian American voters with limited educational opportunities and English ability to fully participate in the political process.

Impact of Section 203 Lawsuits

Section 203 lawsuits have had major positive impacts on the ability of Asian Americans to exercise their right to vote. The Justice Department has filed several Section 203 enforcement actions, resulting in the first-ever Filipino and Vietnamese language assistance programs in San Diego County, California in 2004. Following this lawsuit, Filipino American voter registration increased over 21% and Vietnamese American voter registration increased over 37%.²⁷ Similarly, the Justice Department's Memorandum of Agreement with Harris County, Texas, which became a covered jurisdiction after the 2000 Census, helped to double the turnout among Vietnamese American voters and was followed by the election of the first Vietnamese American to the Texas legislature.²⁸

TO LIFE IN THE UNITED STATES (1998).

²³ *Id.*

²⁴ J. LEW, *KOREAN AMERICAN HIGH SCHOOL DROPOUTS: A CASE STUDY OF THEIR EXPERIENCES AND NEGOTIATIONS OF SCHOOLING, FAMILY, AND COMMUNITIES* (2003).

²⁵ *Id.*

²⁶ V. Louie, *Parents' Aspirations and Investment: The Role of Social Class in the Educational Experiences of 1.5 and Second-Generation Chinese Americans*, 71 HARV. EDUC. REV. 438 (2001).

²⁷ See *Hearing on the Voting Rights Act: Section 203-Bilingual Election Requirements (Part I) Before the House Subcomm. on the Const., House Judiciary Comm.*, 109th Cong., 1st Sess. at 10 (Testimony of Bradley J. Schlozman, Acting Assistant Attorney General) (Nov. 8, 2005).

²⁸ Testimony of Wan J. Kim, Assistant Attorney General for Civil Rights before the Senate Judiciary Comm. (May 10, 2006).

In February 2006, AALDEF filed a federal lawsuit against the New York City Board of Elections for violations of Sections 203 and 208 of the Voting Rights Act. The suit was filed on behalf of four organizations—the Chinatown Voter Education Alliance, Young Korean American Service and Education Center, Inc. (YKASEC), Korean American Voters' Council, and Chinese American Voters Association—and five limited English proficient Asian American voters.²⁹ Although language assistance has been mandated since 1992 in three New York City counties, the ongoing problems faced by Asian American voters demonstrate that there is a continuing need for full enforcement of Section 203 for language minority voters.

Question 3 - There are often subtle forms of voting discrimination against Asian-American voters, such as how they are treated at the polls, polling place locations, and the failure to recruit Asian poll workers. Please explain how these subtle forms of discrimination impair the ability of Asian-American voters to have equal access to the election process. How does Section 203 address these problems?

Before the passage of the Voting Rights Act of 1965, poll taxes, literacy tests, physical intimidation and threats of violence were routinely used to prevent African Americans from voting in many southern states. Voting discrimination against Asian Americans has occurred in different and more subtle ways, with English-only ballots operating in effect as literacy tests to exclude language minority voters. Since 1992, when the language assistance provisions of the Voting Rights Act were expanded, Section 203 has been instrumental in increasing Asian American voter registration and turnout.

Section 203 has addressed many aspects of voting discrimination against Asian Americans. For example, covered jurisdictions now recruit and hire interpreters to staff selected polling places on Election Day. These interpreters can more effectively assist the diverse voting electorate in neighborhoods with shifting demographics. Asian Americans, especially first-time voters, can get assistance in operating new voting machines or filling out provisional ballots. Translated voting notices provide important information to Asian American voters about the location of their poll sites and changes in these locations. Translated ballots enable Asian Americans to vote independently and privately, in the same manner as other citizens. Section 203 has helped to ensure equal access to the ballot for all Americans.

Question 4 - During the hearing, it was suggested that bilingual language requirements are not necessary because a person who can pass the citizenship language test should be able to vote in English. Is there still a continuing need for language assistance for voters, even if they speak English well enough to pass a citizenship test? Please discuss the experience of non-Native English speakers with election materials and ballots and directions that are often confusing.

Naturalized citizens are still in need of language assistance under Section 203 because the level of proficiency needed to cast an informed ballot in English is higher than the English language ability needed to pass a citizenship test. In order to become a

²⁹ *Chinatown Voter Education Alliance v. Ravitz*, No. 06 Civ. 913 (S.D.N.Y. 2006).

naturalized citizen, the individual must demonstrate “an understanding of the English language, including an ability to read, write and speak words in ordinary usage in the English language.”³⁰ Studies have found that naturalization requires a 3rd or 4th grade level of English proficiency, as compared to high school or college levels of English proficiency in order to vote.³¹

It is also important to note that certain individuals over the age of 50 who have lived in the U.S. as permanent residents for over 20 years and a group of Hmong war veterans who fought as U.S. allies during the Vietnam War are exempt from the requirement of passing an English proficiency test.³²

Many new citizens are unfamiliar with the American electoral process. The need to register by a certain date in order to be eligible to vote in particular elections, the importance of enrolling in a political party in order to vote in primaries, and the mechanics of operating a voting machine are all aspects of voting that are more easily navigated when language assistance is available. In a 1982 study by the Chinatown Voter Education Alliance—before language assistance was mandated in New York City—35% of voters in Manhattan’s Chinatown, as compared to 19% of voters outside of Chinatown, mistakenly lost their votes because of errors in using the voting machine levers.³³ Indeed, even a native-born, English-speaking voter can be confused by the highly sophisticated content of lengthy referenda or the technical instructions for casting a ballot. Language assistance under Section 203 helps Asian Americans not yet fluent in English to exercise their fundamental right to vote.

Question 5 - Please address the concerns raised by Linda Chavez in her testimony that providing bilingual language assistance is harmful to the integration of minority language citizens into American society. Does expanding the access of citizens to the electoral process result in what she described as “balkanization” or does it help American citizens fully participate in American democracy?

Section 203 helps to promote a more inclusive democracy for all Americans. New citizens and first-time voters, who are most likely to need language assistance at the polls, are able to vote in an effective and informed manner when they have access to translated ballots and interpreters required by Section 203. Elected officials are more responsive to voting constituents, and this in turn encourages language minority citizens to register to vote and join with like-minded residents to elect candidates who represent their common interests. By facilitating the involvement of language minorities in the electoral process, Section 203 promotes the integration of all citizens into American society.

³⁰ 8 U.S.C. § 1423 (2006).

³¹ See, e.g., ANA HENDERSON, ENGLISH LANGUAGE NATURALIZATION REQUIREMENTS AND THE BILINGUAL ASSISTANCE PROVISIONS OF THE VOTING RIGHTS ACT (2006).

³² See 8 U.S.C. § 1423 (2006).

³³ S. REP. 102-315, CALENDAR NO. 537 at 12 (July 2, 1992).

IV. Questions from Senator Edward M. Kennedy

Question 1 - In her written testimony for the hearing on Section 203, panelist Linda Chavez stated that “there are few citizens who need ballots and other election materials printed for them in languages other than English.”

Q: Is Ms. Chavez right? Or is there a high incidence of limited English proficiency among Asian American voting age citizens? What data support your conclusion?

With respect to the Asian American community, Ms. Chavez is incorrect when she asserts that few citizens are in need of language assistance. According to the 2000 Census, nearly one-third (31%) of all Asian American voting age citizens are limited English proficient (LEP),³⁴ compared to only 4% of the total population.³⁵ The data from multilingual exit polls of Asian American voters, conducted since 1988, also show high rates of limited English proficiency and low levels of U.S. educational attainment among Asian American voters. Moreover, these exit polls demonstrate the steady use of, and continued need for, Asian language assistance, either in the form of translated ballots and voting materials or oral assistance from interpreters.

Language assistance removes barriers for limited English proficient and first-time voters to register and cast informed votes. As AALDEF’s recent multilingual exit polls reveal, a large percentage of first-time Asian American voters use language assistance:

Table 1: First-Time LEP Voters and the Use of Interpreters and Translated Materials³⁶

Election Year	LEP Rate of First-Time Voters	First-Time Voters Who Used an Interpreter	First-Time Voters Who Used Translated Materials
2005	69%	68%	53%
2004	39%	20%	14%
2003	61%	50%	33%
2002	61%	50%	33%
2001	64%	33%	37%
2000	60%	37%	29%

As you can see, the LEP rate of first-time Asian American voters polled in 2005 was extremely high (69%), and 68% indicated that they used an interpreter to vote and 53% used translated materials. Similar rates exist in previous years in which AALDEF documented the use of language assistance. Thus, it is clear that many citizens need ballots and other election materials printed for in languages other than English.

³⁴ See 42 U.S.C. § 1973aa-1a(b)(3)(B) (2006) (defining LEP as the inability “to speak or understand English adequately enough to participate in the electoral process.”).

³⁵ U.S. CENSUS BUREAU, Census 2000 Sample Data File, using Advanced Query.

³⁶ See AALDEF, ACCESS TO DEMOCRACY 2004; ACCESS TO DEMOCRACY 2003; ACCESS TO DEMOCRACY 2002; ACCESS TO DEMOCRACY 2001; NAPALC, ET AL., ACCESS TO DEMOCRACY: LANGUAGE ASSISTANCE AND SECTION 203 OF THE VOTING RIGHTS ACT 10-11.

Disaggregating the data by Asian ethnic group also illustrates a high preference for voting with language assistance. In November 2005, 38% of Chinese American, 35% of Korean American, 25% of Vietnamese American, and 20% of Bangladeshi American voters in New York and 28% of Korean American voters in New Jersey responded that they preferred to vote with language assistance. Similarly, in Massachusetts, where a lawsuit by the U.S. Department of Justice resulted in the City of Boston providing translated ballots, voting materials, and language assistance in Vietnamese and Chinese,³⁷ 50 % of Chinese American and Vietnamese American voters indicated a preference for voting with language assistance. In fact, the high LEP rates among the Chinese American (65%) and Vietnamese American (74%) communities in Boston and Dorchester, documented by AALDEF in the 2004 elections, was a factor in the Justice Department's decision to file a Section 203 lawsuit against the City of Boston.³⁸

These high LEP rates, especially among newly-arrived immigrant groups from Southeast and South Asia, warrant reauthorization, and even expansion, of the language assistance provisions of Section 203.

Question 2 - How do educational discrimination and the lack of English as a Second Language classes for adults contribute to the number of limited English proficient Asian-American citizens of voting age and their high rate of illiteracy?

Congress has come to the same conclusion after each round of reauthorization—educational disparities and other institutional discrimination in American society have affected the ability Asian American and other limited English proficient voters to participate in the electoral process. Part III of AALDEF's report, *Asian Americans and the Voting Rights Act: The Case for Reauthorization*, describes the lingering effects of historical discrimination against Asian Americans, resulting in the disenfranchisement of Asian American voters.

The modern perception of Asian American students is one of overwhelming success. However, the "Model Minority" myth buries the fact that students from Asian American families who live in poverty, particularly those from Southeast Asia, fail to graduate from high school at alarmingly high rates. Furthermore, educational discrimination and the lack of English as a Second Language (ESL) opportunities for adults has resulted in high illiteracy rates and low levels of English language proficiency.

For example, Asian American students, over half of whom do not consider English their first language, face the further challenge of having to compete with native-born, English-speaking classmates.³⁹ However, the National Education Association observed that

³⁷ *U.S. v. City of Boston*, No. 05-11598 (D. Mass 2005).

³⁸ See also Letter from Glenn D. Magpantay, Staff Attorney, AALDEF, to Michelle K. Tassinari, Legal Counsel, Elections Div., Sec'y of the Commonwealth 2 (Mar. 14, 2005).

³⁹ ASIAN WEEK ET AL., *THE NEW FACE OF ASIAN PACIFIC AMERICA, NUMBERS, DIVERSITY & CHANGE IN THE 21ST CENTURY* 206 (Eric Lai & Dennis Arguelles eds. 2003).

“Despite the growing number of immigrant students in schools throughout the country, many schools lack the expertise to adequately serve second-language learners.”⁴⁰

In a study of Asian Americans in the New York City public school system, the Coalition for Asian American Children and Families (CACF) found that in 2000 and 2001, Asian American students, who are more likely to be first-generation or immigrants themselves, comprised almost 20% of all English Language Learners.⁴¹

The CACF study, limited to New York City, did not account for emerging Southeast Asian immigrant communities in places like Massachusetts, Texas, and Louisiana. Indeed, educational attainment for Southeast Asian American communities runs far behind other Asian American communities. While just 1% of the overall population has had no formal schooling, 26% of Cambodians, 45% of Hmong, and 23% of Laotians indicated they had no formal schooling.⁴²

LEP rates within the Asian American community, as well as exponential growth among Southeast Asian Americans, underscores the importance of engaging newly eligible voters whose limited educational opportunities may affect their level of participation in civic matters. Coupled with the overall educational barriers that continue to plague Asian American students, the lingering effects of discrimination persist today.

Moreover, educational disparities are linked to income and poverty in limited English proficient Asian American communities. According to the U.S. Census Bureau, Asian American and Pacific Islander families were more likely than the general population to have incomes of less than \$25,000.⁴³ The report further stated that in 2001, 1.3 million Asians and Pacific Islanders (or 10%) lived below the poverty line.

Language minority voters understand well the importance of learning English and using the VRA’s language assistance provisions in order to participate in the democratic process. However, because of their financial circumstances, family obligations, or lack of access to English classes,⁴⁴ many Asian Americans do not have a meaningful opportunity to learn the English language.

⁴⁰ STACEY J. LEE & KEVIN K. KUMASHIRO, NEA, A REPORT ON THE STATUS OF ASIAN AMERICANS AND PACIFIC ISLANDERS IN EDUCATION: BEYOND THE “MODEL MINORITY” STEREOTYPE 5 (2005).

⁴¹ VANESSA LEUNG, COALITION FOR ASIAN AMERICAN STUDENTS AND FAMILIES 18 (2004) (citing Bd. of Educ. of the City of New York, Office of English Language Learners, Facts & Figures 2000-2001).

⁴² *Id.*

⁴³ TERRANCE REEVES & CLAUDETTE BENNETT, U.S. CENSUS BUREAU, THE ASIAN AND PACIFIC ISLANDER POPULATION IN THE UNITED STATES 6 (2003).

⁴⁴ See *Legislative Hearing on H.R. 9, A Bill to Reauthorize and Amend the Voting Rights Act of 1965: Part II Before the House Subcomm. on the Const., House Judiciary Comm.*, 109th Cong. at 16-18 (May 6, 2006) (statement of Dr. James Thomas Tucker, Voting Rights Consultant for the Nat’l Ass’n of Latino Elected and Appointed Officials (NALEO) Educational Fund) (documenting the shortage of adult ESL programs in covered jurisdictions. In Albuquerque, N.M., the city’s largest ESL provider, Catholic Charities, has a 12-month, 1,000-person waiting list. In Boston, MA, a 6- to 9-month waiting list of 16,725 persons often extends to 2 to 3 years. And in New York City, the estimated waiting list is 1 million. In 2005, just 41,437 adults were allowed to enroll in ESL classes after being selected through the city’s lottery system, which generally rejects 75 % of applicants.).

Section 203 was intended to address the educational disparities that had doomed language minority communities to limited educational and economic opportunities. As Congress found in 1975: “[T]he purpose of suspending English-only and requiring bilingual elections is not to correct the deficiencies of prior educational inequality. It is to permit persons disabled by such disparities to vote now.”⁴⁵ The high LEP and illiteracy rates among Asian American citizens, resulting from educational discrimination and lack of ESL classes, demonstrate a continued need to reauthorize Section 203.

Question 3 - What would be the impact on limited English proficient Asian American voters if Section 203 is not reauthorized?

The Asian American population is one of the fastest growing communities of color in the United States, numbering close to 14 million in 2004. According to Census reports, Asian American voter turnout has increased steadily, from 1.7 million in 1996 to nearly 3 million in 2004. The number of Asian American elected officials in federal, state and local office since the passage of Section 203 has also increased from 120 in 1978 to a total of 348 in 2004. Although substantial progress has been made since 1992—the year when Section 203 was expanded to cover large Asian American populations—full and equal access to the political process is not yet a reality for all American citizens.

If Section 203 of the Voting Rights Act is not reauthorized, Asian American and other language minority citizens will face more difficulties in registering to vote and casting an informed ballot. There is no guarantee that local jurisdictions across the country will voluntarily hire bilingual poll workers or translate ballots and voting materials—the elements of language assistance that have enabled hundreds of thousands of Asian Americans and other language minorities to cast a meaningful vote. Without federal oversight of local election practices, jurisdictions may revert to discriminatory practices against language minority voters. Private parties would bear the burden of litigating voting discrimination cases, since the Justice Department could no longer bring enforcement actions under Section 203.

Over the past 18 years, AALDEF’s multilingual exit polls have consistently shown a positive correlation between language assistance provided under Section 203 and the steady increase in voter registration and turnout among Asian Americans. In the 2005 elections, 68% of first-time Asian American voters said they used an interpreter to vote and 53% of first-time Asian American voters said they used translated materials.

The language assistance provisions of the Voting Rights Act are still urgently needed in the Asian American community, and the renewal of Section 203 of the Voting Rights Act is critical to ensure that all citizens have a meaningful right to vote.

⁴⁵ S. REP. NO. 94-295, at 34 (1975).

Question 4 - Some have suggested that the ability to bring someone with you to the polls to provide voting assistance under Section 208 of the Voting Rights Act is an adequate alternative to bilingual ballots and bilingual poll workers. It has also been suggested that sample ballots printed in ethnic newspapers would provide an alternative source of assistance for non-English speaking voters if Section 203 is not reauthorized.

Would either of these practices make up for the absence of bilingual poll workers and translated ballots and voting instructions at the polls on election day?

While the right to receive voting assistance from a person of choice (Section 208 of the Voting Rights Act) and the printing of sample ballots in ethnic newspapers can be useful tools for voters with limited English proficiency, these two devices are inadequate to ensure that language minority citizens have full and equal access to the ballot.

First, there are major structural differences between Sections 203 and 208. Section 203 addresses the needs of large numbers of limited English proficient citizens concentrated in specific jurisdictions through comprehensive language assistance programs. Following the 2000 Census, language assistance under Section 203 was available to over 672,750 Asian Americans with limited English proficiency and low educational attainment in 16 jurisdictions in Alaska, Hawai'i, California, Illinois, New York, Texas, and Washington.⁴⁶

By contrast, Section 208 addresses the needs of individual voters, who "by reason of blindness, disability, or inability to read or write" may require some form of assistance. 42 U.S.C. § 1973aa-6. This places an additional burden on the voter to bring along a friend or relative to serve as an interpreter. That person may not fully explain or translate all of the ballot choices to the voter and could also improperly influence the voter's choices.⁴⁷ Moreover, AALDEF has documented instances in which poll workers have interfered with the right of Asian American voters to receive assistance under Section 208. For example, in 2001, AALDEF monitors observed that poll workers at one site in Sunset Park, Brooklyn interfered with Chinese voters who brought someone to assist them in the voting booth, and that poll workers at Rutgers House in Manhattan's Chinatown refused to allow official Board of Elections interpreters to enter the voting booth with Chinese voters at the voters' requests.⁴⁸

⁴⁶ 67 Fed. Reg. No. 144, 48871-77 (July 26, 2002) (Notices). See also U.S. CENSUS BUREAU, Voting Rights Determination File, available at <http://www.census.gov/rdo/www/voting%20rights.htm>. AALDEF's constituents have asserted that the exponential growth of the Asian American population in the United States, coupled with their increasing rates of citizenship and demonstrated needs for language assistance in exercising the fundamental right to vote, warrants reauthorization and even expansion of the language assistance provisions. By modifying the Section 203 numeric trigger below 10,000, language assistance would be available to more language minority groups in more jurisdictions.

⁴⁷ This was the case in *United States v. Boston*, where Chinese American voters complained that poll workers took their ballots and marked them improperly. If Chinese-language ballots had been available, voters could have made their own independent choices. Declaration of Lydia Lowe and Declaration of Siu Tsang, *United States v. City of Boston*, Civ. 05-11598 WGY (D. Mass. 2005).

⁴⁸ Letter from AALDEF to New York City Bd. of Elections (Nov. 2, 2001).

Second, the printing of sample ballots and other election information in ethnic newspapers, while certainly useful to voters, is only one small component of any meaningful language assistance program. AALDEF's exit polls in 2004 found that over half of the 11,000 Asian American respondents received their news about politics and community issues from the ethnic press, rather than from mainstream media outlets.⁴⁹ However, the voluntary efforts of some ethnic media should not supplant the government's primary responsibility to conduct fair elections and to provide complete and accurate information about elections to all eligible voters.

The right of voters to bring a person into the voting booth and the printing of sample ballots in ethnic media cannot fully address the needs of language minority citizens to exercise their fundamental right to vote. These two mechanisms do not offer a satisfactory alternative for enabling language minority citizens to cast an informed ballot. Section 203 has expanded access to the vote for countless Asian Americans and other language minority citizens because it has taken a comprehensive approach to language assistance, and it should be renewed.

⁴⁹ AALDEF, THE ASIAN AMERICAN VOTE, A REPORT OF THE AALDEF MULTILINGUAL EXIT POLL IN THE 2004 PRESIDENTIAL ELECTION 12 (2005).



June 15, 2006

The Honorable Tom Coburn, M.D.
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re. Drafting an Opt-Out Provision for Covered Jurisdictions under Section 203 of the Voting Rights Act

Senator Coburn:

It was an honor to appear before the Senate Judiciary Committee and testify on the continuing need to provide bilingual election materials to citizens who are "limited English proficient" (LEP citizens) as defined by section 203 of the Voting Rights Act (VRA). I am pleased to respond to your question concerning whether section 203 should contain an opt-out provision for covered jurisdictions whose LEP citizens make little or no use of 203 materials.

This is a common sense proposal and has my support, in principle. Such an opt-out could cure section 203 of some of the constitutional defects identified in my testimony, and it would certainly alleviate significant administrative burdens and costs that section 203 imposes on localities, particularly where 203 materials confer no meaningful benefit to the identified LEP population.

Before I address the substance of your proposal, a cautionary note on drafting.

While opt-out provisions are consistent with the history and structure of the Voting Rights Act, they have not been successful in achieving their purposes. Technically, jurisdictions subject to section 5 preclearance have a "bail out" option. The report accompanying H.R. 9, the House Bill reauthorizing the VRA, acknowledges that "the expectation of Congress," when it liberalized section 5's bail out procedures in 1982, was "that a majority of covered jurisdictions would utilize [the procedures]..., such that few jurisdictions would remain covered 25 years later." H. Rpt. No. 109-478 (May 22, 2006). However, in practice, very few jurisdictions have availed themselves of this procedure, as noted in the House Report and explained by Professor Mike McDonald in *The Future of the Voting Rights Act*. "The reason," Professor McDonald postulates, "may lie either with a too difficult bailout mechanism - particularly the proactive steps a jurisdiction must take to improve minority participation - or a lack of information and resources among covered jurisdictions. If the latter were the reason, more jurisdictions could bail out if they were provided with aid in preparing their bailout litigation." *Id.* at 32-34,

citing Hancock and Tredway, *The Bailout Standard of the Voting Rights Act*, 17 URB. LAW. 379, 422 (1985:). Moreover, the record in the House speculates that up to 90% of covered jurisdictions may be eligible for bail-out, see *Oral Testimony of Gerald Herbert, Former Acting Chief, Civil Rights Division, U.S. Department of Justice*, October 20, 2005. However, according to the record, jurisdictions do not avail themselves of opt-out provisions for the reasons identified by Professor McDonald and potentially because of a political sensitivity to maintaining race relations. See *id.*, Comments of Representative Scott of Virginia.

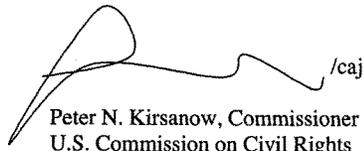
Similar concerns apply in the context of 203. Any opt-out provision for 203 should be crafted with the history of section 5 in mind and endeavor not to repeat it.

One approach is to place the onus on the Attorney General to certify after a defined period of review that section 203, as applied to an LEP population within a covered jurisdiction, is both effective at providing voting access to a class of LEP citizens and remedies an identifiable pattern or practice of constitutional deprivations of the right to vote. If the Attorney General fails to certify the effectiveness 203 as applied to a covered jurisdiction, then an opt-out provision would trigger and 203's requirements would lapse with respect to that jurisdiction. Other details could be added-e.g., amending 42 USC Sec. 1973aa-6 (Voting assistance for blind, disabled or illiterate persons) to include LEP citizens as defined by 42 USC Sec. 1973aa-1a(3)(b); or giving covered jurisdictions a right of appeal from the Attorney General's certification.

There are other approaches to crafting an opt-out provision. But the approach sketched here would not only capture the common sense appeal of your proposal, but would also begin to redress the constitutional infirmities I detect in H.R. 9's flat reauthorization of section 203 for an arbitrary 25 year period.

Again, thank you for allowing me to respond to your question. If I may be of further assistance to you or your staff, please do hesitate to contact me directly.

Sincerely,



/caj
Peter N. Kirsanow, Commissioner
U.S. Commission on Civil Rights



Supplemental Written Testimony of John Trasviña

Interim President and General Counsel

Mexican American Legal Defense and Educational Fund (MALDEF)

Before the Senate Committee on the Judiciary

Hearing on S. 2703,

**“Examining the Continuing Need for the Voting Rights Act Section 203’s Provisions
Regarding Bilingual Election Material”**

June 13, 2006

RESPONSES TO SENATOR LEAHY

1. Some American citizens are not fully proficient in written English because they were intentionally denied the academic instruction necessary to vote effectively in English-only elections that employ complicated language and terminology. Please discuss the link between unconstitutional discrimination in elections and education. How has past intentional discrimination in public education continued to impact the need for language assistance in order to cast a meaningful, informed vote?

There is a clear nexus between unconstitutional discrimination in public education and the need for language assistance to cast a meaningful, informed vote. Historical and ongoing discrimination in public education continues to prevent many minority citizens from understanding complex ballot measures and casting effective ballots in English-only elections. Without adequate and equal opportunities to learn the English language and be able to read and write it, English-only materials function as a literacy test for many Alaska Natives, American Indians, Asian Americans, and Latinos. I will briefly explain my point.

According to the 2000 Census, among all covered jurisdictions, an average of 13.1 percent of citizens of voting age are limited-English proficient (LEP) in the languages triggering coverage.¹ The average LEP rate of all voting age citizens in covered jurisdictions is as follows: 22.6 percent for Alaska Native languages; 16.3 percent for American Indian languages; and 10.4 percent for Spanish-speaking citizens.²

According to the 2000 Census, covered language minority citizens have an average illiteracy rate of 18.8 percent, nearly fourteen times the national rate.³ The average illiteracy rate of LEP voting age citizens in the covered jurisdictions is as follows: 28.3 percent of Alaska Natives, nearly 21 times the national illiteracy rate (forty percent of covered reservations have illiteracy rates greater than 50 percent); 11.7 percent of American Indians, nearly nine times the national illiteracy rate (over one-quarter of covered reservations have illiteracy rates greater than 50 percent); 20.8 percent of Spanish speakers, over fifteen times the national illiteracy rate; and 8.5 percent of Asian Americans, more than six times the national illiteracy rate.⁴

The Senate previously found that the high illiteracy rates experienced by language minorities are “not the result of choice or mere happenstance,” but instead result from

¹ DR. JAMES THOMAS TUCKER & RODOLFO ESPINO, MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS EXECUTIVE SUMMARY 21 (Mar. 2006) (summarizing July 2002 Census determinations for Section 203 coverage).

² Id. at 32, 35, 38.

³ Id. at 21.

⁴ Id. at 32-33, 36, 38-39, 42.

“the failure of state and local officials to afford equal educational opportunities.”⁵ The statute itself points to the failure of our school systems for language minority U.S. citizens.⁶ This failure comes in two forms: the present effects of past educational discrimination and ongoing educational discrimination.

Texas and other states maintained segregated public school systems well into the 1970s. The pervasive impact of *de jure* segregation in public schools persists: many language minority citizens who attended segregated schools have never been able to gain the skills in English reading comprehension necessary to cast an informed ballot in an English-only election. Mexican Americans and other language minorities educated in segregated public schools received low-quality English language instruction that did not provide language minority citizens with the tools necessary to read and write effectively in English. Further, many Mexican Americans and other language minorities who attended public schools in this era did not receive formal schooling past the sixth grade, compounding the lack of English language acquisition.

Since 1975, at least twenty-four successful educational discrimination cases have been brought on behalf of English Language Learner (ELL) students in fifteen states, fourteen of which are presently covered in whole or in part by the language assistance provisions. Since 1992, when the language assistance provisions were last reauthorized, at least ten ELL cases have been brought or plaintiffs have had additional relief granted under existing court decrees. Consent decrees or court orders remain in effect for ELL students statewide in Arizona, Florida, and Texas, and in the cities of Boston, Denver, Philadelphia, and Seattle. Successful educational discrimination cases have been brought in all three states covered statewide under Section 4(f)(4): Alaska, Arizona, and Texas. About three-quarters of all ELLs in the public schools (3.4 million out of 4.5 million) are native-born-U.S. citizens.⁷

For example, in December 2005 the federal district court in Arizona cited the State of Arizona for contempt for failing to take action pursuant to a 2000 judicial decree intended to remedy ongoing inequalities in the educational opportunities available to LEP students.⁸ The 2000 decree in *Flores v. Arizona* found many inequalities in programs for LEP students in the state, including 1) too many students per classroom; 2) insufficient classrooms available for LEP students; 3) insufficient numbers of qualified teachers and teachers’ aides; 4) inadequate tutoring programs; and 5) insufficient teaching materials for classes in English language acquisition and content area studies.⁹ Many additional examples of ongoing inequality in the educational opportunities available to LEP students

⁵ S. REP. NO. 94-295 at 28.

⁶ See 42 U.S.C. § 1973b(f)(1) and 42 U.S.C. § 1973aa-1a(a).

⁷ U.S. DEPARTMENT OF EDUCATION, OFFICE OF ENGLISH LANGUAGE ACQUISITION, LANGUAGE ENHANCEMENT AND ACADEMIC ACHIEVEMENT FOR LIMITED ENGLISH PROFICIENT STUDENTS (OELA), SURVEY OF THE STATES’ LIMITED ENGLISH PROFICIENT STUDENTS AND AVAILABLE EDUCATIONAL PROGRAMS AND SERVICES 4, 19 (Oct. 2002).

⁸ *Flores v. State of Arizona*, 405 F.Supp.2d 1112 (D. Ariz. 2005) (contempt order).

⁹ *Flores v. State of Arizona*, 160 F.Supp.2d 1043, 1044 (D. Ariz. 2000).

are presented in the NALEO report, which has been submitted for the record underlying the current reauthorization of the Voting Rights Act.

The successful school funding cases, which have been brought in half of all of the Section 203 covered jurisdictions, cannot be ignored because ELL students also derive significant benefits from equal educational opportunities.¹⁰

Unequal educational opportunities translate into high illiteracy and low achievement rates, which are demonstrated by testing and graduation data for ELL students. According to a federal study, LEP students are twice as likely to fail graduation tests as native-English speakers.¹¹ In Alaska, 80.5 percent of Alaska Native graduating seniors are not proficient in reading comprehension, they have failure rates on standardized tests more than 20 percent higher than non-Native students, and graduation rates that lag more than 15 percent behind the statewide average.¹² In Arizona, eighty-three percent of American Indian and Latino juniors and sophomores who qualify as English learners failed key portions of the state-mandated graduation test including reading comprehension.¹³ In Texas, the Texas Education Agency reports that in 2004-2005, more than 9 out of 10 (94%) of Texas LEP students in Grade 10 failed to meet the state's standards. Nearly 1.2 million Latino voting age citizens in Texas lack a high school diploma, or 40 percent of all Latino voting age citizens, compared to only 13.5 percent of all Anglo voting age citizens. As a result of these substantial disparities, in early 2006, plaintiffs filed a motion for further post-judgment relief in *United States v. Texas*, in which the federal court has retained jurisdiction under a 1981 Consent Decree.¹⁴

Unequal educational opportunities for ELL students is compounded by the lack of adult ESL classes, which is evidenced by long waiting times for the most basic level of English classes. Even after waiting three years or more for entry into the most basic ESL classes, adult students are left far short of the written and oral language abilities necessary to vote without language assistance.¹⁵

When unequal educational opportunities and lack of English instruction is combined with the absence of language assistance, it results in significantly depressed voter registration and turnout among the four covered language minority groups. The "largely monolingual

¹⁰ See DR. JAMES THOMAS TUCKER, UNEQUAL EDUCATIONAL OPPORTUNITIES FOR ENGLISH LANGUAGE LEARNERS IN SECTION 203 COVERED JURISDICTIONS (June 2006).

¹¹ PAUL J. HOPSTOCK & TODD G. STEPHENSON, DESCRIPTIVE STUDY OF SERVICES TO LEP STUDENTS AND LEP STUDENTS WITH DISABILITIES 17 (Aug. 2003) (commissioned by OELA).

¹² NATALIE LANDRETH & MOIRA SMITH, VOTING RIGHTS IN ALASKA 1982-2006, at 27-28 (2006).

¹³ DR. JAMES THOMAS TUCKER, UNEQUAL EDUCATIONAL OPPORTUNITIES FOR ENGLISH LANGUAGE LEARNERS IN SECTION 203 COVERED JURISDICTIONS (June 2006).

¹⁴ NINA PERALES, LUIS FIGUEROA & CRISELDA RIVAS, THE MINORITY VOTING EXPERIENCE IN TEXAS SINCE 1982: DEMONSTRATING THE IMPORTANCE OF REAUTHORIZATION OF THE VOTING RIGHTS ACT (2006).

¹⁵ DR. JAMES THOMAS TUCKER, WAITING TIMES FOR ADULT ESL CLASSES AND THE IMPACT ON ENGLISH LEARNERS (June 2006).

elections in Alaska have clearly impacted Alaska Natives' ability to exercise their right to vote," resulting in voter turnout that trails statewide turnout by nearly seventeen percent.¹⁶ In Arizona, American Indian turnout remains low, comprising just over 54 percent of all registered American Indian voters in the 2004 presidential election, compared to the statewide turnout of 76 percent.¹⁷ According to the Census Bureau, in the November 2004 Presidential Election, Hispanic voting-age U.S. citizens had a registration rate of 57.9 percent, compared to 75.1 percent of all non-Hispanic white voting-age U.S. citizens.¹⁸ According to the Census Bureau, in the November 2004 Presidential Election, Asian American voting-age U.S. citizens had a registration rate of only 52.5 percent, compared to 75.1 percent of all non-Hispanic white voting-age U.S. citizens.¹⁹

This evidence of unequal educational opportunities, which has resulted in depressed language minority registration and turnout, demonstrates that there is a continuing need for Sections 4(f)(4) and 203.

2. How does Section 5 preclearance protect language minority citizens from discriminatory voting changes? Why does preclearance need to be applied to certain jurisdictions with language minority populations?

Section 5 preclearance protects language minority citizens from several categories of discriminatory voting changes. These changes include the ones identified by MALDEF in its Texas report,²⁰ and which historically have also been applied to African-Americans:

- Discriminatory use of numbered posts and staggered terms that ensure that a majority – or even plurality – of non-Hispanic white voters continue to be overrepresented in elected offices.
- Discriminatory implementation of majority vote and/or runoff requirements.
- Polling place or election date changes that deny minorities equal voting opportunities.
- Discriminatory absentee voting practices.
- Discriminatory annexations or deannexations.

¹⁶ LANDRETH & SMITH, at 25-26.

¹⁷ DR. JAMES THOMAS TUCKER & DR. RODOLFO ESPINO ET AL., VOTING RIGHTS IN ARIZONA 1982-2006, at 19 (2006).

¹⁸ U.S. CENSUS BUREAU, Table 4a, Reported Voting and Registration of the Total Voting-Age Population by Sex, Race and Hispanic Origin: November 2004.

¹⁹ U.S. CENSUS BUREAU, Table 4a, Reported Voting and Registration of the Total Voting-Age Population by Sex, Race and Hispanic Origin: November 2004.

²⁰ See PERALES ET AL., Section IV.

- Dissolution of single member districts, reductions in the number of offices, or revocation of voting rules when minority candidates of choice are about to be elected to office.
- Discriminatory redistricting practices to deny minorities an equal opportunity to elect their chosen candidates.

In addition, Section 5 prevents the implementation of discriminatory election procedures and rules that have a particular impact on language minorities and that violate Section 203 of the Voting Rights Act. Some examples of discriminatory voting changes falling into this category include:

- English-only materials that function as English literacy tests. This category includes and voting materials, whether written or electronic (such as web access) that is not provided in the covered languages (unless those languages are historically unwritten).
- Poll worker selection and recruitment, particularly to the extent that language minority citizens are not included in the process, which directly impacts the availability of bilingual language assistance.
- Failure to provide oral language assistance at any stage of the voting process, from voter registration through the distribution of election results.
- Community outreach and publicity programs that do not provide equal opportunities to language minority citizens or inform language minority citizens about the availability of language materials and assistance.
- Election official training that fails to include proper instruction on language assistance.
- Voter assistance practices that deny language minority citizens the opportunity to receive language assistance from the person of their choice.
- Election Day procedures in which language minority citizens are treated unequally, including voter check-in, voter challenges, use of provisional ballots, voter purges, absentee ballots, early voting opportunities, etc.

The reason that only certain jurisdictions are covered under Section 4(f)(4), which results in application of the special provisions of the Voting Rights Act including Section 5 preclearance, has been discussed at length by Congress in prior reauthorizations. The Section 4(f)(4) trigger targets “those jurisdictions with the more serious problems” of voting discrimination against language minorities.²¹ Specifically, “the more severe

²¹ S. REP. NO. 94-295 at 31, *reprinted in* 1975 U.S.C.C.A.N. 798.

remedies ... are premised not only on educational disparities” (like the less stringent provisions under Section 203(c)), “but also on evidence that language minorities have been subjected to ‘physical, economic, and political intimidation’ when they seek to participate in the political process.”²²

Jurisdictions covered by Section 4(f)(4) have severe and pervasive voting discrimination. For specific examples and evidence of this discrimination, I would encourage the Committee to read the state reports from Alaska, Arizona, California, Florida, New York, South Dakota, and Texas.

3. Why does Section 203 remain necessary in states with parallel laws that require language assistance, such as California, New Mexico, and New Jersey?

When Sections 4(f)(4) and 203 were originally enacted in 1975, a few Members of Congress suggested that the provisions were unnecessary because of parallel state laws that required language assistance. Specifically, in 1975, seven states required that bilingual materials and/or language assistance be provided to limited-English proficient voters: California, which adopted a 3 percent trigger after the state supreme court struck down the state’s literacy test in *Castro v. State*, 466 P.2d 244 (Cal. 1970); Connecticut; Florida; Massachusetts; New Mexico; New Jersey; and Pennsylvania.²³

Unfortunately, the record of these seven states has proven that Congressional concerns about state enforcement of their own laws was well-founded. Six of the seven states that voluntarily adopted their own language assistance provisions have admitted violating or been found to have violated Section 203 and/or other provisions of the Voting Rights Act because of discriminatory practices against language minority voters:

- California:
 - *United States v. City of Azusa* (C.D. Cal. 2005)
 - *United States v. City of Paramount* (C.D. Cal. 2005)
 - *United States v. City of Rosemead* (C.D. Cal. 2005)
 - *United States v. San Benito County* (N.D. Cal. 2004)
 - *United States v. San Diego County* (S.D. Cal. 2004)
 - *United States v. Ventura County* (C.D. Cal. 2004)
 - *United States v. Alameda County* (N.D. Cal. 1995)
 - *United States v. City and County of San Francisco* (N.D. Cal. 1978)
- Florida:

²² 121 CONG. REC. H4718 (daily ed. June 2, 1975) (statement of Rep. Edwards).

²³ S. REP. NO. 94-295, 94th Cong., 1st Sess. 33 n.35 (1975), reprinted in 1975 U.S.C.C.A.N. 799-800 n.35.

- *United States v. Osceola County* (M.D. Fla. 2002)
- *United States v. Orange County* (M.D. Fla. 2002)
- *United States v. Metropolitan Dade County* (S.D. Fla. 1993)
- Massachusetts
 - *United States v. City of Boston* (D. Mass. 2005)
 - *United States v. City of Lawrence* (D. Mass. 1998)
- New Jersey
 - *United States v. Passaic City and Passaic County* (D.N.J. 1999)
 - *Vargas v. Calabrese* (D.N.J. 1990)
 - *Marquez v. Falcey* (D.N.J. 1973)
- New Mexico
 - *United States v. Bernalillo County* (D.N.M. 1998)
 - *United States v. Socorro County* (D.N.M. 1993)
 - *United States v. Cibola County* (D.N.M. 1993)
 - *United States v. State of New Mexico and Sandoval County* (D.N.M. 1988)
 - *United States v. McKinley County* (D.N.M. 1986)
 - *United States v. San Juan County* (D.N.M. 1979)
- Pennsylvania
 - *United States v. Berks County* (E.D. Pa. 2003)
 - *Arroyo v. Tucker* (E.D. Pa. 1974)

The fact that most of these successful language assistance cases have been brought in the last ten years, with about half brought in the last five years, highlights the continuing need for federal oversight through reauthorization of Sections 4(f)(4) and 203.

4. Complex initiatives and referendums are becoming increasingly common features on ballots, including initiatives that directly impact the education and voting access of non-Native speakers. Can you explain how ballot complexity affects language minority voters? How does this complexity affect those with LEP in ways different from native speakers?

Complex ballot questions have a particularly devastating impact on language minority citizens in the absence of language assistance. I will explain this impact in two parts. First, it is important to understand the language and literacy abilities of covered language minority voting age citizens. Second, it is necessary to understand the educational level necessary to understand ballot propositions.

First, it is important to look at the triggering formula for Section 203 to see how jurisdictions are identified for coverage. The formula has two components: a numerical (10,000) or percentage (5 percent) trigger based upon LEP voting age U.S. citizens from a single language minority group; and a trigger that requires LEP voting age citizens from each language minority group to demonstrate that their illiteracy rate exceeds the national average.²⁴

LEP voting age citizens include all of those who speak English less than “very well.” Congress used this definition for two reasons. First, there is strong evidence that the complexities of casting a ballot – not just interpreting and voting on ballot initiatives, but also getting instructions on how to use voting equipment and other tasks we often take for granted – requires a higher level of English abilities. Second, there is evidence that non-native English language minority citizens tend to overstate their English language abilities.²⁵ The Congressional findings are supported by studies by educators that show that the sort of listening, reading, and comprehension skills required to cast an effective ballot require the highest level of English abilities that LEP voting age citizens lack.²⁶

The illiteracy rate for Section 203 coverage requires a very low level of educational attainment: namely, “the failure to complete the 5th primary grade.”²⁷ As discussed in my response to Senator Leahy’s Question #1 and Senator Kennedy’s Question #8, LEP language minority voting age citizens generally have illiteracy rates several times the national average of 1.35 percent, such as LEP Alaska Natives, over one-quarter of whom have less than a fifth grade education. Many other LEP voting age citizens have educational attainment rates that only marginally exceed a fifth grade education.

Second, a fifth grade education – or even a junior high level education – falls far short of the level of educational attainment necessary to understand and cast an informed vote on complex ballot initiatives. I have attached to my testimony today (as Attachment C) a report by regarding the relationship between English language naturalization requirements and the levels of English comprehension required to cast an informed ballot in an English-only election. Most ballot propositions are drafted at a high school level or greater, such as information on Louisiana’s voter ID proposition, which was written at the 15.9 grade level.²⁸ “A home rule charter question regarding tax increases for infrastructure improvement on the ballot in Fargo, ND in 2006 contains one sentence that is 150 words long and is written at the graduate school level.”²⁹

²⁴ See 42 U.S.C. § 1973aa-1a(b)(2)(A).

²⁵ H.R. REP. NO. 102-655 at 8, *reprinted in* 1992 U.S.C.C.A.N. 772.

²⁶ See WAITING TIMES FOR ADULT ESL CLASSES AND THE IMPACT ON ENGLISH LEARNERS, including Appendices C-F, which provide specific examples of my point.

²⁷ 42 U.S.C. § 1973aa-1a(b)(3)(E).

²⁸ ANA HENDERSON, ENGLISH LANGUAGE NATURALIZATION REQUIREMENTS AND THE BILINGUAL ASSISTANCE PROVISIONS OF THE VOTING RIGHTS ACT 3 (2006).

²⁹ *Id.* at 4-5.

Ballot initiatives, propositions, and referenda less lengthy and complicated than the example that you cited from Denver, Colorado often present challenges of comprehension to United States citizens for whom English is their second language. California's Proposition 77 on the ballot in November 2005 was a 42-word sentence written at the 12th grade level.³⁰ Any covered language minority voter who has does not have advanced English language skills or a high school diploma would be unable to cast an informed ballot on even the less complex language included in California's Proposition 77.

Many native born U.S. citizens struggle with complex ballot questions that are frequently written in legalese, use run-on sentences, and employ double negatives in which a "Yes" vote may actually be a vote against the subject matter on the ballot. When these challenges are combined with language barriers, including lack of both oral and written language assistance, the challenges become insurmountable. For LEP voting age U.S. citizens, the ballot initiatives are incomprehensible English literacy tests. Even language minority citizens proficient in English often prefer to review information about complex ballot initiatives in their native language because they feel more comfortable that they fully understand the issue.

Every American loses out when direct democracy is anything but democratic. Results from ballot initiatives are rendered illegitimate if a large segment of voting age U.S. citizens is left out of the process. This is especially true in the western states, where numerous ballot initiatives, such as bans on bilingual education and implementation of burdensome voter ID laws, have a disparate impact (and indeed are targeted at) the very language minority citizens who are left out of the process.

Complex ballot initiatives are not the only written election materials that can shut language minority voting age citizens out of the political process. For first-time voters or voters using new voting machines for the first time, English-only instructions can be confusing and incomprehensible. A voter who is unable to understand machine instructions may be unable to cast an effective vote. Electronic voting machines often have confusing procedures for typing in write-in candidates using keyboards. If a covered LEP voter is unable to receive instructions and assistance in his or her native language, the risk of error increases dramatically.

Every day voting materials, such as absentee or early voting requests and provisional ballots, can be confusing for even native-English speakers. I have attached a copy of the absentee voting request form used by the State of Texas to illustrate my point (see Attachment D). The failure to complete a single section of the form or to sign it will result in the voter's request being denied. Moreover, an illiterate voter who is unable to sign his or her own name must have a witness or assistant observe the voter make their mark in a box; the failure to have the witness or assistant print their name and sign the form "is a Class A misdemeanor" that can lead to criminal penalties.

³⁰ Id. at 4.

Consequently, it is very important that language assistance be offered to LEP voters to prevent vote denial or disenfranchisement both for complex ballot questions, and even the most routine voting activities.

5. How can a jurisdiction be removed from Section 203 coverage? Specifically, describe how Census determinations and the bailout provisions affect coverage. How will the change from the long form census, which had been used in coverage determinations, to the annually-administered American Community Survey affect the ability of jurisdictions to be removed from coverage?

Jurisdictions covered by Section 203 can be removed from coverage in three ways. First, if the demographics of the jurisdiction change so that the language minority groups triggering coverage no longer meet the numerical (10,000 LEP voting age citizens from a single language group) or percentage (five percent or more LEP voting age citizens from a single language group) threshold, then the jurisdiction will be removed from coverage during the next Census determination.³¹ As a result of the July 2002 Census determinations, two states that previously were covered in part, Iowa and Wisconsin, no longer are.³²

The other two ways to be removed from coverage provide jurisdictions with strong incentives to address the underlying bases for coverage: high LEP rates among voting age U.S. citizens from particular language groups, and high illiteracy rates among LEP voting age U.S. citizens.

If a covered jurisdiction provides opportunities that allow language minority voting age citizens to become sufficiently proficient in English to participate in elections without needing language assistance, then that can be reflected in subsequent Section 203 determinations by the Census Bureau. Just as new jurisdictions become covered under Section 203, the changing demographics of LEP voters resulting from affirmative efforts to address English limitations can result in jurisdictions falling out from coverage.

Section 203(d) of the Act provides that a covered jurisdiction may bailout from coverage under the bilingual election provisions if it can demonstrate “that the illiteracy rate of the applicable language minority group” that triggered coverage “is equal to or less than the national illiteracy rate.”³³ “Having found that the voting barriers experienced by these citizens is in large part due to disparate and inadequate educational opportunities,” this bailout procedure “rewards” jurisdictions that are able to remove these barriers.³⁴ S. 2703 maintains this built-in incentive to address the burden of illiteracy caused by unequal educational opportunities.

³¹ See 42 U.S.C. § 1973aa-1a(b).

³² MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS, at 7.

³³ 42 U.S.C. § 1973aa-1a(d).

³⁴ 121 CONG. REC. H4719 (daily ed. June 2, 1975) (statement of Rep. Edwards).

The bill also updates the data used for coverage determinations to reflect changes in how the Census Bureau collects language ability data. In future censuses, the existing method of collection, decennial long-form data, will be replaced by the American Community Survey (ACS), which will “provide long-form type information every year instead of once in ten years.”³⁵ The bill responds to this data collection change by providing that coverage determinations under Section 203(b) will be made using “the 2010 American Community Survey census data and subsequent American Community Survey data in 5-year increments, or comparable census data.”³⁶ The bill otherwise leaves Section 203(b)(4) unchanged, ensuring that coverage determinations will continue to “be effective upon publication in the Federal Register and shall not be subject to review in any court.”³⁷ The bill also continues to provide the Director of the Census with the flexibility to update census data and publish Section 203(c) coverage determinations more frequently, as new data becomes available.³⁸

ACS data ensures that jurisdictions will be removed from coverage on a regular basis for any of the three reasons I have discussed above. In that respect, Section 203 coverage will always be directly tied to only those areas in which voting age language minority U.S. citizens need language assistance to have equal access to the electoral process.

6. Mauro Mujica testified that low usage of bilingual ballots in certain jurisdictions is evidence that coverage is unnecessary, suggesting that there needs to be an opt-out provision for Section 203 covered jurisdictions that can show they have complied with the law, but that the materials and assistance provided are not being used. Is the low usage rates he cited in certain jurisdictions evidence that the materials are not needed? How important is it to the success of bilingual assistance programs that jurisdictions employ effective outreach to inform voters of bilingual language assistance materials that may be available to them?

For the first part of this question, please see my response to Senator Coburn’s questions. Pages 21-23 of the Section 203 report that I have attached in response to Senator Specter’s question is also responsive to the first part of this question. To summarize, the “low use” rates cited by Mr. Mujica are not evidence that the materials are not needed for all of the reasons discussed in my separate responses and the report.

It is absolutely critical that jurisdictions employ effective outreach programs to inform language minority voters that language materials and assistance are available to them. As I discussed at length in my response to Senator Coburn, voters cannot use language materials if they do not know they are available. The King County, Washington example

³⁵ U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY: A HANDBOOK FOR STATE AND LOCAL OFFICIALS 1 (Dec. 2004). Because the American Community Survey is part of the census, responding to it is required by law. *Id.* at 2.

³⁶ VRARA § 8.

³⁷ 42 U.S.C. § 1973aa-1a(b)(4).

³⁸ See *Doi v. Bell*, 449 F. Supp. 267 (D. Haw. 1978).

cited by Mr. Mujica refutes the proposition for which he cited it. Rather than serving as evidence of low use (only 24 Chinese ballots used in the first election following Section 203 coverage in July 2002), it actually shows the significant impact that community outreach has on usage. Within a short period following publicity and work with Chinese community organizations, the number of Chinese ballots requested skyrocketed by more than 5800 percent for the 2005 elections.

In addition, the failure to engage in proper outreach to the covered language minority group has several other negative consequences. If language minority voting age citizens are not asked to serve as poll workers or in other election official capacities, it makes it much more likely that oral language assistance will not be available to all of those voters who need it. Language minority voters will not be aware of polling place locations/hours, new voter orientation classes, voter registration deadlines, absentee or early voting opportunities, or pre-election publicity about candidates or ballot issues. Lack of outreach often means that covered jurisdictions will be ineffective in identifying those areas where voters need language assistance or have other special needs, such as inadequate transportation, that must be addressed to provide them with equal access to the electoral process.

Election officials acknowledge that they are not doing enough community outreach on the availability of language assistance. In a survey of 810 covered jurisdictions, 52 percent of which responded, nearly two-thirds of election officials admitted that they do not engage in community outreach with covered language groups.³⁹ Their lack of outreach shows. As a direct result of their non-compliance with Section 203,⁴⁰ the Department of Justice has had to bring over two dozen successful enforcement actions.⁴¹ The lack of community outreach and publicity often leads to direct disenfranchisement of covered language minority voters.

7. Linda Chavez testified that election officials and the U.S. Department of Justice were required to create written versions of unwritten Native American languages in order to comply with Section 203. If it is true that they did so, was such action necessary to comply with Section 203, which requires a jurisdiction to provide only oral assistance if the language is not in written form?

Ms. Chavez's testimony on this point is apparently erroneous. I have consulted with several American Indian organizations, current and former Justice Department attorneys,

³⁹ DR. JAMES THOMAS TUCKER & RODOLFO ESPINO, MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS EXECUTIVE SUMMARY 23 (Mar. 2006) ("MINORITY LANGUAGE ASSISTANCE PRACTICES").

⁴⁰ See 28 C.F.R. § 55.18(e) (describing steps that "may include the display of appropriate notices, in the minority language, at voter registration offices, polling places, etc., the making of announcements over minority language radio or television stations, the publication of notices in minority language newspapers, and direct contact with language minority group organizations").

⁴¹ A complete listing of these cases is included in the Appendix A to the Section 203 memorandum (Attachment B).

and even election officials in American Indian language covered jurisdictions, and have found no evidence of Ms. Chavez's allegation. Unfortunately, Ms. Chavez did not identify any jurisdictions where she claims that this has happened, which makes it impossible to respond with any greater specificity.

Moreover, as Congress had recognized during prior reauthorizations of the language assistance provisions, Section 203 does not "require the impossible," but merely requires that a covered jurisdiction provide written materials or oral assistance based upon the actual needs of the applicable language minority group(s).⁴² If the predominant covered language is historically unwritten, such as most Alaskan Native and American Indian languages,⁴³ "the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting."⁴⁴ The Department of Justice regulation cited by Senator Kennedy, 28 C.F.R. § 55.12(c), makes it clear that Section 203 means what it says, and that is precisely how the Department enforces it.

8. Please address the concerns raised by Linda Chavez in her testimony that providing bilingual language assistance is harmful for the integration of minority language citizens into American society. Does expanding the access of citizens to the electoral process result in what she described as "balkanization" or does it help citizens fully participate in American democracy?

Clearly, providing language assistance to LEP voting age U.S. citizens integrates those citizens into the political process by allowing them to fully and effectively exercise their fundamental right to vote. "Balkanization" is a loaded term of mythical proportions that has absolutely no basis in fact, and is used as a divisive measure to distract Congress from focusing on two things.

First, the only people covered by the language assistance provisions of the Voting Rights Act are voting age U.S. citizens. It is unfortunate that some pundits, such as Ms. Chavez, have tried to deflect attention from the citizenship of language minority voters by claiming that this is about immigration. Every single voter who receives assistance under Section 203 is a U.S. citizen, including millions of native-born Alaska Natives, American Indians, and Puerto Ricans. Furthermore, for nearly two hundred years the United States Supreme Court has recognized, "A naturalized citizen is indeed made a citizen under an act of Congress, but the act does not proceed to give, to regulate, or to prescribe his capacities. He becomes a member of the society, possessing all the rights of a native

⁴² S. REP. NO. 94-295 at 39, *reprinted in* 1975 U.S.C.C.A.N. 806; 121 CONG. REC. H4718 (daily ed. June 2, 1975) (statement of Rep. Edwards); 121 CONG. REC. H4900 (daily ed. June 4, 1975) (statement of Rep. Badillo); 121 CONG. REC. H4827 (daily ed. June 3, 1975) (statement of Rep. Edwards).

⁴³ This Committee heard evidence from Natalie Landreth that there are a few Alaska Native languages that are written and used by LEP voting age citizens, such as the Yu'pik language.

⁴⁴ 42 U.S.C. §§ 1973b(f)(4), 1973aa-1a(c).

citizen, and standing, in the view of the constitution, on the footing of a native. The constitution does not authorize Congress to enlarge or abridge those rights.”⁴⁵

Second, language minority voters covered by Section 203 are the victims of unequal educational opportunities in the public schools and through inadequate ESL opportunities. As noted in my response to Senator Leahy’s first question, high LEP and illiteracy rates are not the result of mere happenstance. The balkanization argument is intended to deflect attention from the fact that Section 203 is a remedial measure to ameliorate the effects of past and present discrimination. As the Supreme Court reasoned in *Katzenbach v. Morgan*, Congress may have “questioned whether denial of a right deemed so precious and fundamental in our society was a necessary or appropriate means of encouraging persons to learn English, or of furthering the goal of an intelligent exercise of the franchise.”⁴⁶

Congress has before it a substantial record that establishes that without language assistance to correct the effects of discrimination against language minorities, the right to vote will be rendered a dead letter for these individuals. In the process, all Americans are harmed. Instead of having candidates and legislation that reflect the deliberative process of all citizens, we are left with a shell that provides a hollow ring from the bell of democracy.

9. Some have raised concerns about the costs of compliance with Section 203. In your experience working closely with many jurisdictions on compliance, are costs a significant concern for jurisdictions? Do they consider those costs to be too high? How have jurisdictions alleviated some of these costs by including compliance with Section 203 as part of their general election administration, including technology upgrades and the production of election materials generally?

In my experience the costs of compliance with the language assistance provisions are modest, if there are any costs at all. Pages 23-26 of the Section 203 Memorandum I have attached (Attachment B) in response to Senator Specter’s question provides a detailed summary of the low costs associated with Section 203. Deborah Wright, who is the compliance officer for Los Angeles County, which has more languages covered than any other jurisdiction in for one of the largest electorates in the United States, testified that the costs are “reasonable.” It therefore comes as no surprise that an overwhelming majority (over 71 percent) of all election officials surveyed in 810 covered jurisdictions support reauthorization of Section 203.⁴⁷

Targeting is the best way to ensure that only those voters who need written and oral language assistance receive it. In 1975, Congress recognized targeting as a permissible means to comply with Section 203 as long as “it is designed and implemented in a manner that ensures that all members of the language minority who need assistance,

⁴⁵ *Osborn v. Bank of the United States*, 22 U.S. 738, 827-28 (1824).

⁴⁶ 384 U.S. 641, 658 (1966).

⁴⁷ MINORITY LANGUAGE ASSISTANCE PRACTICES at 24.

receive assistance.”⁴⁸ Specifically, it must ensure language minority voters have “access to bilingual materials” and “does not place an unequal burden upon those voters requiring information and materials in a language other than English.”⁴⁹ Department of Justice guidelines explicitly provide for targeting. According to the Department, “a targeting system will normally fulfill the Act’s minority language requirements if it is designed and implemented in such a way that language minority group members who need minority language materials and assistance receive them.”⁵⁰

There are several ways to target to identify the location and number of voters and citizens not yet registered to vote who need voting materials and assistance in their native language. For example, new voters can be asked their language preference when they register and existing voters can be sent a postcard in the covered language asking them to identify their preferred language, to ensure written materials and oral assistance are available where necessary.⁵¹ Alternatively, the jurisdiction can rely upon existing data sources. Use of census information is one obvious method. Voter registration lists also can be used, particularly where data on the race or ethnicity of registered voters is available or surname analysis is possible,⁵² although registration data will not necessarily identify precincts where large numbers of unregistered language minority citizens reside.⁵³ In addition, jurisdictions may be able to rely upon assessment by precinct officials, with the understanding that those officials may understate or downplay the need for language materials and assistance. Local election officials even may base their decisions on intuition and their own knowledge about the demographics of their community. In the end, the most effective way to target is to use some combination of these methods, along with input from the affected language minority community. Covered jurisdictions must be prepared to update this information regularly, particularly if the demographics of the communities are changing.

After determining where bilingual materials and assistance should be targeted, a covered jurisdiction can reduce its costs by focusing its efforts on those areas. Mailings of written materials in the covered language can be directed to only those “persons who are likely to need them or to residents of neighborhoods in which such a need is likely to exist, supplemented by a notice of the availability of minority language materials in the general mailing (in English and in the applicable minority language)” and separate publicity regarding those materials.⁵⁴ Minority language materials do not need to be provided at

⁴⁸ H. REP. NO. 102-655 at 9, *reprinted in* 1992 U.S.C.C.A.N. 773.

⁴⁹ S. REP. NO. 94-295 at 69, *reprinted in* 1975 U.S.C.C.A.N. 820.

⁵⁰ 28 C.F.R. § 55.17.

⁵¹ S. REP. NO. 94-295 at 68, *reprinted in* 1975 U.S.C.C.A.N. 819; *see also* 28 C.F.R. § 55.18(a) (describing a similar method for targeting the provision of voting materials by mail).

⁵² *See my response to Senator Kennedy’s Question #5 for additional information about the utility of surname analysis in targeting language assistance to those places that need it.*

⁵³ *See* 28 C.F.R. § 55.20(c).

⁵⁴ 28 C.F.R. § 55.18(a). *See also* 138 CONG. REC. H6605 (daily ed. July 24, 1992) (statement of Rep. Brooks) (noting that “English language mailings sent to registered voters will obviously not assist language

polling sites with a small number of language minority registered voters if the jurisdiction has targeted assistance through “an alternative system enabling those few to cast effective ballots.”⁵⁵ The availability of language assistance must comply with an “effectiveness” standard, in which the extent of assistance available is tailored to ensure that language minority voters can participate effectively in the election process.⁵⁶

Hiring and training bilingual language minority voters to serve as election officials is an often overlooked and underutilized way to lower costs.⁵⁷ Unless otherwise required by state law or court order, covered jurisdictions generally are not required to hire additional poll workers if they retain poll workers who are able to communicate effectively in the applicable minority languages.⁵⁸ In most cases, bilingual poll workers are paid the same as other poll workers.⁵⁹ Moreover, some jurisdictions do not have bilingual poll workers available at every polling place, but instead use standby poll workers who are “available to come to the polling place, if called, to provide assistance.”⁶⁰ The use of volunteers also may be acceptable, if minority language voters have the same opportunities as other voters to serve as paid election officials.⁶¹ In some cases, it may not be necessary to have bilingual poll workers at all, if a language recording provides oral instructions and assistance effectively to voters who need it.⁶²

More technologically advanced voting equipment also lowers the cost of providing language assistance. Many of the new electronic voting equipment has audio recordings that permit instructions to be provided in several languages. In addition, recent improvements now allow multiple languages to be included on voting machines. Obviously, there is no added cost for including covered languages on this new voting equipment.

minority voters unless, at a minimum, the mail includes information in that minority language regarding how to request help”).

⁵⁵ 28 C.F.R. § 55.18(d). *See also* 138 CONG. REC. H6604 (daily ed. July 24, 1992) (statement of Rep. Edwards) (observing that Section 203 does “not demand the unreasonable from jurisdictions: and therefore “jurisdictions with small language minority communities may not need to implement language assistance measures identical to those provided in larger jurisdictions”).

⁵⁶ 28 C.F.R. § 55.20(c).

⁵⁷ *See* Statement of Deborah Wright.

⁵⁸ *See* 1984 GAO REPORT at 20; 138 CONG. REC. H6606 (daily ed. July 24, 1992) (statement of Rep. Pelosi).

⁵⁹ 1984 GAO REPORT at 20.

⁶⁰ *Id.*

⁶¹ *See Id.*

⁶² *See* Christina Leonard, *Translator Finds Words for Pima-Speaking Voters*, THE ARIZONA REPUBLIC, at B7 (Aug. 13, 2002) (describing use of recorded instructions by Maricopa County, Arizona, to provide oral language assistance to limited-English proficient voters from the Pima Indian community).

RESPONSES TO SENATOR KENNEDY

1. How can a jurisdiction be removed from Section 203 coverage? Specifically, describe how Census determinations and the bailout provisions of the Voting Rights Act affect coverage.

Jurisdictions covered by Section 203 can be removed from coverage in three ways. First, if the demographics of the jurisdiction change so that the language minority groups triggering coverage no longer meet the numerical (10,000 LEP voting age citizens from a single language group) or percentage (five percent or more LEP voting age citizens from a single language group) threshold, then the jurisdiction will be removed from coverage during the next Census determination.⁶³ As a result of the July 2002 Census determinations, two states that previously were covered in part, Iowa and Wisconsin, no longer are.⁶⁴

The other two ways to be removed from coverage provide jurisdictions with strong incentives to address the underlying bases for coverage: high LEP rates among voting age U.S. citizens from particular language groups, and high illiteracy rates among LEP voting age U.S. citizens.

If a covered jurisdiction provides opportunities that allow language minority voting age citizens to become sufficiently proficient in English to participate in elections without needing language assistance, then that can be reflected in subsequent Section 203 determinations by the Census Bureau. Just as new jurisdictions become covered under Section 203, the changing demographics of LEP voters resulting from affirmative efforts to address English limitations can result in jurisdictions falling out from coverage.

Section 203(d) of the Act provides that a covered jurisdiction may bailout from coverage under the bilingual election provisions if it can demonstrate “that the illiteracy rate of the applicable language minority group” that triggered coverage “is equal to or less than the national illiteracy rate.”⁶⁵ “Having found that the voting barriers experienced by these citizens is in large part due to disparate and inadequate educational opportunities,” this bailout procedure “rewards” jurisdictions that are able to remove these barriers.⁶⁶ S. 2703 maintains this built-in incentive to address the burden of illiteracy caused by unequal educational opportunities.

The bill also updates the data used for coverage determinations to reflect changes in how the Census Bureau collects language ability data. In future censuses, the existing method of collection, decennial long-form data, will be replaced by the American Community

⁶³ See 42 U.S.C. § 1973aa-1a(b).

⁶⁴ MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS, at 7.

⁶⁵ 42 U.S.C. § 1973aa-1a(d).

⁶⁶ 121 CONG. REC. H4719 (daily ed. June 2, 1975) (statement of Rep. Edwards).

Survey (ACS), which will “provide long-form type information every year instead of once in ten years.”⁶⁷ The bill responds to this data collection change by providing that coverage determinations under Section 203(b) will be made using “the 2010 American Community Survey census data and subsequent American Community Survey data in 5-year increments, or comparable census data.”⁶⁸ The bill otherwise leaves Section 203(b)(4) unchanged, ensuring that coverage determinations will continue to “be effective upon publication in the Federal Register and shall not be subject to review in any court.”⁶⁹ The bill also continues to provide the Director of the Census with the flexibility to update census data and publish Section 203(c) coverage determinations more frequently, as new data becomes available.⁷⁰

ACS data ensures that jurisdictions will be removed from coverage on a regular basis for any of the three reasons I have discussed above. In that respect, Section 203 coverage will always be directly tied to only those areas in which voting age language minority U.S. citizens need language assistance to have equal access to the electoral process.

2: In her written testimony for the hearing on Section 203, panelist Linda Chavez stated that “there are few citizens who need ballots and other election materials printed for them in languages other than English.” Is Ms. Chavez right? Or is there a high incidence of limited English proficiency among Hispanic voting age citizens, including those born in the United States? What data support your conclusion?

Ms. Chavez is incorrect that “there are few citizens who need ballots and other election materials printed for them in languages other than English.” As I noted in one of my earlier responses, according to the 2000 Census, among all jurisdictions covered under Section 203, an average of 13.1 percent of citizens of voting age are limited-English proficient (LEP) in the languages triggering coverage.⁷¹ The average LEP rate of all voting age citizens in covered jurisdictions is as follows: 22.6 percent for Alaska Native languages; 16.3 percent for American Indian languages; and 10.4 percent for Spanish-speaking citizens.⁷² In the State of Texas alone, the United States Census reported in 2003 that there are 818,185 Latino voting-age citizens – or nearly one out of every four Latino voting-age citizens – who are not yet fully proficient in English. A complete listing of the LEP and illiteracy rates for all of the jurisdictions covered by Section 203,

⁶⁷ U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY: A HANDBOOK FOR STATE AND LOCAL OFFICIALS 1 (Dec. 2004). Because the American Community Survey is part of the census, responding to it is required by law. *Id.* at 2.

⁶⁸ VRARA § 8.

⁶⁹ 42 U.S.C. § 1973aa-1a(b)(4).

⁷⁰ *See Doi v. Bell*, 449 F. Supp. 267 (D. Haw. 1978).

⁷¹ DR. JAMES THOMAS TUCKER & RODOLFO ESPINO, MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS EXECUTIVE SUMMARY 21 (Mar. 2006) (summarizing July 2002 Census determinations for Section 203 coverage).

⁷² *Id.* at 32, 35, 38.

derived from the July 2002 Census determinations, is provided in Exhibit B of the Section 203 Memorandum (Attachment B).

Millions of LEP American citizens who need language assistance are native born. The 1986 GAO report includes the most comprehensive study of language assistance use rates based on country of origin. The GAO found that of 283,000 Hispanic voters it surveyed in Texas in 1984, “[t]he typical bilingual voter was a native-born U.S. citizen, was older, and lacked a high school education.” Seventy-seven percent of Hispanic voters who used a bilingual ballot were born in the United States.⁷³

Similarly, according to the 2000 Census, 98.6 percent of all Puerto Rican persons in the United States are native born.⁷⁴ Nearly one-third (662,607) of the 2.2 million Puerto Ricans of voting age are LEP.⁷⁵

Nearly all of the Alaska Native and American Indian persons in the United States are also native born.⁷⁶ Over 168,000 Alaska Native and American Indian voting age citizens are LEP and need oral language assistance to cast effective ballots.⁷⁷ The need is particularly acute among the elderly and those living on isolated reservations.

LEP voters confirm the high need for language assistance through their requests for that assistance. According to AALDEF’s eight-state survey of Asian American voters in November 2004, almost one-third indicated that they needed language assistance to vote, including 46 percent of all first-time voters.⁷⁸ According to a November 2004 survey of LEP Navajo and Latino voters in Coconino and Maricopa Counties and a follow-up telephone survey in March 2005 of Latino voters in Maricopa County, 76 percent reported that they received some type of language assistance when they voted.⁷⁹

The same holds true in California. According to the Los Angeles County, California Registrar of Voters, the total number of voters in Los Angeles County who have requested language assistance increased by 38 percent between December 1999 and August 2005 as a result of outreach efforts. During this period, requests for language assistance among specific language groups increased as follows: Tagalog (Filipino) requests increased by 63 percent; Chinese requests increased by 49 percent; Vietnamese requests increased by 40 percent; Spanish requests increased by 37 percent; Korean

⁷³ U.S. GEN. ACCT. OFF., BILINGUAL VOTING ASSISTANCE: COST OF AND USE DURING THE NOVEMBER 1984 GENERAL ELECTION, at p. 61 (1986).

⁷⁴ U.S. CENSUS BUREAU, *We the People: Hispanics in the United States*, at p. 8 (Dec. 2004).

⁷⁵ U.S. Census Bureau, STF-3 and STF-4 data.

⁷⁶ U.S. CENSUS BUREAU, *The American Indian and Alaska Native Population: 2000*, at p. 1 (Feb. 2002).

⁷⁷ U.S. Census Bureau, STF-3 and STF-4 data.

⁷⁸ Testimony of Margaret Fung of AALDEF.

⁷⁹ Dr. James Thomas Tucker & Dr. Rodolfo Espino et al., *Voting Rights in Arizona 1982-2006*, at 39 (2006).

requests increased by 26 percent; and Japanese requests increased by 25 percent.⁸⁰ According to a November 2000 exit survey of language minority voters in Los Angeles and Orange Counties in California, 54 percent of Asian American and Pacific Islander voters and 46 percent of Hispanic voters reported that they would be more likely to vote if they received language assistance. These numbers are consistent with other exit surveys done in the same counties in March 2000 and November 1998.⁸¹

This evidence of need and use of language assistance is consistent with evidence received during the last reauthorization. For example, the Senate received evidence of a 1992 survey of Navajo and Pueblo Indians in northwestern New Mexico found that 48 percent were “more comfortable” speaking their own language than English and that they needed assistance when they voted.⁸² This evidence conclusively refutes Ms. Chavez’s unfounded contention that there is no need for language assistance among voting age U.S. citizens.

3: What would be the impact upon limited English proficient Hispanic voters if Section 203 is not reauthorized?

If Section 203 were not reauthorized, millions of LEP Hispanic voting age citizens would no longer be able to cast effective, informed ballots for the candidates and policy options of their choice. In essence, these voters would be effectively disenfranchised if Section 203 were not renewed because they would not be able to participate in a knowledgeable, informed manner in U.S. elections. As a result of the discontinuation of language assistance, voter registration and turnout may be expected to decrease significantly below the already depressed levels I described in response to Senator Leahy’s Question #1 and Senator Kennedy’s Question #8.

Strong evidence of the beneficial impact of Section 203 upon the voter registration and participation levels of covered language minority citizens is provided by the results of the Department of Justice’s successful enforcement actions: following Section 203 enforcement actions, voter registration and turnout among covered language minority voters dramatically increases. For example, “A Section 203 lawsuit in Passaic, New Jersey, was so successful for Hispanic voters that a Section 2 challenge to the at-large election system was subsequently withdrawn. A Memorandum of Agreement in Harris County, Texas helped double Vietnamese turnout, and the first Vietnamese candidate in history was elected to the Texas legislature – defeating the incumbent chair of the Appropriations Committee by 16 votes out of over 40,000 cast.”⁸³ My response to

⁸⁰ Statement of Eugene Lee before the National Commission on the VRA (Sept. 27, 2005), at 4 http://www.votingrightsact.org/hearings/pdfs/eugene_lee.pdf

⁸¹ *Id.*

⁸² *S. 2236 Hearings*, 102d Cong., 2d Sess., S. HRG. 102-1066, at 328 (1992) (joint testimony of Native Am. Rts. Fund and National Cong. of Am. Indians).

⁸³ Statement of Bradley J. Schlozman, Acting Assistant Attorney General, before the House Judiciary Committee, at p. 4 (Nov. 8, 2005).

Senator Coburn's Question #1 provides additional evidence of increased voter registration and turnout resulting from the Department's enforcement actions.

There is also substantial evidence that without the federal oversight of election activities for language minority citizens, much voting discrimination would go undetected. The NALGO Section 203 Memorandum (Attachment B) contains several examples of other forms of discrimination, such as lack of outreach, poll worker recruitment, polling place selection, intimidation, and other disparate forms of treatment of language minority voters, which have occurred in Section 203 covered jurisdictions. These examples tell a very poignant story: when language minorities are shut out of the political process because of English literacy tests, their exclusion masks other forms of more covert discrimination.

4. Some have suggested that the ability to bring someone with you to the polls to provide voting assistance under Section 208 of the Voting Rights Act is an adequate alternative to bilingual ballots and bilingual poll workers. It has also been suggested that sample ballots printed in ethnic newspapers would provide an alternative source of assistance for limited-English speaking voters if Section 203 is not reauthorized. Would either of these practices make up for the absence of bilingual poll workers and translated ballots and voting instructions at the polls on election day? Why or why not?

Neither of the suggested practices would make up for the absence of bilingual poll workers and translated election materials.

First, the ability of voters to bring persons with them to provide language assistance is not an adequate alternative to bilingual election materials and bilingual poll workers. In essence, requiring LEP citizens to provide their own language assistance would impose an additional burden upon LEP citizens wishing to cast an informed ballot: they would not only need to register to vote and participate in elections in the same manner as other voters, they also be required to provide their own private translation services in order to vote effectively.

Many eligible LEP voters will be unable to access a person whose English fluency is sufficient to provide capable language assistance in elections. According to the 2000 Census, 4.4 million households encompassing 11.9 million people are "linguistically isolated" from the rest of the population, which means that all members of the household fourteen years and older are limited-English proficient. Among the language groups covered by Section 203, the following are linguistically isolated:

- 29.2 percent of the 2.8 million Asian American and Pacific Island language-speaking households;
- 23.9 percent of the 10.7 million Spanish-speaking households; and

- 5.0 percent of all Alaskan Native and American Indian persons.⁸⁴

Therefore, many language minority U.S. citizens will not have access to someone to bring with them to provide assistance.

Moreover, there is widespread non-compliance with Section 208 of the Voting Rights Act. Only 10.3 percent of responding election officials in 31 states covered by Section 203 of the Voting Rights Act reported voter assistance practices that are at least as protective as Section 208: only 1.9 percent correctly stated the federal standard; an additional 8.4 percent stated voter assistance practices more protective than Section 208.⁸⁵

Further, requiring LEP voters to provide their own language assistance at the polls may encourage the manipulation of these voters by unscrupulous private persons who wish to improperly influence the voters' decisions in the polling place. Government provision of language assistance, which provides legal protections to ensure the provision of nonpartisan language assistance by election workers, ensures that LEP voters may make election choices independently and in an informed manner.

A similar concern regarding improper influencing of LEP voters arises in the context of ethnic newspapers providing language assistance in the election process. Jurisdictions provide nonpartisan voter information in English in order to ensure that voters may be informed about candidates and issues through a nonpartisan source. Ethnic newspapers, which are nonetheless invaluable information resources for Latino communities, may not be dependably nonpartisan such that they should be entrusted to provide translated voter information in an independent and reliable manner.

Without Section 203, many jurisdictions would fail to include language minorities in their poll worker recruitment. For example, in Reading, Pennsylvania, a federal court recently noted the high level of exclusion of Latinos from elections positions. Although the largely Puerto Rican Hispanic population comprised nearly one-third of Reading's voting age population, in the 1999 election only 1.3 percent of all poll workers were Hispanic. The failure to recruit bilingual Spanish-speaking poll workers deprived LEP Spanish-speaking voters of an equal opportunity "to cast an informed and effective vote."⁸⁶ The Court concluded, "The only impediment to Defendants' appointment of bilingual persons to serve as clerks or machine inspectors, and to fill vacant elected poll worker positions, was Defendants' apparent unwillingness to ensure that poll workers included persons reflective of the community."⁸⁷

⁸⁴ BUREAU OF THE CENSUS, ECONOMICS & STATISTICS ADMIN., U.S. DEP'T OF COMMERCE, LANGUAGE USE AND ENGLISH-SPEAKING ABILITY: 2000, at p. 10 (OCT. 2003); 2000 Census, Summary Tape File 3 (STF-3), Tables QT-P17 and P20.

⁸⁵ MINORITY LANGUAGE ASSISTANCE PRACTICES EXECUTIVE SUMMARY at 23.

⁸⁶ *United States v. Berks County*, 277 F. Supp. 2d 570, 574, 576, 579 (E.D. Pa. 2003).

⁸⁷ 277 F. Supp. 2d at 581.

In passing and renewing Section 203 and the Voting Rights Act, Congress has repeatedly found that the language assistance as required under Section 203 presents the most reliable, efficient, and effective manner of ensuring that LEP voters may vote in an informed manner in U.S. elections.

5. There was testimony that the Department of Justice uses surname analysis to target bilingual assistance under Section 203. In what ways can surname analysis be used in conjunction with other tools to target language assistance to those areas that need it?

Surname analysis is just one of several tools that may be used to target language assistance to only those voters who need it and not to every voter in the jurisdiction. Surname analysis is not “racial profiling,” but is merely one of many tools that is a starting point to ensure that language assistance is targeted to only those voters who need it. If that tool is removed, it will inhibit not only Section 203 enforcement, but also compliance by covered jurisdictions.

Surname analysis allows jurisdictions to target assistance based upon up to date voter registration data, and not Census data that may be older and includes many people who are not registered to vote. The Department of Justice does not assume that the surname analysis is valid, but merely uses it as a guide and then seeks out admissible evidence, usually eyewitnesses. Surname analysis provides the best available process for targeting language assistance; it should not, however, be used in isolation but as one of many information sources used to target language assistance services. As one of the tools used for targeting, surname analysis assists in the cost-effective identification of those areas where language assistance is needed.

Surname analysis is an accepted methodology for determining an accurate estimate of persons of Spanish or Filipino Heritage, as Congress recognized in 1975 and numerous federal courts have held where it has been used.⁸⁸ Many states, such as California, Connecticut, Massachusetts and Pennsylvania rely upon surname analysis to target language assistance under their own state laws.

6. According to Section 203 panelist Mauro Mujica, “In King County, Washington, only 24 of the 3,600 Chinese ballots prepared for the September 2002 primary election were used.” What are the reasons why the usage may have been at that level for that one election? Is it still true today that ballots translated into Chinese are under-used in elections in King County?

⁸⁸ S. REP. NO. 94-295 at 24 n.14, *reprinted in* 1975 U.S.C.C.A.N. 790-91 n.14; *Hernandez v. Texas*, 347 U.S. 745, 480 n.12 (1954); *Ely v. Klahr*, 403 U.S. 108, 118 (1971) (Douglas, J., concurring); *Aranda v. Van Sickle*, 600 F.2d 1267 (9th Cir. 1979); *Perez v. Pasadena Indep. Sch. Dist.*, 958 F. Supp. 1196 (S.D. Tex. 1997); *Terrazas v. Slagle*, 789 F. Supp. 828, 836 (W.D. Tex. 1992); *Garza v. County of Los Angeles*, 756 F. Supp. 1298, 1325-28 (C.D. Cal.), *aff’d*, 918 F.2d 763 (9th Cir. 1990).

The September 2002 primary election was not representative of current usage levels of translated election materials in King County, Washington; on the contrary, it was an aberration that does not reflect the present usage of language assistance in the county. Translated election materials were used sparingly in King County, Washington during the September 2002 primary only because this was the first election in which the county was covered under Section 203; usage of bilingual election materials has since increased significantly as the county has improved its capacity to provide language assistance services and the Chinese American community in the area has learned of the availability of language assistance in elections.

Colleen Kwan, the Minority Language Compliance Coordinator for King County, notes that the county received notice from the Department of Justice on July 26, 2002 that it would be covered for Chinese under Section 203, leaving the jurisdiction with little over a month to prepare for the September 2002 primary election. While the county did provide translated materials for the September primary election, it was left with insufficient time to engage in effective outreach to ensure that the Chinese American community was aware of the availability of translated election materials. As a result, translated materials were used sparingly in this first election of Section 203 coverage because voters did not know about them and poll workers did not widely offer them.

As King County has improved its implementation of Section 203 and its outreach to the Chinese American community, the usage of translated election materials by Chinese American citizens in the county has soared. Ms. Kwan indicates that 1500 citizens of Chinese ancestry had registered for language assistance by 2004 and that she expects continued increases in the usage of translated materials as the Chinese American community continues to learn about the availability of translated election materials and continues to engage in local elections. King County has, through improved implementation and increased outreach, provided a very significant number of limited English proficient Chinese American citizens with the tools necessary to cast informed ballots.

My response to Senator Leahy's Question #6 includes additional data and discussion relevant to this question.

7. In his testimony, Mauro Mujica agreed that "language help that the government might provide to an individual, in a democracy, is most important when it comes to a ballot." Mr. Mujica suggested that the United States adopt an intensive, six-month program to help immigrants adjust to this country, including rigorous English language classes. At the hearing, we also learned that the waiting time for citizens who *want* to learn English is up to three years in some parts of the country. The nationwide disparity between voters who want to learn English and spaces available in ESL classes will continue with the absence of an initiative to improve language learning opportunities, such as the program Mr. Mujica suggested. Given this disparity, is it obvious that there's a continued need for Section 203?

Yes. Forty years ago in *Katzenbach v. Morgan*,⁸⁹ the United States Supreme Court upheld Section 4(e) of the Act, which provides for language assistance for “persons educated in American-flag schools in which the predominant classroom language was other than English.”⁹⁰ The State of New York argued that Section 4(e) of the Act was unconstitutional as applied to New York, which had passed an English language requirement for voting to give language minorities an incentive to learn English. The Court rejected that assertion, finding that Congress may have “questioned whether denial of a right deemed so precious and fundamental in our society was a necessary or appropriate means of encouraging persons to learn English, or of furthering the goal of an intelligent exercise of the franchise.”⁹¹

The same reasoning has equal force today. The significant disparity between the desire of limited English proficient U.S. citizens to learn English and the limited availability of the educational resources needed to do so underscores the continuing need for Section 203. As I have discussed in my responses to Senator Leahy’s Question #1 and Senator Kennedy’s Question #8, educational discrimination and lengthy waiting times for adult ESL classes reaffirm the *Katzenbach* holding and the congressional findings stated in Sections 4 and 203 of the Voting Rights Act.

8. In your testimony, you stated that reauthorization of Section 203 is constitutional because “many of the U.S. citizens subject to intentional discrimination in public education systems, which lasted well into the 1970s in Texas and other states, continue to require language assistance in order to cast a meaningful, informed vote.” Please explain in more detail the kind of educational discrimination you are referring to and describe its continuing effect on these language minorities’ ability to vote today.

There is a clear nexus between unconstitutional discrimination in public education and the need for language assistance to cast a meaningful, informed vote. Historical and ongoing discrimination in public education continues to prevent many minority citizens from understanding complex ballot measures and casting effective ballots in English-only elections. Without adequate and equal opportunities to learn the English language and be able to read and write it, English-only materials function as a literacy test for many Alaska Natives, American Indians, Asian Americans, and Latinos. I will briefly explain my point.

According to the 2000 Census, among all covered jurisdictions, an average of 13.1 percent of citizens of voting age are limited-English proficient (LEP) in the languages triggering coverage.⁹² The average LEP rate of all voting age citizens in covered

⁸⁹ 384 U.S. 641 (1966).

⁹⁰ 42 U.S.C. § 1973b(e)(1).

⁹¹ 384 U.S. at 658.

⁹² DR. JAMES THOMAS TUCKER & RODÓLFO ESPINO, MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS EXECUTIVE SUMMARY 21 (Mar. 2006) (summarizing July 2002 Census determinations for Section 203 coverage).

jurisdictions is as follows: 22.6 percent for Alaska Native languages; 16.3 percent for American Indian languages; and 10.4 percent for Spanish-speaking citizens.⁹³

According to the 2000 Census, covered language minority citizens have an average illiteracy rate of 18.8 percent, nearly fourteen times the national rate.⁹⁴ The average illiteracy rate of LEP voting age citizens in the covered jurisdictions is as follows: 28.3 percent of Alaska Natives, nearly 21 times the national illiteracy rate (forty percent of covered reservations have illiteracy rates greater than 50 percent); 11.7 percent of American Indians, nearly nine times the national illiteracy rate (over one-quarter of covered reservations have illiteracy rates greater than 50 percent); 20.8 percent of Spanish speakers, over fifteen times the national illiteracy rate; and 8.5 percent of Asian Americans, more than six times the national illiteracy rate.⁹⁵

The Senate previously found that the high illiteracy rates experienced by language minorities are “not the result of choice or mere happenstance,” but instead result from “the failure of state and local officials to afford equal educational opportunities.”⁹⁶ The statute itself points to the failure of our school systems for language minority U.S. citizens.⁹⁷ This failure comes in two forms: the present effects of past educational discrimination and ongoing educational discrimination.

Texas and other states maintained segregated public school systems well into the 1970s. The pervasive impact of *de jure* segregation in public schools persists: many language minority citizens who attended segregated schools have never been able to gain the skills in English reading comprehension necessary to cast an informed ballot in an English-only election. Mexican Americans and other language minorities educated in segregated public schools received low-quality English language instruction that did not provide language minority citizens with the tools necessary to read and write effectively in English. Further, many Mexican Americans and other language minorities who attended public schools in this era did not receive formal schooling past the sixth grade, compounding the lack of English language acquisition.

Since 1975, at least twenty-four successful educational discrimination cases have been brought on behalf of English Language Learner (ELL) students in fifteen states, fourteen of which are presently covered in whole or in part by the language assistance provisions. Since 1992, when the language assistance provisions were last reauthorized, at least ten ELL cases have been brought or plaintiffs have had additional relief granted under existing court decrees. Consent decrees or court orders remain in effect for ELL students statewide in Arizona, Florida, and Texas, and in the cities of Boston, Denver, Philadelphia, and Seattle. Successful educational discrimination cases have been brought

⁹³ Id. at 32, 35, 38.

⁹⁴ Id. at 21.

⁹⁵ Id. at 32-33, 36, 38-39, 42.

⁹⁶ S. REP. NO. 94-295 at 28.

⁹⁷ See 42 U.S.C. § 1973b(f)(1) and 42 U.S.C. § 1973aa-1a(a).

in all three states covered statewide under Section 4(f)(4): Alaska, Arizona, and Texas. About three-quarters of all ELLs in the public schools (3.4 million out of 4.5 million) are native-born-U.S. citizens.⁹⁸

For example, in December 2005 the federal district court in Arizona cited the State of Arizona for contempt for failing to take action pursuant to a 2000 judicial decree intended to remedy ongoing inequalities in the educational opportunities available to LEP students.⁹⁹ The 2000 decree in *Flores v. Arizona* found many inequalities in programs for LEP students in the state, including 1) too many students per classroom; 2) insufficient classrooms available for LEP students; 3) insufficient numbers of qualified teachers and teachers' aides; 4) inadequate tutoring programs; and 5) insufficient teaching materials for classes in English language acquisition and content area studies.¹⁰⁰ Many additional examples of ongoing inequality in the educational opportunities available to LEP students are presented in the NALEO report, which has been submitted for the record underlying the current reauthorization of the Voting Rights Act.

The successful school funding cases, which have been brought in half of all of the Section 203 covered jurisdictions, cannot be ignored because ELL students also derive significant benefits from equal educational opportunities.¹⁰¹

Unequal educational opportunities translate into high illiteracy and low achievement rates, which are demonstrated by testing and graduation data for ELL students. According to a federal study, LEP students are twice as likely to fail graduation tests as native-English speakers.¹⁰² In Alaska, 80.5 percent of Alaska Native graduating seniors are not proficient in reading comprehension, they have failure rates on standardized tests more than 20 percent higher than non-Native students, and graduation rates that lag more than 15 percent behind the statewide average.¹⁰³ In Arizona, eighty-three percent of American Indian and Latino juniors and sophomores who qualify as English learners failed key portions of the state-mandated graduation test including reading comprehension.¹⁰⁴ In Texas, the Texas Education Agency reports that in 2004-2005, more than 9 out of 10 (94%) of Texas LEP students in Grade 10 failed to meet the state's standards. Nearly 1.2 million Latino voting age citizens in Texas lack a high school

⁹⁸ U.S. DEPARTMENT OF EDUCATION, OFFICE OF ENGLISH LANGUAGE ACQUISITION, LANGUAGE ENHANCEMENT AND ACADEMIC ACHIEVEMENT FOR LIMITED ENGLISH PROFICIENT STUDENTS (OELA), SURVEY OF THE STATES' LIMITED ENGLISH PROFICIENT STUDENTS AND AVAILABLE EDUCATIONAL PROGRAMS AND SERVICES 4, 19 (Oct. 2002).

⁹⁹ *Flores v. State of Arizona*, 405 F.Supp.2d 1112 (D. Ariz. 2005) (contempt order).

¹⁰⁰ *Flores v. State of Arizona*, 160 F.Supp.2d 1043, 1044 (D. Ariz. 2000).

¹⁰¹ See DR. JAMES THOMAS TUCKER, UNEQUAL EDUCATIONAL OPPORTUNITIES FOR ENGLISH LANGUAGE LEARNERS IN SECTION 203 COVERED JURISDICTIONS (June 2006).

¹⁰² PAUL J. HOPSTOCK & TODD G. STEPHENSON, DESCRIPTIVE STUDY OF SERVICES TO LEP STUDENTS AND LEP STUDENTS WITH DISABILITIES 17 (Aug. 2003) (commissioned by OELA).

¹⁰³ NATALIE LANDRETH & MOIRA SMITH, VOTING RIGHTS IN ALASKA 1982-2006, at 27-28 (2006).

¹⁰⁴ DR. JAMES THOMAS TUCKER, UNEQUAL EDUCATIONAL OPPORTUNITIES FOR ENGLISH LANGUAGE LEARNERS IN SECTION 203 COVERED JURISDICTIONS (June 2006).

diploma, or 40 percent of all Latino voting age citizens, compared to only 13.5 percent of all Anglo voting age citizens. As a result of these substantial disparities, in early 2006, plaintiffs filed a motion for further post-judgment relief in *United States v. Texas*, in which the federal court has retained jurisdiction under a 1981 Consent Decree.¹⁰⁵

Unequal educational opportunities for ELL students is compounded by the lack of adult ESL classes, which is evidenced by long waiting times for the most basic level of English classes. Even after waiting three years or more for entry into the most basic ESL classes, adult students are left far short of the written and oral language abilities necessary to vote without language assistance.¹⁰⁶

When unequal educational opportunities and lack of English instruction is combined with the absence of language assistance, it results in significantly depressed voter registration and turnout among the four covered language minority groups. The “largely monolingual elections in Alaska have clearly impacted Alaska Natives’ ability to exercise their right to vote,” resulting in voter turnout that trails statewide turnout by nearly seventeen percent.¹⁰⁷ In Arizona, American Indian turnout remains low, comprising just over 54 percent of all registered American Indian voters in the 2004 presidential election, compared to the statewide turnout of 76 percent.¹⁰⁸ According to the Census Bureau, in the November 2004 Presidential Election, Hispanic voting-age U.S. citizens had a registration rate of 57.9 percent, compared to 75.1 percent of all non-Hispanic white voting-age U.S. citizens.¹⁰⁹ According to the Census Bureau, in the November 2004 Presidential Election, Asian American voting-age U.S. citizens had a registration rate of only 52.5 percent, compared to 75.1 percent of all non-Hispanic white voting-age U.S. citizens.¹¹⁰

This evidence of unequal educational opportunities, which has resulted in depressed language minority registration and turnout, demonstrates that there is a continuing need for Sections 4(f)(4) and 203.

¹⁰⁵ NINA PERALES, LUIS FIGUEROA & CRISelda RIVAS, *THE MINORITY VOTING EXPERIENCE IN TEXAS SINCE 1982: DEMONSTRATING THE IMPORTANCE OF REAUTHORIZATION OF THE VOTING RIGHTS ACT* (2006).

¹⁰⁶ ¹⁰⁶ DR. JAMES THOMAS TUCKER, *WAITING TIMES FOR ADULT ESL CLASSES AND THE IMPACT ON ENGLISH LEARNERS* (June 2006).

¹⁰⁷ LANDRETH & SMITH, at 25-26.

¹⁰⁸ DR. JAMES THOMAS TUCKER & DR. RODOLFO ESPINO ET AL., *VOTING RIGHTS IN ARIZONA 1982-2006*, at 19 (2006).

¹⁰⁹ U.S. CENSUS BUREAU, Table 4a, *Reported Voting and Registration of the Total Voting-Age Population by Sex, Race and Hispanic Origin: November 2004*.

¹¹⁰ U.S. CENSUS BUREAU, Table 4a, *Reported Voting and Registration of the Total Voting-Age Population*

by Sex, Race and Hispanic Origin: November 2004.

9. During the hearing, several references were made to the Denver County, Colorado ballot initiative language I presented on a poster board to make the point that merely understanding English used in everyday life is insufficient to comprehend complicated ballot initiatives presented only in English. The panelists and other senators responded that maybe what is needed are laws simplifying ballot language, not translated voting materials. The initiative I selected was of course an extreme example. Can ballot initiatives, propositions, and referenda less lengthy and complicated than the example I used present challenges of comprehension to United States citizens for whom English is their second language? Is the same true of instructions for using voting machines, ballots, and other election-day materials? If so, please describe.

Complex ballot questions have a particularly devastating impact on language minority citizens in the absence of language assistance. I will explain this impact in two parts. First, it is important to understand the language and literacy abilities of covered language minority voting age citizens. Second, it is necessary to understand the educational level necessary to understand ballot propositions.

First, it is important to look at the triggering formula for Section 203 to see how jurisdictions are identified for coverage. The formula has two components: a numerical (10,000) or percentage (5 percent) trigger based upon LEP voting age U.S. citizens from a single language minority group; and a trigger that requires LEP voting age citizens from each language minority group to demonstrate that their illiteracy rate exceeds the national average.¹¹¹

LEP voting age citizens include all of those who speak English less than “very well.” Congress used this definition for two reasons. First, there is strong evidence that the complexities of casting a ballot – not just interpreting and voting on ballot initiatives, but also getting instructions on how to use voting equipment and other tasks we often take for granted – requires a higher level of English abilities. Second, there is evidence that non-native English language minority citizens tend to overstate their English language abilities.¹¹² The Congressional findings are supported by studies by educators that show that the sort of listening, reading, and comprehension skills required to cast an effective ballot require the highest level of English abilities that LEP voting age citizens lack.¹¹³

The illiteracy rate for Section 203 coverage requires a very low level of educational attainment: namely, “the failure to complete the 5th primary grade.”¹¹⁴ As discussed in my response to Senator Leahy’s Question #1 and Senator Kennedy’s Question #8, LEP language minority voting age citizens generally have illiteracy rates several times the

¹¹¹ See 42 U.S.C. § 1973aa-1a(b)(2)(A).

¹¹² H.R. REP. NO. 102-655 at 8, *reprinted in* 1992 U.S.C.C.A.N. 772.

¹¹³ See WAITING TIMES FOR ADULT ESL CLASSES AND THE IMPACT ON ENGLISH LEARNERS, including Appendices C-F, which provide specific examples of my point.

¹¹⁴ 42 U.S.C. § 1973aa-1a(b)(3)(E).

national average of 1.35 percent, such as LEP Alaska Natives, over one-quarter of whom have less than a fifth grade education. Many other LEP voting age citizens have educational attainment rates that only marginally exceed a fifth grade education.

Second, a fifth grade education – or even a junior high level education – falls far short of the level of educational attainment necessary to understand and cast an informed vote on complex ballot initiatives. Most ballot propositions are drafted at a high school level or greater, such as information on Louisiana’s voter ID proposition, which was written at the 15.9 grade level.¹¹⁵ “A home rule charter question regarding tax increases for infrastructure improvement on the ballot in Fargo, ND in 2006 contains one sentence that is 150 words long and is written at the graduate school level.”¹¹⁶

Ballot initiatives, propositions, and referenda less lengthy and complicated than the example that you cited from Denver, Colorado often present challenges of comprehension to United States citizens for whom English is their second language. California’s Proposition 77 on the ballot in November 2005 was a 42-word sentence written at the 12th grade level.¹¹⁷ Any covered language minority voter who has does not have advanced English language skills or a high school diploma would be unable to cast an informed ballot on even the less complex language included in California’s Proposition 77.

Many native born U.S. citizens struggle with complex ballot questions that are frequently written in legalese, use run-on sentences, and employ double negatives in which a “Yes” vote may actually be a vote against the subject matter on the ballot. When these challenges are combined with language barriers, including lack of both oral and written language assistance, the challenges become insurmountable. For LEP voting age U.S. citizens, the ballot initiatives are incomprehensible English literacy tests. Even language minority citizens proficient in English often prefer to review information about complex ballot initiatives in their native language because they feel more comfortable that they fully understand the issue.

Every American loses out when direct democracy is anything but democratic. Results from ballot initiatives are rendered illegitimate if a large segment of voting age U.S. citizens is left out of the process. This is especially true in the western states, where numerous ballot initiatives, such as bans on bilingual education and implementation of burdensome voter ID laws, have a disparate impact (and indeed are targeted at) the very language minority citizens who are left out of the process.

Complex ballot initiatives are not the only written election materials that can shut language minority voting age citizens out of the political process. For first-time voters or voters using new voting machines for the first time, English-only instructions can be

¹¹⁵ ANA HENDERSON, ENGLISH LANGUAGE NATURALIZATION REQUIREMENTS AND THE BILINGUAL ASSISTANCE PROVISIONS OF THE VOTING RIGHTS ACT 3 (2006).

¹¹⁶ *Id.* at 4-5.

¹¹⁷ *Id.* at 4.

confusing and incomprehensible. A voter who is unable to understand machine instructions may be unable to cast an effective vote. Electronic voting machines often have confusing procedures for typing in write-in candidates using keyboards. If a covered LEP voter is unable to receive instructions and assistance in his or her native language, the risk of error increases dramatically.

Every day voting materials, such as absentee or early voting requests and provisional ballots, can be confusing for even native-English speakers. I have attached a copy of the absentee voting request form used by the State of Texas to illustrate my point. The failure to complete a single section of the form or to sign it will result in the voter's request being denied. Moreover, an illiterate voter who is unable to sign his or her own name must have a witness or assistant observe the voter make their mark in a box; the failure to have the witness or assistant print their name and sign the form "is a Class A misdemeanor" that can lead to criminal penalties.

Consequently, it is very important that language assistance be offered to LEP voters to prevent vote denial or disenfranchisement both for complex ballot questions, and even the most routine voting activities.

10. Does the level of English required to become a naturalized citizen include knowledge of all or most of the vocabulary that might be relevant to understanding ballot initiatives, referenda, and voting instructions?

No, the level of English required to become a naturalized citizen does not include knowledge of all or most of the vocabulary that might be relevant to understanding ballot initiatives, referenda, and voting instructions. The naturalization requirements demand elementary levels of English proficiency (3rd or 4th grade), while the level of English proficiency required for voting is significantly higher, sometimes at the graduate level.¹¹⁸

Candidates for naturalization may meet the English language requirements by demonstrating that "the applicant can read or write simple words and phrases."¹¹⁹ Department of Homeland Security implementing regulations further clarify that an applicant English reading and writing abilities may be assessed using text "written at the elementary literacy level."¹²⁰ In addition, many elderly candidates for naturalization are expressly excluded from passing any citizenship test because of the difficulty they have in mastering even the most basic English phrases.

In contrast, the English language proficiency level required to vote effectively in English-only elections is much higher. As I noted in my response to Senator Leahy's Question #4 and Senator Kennedy's Question #9, voting materials consistently employ much more

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¹¹⁹ 8 U.S.C. § 1423 (2006).

¹²⁰ 8 C.F.R. § 312.1(c)(1).

complex language than that which may be understood by a voter with a fifth-grade literacy level.

11. Panelist Mauro Mujica suggested during his testimony that it would be impossible to translate a complicated English ballot into Spanish so that all Spanish speakers could understand it. He claimed that the differences between Chilean Spanish and Mexican or Puerto Rican Spanish would be so significant that a ballot intelligible to one group would be unintelligible to the others. Is this accurate? Are jurisdictions with diverse communities of Spanish speakers able to provide a single set of translated voting materials that their limited English proficient Spanish-speaking voters are able to understand despite their different backgrounds?

While members of diverse communities of Spanish-speakers may speak and write slightly differently from each other, it is quite possible to provide a single set of translated voting materials that all LEP Spanish-speaking voters are able to understand despite their different backgrounds. National and local Spanish-language media and advertisers communicate very effectively with their core audience nationwide, which includes Spanish-speakers of diverse national and regional origins. States, counties, and political subdivisions, whose target audience is likely less diverse in origin than that of national Spanish-language media and advertisers, can certainly do the same.

There are also diverse variations in the English spoken in different regions of the United States, but this does not prohibit election officials from providing a single set of English-language materials that may be understood by all voters living within a given jurisdiction.

Moreover, long-standing Department of Justice guidelines expressly refute Mr. Mujica's implication that a diversity of dialects somehow renders the language assistance provisions incapable of being applied. 28 C.F.R. § 55.12(b) provides:

Some languages, for example, Japanese, have more than one written form. A jurisdiction is required to provide election materials in such a language need not provide more than one version. The Attorney General will consider whether the particular version of the language that is used for election materials is the one most widely used by the jurisdiction's voting-age citizens who are members of the language minority group.

Covered jurisdictions are required to engage in community outreach and communications with covered language minority groups to ensure that they are providing written materials in the dialect or language most accessible to covered language minority voters.¹²¹

12. Linda Chavez testified that in enforcing Section 203, the "Justice Department essentially had to oversee the creation of written forms of some Native American languages in order to provide ballots in those languages." However, Department of Justice regulations implementing Section 203 provide as follows: "Many of the

¹²¹ See 28 C.F.R. §§ 55.12, 55.13, and 55.20.

languages used by language minority groups, for example, by some American Indians and Alaskan Natives, are unwritten. With respect to any such language, only oral assistance and publicity are required. Even though a written form of a language may exist, a language may be considered unwritten if it is not commonly used in a written form. It is the responsibility of the covered jurisdiction to determine whether a language should be considered written or unwritten.” 28 C.F.R. § 55.12(c). Are you aware of any instances in which the Department of Justice has converted oral languages into written form or required a jurisdiction to do so in order to comply with Section 203?

Ms. Chavez’s testimony on this point is apparently erroneous. I have consulted with several American Indian organizations, current and former Justice Department attorneys, and even election officials in American Indian language covered jurisdictions, and have found no evidence of Ms. Chavez’s allegation. Unfortunately, Ms. Chavez did not identify any jurisdictions where she claims that this has happened, which makes it impossible to respond with any greater specificity.

Moreover, as Congress had recognized during prior reauthorizations of the language assistance provisions, Section 203 does not “require the impossible,” but merely requires that a covered jurisdiction provide written materials or oral assistance based upon the actual needs of the applicable language minority group(s).¹²² If the predominant covered language is historically unwritten, such as most Alaskan Native and American Indian languages,¹²³ “the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.”¹²⁴ The Department of Justice regulation cited by Senator Kennedy, 28 C.F.R. § 55.12(c), makes it clear that Section 203 means what it says, and that is precisely how the Department enforces it.

13. In their written testimony for the June 13th hearing, Peter Kirsanow and Linda Chavez alleged that Section 203 facilitates voter fraud. Mr. Kirsanow stated that “in the last few years there have been scores of instances, particularly in Florida and California, in which substantial numbers of non-citizens voted.” Mr. Kirsanow provided no evidence to back up his allegation in his written or oral testimony. In her written testimony, Ms. Chavez cited a series of news reports as evidence of widespread voting by non-citizens.

However, a closer look at Ms. Chavez’s sources indicates that many claims of non-citizen voting later were found to be overstated or without merit. In one example,

¹²² S. REP. NO. 94-295 at 39, *reprinted in* 1975 U.S.C.C.A.N. 806; 121 CONG. REC. H4718 (daily ed. June 2, 1975) (statement of Rep. Edwards); 121 CONG. REC. H4900 (daily ed. June 4, 1975) (statement of Rep. Badillo); 121 CONG. REC. H4827 (daily ed. June 3, 1975) (statement of Rep. Edwards).

¹²³ This Committee heard evidence from Natalie Landreth that there are a few Alaska Native languages that are written and used by LEP voting age citizens, such as the Yu’pik language.

¹²⁴ 42 U.S.C. §§ 1973b(f)(4), 1973aa-1a(c).

Ms. Chavez cites an article entitled “Scheme to Get Noncitizens on Rolls Alleged,” on October 28, 2004, in the *Atlanta Journal-Constitution*. The allegation was that non-citizen Latinos were registered to vote in Atkinson County, Georgia. However, according to ensuing articles not cited in her testimony, two men challenged 96 Latino registered voters on the basis of citizenship, knowing only that they had Hispanic surnames, without any proof that they were not citizens. The Atkinson County Board of Registrars ultimately rejected all but two of the challenges as unlawfully based on the ethnic origin of the voters and the remaining two challenges were rejected for lack of evidence.

Ms. Chavez did not cite a similar claim from Georgia of non-citizens registering to vote. Prior to the July 2004 primary election, candidates for local office in Long County, Georgia challenged 45 Hispanic or Spanish-surnamed voters on the basis that they were not American citizens. The Department of Justice filed a lawsuit against Long County in February 2006, alleging that the County required the challenged voters to prove their citizenship even though the County knew that the challenges were not supported by any credible evidence. The Department’s complaint charged that by imposing procedures for these challenged Hispanic voters that were different than the procedures for non-Hispanic voters challenged on other grounds, the County’s conduct denied Hispanic voters an equal opportunity to participate in the political process and to elect candidates of their choice, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. The Department and the County resolved the claims by a consent decree. *United States v. Long County, Georgia, et al.*, Case No. CV206-040 (S.D. Ga. Feb. 8, 2006).

Do such instances of discrimination against language-minority and ethnic United States citizens provide support for reauthorizing Sections 203 and 5 of the Voting Rights Act? If so, please explain.

Yes, the complaint and consent decree in *United States v. Long County, Georgia, et al.* expose an unfortunate reality: discrimination in voting against American citizens based on membership in certain racial, ethnic and language-minority groups persists today. The *Long County* case provides a recent and blatant example of voter intimidation and suppression. It demonstrates all too clearly that state and local governments continue to implement standards, practices, and procedures that deny racial, ethnic, and language-minority voters an opportunity to participate fully and equally in the electoral process.

The defendants in *Long County* erected unlawful barriers to the franchise by requiring Latino voters whose qualifications were challenged to prove their citizenship before casting a ballot. The County did so despite knowledge that the challenges were unsupported by any credible evidence that the challenged voters were not American citizens. The Justice Department’s complaint in the case also noted that Latino voters had been subjected to different standards and practices than other members of the electorate. The action was resolved by consent decree in February 2006, through which the County was enjoined from discriminating on the basis of race, color, or membership in a language-minority group. The consent decree also provides for specific challenge

procedures and notice to the Spanish-speaking community, to remedy the County's unlawful conduct.

The procedures challenged and enjoined in Long County, Georgia – and the persistence of voting discrimination that those practices reveal – demonstrate the continued need for legislative efforts to protect minority citizens' voting rights. The incidents that gave rise to the *Long County* case are not isolated; there is now a substantial and voluminous record of discrimination that supports reauthorization of Section 5 and Section 203. In the specific context of Section 203, the practices underlying the *Long County* challenge reinforce Congress's findings that "through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process." Long County's unlawful practices also provide an example of the kind of persistent voter discrimination and political exclusion that compels renewal of Section 5.

It is critical that Congress reauthorize of the temporary provisions of the VRA, without any weakening provisions, to ensure that minority voters' voices will be heard, and to guard against proliferation of the kind of discrimination witnessed in such places as Long County.

RESPONSES TO SENATOR COBURN

1. Please give the Committee your thoughts on amending the current bill to allow covered jurisdictions that can demonstrate a reasonably low use of bi-lingual assistance, a way to opt-out of Section 203 coverage.

The language of S. 2703, the “Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006”, which provides a straight reauthorization of Sections 4(f)(4) and 203, should not be amended as the question suggests.

As an initial matter, the question is based upon the erroneous premise that “low use” means there is no need for language assistance. All too often, “low use” occurs because a jurisdiction is not complying with Section 203. Strong evidence of the impact of non-compliance comes from the Department of Justice’s successful enforcement actions. After the Department has brought Section 203 litigation, voter registration and turnout among covered language minority voters dramatically increases. During these hearings, the Department has reported that within one year of its litigation, in Yakima County, Washington, “Hispanic voter registration is up over 24 percent since the Division’s Section 203 lawsuit. In San Diego County, California, Spanish and Filipino registration rates are up over 21 percent, and Vietnamese registration is up over 37 percent since the Division’s enforcement action.”¹²⁵ In Apache County, Arizona, which has been the site of several Department enforcement actions and continuing federal observer coverage, increased availability of Navajo language translators caused turnout in Navajo precincts to increase 26 percent in four years, from 14,277 voters in 2000 to 17,955 voters in 2004.¹²⁶

In addition, there is evidence that “low use” occurs in newly covered jurisdictions that have not yet implemented an effective language assistance program or advertised that program to the voters who need it. For example, King County (including Seattle), Washington, became covered for Chinese under Section 203 as a result of the July 2002 Census determinations. Mauro Mujica testified that in King County, “only 24 of the 3,600 Chinese ballots prepared for the September 2002 primary election were used” and “only 109 Chinese ballots were cast” on the November 2002 general election. Those numbers do not reflect the present reality in King County. A 2005 King County report noted, “Each election since the program began the number of voters requesting and using Chinese language ballots and voting materials has progressively increased.”¹²⁷ According to King County, the number of Chinese ballots cast in the County climbed to 408 in the 2003 General Election, 1,106 in the 2004 General Election, and 1,415 in the

¹²⁵ Statement of Bradley J. Schlozman, Acting Assistant Attorney General, before the House Judiciary Committee, at p. 4 (Nov. 8, 2005).

¹²⁶ Testimony of Penny Pew, Election Director of Apache County, Arizona, before the Subcomm. on the Const. of the House Judiciary Committee (Nov. 15, 2005).

¹²⁷ See <http://www.metrokc.gov/elections/ElectionsReport.pdf>, at p.7.

2005 Primary Election.¹²⁸ Following this initial startup period of “low use,” the number of requests for Chinese ballots has spiked by more than 5800 percent as the language assistance program became more widely implemented. As the King County Recorder’s Office observes, this increase is also a result of the County’s efforts to cooperate with a Chinese-American advisory committee to build “a model program that has progressively served the Chinese-speaking population as well as providing outreach and educational opportunities to other minority communities.”¹²⁹

Far too often “low use” of bilingual voting materials and assistance occurs because those materials and assistance are never made available to voters. In many polling place locations, bilingual materials are left inside boxes or never removed from their shrink-wrap. Polling places may be inadequately staffed with an insufficient number of poll workers who are fluent in English and the covered language. If language materials and assistance are not offered in all of the locations where they should be, their absence artificially creates “low use.”

Furthermore, the Department of Justice’s enforcement actions demonstrate that many covered jurisdictions make no effort to advertise the availability of language materials. Without proper outreach and publicity, voters never even know that language assistance is available; not surprisingly, voters cannot use it if they do not know about it.

Reliance upon a “low use” standard causes problems that would seriously undermine and erode Section 203. As the question has been posed, a covered jurisdiction could “opt out” of coverage if it established that there was a “low use” of language materials or assistance. Such a standard would create a built-in incentive for a jurisdiction to violate Section 203. Specifically, a jurisdiction would want to keep the number of requests for minority language ballots and assistance as artificially low as possible to be eligible to “opt out.” The easiest way to do this is by simply failing to provide any language materials or assistance and to refrain from outreach and publicity to the covered minority language voters about their Section 203 program (or lack thereof), even if there were a substantial number or percentage of language minorities who needed and wanted assistance. We should be encouraging compliance with the law, not violations of it as the proposed language would foster.

The amendment suggested in the question is also unnecessary for at least four additional reasons. First, Congress has long recognized that targeting is a permissible means to comply with Section 203 to ensure “that all members of the language minority who need assistance, receive assistance.”¹³⁰ Department of Justice guidelines explicitly provide for targeting. According to the Department, “a targeting system will normally fulfill the Act’s minority language requirements if it is designed and implemented in such a way

¹²⁸ See *Id.* and

<http://www.secstate.wa.gov/documentvault/The%20Election%20Center%20Report%20to%20King%20County%20-%20October%202005-1048.pdf>

¹²⁹ See <http://www.metrokc.gov/elections/ElectionsReport.pdf>, at p.7.

¹³⁰ H. REP. NO. 102-655 at 9, *reprinted in* 1992 U.S.C.C.A.N. 773.

that language minority group members who need minority language materials and assistance receive them.”¹³¹

Second, in those limited circumstances under which “low use” of language materials and assistance may not be attributable to the issues I have described above and there has been proper targeting, the jurisdiction is deemed to be in full compliance with Section 203. Each of the over two dozen enforcement actions brought by the Department of Justice in the last three years have involved jurisdictions where there has been a substantial need for language assistance. The Department of Justice is not suing “low use” jurisdictions.

Third, more regular Census determinations using American Community Survey (ACS) data will ensure that only those jurisdictions that need to be covered under Section 203 will be covered. As demographics in a jurisdiction change and the number or percent of LEP minority voting age citizens drops below the statutory threshold, that jurisdiction will no longer be covered. This existing language in the bill meets your concerns about supposed “low use.”

Fourth, jurisdictions will continue to have incentives under the statute to address existing language and literacy barriers that prevent language minorities from participating in elections without language assistance. Section 203(d) provides that a covered jurisdiction may bailout from coverage under the bilingual election provisions if it can demonstrate “that the illiteracy rate of the applicable language minority group” that triggered coverage “is equal to or less than the national illiteracy rate.”¹³² “Having found that the voting barriers experienced by these citizens is in large part due to disparate and inadequate educational opportunities,” this bailout procedure “rewards” jurisdictions that are able to remove these barriers.¹³³ Unlike the amendment suggested in the question, the existing bailout formula creates a strong incentive to eliminate the need for language assistance.

2. Also, describe how you would craft a bail-out provision for jurisdictions covered by Section 203, such that it would allow jurisdictions that can demonstrate that the bilingual voting assistance prepared by the jurisdiction has not been reasonably utilized.

Section 203(d) already provides an adequate bailout provision for covered jurisdictions, and no amendment is necessary or desirable. For the specific reasons why the underlying premise of the question is wrong, please see my response to Senator Coburn’s first question.

¹³¹ 28 C.F.R. § 55.17.

¹³² 42 U.S.C. § 1973aa-1a(d).

¹³³ 121 CONG. REC. H4719 (daily ed. June 2, 1975) (statement of Rep. Edwards).

RESPONSE TO CHAIRMAN SPECTER

Before Congress may enact preventive legislation under the Fourteenth and Fifteenth Amendments, it must establish a record of State misconduct that violates the Constitution. See *City of Boerne v. Flores*, 521 U.S. 507, 530 (1997); *Fla. Prepaid Postsecondary Education Expense Bd. v. College Savings Bank*, 527 U.S. 627, 644-46 (1999); *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 64-65 (2000). Please provide all instances of which you know in which a State or jurisdiction acted unconstitutionally to infringe on language-minority citizens' rights to vote.

As posed, the question does not accurately articulate the standard to be applied when Congress exercises its enforcement powers under the Fourteenth and Fifteenth Amendments. In *Boerne*, the Court recognized the sweeping breadth of Enforcement Clause powers, particularly when Congress exercises those powers to remedy or prevent deprivations of the fundamental right to vote. Indeed, the Court noted, "Legislation which deters or remedies constitutional violations can fall within the sweep of Congress' enforcement power even if in the process it prohibits conduct which is not itself unconstitutional and intrudes into 'legislative spheres of autonomy previously reserved to the States.'" The Court specifically cited the ban on literacy tests and similar voting procedures despite their "facial constitutionality" because they could operate in a manner to deprive certain citizens of their fundamental right to vote. The *Boerne* Court specifically reaffirmed its holding in *Katzenbach v. Morgan* "upholding the ban on literacy tests that prohibited certain people schooled in Puerto Rico from voting" as well as the nationwide ban on literacy tests upheld in *Oregon v. Mitchell*.

Consequently, *Boerne* demonstrates that English-only voting materials and assistance, which are facially constitutional, can operate as a literacy test and thereby deprive language minorities of their right to vote. As the Senate has found during the prior reauthorization of Sections 4(f)(4) and 203, the high illiteracy rates and LEP abilities experienced by language minorities are "not the result of choice or mere happenstance," but instead result from "the failure of state and local officials to afford equal educational opportunities."¹³⁴ Accordingly, evidence supporting the Congressional exercise of Enforcement Clause powers need not be limited to "a record of State misconduct that violates the Constitution." Instead, any evidence showing that the fundamental right to vote of language minorities may be infringed or denied because of these unequal learning opportunities is relevant to the *Boerne* inquiry.

My written testimony and supplemental responses have documented some of this evidence. The fourteen state reports, including the Texas report prepared by MALDEF, provide further evidence of ongoing state misconduct. I have attached MALDEF's Texas report as Attachment A to my written supplemental testimony. The Section 203 Memorandum prepared by NALEO (Attachment B) likewise contains a summary of

¹³⁴ S. REP. NO. 94-295 at 28.

evidence that meets the *Boerne* test for reauthorization of Sections 4(f)(4) and 203. I have attached this Memorandum as Attachment B to my written supplemental testimony.

Of course, there is no substitute for the thousands of pages of evidence that the Senate has before it that demonstrates that the statute is congruent and proportional to the harms it is remedying. Accordingly, I would commend that record to the Chairman's attention as providing far more comprehensive evidence than is necessary to satisfy *Boerne*.

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Senator Specter

Question submitted to all witnesses

Before Congress may enact preventive legislation under the Fourteenth and Fifteenth Amendments, it must establish a record of State misconduct that violates the Constitution. See *City of Boerne v. Flores*, 521 U.S. 507, 530 (1997); *Fla. Prepaid Postsecondary Education Expense Bd v. College Savings Bank*, 527 U.S. 627, 644-46 (1999); *Kimel v. Fla. Bd. Of Regents*, 528 U.S. 62, 64-65 (2000). Please provide all instances of which you know in which a State of jurisdiction acted unconstitutionally to infringe on language-minority citizens' rights to vote.

Response:

No personal knowledge of any such instances.

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Dr. Tom Coburn

Questions submitted to all witnesses

1. Please give the Committee your thoughts on amending the current bill to allow covered jurisdictions that can demonstrate a reasonably low use of bi-lingual assistance, a way to opt-out of Section 203 coverage.

Response:

Language minority citizens in Los Angeles County have consistently demonstrated use of translated materials. Evidence of use includes continuous requests via voter registration forms for materials in languages other than English, tally cards prepared by pollworkers on Election Day enumerating the number of voters who requested multilingual materials, and feedback from community-based organizations. Therefore, this question is not applicable to our jurisdiction.

2. Also, describe how you would craft a bail-out provision for jurisdictions covered by Section 203, such that it would allow jurisdictions that can demonstrate that the bilingual voting assistance prepared by the jurisdiction has not been reasonably utilized.

Response:

Not appropriate for our agency to make a recommendation in this regard.

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Questions for Deborah Wright
Submitted by Senator Patrick Leahy

1. Los Angeles (LA) County is the largest and most diverse local election jurisdiction in the United States, providing language assistance in more languages than any other jurisdiction. What impact has Section 203 had on language minority participation in LA County elections? How has it done so?

Response:

The impact of Section 203 had on language minority participation in LA County is illustrated on the "Multilingual Voter Requests on File" data below, collected through voter registration form and other methods. It shows a steady increase of voter requests and participation in our Multilingual Service Program. LA County voters can request election materials in a language other than English by filling in/writing in the language preference on box 11 of the voter registration form. In addition, voters can request minority language materials through our 1-800 hotline, "Did You Know" language preference post card or by written request.

MULTILINGUAL VOTER REQUESTS ON FILE

Year	Chinese	Vietnamese	Tagalog	Japanese	Korean	Spanish	Total
1993	4,573	820	391	443	n/a	n/a	6,227
May-00	13,277	4,260	2,583	1,211	12,761	69,566	103,658
Oct-00	14,830	4,781	2,849	1,284	13,602	76,372	113,718
Jun-01	15,453	4,946	2,926	1,336	14,396	79,860	118,917
Nov-01	15,858	4,940	2,925	1,349	14,320	79,793	119,185
Jan-02	16,023	4,970	2,941	1,350	14,366	80,203	119,853
Dec-02	16,897	5,247	3,192	1,390	15,001	83,225	124,952
Apr-03	17,121	5,208	3,248	1,394	14,981	82,692	124,644
Jun-03	17,480	5,284	3,346	1,408	15,206	83,501	126,225
Jan-04	17,772	5,233	3,406	1,416	15,152	84,055	127,034
Oct-04	19,119	5,773	3,795	1,528	16,449	87,165	133,829
Apr-05	20,312	6,321	4,216	1,604	18,142	92,574	143,169
Aug-05	18,355	5,778	4,067	1,505	17,470	87,954	135,129
Jan-06	19,424	5,946	4,160	1,561	17,614	87,965	136,670
Apr-06	19,681	5,973	4,223	1,576	17,715	87,923	137,091

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2. Does the program you administer in LA County include an outreach component to inform voters of bilingual language assistance materials that may be available to them? How important is outreach to the success of LA County's bilingual language assistance program?

Response:

Our program does include outreach components:

- *The Sample Ballot booklet, mailed to every registered voter prior to each election in accordance with California law, always includes an informational page on available bilingual services as well as a request need for bilingual persons to serve on election day as poll workers.*
- *We provide translated material on our website (www.LAVOTE.net).*
- *We meet quarterly with community-based organizations through our Community Voter Outreach Committee, which includes representatives from many language-minority advocacy groups.*
- *We hire and train seasonal bilingual Election Assistants who make presentations to a variety of community groups about available services.*

We believe our Outreach efforts are important to continually inform the community of available bilingual services and seek bilingual poll workers.

3. In compliance with Section 203 of the Voting Rights Act, LA County provides assistance to voters in six languages in addition to English: Chinese, Japanese, Korean, Spanish, Tagalog (Filipino) and Vietnamese. You testified that the cost of LA County's extensive multi-lingual program, involving the provision of both translated written election materials and oral assistance at up to 5,000 voting precincts on election day, comprises approximately ten percent of the County's annual election expenses. In your view, why is this cost reasonable in comparison to the number of voters your program is able to assist?

Response:

Our overall costs for translation and printing are significant; however, the percentage of our election budget used for multilingual services is comparable to the percentage of limited-English proficient residents in Los Angeles County, based on census data.

4. It is my understanding that you have experience teaching English to adult students in addition to your experience as an elections official. Do the non-English speaking citizens in your class want to learn English? What sort of challenges do they have to overcome to learn English at a sufficient level to feel comfortable voting in English?

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Response:

My experience in teaching English did not involve non-English speakers.

5. The Department of Education has reported that between 55 and 60 percent of all adult ESL classes are at the most Basic English level. Are students who complete Basic ESL classes able to cast informed ballots without assistance in their own language? Why or why not? What about in elections involving complex initiatives or referendums on the ballot?

Response:

I am not qualified to comment on ESL students.

6. Peter Kirsanow testified that he is concerned that Section 203 increases the chance for ballot errors due to language translation problems. As someone who regularly works with election materials, can you comment on whether the rate of ballot errors for bilingual ballots is different than for English ballots? Can Section 203 help prevent voting errors?

Response:

We have a detailed, well-managed process for verifying the accuracy of translated material, including contracting with certified translators, reviewing all translated materials (using employees whose native language is the one being reviewed), and including language-minority community-based organizations in the review process.

It is important to note that our actual, physical ballot in Los Angeles County is a card with numbers, not words or names, printed on the ballot card. Voters who use a translated version of the sample ballot often mark their choices on the translated sample ballot ahead of time (as do English speakers) and then vote using our "InkaVote" device by the numbers of their choices. Therefore, since all of the ballots returned to us for counting look exactly alike, we have no way of knowing what the error rate is for voters using a translated version of the sample ballot.

7. Mr. Kirsanow also raised concerns about the potential for voter fraud stemming from Section 203's requirements. In your 15 years as an election official in California, have you encountered problems with voter fraud arising from Section 203 language assistance? Are the incidents of voting fraud higher among voters using bilingual materials than among those using English materials?

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Response:

In my experience, the fear of fraud consistently outpaces any evidence of fraud. I have no knowledge of voter fraud issues related to language assistance.

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Senator Edward M. Kennedy

You testified that costs associated with complying with Section 203 comprise about 10 percent of your office's budget. Can you describe some of the reasons Section 203 compliance comprises that percentage?

Response:

We do not set aside a particular percentage of our election budget for multilingual services. The cost of translating and printing multilingual materials remains relatively consistent at about ten percent as the need for translation and printing services is directly proportional to the length and complexity of the ballot.

You testified that Los Angeles County provides services to limited-English proficient voters beyond what is required by Section 203. Does your estimate that your language-minority program comprises 10 percent of your budget include costs incurred beyond what is necessary for Section 203 compliance?

Response:

Yes. The percentage includes all costs attributable to the minority-language program.

Some critics claim that providing language materials and assistance to voters under Section 203 is a waste of government resources. Do you agree with these critics?

Response:

Actions of our Agency are governed entirely by statute --- Federal, State and local. The voting equipment we are permitted to use, the rules for voter registration and absentee voting, the conduct of activities within polling places and scores of other specific activities all are governed by a complex interaction of Federal, State and local laws and regulations. We understand the underlying reasons for Section 203 requirements and do our best to be good stewards of public money in this as well as all other aspects of election administration. It would not be appropriate for us to apply a value judgment with regard to language assistance or any other mandated activity.

My understanding is that the Justice Department permits a jurisdiction covered by Section 203 to target its language materials and assistance to voters. In other words, a jurisdiction can provide the materials and assistance to only those areas where there is a demonstrated need. Has targeting enabled Los Angeles County to reduce its costs? What targeting methods has Los Angeles County used to lowers its costs?

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Response:

We do employ targeting based on census and other criteria (CMC Note: Mention other criteria). Such targeting has significantly reduced our costs because printing materials is more costly than the actual translations. Therefore, we use a targeting program to distribute printed material only where our multi-level analysis indicates a need for the materials.

Some critics of Section 203 cite decades-old data from a few jurisdictions to suggest that bilingual voting materials go unused. Are bilingual voting materials provided by Los Angeles County actually being used by limited-English-proficient citizens? Is under-use a problem in Los Angeles County?

Response:

In our experience, bilingual voting materials are being utilized by limited-English-proficient citizens. Our voter file is continuously updated to include requests by voters who wish to receive voting materials in a language other than English. Additionally, on Election Day our pollworkers track the number of requests for assistance in languages other than English, and these requests are ongoing.

Some critics of Section 203 claim that bilingual voting materials and language assistance encourage voting fraud by non-citizens. Based on your extensive experience as an election official in Los Angeles County, do bilingual voting materials and oral language assistance promote voting fraud by non-citizens? To your knowledge, do non-citizens attempt to vote in any significant numbers in Los Angeles County?

Response:

We have no evidence that bilingual voting materials or oral language assistance promote voting fraud by non-citizens. Allegations of non-citizens attempting to vote are referred to the District Attorney's office for investigation. However, investigative follow-up has not revealed any significant fraud of this type.

In your 15 years as an election official in California, are you aware of any successful prosecutions for voter fraud resulting from language assistance?

Response:

No, I am not aware of any prosecutions for voter fraud resulting from language assistance.

"Examining the Continuing Need for Voting Rights Act Section 203's Provisions
Regarding Bilingual Election Materials"

County of Los Angeles, California, Registrar-Recorder/County Clerk –
Responses to written questions from members of U.S. Senate Judiciary Committee

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In her written testimony for the House Judiciary Committee, Principal Assistant Attorney General Rena Comisac credited the Justice Department's Section 203 enforcement actions in Yakima County in Washington and San Diego for increases in language-minority voter registration. Has the availability of voting materials and assistance in languages other than English resulted in increased voter participation by language-minority voters in Los Angeles County? On what do you base your answer?

Response:

We have no statistics or evidence in this regard.

Panelist Mauro Mujica suggested during his testimony that it would be impossible to translate a complicated English ballot into Spanish so that all Spanish speakers could understand it. He claimed that the difference between Chilean Spanish and Mexican or Puerto Rican Spanish would be so significant that a ballot intelligible to one group would be unintelligible to the others. Is this consistent with Los Angeles County's experience providing voting materials translated in Spanish?

Response:

We have an extensive review process for translated materials, as well as a glossary of election terminology for each required language, developed over our many years of experience in this area. The glossary has been reviewed by native speakers from community-based organizations as well as interaction with certified translators. We have no recorded complaints from language-minority voters that our translations reflect any one idiom or are confusing.

SUBMISSIONS FOR THE RECORD

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS



815 SIXTEENTH STREET, N.W.
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LEGISLATIVE ALERT!

(202) 637-5090

May 10, 2006

Dear Senator:

I am writing on behalf of the AFL-CIO to urge you to co-sponsor the "Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006" (S. 2703). This legislation is critical to ensuring the continued protection of the Voting Rights Act (VRA), widely considered to be our nation's most effective civil rights law.

The VRA has enfranchised millions of racial, ethnic, and language minority citizens by eliminating discriminatory practices and removing other barriers to their political participation. In doing so, the VRA has empowered minority voters and helped to desegregate legislative bodies at all levels of government. However, 41 years after initial passage of the VRA, there is significant evidence that barriers to minority voter participation persist.

Ten oversight hearings held by the Subcommittee on the Constitution of the House Judiciary Committee during the 109th Congress considered the ongoing need for three key provisions of the VRA that are set to expire in August 2007. The evidence presented at those hearings demonstrated the continuing need for all three of these provisions: Section 5, which requires certain jurisdictions to obtain federal approval prior to making any changes that affect voting; Section 203, which requires certain jurisdictions to provide language assistance to citizens with limited English proficiency; and Sections 6 through 9, which authorize the federal government to send observers to monitor elections.

The evidence presented at the House oversight hearings revealed continuing and persistent discrimination in jurisdictions covered by Section 5 and Section 203 of the VRA. Jurisdictions covered by Section 5 continue to attempt to implement discriminatory electoral procedures on matters such as methods of election, annexations, and polling place changes, as well as redistricting. The hearings also demonstrated that citizens are often denied access to VRA-mandated language assistance and, as a result, the opportunity to cast an informed ballot. S. 2703 responds directly to evidence gathered by the subcommittee by renewing these key provisions for 25 years.

S.2703 also reauthorizes and reinstates the meaning of Section 5 originally intended by Congress, which the Supreme Court undermined in *Reno v. Bossier Parish II* and *Georgia v. Ashcroft*. The provision dealing with *Reno v. Bossier Parish II* restores the ability of the Attorney General, under Section 5 of the VRA, to block implementation of voting changes motivated by a discriminatory purpose. The provision dealing with *Georgia v. Ashcroft* clarifies that Section 5 is intended to protect the ability of minority citizens to elect candidates of their

choice. In order to provide minority-language citizens with equal access to voting, S. 2703 renews Section 203 using more frequently updated coverage determinations based on the American Community Survey Census data. S.2703 also keeps in place provisions for federal observers, and authorizes recovery of expert witness fees in lawsuits brought to enforce the VRA.

We urge you to co-sponsor and support prompt enactment of the Fannie Lou Hamer, Rosa Parks, Coretta Scott King Voting Rights Act Reauthorization and Amendment Act of 2006. Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Samuel', written in a cursive style.

William Samuel, Director
DEPARTMENT OF LEGISLATION



The American Jewish Committee
Office of Government and International Affairs

1156 Fifteenth Street, N.W., Washington, D.C. 20005 www.ajc.org 202-785-4200 Fax 202-785-4115 E-mail ogia@ajc.org

RE: VOTING RIGHTS ACT REAUTHORIZATION

May 9, 2006

Dear Senator,

I write on behalf of the American Jewish Committee, the nation's oldest human relations organization with over 150,000 members and supporters represented by 33 regional chapters, to urge you to support S.2703, the "Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006" (VRAVA). This crucial legislation would reauthorize and restore the vitality of the most successful civil rights law ever enacted, the Voting Rights Act of 1965 (VRA).

The VRA protects fundamental civil rights and ensures that Americans have the right to participate in democratic elections. Passed in the wake of coordinated efforts to disenfranchise African-American populations, the VRA clarified and expanded upon the Constitution's Fifteenth Amendment, which guarantees every American the right to vote. The law proved remarkably successful in removing barriers that too often inhibit Americans from exercising their right to vote. Although many of the discriminatory practices that previously prevented minority populations from voting have been abolished, the VRA is still vitally important today when many Americans, particularly in urban centers, encounter obstacles as they seek to cast their votes.

Section 203 is among the key provisions of the VRA set to expire at the end of 2007. This provision requires certain communities with large populations of non-English or limited-English-proficient speakers to provide ballots and instructions in languages other than English. The reauthorization of this measure will ensure that these immigrant populations are afforded the same information and access in voting as their fellow Americans, regardless of national origin and linguistic skills. Section 5, also set to expire next year, requires jurisdictions with a history of discrimination in voting to obtain federal approval prior to making changes that would affect voter participation. This provision prevents voting practices with a discriminatory purpose or effect from being implemented.

Reauthorizing the expiring provisions in the Voting Rights Act will safeguard the right to vote in America for future generations. S.2703 appropriately addresses the essence of the VRA by renewing the temporary provisions for 25 years, as well as by clarifying the VRA's language in response to two recent U.S. Supreme Court decisions. The American Jewish Committee urges you to support the Voting Rights Act Reauthorization and Amendments Act of 2006.

Thank you for considering our views on this important matter.

Respectfully,

A handwritten signature in cursive script that reads "Richard T. Foltin".

Richard T. Foltin
Legislative Director and Counsel



May 4, 2006

Co-Sponsor Voting Rights Reauthorization and Amendments Act of 2006 (S 2703)

Dear Senator:

On behalf of the Asian American Justice Center, and our affiliates, the Asian American Institute, the Asian Law Caucus, and the Asian Pacific American Legal Center, we write to vigorously support and to urge you to co-sponsor S. 2703, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006. S. 2703 is critical to ensuring the continued protection of the right to vote for all Americans, including Asian Americans.

The Voting Rights Act (VRA) is our Nation's most successful civil rights law and has enjoyed strong bipartisan support. Congress enacted it in direct response to persistent and purposeful discrimination through literacy tests, poll taxes, intimidation, threats, and violence. The VRA has enfranchised millions of racial, ethnic, and language minority citizens by eliminating discriminatory practices and removing other barriers to their political participation. In the process, the VRA has made the promise of democracy a reality for Asian Americans.

Three key provisions of the VRA will expire next year, unless they are renewed. Section 5 prevents voting practices with a discriminatory purpose or effect from being implemented. Section 203 requires certain jurisdictions to provide language assistance to voters in areas with high concentrations of citizens who are limited-English proficient and illiterate. Sections 6-9 authorize the federal government to use observers in elections to monitor VRA compliance.

The House hearings highlighted that while progress has been made under the VRA, much work remains to be done. The hearings demonstrate that significant discrimination in voting is still pervasive in jurisdictions covered by the expiring provisions of the Act. In fact, the majority of all the Department of Justice's objections to discriminatory voting practices and procedures have occurred since 1982, when Section 5 was last reauthorized. Evidence of the hundreds of Section 5 objections and numerous successful voting cases have been brought during that period, provide further documentation of the persistence of discrimination in jurisdictions covered by the expiring provisions. Additionally, the record illustrates that thousands of United States citizens continue to face discrimination because of their language minority status and need VRA mandated language assistance to ensure that they can cast a meaningful ballot.

S. 2703 addresses this compelling record by renewing the VRA's temporary provisions for 25 years. The bill reauthorizes and restores Section 5 to the original congressional intent that has been undermined by the Supreme Court in *Reno v. Bossier Parish II* and *Georgia v. Ashcroft*. The *Bossier*

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fix prohibits implementation of any voting change motivated by a discriminatory purpose. The *Georgia* fix clarifies that Section 5 is intended to protect the ability of minority citizens to elect their candidates of choice. Section 203 is being renewed to continue to provide language minority citizens with equal access to voting without language barriers, using more frequent coverage determinations based on the American Community Survey Census data. The bill also keeps the federal observer provisions in place and authorizes recovery of expert witness fees in lawsuits brought to enforce the VRA.

The right to vote is the foundation of our democracy and the VRA provides the legal basis to protect this right for all Americans. We urge you to support this critical civil rights legislation by cosponsoring S. 2703. To co-sponsor S. 2703, please contact: Dimple Gupta, Chief Counsel for the Constitution in Senator Specter's office, at (202) 224-5225, Dimple_Gupta@judiciary-rep.senate.gov; Kristine Lucius, Senior Counsel in Senator Leahy's office, at (202) 224-7703, Kristine_Lucius@judiciary-dem.senate.gov; Charlotte Burrows, Counsel in Senator Kennedy's office at 202-224-4031, charlotte_burrows@judiciary-dem.senate.gov; or, Gaurav Laroia, Counsel in Senator Kennedy's office, at (202) 224-7878, Gaurav_Laroia@judiciary-dem.senate.gov. If you or your staff have any further questions, please feel free to contact Terry M. Ao, AAJC Senior Staff Attorney, at (202) 296-2300.

Sincerely,



Karen K. Narasaki
President and Executive Director
Asian American Justice Center

Stewart Kwoh
President and Executive Director
Asian Pacific American Legal Center

Tuyet Le
Executive Director
Asian American Institute

Gen Fujioka
Interim Executive Director
Asian Law Caucus



ADVANCING EQUALITY

**Statement of
Karen K. Narasaki
President and Executive Director, Asian American Justice Center**

**Before the
Subcommittee on the Constitution, Civil Rights and Property Rights
Committee on the Judiciary
United States Senate**

**Hearing on S. 2703,
"Continuing Need for Section 203's Provisions for Limited English Proficient Voters"
June 13, 2006**

Introductory Statement

AAJC is supportive of S. 2703 and its renewal and restoration of the Voting Rights Act (VRA) of 1965. As our statement will demonstrate, the VRA has been instrumental to the Asian American community and our political participation. Our statement first reviews the historic and current discriminatory barriers faced by Asian Americans seeking to vote. The statement also outlines the educational inequities that still persist. A review of the impact the VRA has had on political participation, including the increase in Asian Americans as elected officials and the increase in voter registration and turnout, is also included. The statement will also explain why Section 5, Section 203, and the other provisions reauthorized by S. 2703 are critical to the continued political participation of the Asian American community.

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 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

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communities and increasing Asian American access to the voting process. One of our top priorities is 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.

To that end, AAJC is pleased to provide comments on S. 2703, the “Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.” AAJC commends the bipartisan, bicameral support shown by the Senate Judiciary Committee and House Judiciary Committee for renewing key expiring provisions of the VRA. AAJC would like to request that this written statement be formally entered into the hearing record.

History of Discrimination against Asian Americans in the United States

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. In short, voting is power.

Voting is also the foundation of our democracy, and the right to vote is a fundamental American right. However, large numbers of Americans have been denied the right to vote throughout our nation’s history. For example, until 1965, African Americans in the South were systematically and violently denied the right to vote.

During that same time, Asian American voters were also denied the opportunity to exercise the right to vote. Beginning in 1790, Asian Americans were considered “aliens ineligible for citizenship.”¹ In the late 1800s, Chinese Americans were expressly prohibited from naturalizing as citizens.² By 1924, this prohibition was extended to virtually all Asian immigrants (except Filipinos), denying them the right to vote.³ By 1935, Filipinos were also restricted in their ability to vote.⁴

It was not until the last fifty years that the last of these restrictions ended, at long last giving all Asian Americans the right to vote.⁵ However, even after all Asian Americans were finally granted the right to vote, they faced another obstacle to meaningful voter participation – language barriers. Citizens not fluent in English were often denied needed assistance at the polls.

To compound the language barrier problems at the polls, Asian Americans historically faced discrimination in education. Like most communities of color in the United States, Asian Americans experienced segregation in the classrooms. In Mississippi during the late 1920s, Martha Lum, a native-born Asian American, brought suit after being denied admission to the local white school in *Gong Lum v. Rice*.⁶ Lum claimed that being rejected on account of her Chinese ancestry was discriminatory and unconstitutional. The Supreme Court upheld Mississippi’s right to school segregation, holding that under *Plessy v. Ferguson*, segregation was constitutional and that the federal courts should not interfere with a state’s right to regulate its school system as it sees fit.

¹ See, e.g., Naturalization Act of March 26, 1790, ch. 3, 1 Stat. 103 (1790) (repealed 1795).

² See, e.g., Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, 58-61 (repealed 1943) (prohibiting immigration of Chinese laborers).

³ See, e.g., Immigration Act of 1917, ch. 29, 39 Stat. 874 (repealed 1952) (banning immigration from almost all countries in the Asia-Pacific region).

⁴ Philippine Independence Act of 1934 (Tydings-McDuffie Act), ch. 84, 48 Stat. 456 (amended 1946) (imposing annual quota of fifty Filipino immigrants).

⁵ Immigration and Nationality Act of 1965 (Hart-Celler Act), Pub. L. No. 89-236, 79 Stat. 911 (1965).

⁶ *Gong Lum v. Rice*, 275 U.S. 78 (1927).

Gong Lum v. Rice did more than just validate segregation in Mississippi. Alabama,⁷ the District of Columbia,⁸ Florida,⁹ Kansas,¹⁰ Maryland,¹¹ Missouri,¹² North Carolina,¹³ Oklahoma,¹⁴ South Carolina,¹⁵ Tennessee,¹⁶ Texas,¹⁷ and Virginia¹⁸ all cited to *Gong Lum* as precedent in their own segregation cases.

In California, which has historically had a significant Asian American population, school segregation laws existed that specifically required students of Asian descent to attend schools separate from both white and black children. As early as 1860, the California School Law provided for separate schools for “Negroes, Mongolian[s], and Indians.”¹⁹ In 1870, however, the state legislature provided only for separate schools for “all white children,” “children of African descent,” and “Indian children,” completely ignoring the Asian American population.²⁰ Several attempts were made to establish schools for children of Chinese descent in San Francisco during this period, but various obstacles prevented the establishment of an ongoing school system for Asian American students.²¹

Although the California Supreme Court upheld school segregation in the face of a challenge based on both the state and federal constitutions in 1874,²² the court did hold that no child could be completely prevented from attending school on account of his or her race. This meant that Asian American schoolchildren, who had been ignored by the 1870 School Law, could attend public schools. In spite of the ruling, many local school boards enacted measures to prevent Asian American students from attending their neighborhood schools.

In 1885, the California Supreme Court held that because students of Asian descent were not specifically excluded from the public schools, school boards could not prohibit them from attending schools in their district.²³ The California legislature quickly responded to this ruling by passing a statute that stated that if a local school board established a school for “Mongolian” students, those students could not attend any other school.²⁴

In 1902, Chinese American students specifically challenged segregation and Chinese-only schools, but the court upheld the separate but equal doctrine.²⁵ Japanese American students

⁷ *Browder v. Gayle*, 142 F.Supp. 707 (M.D. Ala. 1956).

⁸ *Carr v. Corning*, 182 F.2d 14 (D.C. Cir. 1950).

⁹ *State ex rel. Hawkins v. Bd. of Control*, 60 So. 2d 162 (Fla. 1952).

¹⁰ *Graham v. Bd. of Educ.*, 114 P.2d 313 (Kan. 1941).

¹¹ *Pearson v. Murray*, 182 A. 590 (Md. 1936).

¹² *State ex rel. Gaines v. Canada*, 113 S.W.2d 783 (Mo. 1937).

¹³ *Epps v. Carmichael*, 93 F.Supp. 327 (M.D.N.C. 1950).

¹⁴ *Sch. Dist. No. 7 v. Hunnicutt*, 51 F.2d 528 (E.D. Okla. 1931).

¹⁵ *Briggs v. Elliott*, 98 F. Supp. 529 (E.D.S.C. 1951).

¹⁶ *McSwain v. County Bd. of Educ.*, 104 F.Supp. 861 (E.D. Tenn. 1952).

¹⁷ *Battle v. Wichita Falls Jr. Coll. Dist.*, 101 F.Supp. 82 (N.D. Tex. 1951).

¹⁸ *Davis v. County Sch. Bd.*, 103 F.Supp. 337 (E.D. Va. 1952).

¹⁹ Joyce Kuo, *Excluded, Segregated and Forgotten: A Historical View of the Discrimination of Chinese Americans in Public Schools*, 5 Asian L.J. 181, 190 (1998).

²⁰ *Id.* at 191.

²¹ *See id.* at 190-91.

²² *See Ward v. Flood*, 48 Cal. 36 (1874).

²³ *Tape v. Hurley*, 66 Cal. 473 (1885).

²⁴ *See Kuo, supra note 19*, at 198.

²⁵ *See Wong Him v. Callahan*, 119 F. 381 (N.D. Cal. 1902).

challenged segregation in *Aoki v. Dean* arguing that the School Law did not apply to Japanese Americans because they were not “Mongolian.” In 1907, as part of the “Gentleman’s Agreement” between the Roosevelt administration and the Japanese government that limited Japanese immigration, the *Aoki* case was dismissed.²⁶ Asian Americans did not see the repeal of all California’s school segregation statutes until 1947 when students of Mexican heritage who challenged California’s segregation system, with the cooperation of the Japanese American Citizens League, won in court.²⁷ It was not until 1954 that all Asian American students were freed from school segregation nationwide.²⁸

Even with desegregated classrooms, Asian American students faced educational discrimination when schools failed to teach them English. It was not until 1974 that the Supreme Court’s decision in *Lau v. Nichols*²⁹ launched the modern bilingual education movement, finding that school districts could no longer ignore the plight of non-English speaking students and thus must have programs in place to address their special needs.

Prior to *Lau*, San Francisco’s school district faced rising numbers of non-English speaking and limited English proficient (LEP)³⁰ students. Despite underfunded attempts by the school district to provide English language assistance programs, most LEP students were required to attend regular, English-only classes for all academic areas.³¹ For example, in 1970, only 37% of the 2,856 Chinese-speaking students in the San Francisco school district who needed special English language instructions received specialized assistance. Of the remaining students who did receive English language assistance, more than 59% did not receive such assistance on a full-time basis. Finally, there were enough bilingual Chinese-speaking teachers to teach only 9% of the total Chinese-speaking student population who needed special English language instructions.³² These inadequacies caused difficulties and frustration among the LEP Chinese-speaking students, resulting in increased rates of truancy, delinquency, and drop-outs within an ethnic group that had previously been considered a “model minority.”

On March 25, 1970, Kinney Kinmon Lau and 12 non-English speaking Chinese American students, more than half of whom were American-born, filed a class action lawsuit on behalf of approximately 3,000 Chinese-speaking students who received no specialized English language assistance.³³ Plaintiffs claimed that the school district denied them the opportunity to obtain the education received by other students in the school district by failing to provide adequate English assistance and that this failure thus violated Title VI of the Civil Rights Act of 1964, which bans discrimination based “on the ground of race, color, or national origin,” in “any program or activity receiving federal financial assistance.”

²⁶ See Richard Delgado & Jean Stefancic, *Symposium: Race and the Law at the Turn of the Century: California’s Racial History and Constitutional Rationales for Race-Conscious Decision Making in Higher Education*, 47 UCLA L. Rev. 1521, 1567 (2000).

²⁷ See *Mendez v. Westminster Sch. Dist.*, 161 F.2d 774 (9th Cir. 1947); see also, Toni Robinson & Greg Robinson, *Mendez v. Westminster: Asian-Latino Coalition Triumphant?*, 10 Asian L.J. 161 (2003).

²⁸ *Brown v. Bd. of Educ.*, 98 F. Supp. 797 (1951).

²⁹ *Lau v. Nichols*, 414 U.S. 563 (1974).

³⁰ Limited-English proficiency is defined as the ability to speak English “less than very well.”

³¹ See Wang, L. Ling Chi, *Lau v. Nichols: History of a Struggle for Equal and Quality Education*, in *Counterpoint: Perspectives on Asian America*, 240, 241 (Emma Gee ed. 1976).

³² See *id.*; see also *Lau v. Nichols*, 483 F.2d 791, 792 (9th Cir. 1973).

³³ See Wang, *supra* note 31, at 240.

On January 21, 1974, the Supreme Court issued a unanimous opinion finding that the state had failed to provide equal treatment to the *Lau* plaintiffs. Because the state treated the students differently based on their language, the Court found that the state had discriminated against the students based on their national origin. The opinion stated that “there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.”³⁴ The Court found that the Chinese-speaking minority receive fewer benefits than the English-speaking majority, which denied them a meaningful opportunity to participate in the educational program, and noted that these were “all earmarks of the discrimination banned by the regulations.”³⁵

The school segregation and lack of English instruction in the classrooms for Asian American students, coupled with disproportionate income levels and living conditions arising from past discrimination, resulted in high rates of illiteracy and low voting participation.

Overview of the Voting Rights Act and Asian Americans

The VRA was enacted in response to this long history of discrimination. The critical moment leading to the VRA’s passage occurred in March 1965. On a bridge outside Selma, Alabama, state troopers assaulted hundreds of people who were peacefully marching for voting rights for African Americans.

The VRA is designed to combat voting discrimination and to break down language barriers in order to ensure that Asian Americans and other Americans can vote. Asian Americans have long suffered discrimination at the polls, and still do today. Additionally, Asian American citizens still face language barriers when attempting to vote. Asian American citizens who speak some English but are not fluent can have difficulty understanding complex voting materials and procedures. By providing Asian American citizens with equal access to voting and helping to combat voting discrimination, the VRA gives Asian American citizens power to influence the policies that impact their community.

Since the enactment of the VRA over 40 years ago and the subsequent adoption of Section 203 in 1975, Asian Americans have made significant gains in electoral representation, although Asian American elected officials are still underrepresented in government. The VRA, and the language assistance provided by Section 203 in particular, has played a critical role in many of these gains.³⁶ Studies show a sharp rise in the number of Asian American elected officials in federal, state, and local offices. In 2004 the total number of elected officials was 346, up from 120 in 1978. Of the 346 total elected officials, 260 serve at the local level, up from 52 in 1978.³⁷ Approximately 75 Asian American officials serve at the state legislative level. These gains can be directly attributed to the VRA and particularly to the passage of Section 203. For example, the vast majority

³⁴ See *Lau v. Nichols*, 414 U.S. 563, 566 (1974).

³⁵ *Id.*

³⁶ States that contain at least one county required to provide voting assistance in one or more Asian languages pursuant to Section 203 include: Alaska, California, Hawaii, Illinois, New York, Texas, and Washington.

³⁷ Carol Hardy-Fanta, Christine Marie Sierra, Pei-te Lien, Dianne M. Pinderhughes, and Wartyna L. Davis, *Race, Gender and Descriptive Representation: An Exploratory View of Multicultural Elected Leadership in the United States*, September 4, 2005, at 4.

³⁸ *Id.* at 17.

of Asian American elected officials, 75%, were elected in jurisdictions covered by Section 203 of the VRA.³⁸ In the state legislatures, 65% of Asian Americans were elected from jurisdictions covered by the VRA.³⁹ In city councils, 79% of Asian Americans were elected from VRA-covered jurisdictions.⁴⁰ And among those serving on the school boards, 84% of Asian Americans were elected from covered jurisdictions.⁴¹

In California, the increase has been particularly dramatic. In 1990, California had no Asian American state legislators; it now has nine. Eight of the nine Asian American state legislators represent legislative districts located in counties that are covered under Section 203 for at least one Asian language.⁴² Every county in California that is covered under Section 203 for an Asian language has at least one Asian American legislator.

Harris County, Texas provides another example of gains in electoral representation that are directly attributable to the 1992 amendment to Section 203. In July 2002, the Census Bureau determined that Harris County qualified for Section 203 coverage in Vietnamese (in addition to Spanish). In 2003, Harris County election officials violated Section 203 by failing to provide Vietnamese ballots on its electronic voting machines. Harris County attempted to remedy the problem by creating paper ballot templates in Vietnamese. However, the County did not make these templates widely available to voters and did not offer them to voters at all polling places.

Pressure by the Department of Justice (DOJ), AAJC, and our Community Partner, the Asian American Legal Center of Texas, resulted in a settlement agreement that addressed the County's violations. Specifically, the County agreed to (1) hire an individual to coordinate the County's Vietnamese language election program; (2) provide all voter registration and election information and materials, including the voting machine ballot, in Vietnamese, as well as English and Spanish; (3) establish a broad-based election advisory group to make recommendations and assist in election publicity, voter education, and other aspects of the language program; and (4) train poll officials in County procedures and applicable federal voting rights law. In the wake of these changes, Harris County elected its first Vietnamese state legislator, Hubert Vo, in November 2004 over an incumbent.⁴³

Despite these significant gains, barriers precluding Asian Americans from electing candidates of their choice still exist. This progress is at risk of being subverted without the renewal of the VRA, including Section 203. There is still much work to do before Asian Americans can exercise their right to vote without encountering obstacles related to their lack of fluency in English and without encountering discrimination at the polls. To that end, AAJC believes S. 2703 will help ensure that Asian American voters will continue to have their voices heard and help more Asian Americans to vote.

³⁹ *Id.*

⁴⁰ *Id.* at 17-18.

⁴¹ *Id.*

⁴² These legislators are California State Assemblymembers: Judy Chu (Los Angeles), Carol Liu (Los Angeles), Ted Lieu (Los Angeles), Van Tran (Orange), Shirley Horton (San Diego), Wilma Chan (Alameda), Alberto Torrico (Alameda, Santa Clara), and Leland Yee (San Francisco, San Mateo).

⁴³ http://www.civilrights.org/campaigns/vra/learn_more/detail.cfm?d=195.

Continuing Discrimination against Asian American Voters

Although the VRA has done much to assist language minorities in exercising their right to vote, discrimination against Asian American voters and candidates persists, and the need for the protections provided by the VRA remains.

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.⁴⁴

Several days after the broadcast, the New Jersey/National Taskforce Against Hate Media and the New Jersey Coalition for Asian American Civil Rights reached an agreement with the radio station, which provided that the hosts would issue an on-air apology and the station would implement specific strategies to promote cultural awareness.⁴⁵ Jun Choi eventually won the election.

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.”⁴⁶ Mr. Ringhofer primarily targeted Asian and Hispanic voters.⁴⁷ In one of the counties in which Mr. Ringhofer initiated his challenge, the county auditor declined to process the challenge and contacted the DOJ about the challenge due to its apparent violation of state and federal law.⁴⁸

Through poll monitoring efforts, several organizations have documented evidence of discrimination by poll workers at polling sites throughout the country. Under the Access to Democracy Project, AAJC and its affiliates monitored polls during the November 2004 election and found significant evidence of poll worker reluctance to implement Section 203 properly, as well as outright hostility towards Asian American voters. For example, one election judge in Cook County, Illinois, commented that a voter whom he was unable to understand should “learn to speak

⁴⁴ <http://www.asianmediawatch.net/jerseyguys/>.

⁴⁵ *Id.*

⁴⁶ See also Jim Camden, *Man Says Votes from Illegal Immigrants*, March 31, 2005,

<http://www.spokesmanreview.com/local/story.asp?ID=61944>.

⁴⁷ *Id.*

⁴⁸ Letter dated April 5, 2005 from Franklin County Auditor to Martin Ringhofer.

English.” Similarly, in a precinct in Cook County, with a very high concentration of Chinese American voters, there was only one Chinese ballot booth and no sign indicating that the booth was for Chinese speakers. When asked about this concern, the election judge replied, “They don’t need them anyway. They just use a piece of paper and punch numbers. They don’t read the names anyway, so it doesn’t matter.”

During the 2004 election, “Election Protection” coalition members monitored polls by documenting calls from voters across the United States complaining of discriminatory practices at the polls. For example, in Orange County, California, an Asian American voter was unnecessarily required to show proof of identification and address even though she was not a first time voter and had voted in the precinct previously. This also occurred in Bergen County, New Jersey.⁴⁹

Similarly, in Boulder, Colorado, a poll worker made racist comments to an Asian American voter. The poll worker then told her she was not on the list of registered voters and turned her away after the voter had waited in line for over an hour. The voter watched as others completed provisional ballots, and she asked if she could do so as well, only to be told her circumstances were different. The voter continued to watch as another Asian American woman was also turned away. After the voter left the polling place, she called the Election Protection hotline and discovered that she indeed was properly registered to vote at that location. She returned and eventually was allowed to vote.⁵⁰

Other examples of discriminatory behavior at the polls included:

- In West Palm Beach, Florida, an election poll worker told a voter that the city was not handling Hispanic, Black or Asian voters at that particular polling place.⁵¹
- In Union County, New Jersey, White challengers were seen going inside the voting booth with minority voters.⁵²
- In Jackson Heights, Queens, one poll worker said, “You Oriental guys are taking too long to vote.” Other poll workers commented that there were too many language assistance materials on the tables, saying, “If they (Asian American voters) need it, they can ask for it.” 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.”⁵³
- In Koreatown, New York during the 2004 general elections, a precinct inspector gave certain Asian American voters time limits and sent at least one Asian American voter to the back of the line.⁵⁴

⁴⁹ *Election Incident Reporting System: 1-866-Our-Vote*, <https://voteprotect.org/index.php?display=EIRMapNation&tab=ED04>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ 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*, August 2005.

⁵⁴ Tr. 11/8/05 (App.), at 1433 (Written Testimony of Eunsook Lee, Sept. 25, 2005 (“Lee Written Testimony”).

More generally, despite claims of certain opponents who assert that Asian Americans no longer suffer from discrimination in American society and hold Asian Americans up as the “model minority” who have already succeeded in American society, the reality is that Asian Americans still suffer from discrimination. Scholars have debunked this “model minority” myth.⁵⁵ This myth rests on stereotypes of Asian Americans as being more racially and culturally inclined to be hard-working and industrious than other minorities.⁵⁶ As evidenced by the substantial body of scholarly literature on this topic, the “model minority” myth is empirically false and ignores current discrimination against Asian Americans.

Contrary to the claims of the proponents of the myth, Asian Americans’ socioeconomic status reflects the lingering effects of a long history of racial discrimination. Indeed, a higher percentage of Asian Americans than Caucasian Americans live in poverty.⁵⁷ Eleven Asian American groups have poverty rates above average, including Chinese, Koreans, Vietnamese, and Pakistanis.⁵⁸ Hmong and Cambodians have poverty rates higher than any of the major racial and ethnic groups in the U.S., both 29% or higher compared to 12% for the U.S.⁵⁹ Asian Americans have per capita incomes below that of the U.S. population overall.⁶⁰ Filipinos, Koreans, and Vietnamese are among the sixteen Asian American and Pacific Islander groups that have per capita incomes below that of the U.S. overall. Hmong, Cambodians, and Laotians have per capita incomes below \$12,000, which is below that of any of the major racial or ethnic groups.⁶¹ Further, discriminatory employment barriers resulting from the stereotype of Asian Americans as unassertive “grinds” who lack leadership skills have hindered Asian Americans’ ability to advance to management positions.⁶² Asian Americans experience such “glass ceiling” barriers in many

⁵⁵ See, e.g., Frank H. Wu, *Yellow: Race in America Beyond Black and White* 39-59 (Basic Books 2002) (discussing the empirical and other flaws in this myth); Deborah Woo, *Glass Ceilings and Asian Americans: The New Face of Workplace Barriers* 34-38 (Altamira Press 2000).

⁵⁶ See Wu, *Yellow*, *supra* note 55, at 45-47, 62-63 (discussing how the myth emerged with a 1966 article contrasting Japanese Americans and African Americans based on cultural differences); Woo, *Glass Ceilings*, *supra* note 55, at 24, 33-38 (criticizing explanations of socioeconomic disparities between Asian Americans and other races based on cultural differences such as Confucianism); see also Wu, *Yellow*, *supra* note 55, at 49, 74-77 (describing “model minority” myth as a form of stereotyping).

⁵⁷ Asian American Justice Center, *A Community of Contrasts: Asian Americans and Pacific Islanders in the United States Demographic Profile* 10 (2006).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 9. Per capita income is the income available per individual in a population, rather than for an entire household. Because Asian American households are larger on average, per capita income is a better measure of a group’s overall well-being.

⁶¹ *Id.*

⁶² See Woo, *Glass Ceilings*, *supra* note 55, at 120 (discussing cultural stereotypes regarding Asian Americans’ general leadership abilities); Paul Brest & Miranda Oshige, *Affirmative Action for Whom?*, 47 *Stan. L. Rev.* 855, 894 (1995) (noting the negative stereotype that Asian Americans have poor leadership and interpersonal skills). Indeed, according to one study, of all racial groups, Asian Americans “face the worst chance of being advanced into management positions.” See LEAP Asian American Pub. Policy Inst. & U.C.L.A. Asian American Studies Ctr., *The State of Asian Pacific America* 215-216 (1993). According to the Equal Employment Opportunity Commission (“EEOC”), a disparity exists for Asian Americans between the extent to which they occupy professional positions that require a college degree and the extent to which they hold management positions with responsibilities of supervision and policy setting. See EEOC, *Job Patterns for Minorities and Women in Private Industry* (1998), <http://www.eeoc.gov/stats/jobpat/1998/tables-1.html> (last visited June 28, 2006) (noting EEOC data showing that 29 percent of Asian American employees are professionals, but only 7.4 percent fill management positions).

occupational contexts, including the corporate sector,⁶³ the federal government,⁶⁴ science and engineering,⁶⁵ academia,⁶⁶ and the federal judiciary.⁶⁷ Asian Americans also suffer significant discrimination in the area of government contracting.⁶⁸

The “model minority” myth ignores the continuing existence of discrimination and prejudice against Asian Americans in contemporary American society. In 2001, a comprehensive survey revealed that 71 percent of respondents held either decisively negative or partially negative attitudes towards Asian Americans.⁶⁹ Racial representations and stereotyping of Asian Americans, particularly in well-publicized instances where individuals in power or the mass media express such attitudes,⁷⁰ reflect and reinforce an image of Asian Americans as “different,” “foreign,” and the “enemy,” thus stigmatizing Asian Americans, heightening racial tension, and instigating

⁶³ Asian Americans comprised less than 0.3 percent of senior executives in the United States in 1990. See Korn/Ferry International, *Executive Profile: A Decade of Change in Corporate Leadership* 23 (1990). Today, Asian Americans comprise less than one percent of the board directorships of Fortune 500 companies. See White House Initiative on Asian Americans and Pacific Islanders, *A People Looking Forward, Action for Access and Partnership in the 21st Century* 60-61 (2001) (“*A People Looking Forward*”).

⁶⁴ According to EEOC data, Asian Americans are under-represented in supervisory positions in 23 out of 25 federal departments or agencies (of those departments or agencies reporting this information) and constitute just 1.6 percent of the federal workforce’s top managers and highest salaried employees. See *A People Looking Forward*, supra note 62, at 104-05; Asian Americans and Pacific Islanders Joint Task Force, *API Federal Employment and Glass Ceiling Issues* 11 (2001).

⁶⁵ Asian Americans are less likely than other minority groups to be in management positions in science and engineering fields. See National Science Foundation, *Women, Minorities, and Persons with Disabilities in Science and Engineering* (1998), <http://www.nsf.gov/statistics/nsf99338/pdfstart.htm> (last visited June 12, 2006).

⁶⁶ Among minorities, Asian Americans occupy the smallest number (under one percent) of top administrative positions at two- and four-year academic institutions combined. See Woo, *Glass Ceilings*, supra note 55, at 118-19. Asian Americans also have been under-represented in professional school faculties. For example, as of 1993, over 70 percent of American law schools had never hired an Asian American faculty member. See Pat K. Chew, *Asian Americans in the Legal Academy: An Empirical and Narrative Profile*, 3 *Asian L.J.* 7, 33 (1996).

⁶⁷ Of almost 1,600 active judges in the federal judiciary, only 0.9 percent are Asian American. See Edward M. Chen, Speech Presented at the California Law Review Dinner (April 11, 2002) (unpublished).

⁶⁸ See Notice: Proposed Reforms to Affirmative Action in Federal Procurement, Appendix - *The Compelling Interest for Affirmative Action in Federal Procurement: A Preliminary Survey*, 61 Fed. Reg. 26042, 26050-63 (May 23, 1996) (citing congressional hearings since 1980 regarding discrimination against minority-owned business enterprises, and stating that Congress found that “11 percent of Asian business owners had experienced known instances of discrimination in the form of higher quotes from suppliers” and that Asian American-owned businesses receive, on average, only 60 cents of each dollar “of state and local expenditures that those firms would be expected to receive, based on their availability”); Theodore Hsien Wang, *Swallowing Bitterness: The Impact of the California Civil Rights Initiative on Asian Pacific Americans*, Ann. Surv. Am. L. 463, 469 (1995) (stating that numerous studies conducted by local governments in California concluded that Asian American businesses face significant discrimination in competition for government contracts).

⁶⁹ See Committee of 100, *American Attitudes Toward Chinese Americans and Asians* 56 (2001). The study further found that, of those respondents holding decisively negative views, 34 percent said they would be upset if a significant number of Asian Americans moved into their neighborhood and 57 percent believed that increased Asian American population is bad for America. See *American Attitudes*, at 46, 50. Twenty three percent of respondents said that they would be “uncomfortable” if an Asian American were elected president. *Id.* at 40.

⁷⁰ For example, during the trial of O.J. Simpson in the mid-1990s, Senator Alfonse D’Amato, using a crudely exaggerated Japanese accent on a radio talk show, mocked the handling of the case by Judge Lance Ito, a third generation Japanese American who speaks English without an accent. See 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, 175 (1995). Other incidents of such stereotyping in connection with the Simpson trial included racist epithets that appeared on national radio programs. See *id.* at 176.

discrimination.⁷¹ Such negative racial representation and stereotyping also can incite violence directed against Asian Americans.⁷² Thousands of incidents of anti-Asian American violence have been documented over the last decade, including physical harassment, assault, attempted murder, and murder.⁷³

Finally, educational discrimination against Asian Americans still exists. This educational discrimination impacts the ability of Asian Americans to achieve high levels of education. While some Asian American children are doing well in education, there is a significant number who are not.⁷⁴ This in turn depresses the ability of Asian Americans to participate in the electoral process.⁷⁵ The impact of these low rates of educational attainment on electoral participation is exacerbated by the language barriers faced by Asian Americans. More than a third of the Asian American

⁷¹ See Lee, *Beyond Black and White*, *supra* note 70, at 181. Spencer K. Turnbull, *Wen Ho Lee and the Consequences of Enduring Asian American Stereotypes*, 7 *Asian Pac. Am. L.J.* 72, 74-75 (2001); Terri Yuh-lin Chen, *Hate Violence as Border Patrol. An Asian American Theory of Hate Violence*, 7 *Asian L.J.* 69, 72, 74-75 (2000) (“*Hate Violence*”); Jerry Kang, *Racial Violence Against Asian Americans*, 106 *Harv. L. Rev.* 1926, 1930-1932 (1993). See also *American Attitudes*, *supra* note 68, at 8. In the survey discussed above, 32 percent of the respondents said they believed that Chinese Americans are more loyal to China than to the United States, and 46 percent of those surveyed said they believed that “Chinese Americans passing on information to the Chinese government is a problem.” See *American Attitudes*, *supra* note 68, at 18, 26. Such racial attitudes toward Japanese Americans underlay the federal government’s internment of approximately 120,000 of these citizens during World War II. See *Korematsu v. United States*, 323 U.S. 214 (1944); see also *Adarand Contractors, Inc. v. Peña*, 515 U.S. 200, 236 (1995) (recognizing that the internment of Japanese Americans upheld in *Korematsu* was “illegitimate” and citing Congressional finding that this internment was “carried out without adequate security reasons . . . and [was] motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership” (quoting Pub. L. 100-383, § 2(a), 102 Stat. 903-904)).

⁷² See Chen, *Hate Violence*, 7 *Asian L.J.* at 74-76.

⁷³ See National Asian Pacific American Legal Consortium 2000 *Audit of Violence Against Asian Pacific Americans* 9 (2001). Moreover, the myth that Asian Americans uniformly are economically prosperous encourages criminals to target Asian Americans. See Jerry Kang, *Racial Violence Against Asian Americans*, 106 *Harv. L. Rev.* 1926, 1929-30 (1993). The implied inferiority of other minority races that is inherent in the myth’s depiction of Asian Americans as a success story also creates or intensifies resentment and scapegoating impulses, especially in competitive circumstances (e.g., school) or in times of economic downturn. See *id.* at 1934-36 (explaining that publicity about supposed successes of Asian Americans implies to other minority groups “that, but for their incompetence or indolence, they too would be succeeding in America,” thus fueling resentment against Asian Americans); Wu, *Yellow: Race in America Beyond Black and White*, *supra* note 55, at 70-73 (explaining how myth of Asian American prosperity instigated racial tension in Detroit during the recession in 1982 and in Los Angeles during the 1992 riots following acquittal of the defendants accused of beating Rodney King).

⁷⁴ While Asian American adults age 25 years and older are more likely than Whites to have graduated college, they are also more likely to have not graduated from high school. Four Southeast Asian groups – Vietnamese, Cambodians, Laotians, and Hmong – have educational levels far below average, some among the lowest in the nation. Census data shows that over 25% of Cambodians, 45% of Hmong, and 23% of Laotians have had no formal schooling, compared to 1% of the overall population. Similarly, Census data shows that only 9% of Cambodians, 7% of Hmong, and 8% of Laotians obtain at least a bachelor’s degree, compared to 24% of the overall U.S. population. Additionally, nearly half or more of Hmong, Cambodian, and Laotian adults and over a third of Vietnamese have not completed high school. About one out of five Chinese adults have not finished high school. Less than ten percent of Cambodian, Laotian, and Hmong adults have completed college and only 20% of Vietnamese, the fifth largest Asian American group in the U.S., has a college degree. Asian American Justice Center, *A Community of Contrasts: Asian Americans and Pacific Islanders in the United States Demographic Profile 7* (2006). The data cited are taken from U.S. Census 2000, Summary Files 1 through 4. Figures are for the inclusive Asian American (but not Pacific Islander) population (single race and multi-race combined).

⁷⁵ In its 1982 report supporting reenactment of the temporary provisions of the Voting Rights Act, the Senate found, based on Supreme Court jurisprudence, that educational disparities are causally linked with depressed levels of political participation.

population, nearly four million people, is considered LEP.⁷⁶ A majority of six Asian American groups are LEP: Vietnamese, Hmong, Cambodian, Laotian, Bangladeshi, and Taiwanese.⁷⁷ More than one out of three Koreans, Chinese, Thai, Indonesians, and Malaysians and more than a fifth of Filipinos, Japanese, Asian Indians, and Pakistanis are LEP, or not fluent in English.⁷⁸

More than 1.2 million Asian American children between ages 5 and 17 are language minorities. More than one out of five Asian American children ages 17 years and younger are considered limited English proficient. The effects of LEP are experienced differently across sub-ethnic lines. A majority of Hmong children and a third or more of Bangladeshi, Cambodian, and Vietnamese children are LEP. A fifth or more of Pakistani, Korean, Malaysian, and Chinese children are LEP.⁷⁹ In order for these children to become fluent in English so that they can participate in society, including voting, they need to have adequate, if not better, English language instruction while in school.

Unfortunately, Asian American children are not receiving the English instruction they need. The supply of qualified bilingual educators is not enough to meet the demand of Asian American LEP students. For example, in 1997, California only had 72 certified bilingual Vietnamese teachers for 47,663 Vietnamese-speaking students (ratio = 1:662), 28 certified bilingual Hmong teachers for 31,165 Hmong-speaking students (ratio = 1:1,113), and 5 certified bilingual Khmer teachers for 20,645 Khmer-speaking students (ratio = 1:4,129). In 1986, a successful class action was brought on behalf of 6,800 Asian American English Language Learner (ELL) students.⁸⁰ One of the plaintiffs was a Cambodian refugee enrolled in English-only English as a Second Language (ESL) courses who was placed in a class for mentally handicapped students after failing to make progress for three years. The 1986 consent decree required the school district to review all placements of ELL Asian American students, including assessment and communication in their native language, revisions to ESL curriculum, recruitment and training of ELL instructors fluent in Asian languages, and all communications with parents in their native languages. Students are not being properly served as mandated under *Lau v. Nichols*, and we find Asian American children growing up to become Asian American adults who are not fluent in English.

Asian American immigrants understand that learning English is a path to better earnings and opportunities. Basic adult ESL classes offered generally assist new Americans to become functionally fluent. Because little, if anything, is being offered for those seeking to become more than functionally fluent, many new citizens are not able to learn English to the level where they comfortably understand complex voting materials.

Many Asian American adults who want to learn English find that it can be difficult to do so through no fault of their own. As Dr. James Tucker testified during the House Judiciary Subcommittee on the Constitution legislative hearing, educational discrimination is compounded by

⁷⁶ Asian American Justice Center, *A Community of Contrasts: Asian Americans and Pacific Islanders in the United States Demographic Profile* 11 (2006).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Y.S. v. Sch. Dist. of Philadelphia*, Case No. 85-6924 (E.D. Pa. 1986) (noting consent decree continued by stipulation in 2001).

the absence of sufficient adult ESL programs.⁸¹ Some of the examples he noted of places with significant and/or growing populations of Asian Americans are:⁸²

- In Boston, the average waiting time is 6-9 months. Some adults have to wait as long as 2-3 years.
- In Las Vegas, the largest ESL provider reports that the average waiting time for adult ESL classes ranges from one to four months.
- In the metropolitan New York City region, the need for adult ESL courses is estimated to be one million. Less than half (41,347) of the adults were able to enroll with over one hundred providers in 2005 due to inadequate numbers of classes. Most adult ESL programs no longer keep waiting lists because of the extreme demand, using lottery systems instead. The lottery system turns away at least three out of every four adults interested in taking an adult ESL class. In 2001, a survey of the few providers who still maintained waiting lists found that there were 12,000 adults on the lists, with an average waiting time of at least six months.

As these figures show, there are simply not enough available classes to meet the high demand of many Asian Americans for instruction in English language acquisition. As a result, many Asian American citizens are not receiving the educational opportunities they need in order to fully learn the English language and thus are being marginalized in the voting process due to the complicated voting materials and procedures involved.

AAJC commends the Senate's leadership in recognizing the continuing discrimination faced by minority voters, including Asian Americans, and for reauthorizing and restoring the VRA, including Sections 5 and 203, for 25 more years as a congruent and proportional exercise of its powers.

Section 5

AAJC is supportive of S. 2703's renewal for 25 years and restoration of Section 5 of the VRA. We commend the Senate's leadership for restoring the strength of Section 5 by addressing two Supreme Court decisions that have significantly narrowed Section 5's effectiveness. S. 2703 rejects the Court's holding in *Bossier II* by clarifying that a voting rule change motivated by any discriminatory purpose cannot be precleared. S. 2703 also partly rejects the Court's decision in *Georgia v. Ashcroft*, by restoring the pre-*Georgia v. Ashcroft* standard to protect the minority community's ability to elect their preferred candidates of choice. The renewal and restoration of Section 5 is important to the Asian American community.

Section 5 applies to numerous voting changes in covered jurisdictions, including redistricting, annexation of other territories or political subdivisions, and polling place changes, which can have an immense impact on local politics in particular and on Asian American

⁸¹ See A Bill to Reauthorize and Amend the Voting Rights Act of 1965: Part II of 16 (May 4, 2006): Legislative Hearing on H.R. 9, Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 109th Congress (testimony of Dr. James Thomas Tucker).

⁸² *Id.*

communities' ability to participate in the process. In jurisdictions that are covered by both Sections 5 and 203, Section 5 complements the enforcement of Section 203. Jurisdictions that are covered by both Sections 5 and 203 must obtain preclearance from the Justice Department before implementing any change in a language assistance program. For example, when the New York City Board of Elections refused to provide fully translated machine ballots, the Justice Department, acting pursuant to Section 5, compelled the Board to comply with Section 203 by providing machine ballots with all names transliterated into Chinese.⁸³

As the Asian American community continues to grow and move, Section 5 will become increasingly relevant to Asian Americans. Asian Americans are one of the fastest growing populations in America.⁸⁴ Large numbers of Asian Americans continue to live in California, New York, and Hawaii.⁸⁵ However, Asian Americans are simultaneously moving to different areas of the United States, including the South. Georgia and North Carolina are among the three fastest growing Asian American populations.⁸⁶ In fact, five of the states covered in their entirety and another four states covered partially by Section 5 are among the top 20 states with the fastest growing Asian American populations. The remaining covered states all experienced a growth in their Asian American populations.⁸⁷

With this demographic shift, we are seeing the continued need for Section 5 coverage to help combat voting discrimination against Asian Americans in Section 5 covered jurisdictions. For example, Bayou La Batre, Alabama, is a fishing village of about 2,750 residents, about one-third of whom are Asian Americans. In the 2004 primary elections, an Asian American candidate ran for City Council. In a concerted effort to intimidate supporters of this candidate, supporters of a white incumbent challenged Asian American voters at the polls. The challenges, which are 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. 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.⁸⁸

Section 5 is also important to the Asian American community because of the distinct and unique voice of the community, which sometimes favors different candidates than White voters.⁸⁹ There have been several examples of differences in voting patterns between Asian American and White voters:

- The 2003 gubernatorial election in Louisiana suggests that racial issues remain salient in Section 5 covered jurisdictions. Pre-election polls in the weeks prior to the

⁸³ Editorial, *Minority Rights in the Voting Booth*, New York Times, Aug. 19, 1994, <http://select.nytimes.com/search/restricted/article?res=F60910FB3D5DOC7A8DDDA10894DC494D81>.

⁸⁴ <http://www.census.gov/Press-Release/www/releases/archives/race/001839.html>.

⁸⁵ http://www.advancingequality.org/files/census_handbook.pdf - Summary - p.i.

⁸⁶ http://www.advancingequality.org/files/census_handbook.pdf - Table 9 - p. 10.

⁸⁷ *Id.*

⁸⁸ 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.

⁸⁹ In many cases, the major opponents to Asian American candidates are white voters. Christian Collet, *Bloc Voting, Polarization and the Panethnic Hypothesis: The Case of Little Saigon*, 67 J.Pol. 3 (Aug. 2005).

November runoff showed now-Representative Bobby Jindal, an Indian American Republican supported by George W. Bush and Governor Mike Foster, with a comfortable lead over Caucasian Democratic Lt. Gov. Kathleen Blanco. But on Election Day, Jindal lost to Blanco by the margin of 52% to 48%. Analysis done on the race showed that a significant number of those who voted for David Duke, the former leader of the Ku Klux Klan, swung their support away from the non-white Republican, Jindal, to the white Democrat, Blanco.⁹⁰

- During the 1998 U.S. Congressional 39th District race in California, Cecy Groom (a Filipino American Democrat) ran against Ed Royce. While almost 57% of Asian Americans voted for Groom, over 61% of White voters supported Royce.⁹¹
- During the 1998 race for California State Assembly District 60, in which Bob Pacheco ran against Ben Wong, 61% of Asian Americans voted for Wong, but only 23% of White voters did so.⁹²
- During the 1998 race for California State Assembly District 68, in which Ken Maddox ran against Mike Matsuda, 68% of Asian American Pacific Islanders voted for Matsuda; most White voters supported Maddox (56%).⁹³
- In a study of Vietnamese American voting patterns in Westminster, California⁹⁴, the author found that in every election examined since 1998, racially polarized voting was evident, with Vietnamese American voters giving their support to Vietnamese and other Asian American candidates and white voters backing as an opposing bloc their white opponents.⁹⁵
 - During the highly contested 2000 Westminster City Council race, eight candidates, including three Asian Americans, ran for two seats. Despite overwhelming support from Asian American voters, the Asian American candidates lost to White candidates who were opposed by the Asian American community.⁹⁶ This was the case despite the fact that one of the Asian Americans spent more than the top vote-getter.⁹⁷
 - During the 1998 Westminster mayoral race, five candidates ran for the position of Westminster Mayor, including a Vietnamese American, Chuyen Nguyen. While Asian American voters surveyed overwhelmingly supported

⁹⁰ Richard Skinner and Philip A. Klinkner, *Black, White, Brown and Cajun: The Racial Dynamics of the 2003 Louisiana Gubernatorial Election*, Forum: Vol. 2: No. 1, Article 3 (2004).

⁹¹ Asian Pacific American Legal Center ("APALC"), November 1998 Southern California Voter Survey Report ("Voter Survey Report") (1999), http://www.apalc.org/Nov_1998_Voter_Survey.pdf.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Westminster, California is home to the largest Vietnamese community outside of Vietnam.

⁹⁵ Christian Collet, *Bloc Voting, Polarization and the Panethnic Hypothesis: The Case of Little Saigon*, 67 J.Pol. 3 (Aug. 2005).

⁹⁶ See APALC, Voter Survey Report, *supra* note 90.

⁹⁷ Christian Collet, *Bloc Voting, Polarization and the Panethnic Hypothesis: The Case of Little Saigon*, 67 J.Pol. 3 (Aug. 2005).

him, White voters tended to support Joy Neugebauer and eventual winner Frank Fry.

- During the 1998 Westminster City Council race, a republican Vietnamese American ran for reelection against six white opponents and one other Asian American candidate. Mayor Frank Fry, a fellow Republican, unleashed mail urging “voters to reject Tony ‘Little Saigon’ Lam” in the non-partisan race. While he eventually retained his seat as an incumbent of six years, Lam had to spend almost four times as much as the other incumbent who retained her seat and who happened to be white.⁹⁸

Even in elections where no Asian American candidate is involved, Asian American voters still tend to vote differently than White voters. According to a Los Angeles Times election 2004 exit poll, 34% of Asian American voters voted for Bush, whereas 64% voted for Kerry. White voters, on the other hand, voted 57% for Bush and 42% for Kerry.⁹⁹ A November 2002 Southern California Voter Survey found that, in the 2002 gubernatorial vote, 61% of Asian Americans voted for Gray Davis, while only 38% of White voters voted for him.¹⁰⁰ According to a November 2000 Los Angeles Times exit poll, Asian American voters voted 62% for Gore and 37% for Bush. White voters, on the other hand, voted 43% for Gore and 54% for Bush.¹⁰¹

Asian American voters also vote differently than White voters on ballot initiatives that directly impact the Asian American community.¹⁰² For example, 53% of Asian American voters voted against Proposition 187, a 1994 initiative in California to ban undocumented immigrants from public social services, non-emergency health care, and public education. By contrast, 63% of White voters voted for the initiative. Similarly, 61% of Asian American voters voted against California’s Proposition 209, a 1996 initiative that bans affirmative action in the state; by contrast, 63% of White voters voted for the initiative.

Section 203

AAJC commends the Senate’s leadership for extending the language assistance provision, Section 203 of the VRA, another 25 years in S. 2703. AAJC also commends the Senate’s leadership for recognizing that the previous method of Section 203 determinations based upon data from the decennial census long form cannot keep pace with the ever-growing and changing population and have provided for determinations to be made based upon the annual American Community Survey on a five-year basis. Because the growth rate and the migration rate show that today’s society is increasingly mobile, determinations made every five years will help to ensure that jurisdictions that need coverage continue to be covered and that jurisdictions that no longer need to be covered because they no longer have a sizeable language minority population with limited English proficiency will not be required to provide language assistance.

⁹⁸ Christian Collet, *Bloc Voting, Polarization and the Panethnic Hypothesis: The Case of Little Saigon*, 67 J.Pol. 3 (Aug. 2005).

⁹⁹ L.A. Times 2004 Exit Poll, <http://www.pollingreport.com/2004.htm>.

¹⁰⁰ Asian Pacific American Legal Center, Data on Asian Pacific Islander Voters from the November 2002 Southern California Voter Survey, Nov. 7, 2002, http://www.apalc.org/2002_voter_survey.pdf.

¹⁰¹ L.A. Times 2000 Exit Poll, <http://www.pollingreport.com/2000.htm>.

¹⁰² L.A. Times exit polls.

Section 203 has been critical to the participation of Asian American voters. Despite the positive impact of the Voting Rights Act in general and Section 203 in particular, language minorities still face significant discrimination at the polls when attempting to exercise their right to vote. Discrimination at the polls can manifest in different ways, including hostile and unwelcoming environments at the polls and an outright denial of the right to vote. These barriers in addition to educational discrimination result in extremely depressed voter participation. According to the Census Bureau, in the November 2004 Presidential Election, Latino voting-age U.S. citizens had a registration rate of 57.9 percent and Asian American voting-age U.S. citizens had a registration rate of only 52.5 percent, compared to 75.1 percent of all non-Hispanic white voting-age U.S. citizens.¹⁰³ Section 203 remains necessary to remedy the problem of discrimination against Asian Americans at the polls and to increase their voter participation.

Section 203 is needed to help language minorities overcome another major barrier: 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, often because they received a substandard education and were not taught English in school, while other language minorities immigrated to this country and have not had adequate opportunities to learn English.

Because the United States encourages civic engagement, certain persons are exempt from English literacy requirements when applying for citizenship, such as the elderly who have resided in the United States for a lengthy period of time¹⁰⁴, the physically or developmentally disabled, and certain Hmong veterans who helped to save American lives during the Vietnam War and came to the United States as refugees.¹⁰⁵ 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.¹⁰⁶ A majority of Asian American seniors (58%) are LEP, including Filipino, Koreans, and Chinese.¹⁰⁷ Five Asian American groups have senior populations that are more than 80% LEP, including Vietnamese, Hmong, Cambodians, Laotians, and Bangladeshi.¹⁰⁸

Overall, 40% of Asian Americans nationwide over the age of 18 have limited English proficiency, and 77% speak a language other than English in their homes. For certain Asian American groups, these numbers are well above the national averages. For example, 67% Vietnamese Americans over the age of 18 have limited English proficiency. For Laotians,

¹⁰³ U.S. Census Bureau, Table 4a, Reported Voting and Registration of the Total Voting-Age Population by Sex, Race and Hispanic Origin: November 2004.

¹⁰⁴ 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).

¹⁰⁵ Up to 45,000 Hmong veterans who fought with special guerrilla units or irregular forces in Laos and their spouses were admitted as refugees and were eligible to be exempt. *Id.*

¹⁰⁶ Asian American Justice Center, *A Community of Contrasts: Asian Americans and Pacific Islanders in the United States Demographic Profile 11* (2006).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

Cambodians, and Hmongs over the age of 18, over 60% have limited English proficiency.¹⁰⁹ Coupled with the lack of ESL programs, which Congress itself documented during the 1992 reauthorization of Section 203, language minorities are effectively precluded from learning English.

The Section 203 formula triggering coverage is a very rigorous one. It does not presume that all minority voters need assistance, but considers literacy rates as well as self assessed language ability. In previous censuses, the Census Bureau asked about English ability in its long form census questionnaire.¹¹⁰ It determined that respondents tend to overestimate their ability so only those who respond that they speak English “very” well are deemed to be truly proficient.¹¹¹ Once the Census Bureau determines the population size of LEP citizen voting-age population for a single covered language, the Bureau then takes into account whether the illiteracy rate of that group is higher than the national average.¹¹² In other words, the only persons who are counted for purposes of Section 203 determinations are those that are not fluent in English, of a single language group, citizen, voting-age AND have less than a 5th grade education.¹¹³ Because voting materials are written at a level that is high school or above, citizens whose illiteracy rate, i.e. the failure to complete the 5th primary grade, is greater than that of the nation are in particular need of assistance and Section 203 is narrowly tailored to capture those citizens in need.¹¹⁴

Section 203 has proven effective in achieving its objective. According to Attorney General Alberto Gonzales, Section 203 is a necessary remedy to address disparities in voter registration and turnout among covered groups. When properly implemented, both Asian American voter registration and voter participation has increased significantly in covered jurisdictions. The DOJ has undertaken the most extensive enforcement of the language assistance provisions in the history of the Voting Rights Act and they have evidence that their enforcement and compliance efforts are working. For example, 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

¹⁰⁹ *Id.*

¹¹⁰ The long form census questionnaire has been replaced by the annual American Community Survey, which asks many of the same questions as the long form census questionnaire. S. 2703 renews Section 203 and keys Section 203 determinations to the new American Community Survey. The same concerns that exist regarding self-responses with regards to English proficiency for the long form census questionnaire also apply to the American Community Survey.

¹¹¹ Limited-English proficient for the purposes of Section 203 of the Voting Rights Act is defined as the inability “to speak or understand English adequately enough to participate in the electoral process.” See generally 42 U.S.C. § 1973aa-1a(b)(3)(B). The Director of the Census determines limited English proficiency based upon information included on the long form of the decennial census. The long form, however, is only received by approximately 17 percent of the total population. Those few who do receive the long form and speak a language other than English at home are asked to evaluate their own English proficiency. The form requests that they respond to a question inquiring how well they speak English by checking one of the four answers provided – “very well,” “well,” “not well,” or “not at all.” The Census Bureau has determined that most respondents over-estimate their English proficiency and therefore, those who answer other than “very well” are deemed LEP. See H.R. Rep. No. 102-655 at 8, reprinted in 1992 U.S.C.C.A.N. 772.

¹¹² Illiteracy is defined for these purposes as “receiving less than a fifth grade education.”

¹¹³ As a result, only 16 jurisdictions in seven states are covered for any Asian language. Those jurisdictions account for more than half of the nation’s Asian American population.

¹¹⁴ Ana Henderson, English Language Naturalization Requirements and the Bilingual Assistance Provisions of the Voting Rights Act (2006) (showing that the levels of English literacy necessary to pass naturalization tests, or possessed by many native-born citizens, are far below the level necessary to fully understand election materials) (on file with the author). Analysis of voter materials, including voter registration and ballot measures, from all 50 states reveals that they are consistently written at high grade levels and use complex English, e.g., contain longer sentences and words as well as complicated vocabulary and grammar.

registrations increased by 40 percent. And in Harris County, Texas, the turnout among Vietnamese eligible voters doubled following the DOJ's efforts in that county in 2004.¹¹⁵ That same year, Harris County elected the first Vietnamese American to the Texas state legislature after the county began fully complying with Section 203. Also, in 2004, over 10,000 Vietnamese American voters registered in Orange County, which helped to lead to the election of the first Vietnamese American to California's state legislature.

Costs of Language Assistance

In a May 1997 study on the costs of Section 203, the General Accounting Office (GAO) surveyed all 422 jurisdictions and all 28 states covered by Section 203. For the respondents that provided cost data, the average cost for written assistance was only 14% of total costs, and the average cost of oral assistance was only 6.5% of total costs.

Notably, some officials responding to the GAO survey stated that they have provided assistance for so long that it is just part of their process, and they do not track costs separately. Some jurisdictions even demonstrated that it is possible to provide oral assistance at no or minimal cost. The GAO reported that other jurisdictions even provided assistance to groups for whom they were not required to offer assistance.

Research from Dr. James Tucker confirms the GAO findings. Dr. Tucker's research found, among other things, that over a majority of jurisdictions incurred no additional costs for either oral or written language assistance.¹¹⁶ This research also concluded that, after controlling for factors such as population size and classification of costs, the average percentage of total election costs attributable to language assistance is 2.9% for oral assistance and 7.6% for written assistance. As Dr. Tucker noted in his testimony during the House Judiciary Subcommittee on the Constitution oversight hearing on Section 203, these averages are nearly equal to or below the original costs reported by GAO based on the 1984 elections and relied upon by Congress to extend Section 203 in 1992.

Opponents of the Voting Rights Act and Section 203 in particular continue to argue that providing language assistance to voters with limited English proficiency is prohibitively costly. The evidence presented in the GAO study and the recent research conducted by Dr. Tucker rebuts this contention. According to these reports, costs were minimal in most cases and certainly manageable.

Constitutionality of Section 203

Section 203 is constitutional. The text of Section 203 states that, in enacting this provision, Congress relied on its enforcement powers under the Fourteenth and Fifteenth Amendments to the

¹¹⁵ 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).

¹¹⁶ Dr. Tucker's testimony noted that nearly 60% of reporting jurisdictions (91 of 154) reported incurring no additional costs for providing oral language assistance, and that nearly 55% of reporting jurisdictions (78 of 144) reported incurring no additional costs for providing written language assistance.

United States Constitution.¹¹⁷ Legislation that relies on Congress's enforcement powers under the Fourteenth and Fifteenth Amendments must be intended to address the type of discrimination proscribed by those Amendments. Where Congress addresses such harms, Congress has very broad legislative powers.

Congress's power under these Amendments, though, is not limitless. For legislation to remain within constitutional limits, the United States Supreme Court recently stated that the test is whether the legislation is "congruent" with and "proportional" to the improper discrimination that the statute addresses.¹¹⁸ In *City of Boerne*, the Supreme Court identified three steps for determining whether a statute meets the "congruence and proportionality" standard: (1) identifying the constitutional protection at issue (discrimination); (2) reviewing the record to determine whether Congress responds to a widespread pattern of discrimination (congruence); and (3) determining whether Congress's response is reasonably proportional to the harm addressed (proportionality).

(1) First Prong: Identifying Discrimination Addressed By the Legislation

In the case of Section 203, we need to look no further than the language of the statute itself, which states that "citizens of language minorities 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."¹¹⁹

The legislative history of Section 203 confirms this. In enacting Section 203, the Senate acted in response to racial discrimination in the voting process and education (and in other "facet[s] of life") that result in the disenfranchisement of language minorities.¹²⁰ In its 1982 report supporting reenactment of the temporary provisions of the Voting Rights Act, the Senate found, based on Supreme Court jurisprudence, that educational disparities are causally linked with depressed levels of political participation. Courts have recognized this linkage as well.¹²¹

(ii) Second Prong: Congruence

After identifying the discrimination addressed by the legislation, the Court then looks at whether Congress, in enacting the statute, is in fact responding to the stated discrimination or is acting pursuant to some other motivation.¹²² To evaluate Congress's intent, the Court looks to the legislative record, which must "identif[y] a history and pattern" of violations of the constitutional right at issue.¹²³

¹¹⁷ See 42 U.S.C. § 1973aa-1a(a) ("Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.").

¹¹⁸ *City of Boerne v. Flores*, 521 U.S. 507, 519-20 (1997).

¹¹⁹ 42 U.S.C. § 1973aa-1a(a).

¹²⁰ S. Rep. No. 94-295, as reprinted in 1975 U.S.C.C.A.N. 774, 791-96 (July 22, 1975) ("1975 Senate Report").

¹²¹ See, e.g., *White v. Regester*, 412 U.S. 755, 767-69 (1973) (citing both history of discrimination against minorities and educational and other socio-economic disparities between minorities and whites as factors in concluding that electoral systems violated the Fourteenth Amendment); *Kirksey v. Bd. of Supervisors*, 554 F.2d 139, 143-46 (5th Cir. 1977) (en banc) (inferring causal relationship between socio-economic disparities and depressed levels of political participation).

¹²² *City of Boerne*, 521 U.S. at 531.

¹²³ *Tr. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 368 (2001).

The 1975 Senate Report supporting the enactment of Section 203, and the 1992 House and Senate reports supporting the most recent extension of Section 203 explicitly state and set forth findings that prove the purpose of the statute was to address racial discrimination resulting in the disenfranchisement of language minorities.¹²⁴ The 1992 House Report supporting the 15-year extension of Section 203 states that the extension “is statutory acknowledgement of the continuing existence of the discrimination that led to the enactment of S[ection] 203.”¹²⁵ The House found that educational disparities for certain language minority groups persisted and that these disparities had a direct and negative impact on those groups’ ability to participate in the electoral process. The 1992 Senate Report reached the same conclusions.¹²⁶

The 1975 Senate Report sets forth the many ways in which racial discrimination against language minorities results in disenfranchisement:¹²⁷

- “Extensive” testimony showed “inadequate numbers of minority registration personnel, uncooperative registrars, and the disproportionate effect of purging laws on non-english [sic] speaking citizens because of language barriers.”
- Some jurisdictions did not implement their otherwise liberal local election laws in a systematic way.
- Local officials would “frighten, discourage, frustrate, [and] otherwise inhibit language minority citizens from voting,” including intimidation at the polls.
- Other barriers at election polls included failure to locate voters’ names on precinct lists; location of polls at places where minority voters felt unwelcome or uncomfortable, or which were inconvenient to them; inadequate voting facilities; and underrepresentation of minority persons as poll workers.
- Lack of proper and equal educational opportunities result in high illiteracy rates and large numbers of language minorities who are not sufficiently fluent in English to be able to vote.

In addition, that Report makes clear that Congress’s purpose in enacting Section 203 was not primarily to remedy educational discrimination, but rather to remedy “the kind of voting discrimination against language minorities disclosed by the record” as set forth above.

The 1992 House Report contains numerous findings that show Congress’s concern in renewing Section 203 was to address the inequality of access to the political process that results from, *inter alia*, educational disparities, which is mirrored by the findings in the 1992 Senate Report. The 1992 House Report reiterated the conclusion of the 1975 report that “the denial of the right to vote is ‘directly related to the unequal educational opportunities afforded . . . [to language

¹²⁴ S. Rep. No. 94-295.

¹²⁵ H.R. Rep. 102-655, as reprinted in 1992 U.S.C.C.A.N. 766, 766 (July 8, 1992) (“1992 House Report”).

¹²⁶ S. Rep. 102-315, 1992 WL 163390, at 4-10 (July 2, 1992) (“1992 Senate Report”).

¹²⁷ S. Rep. No. 94-295, as reprinted in 1975 U.S.C.C.A.N. 774, 790-96.

minorities], resulting in high illiteracy and low voting participation.”¹²⁸ The Report found the following evidence of the educational inequalities that lead to the denial of the right to vote:¹²⁹

- LEP groups receive poorer education than the general public.
- Significant funding shortages in local school systems result in the unavailability of ESL classes for LEP students.
- Even fewer ESL classes are available for voters who are no longer in school.
- Deficiencies in educational opportunities to learn English pose a particular problem for the elderly (who have the right to vote).
- De facto segregation for LEP groups remains a pervasive problem in many state and local school systems.
- The United States Commission on Civil Rights recently had determined that “[t]he education of Asian American immigrant children in our public schools is beset with serious problems. Schools face critical shortages of bilingual and [ESL] teachers and counselors for most Asian immigrant groups. Racial tensions are festering in schools, and little is being done about them. Many Asian American students are leaving our schools with below-average English proficiency.”

The record currently before the Senate, as well as the testimony presented here, demonstrates that the same discriminatory problems identified both in 1975 and 1992 by Congress that Section 203 was intended to redress still exists today.

(iii) Third Prong: Proportionality

The Court finally compares the legislation at issue with the documented record of constitutional violations to determine whether the legislation is “so out of proportion to a supposed remedial or preventative object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior.”¹³⁰ In evaluating proportionality, the Court has not enunciated any required factors to be examined. For example, the Court has not required that the legislation be “narrowly tailored” to remedying the identified discrimination. Instead, the latitude granted to Congress depends on the egregiousness and pervasiveness of the constitutional violations.

Section 203 is sufficiently proportional to the discrimination it seeks to address. The 1992 House and Senate had ample evidence to support the proposition that Section 203 is proportional to the very real problem of educational and voting discrimination. The 1992 House Report and the 1992 Senate Report both found that the remedial provisions of Section 203 had done much to cure these inequities. Specifically, statistics showed that, for the covered language minorities, “[Section] 203 has served as a catalyst for increased voter participation.”¹³¹ Although there are no federal requirements that polling data be kept on the Asian American language minorities, then-recent exit

¹²⁸ H.R. Rep. 102-655, as reprinted in 1992 U.S.C.C.A.N. 766, 769.

¹²⁹ *Id.* at 767-70.

¹³⁰ *Tem. v. Lane*, 541 U.S. 509, 533 (2004).

¹³¹ H.R. Rep. 102-655, as reprinted in 1992 U.S.C.C.A.N. 766, 770.

polls conducted in Los Angeles and New York indicated that upwards of 80% of Asian American voters felt that language assistance materials would be “helpful” and likely would increase their participation in the electoral process.¹³² The Report also noted that, in the decade preceding the renewal effort, continued voter discrimination was further evidenced by the fact that three of the four covered language minorities had brought many successful civil actions seeking to enforce the provisions of Section 203.¹³³

More recent testimony indicates that Southern California exit polls revealed that the percentage of voters more likely to vote if they receive language assistance has increased from 43% in 1998 to 54% in 2000.¹³⁴ In the November 2004 general election, over one-third of Asian American voters used language assistance.¹³⁵ Moreover, between December 1999 and August 2005, the percentage of voters in Los Angeles County overall who requested language assistance increased by 38%, and Asian American voter registration in California increased by 61% from the November 1998 election to the November 2004 election, with a 98% increase in turnout from Asian American voters.¹³⁶ Testimony during the House hearings also noted that almost one-third of responders in an exit poll of Asian American voters in 2004’s presidential election stated that they needed some form of language assistance in order to vote, and that the greatest beneficiaries of language assistance (46%) were first-time voters.¹³⁷ Finally, since 2001, the current Administration filed more language assistance cases under sections 4 and 203 than in the entire previous 26 years, with each and every case being successfully resolved with comprehensive relief for affected voters. The lawsuits filed in 2004 alone provided comprehensive language assistance programs to more citizens than all previous sections 203 and 4(f)(4) suits combined and include the first lawsuits ever filed under section 203 to protect Filipino and Vietnamese voters.¹³⁸

The Congressional record developed thus far, and the evidence presented in this testimony, already has substantial evidence demonstrating that Section 203 is proportional. The evidence shows that language assistance has been successful in increasing voter participation and minority representation and that language assistance still is needed because discrimination against Asian Americans continues to occur.

Observer & Examiner program

AAJC agrees with S. 2703’s elimination of federal examiners since examiners have not been appointed to jurisdictions certified for coverage in over twenty years. AAJC also supports the renewal of the observer coverage.

¹³² *Id.* at 771.

¹³³ *Id.* at 772.

¹³⁴ *The Voting Rights Act: Section 203 – Bilingual Election Requirements, Part I: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 1352 (Kwoh Letter at 7).

¹³⁵ *Id.*

¹³⁶ *Id.* at 1353-1354 (Kwoh Letter at 8-9).

¹³⁷ *The Voting Rights Act: Section 203 – Bilingual Election Requirements, Part I: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 1352 (Fung Written Testimony at 3).

¹³⁸ See A Bill to Reauthorize and Amend the Voting Rights Act of 1965: Part II of 16 (May 4, 2006): Legislative Hearing on H.R. 9, Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 109th Congress (testimony of Rena J. Comisac).

Expert Witness Fees and Expenses

AAJC commends leadership for authorizing the prevailing party to also recover expert costs as part of the attorney fees in voting rights cases. Because it is virtually impossible to prove a VRA violation without expending thousands of dollars for expert witness testimony, recoverable expert witness fees affirm Congress' intent of assuring access to the courts by victims of voting discrimination.

Strengthening S. 2703 and the Reauthorization of the Voting Rights Act*Lowering the Numerical Trigger for Section 203*

AAJC recommends that the Subcommittee consider strengthening Section 203 by lowering the numerical threshold for coverage from 10,000 in S. 2703. A lower numerical threshold will also decrease the potential that the ACS, which will replace the decennial long form census, will undercount language minorities. Unlike the decennial census long-form survey, the ACS will not be conducted in any Asian languages. Because 36% of the Asian American population has limited English proficiency, an English and Spanish-only ACS will likely result in an undercount of Asian American language minorities. Additionally, ACS forms are sent to only a small sample of the population, which means that few language minorities receive the form. This may result in the ACS collecting insufficient sample sizes for proper statistical analysis, further increasing the probability that the ACS will undercount Asian American language minorities. Thus, the likelihood of an undercount justifies lowering Section 203's numerical threshold from 10,000.

For example, lowering the threshold to 7,500 would trigger coverage for several Southeast Asian American communities.¹³⁹ The current 10,000 numerical benchmark has largely left out this significant portion of the Asian American community – the Southeast Asian American community, which largely consists of Americans from Cambodia, Laos and Vietnam.¹⁴⁰ Their characteristics include high levels of limited English proficiency and low levels of educational attainment, as well as low voter turnout.¹⁴¹

For the Southeast Asian American community, educational attainment remains low, especially for the Cambodian, Laotian, and Hmong communities.¹⁴² Census data show that over 25% of Cambodians, 45% of Hmong, and 23% of Laotians have had no formal schooling, compared to 1% of the overall population. Similarly, Census data shows that only 9% of

¹³⁹ Nine additional Asian American populations in California, Illinois, New York, and Washington would currently be covered under Section 203 for Asian language assistance if a 7,500 threshold had been in effect when the 2002 determinations were made. All but one of those populations resides in counties that are already mandated to provide voting assistance in one or more Asian languages. Another six populations would have been covered for Spanish language assistance in Illinois, New Jersey, Ohio, Texas, Virginia and Wisconsin. Although several of these populations will have reached the 10,000 threshold by 2010, several other populations will not have reached the 10,000 threshold and will not be covered after the next coverage determinations are made – unless the threshold is lowered to 7,500.

¹⁴⁰ Vietnamese Americans are covered by Section 203 in a few jurisdictions, but other Southeast Asian American language minority groups have not been covered thus far.

¹⁴¹ These communities clearly fall within the group of citizens Congress intended to protect and empower under Section 203 of the Voting Rights Act.

¹⁴² The data cited below are taken from U.S. Census 2000, Summary Files 1 through 4. Figures are for the inclusive Asian American (but not Pacific Islander) population (single race and multi-race combined).

Cambodians, 7% of Hmong, and 8% of Laotians obtain at least a bachelor's degree, compared to 24% of the overall U.S. population. The impact of these low rates of educational attainment on electoral participation is exacerbated by the fact that 53% of Cambodian households, 58% of Hmong households, and 52% of Laotian households are LEP.¹⁴³

Three more Southeast Asian American communities would have been covered in the 2002 coverage determinations based on the 2000 census data if the threshold had been 7,500 then, including the Cambodian American population in Los Angeles County. Section 203 coverage of this population alone would allow 17% of the nation's total Cambodian American population to benefit from language assistance. Contrarily, if the threshold remains at 10,000 when the next coverage determinations are made in 2012, zero percent of the nation's Cambodian American population will benefit from language assistance. A lower threshold of 7,500 will also trigger coverage for two more Southeast Asian American communities that were not at 7,500 after the 2000 census, but will likely be after the 2010 census and ACS.

Section 203 currently covers several cities traditionally known for their significant Asian American populations, including Los Angeles, California's Bay Area region, New York, Chicago, and Seattle. Section 203 coverage has also been triggered in cities with emerging Asian American populations, including Houston and San Diego. However, without a lower threshold, Section 203 will likely continue to omit from its coverage other emerging Asian American populations in places such as Boston and Dallas. It is important for Congress to consider strengthening Section 203 so that it protects Asian American voters in these emerging population areas. A lower threshold would result in minimal additional costs.

Deployment of Federal Observers to Section 203 Jurisdictions Where Discrimination Is Documented

AAJC recommends that the Subcommittee consider whether the Attorney General should be able to deploy federal observers to Section 203 jurisdictions where discrimination or interference with the right to vote in connection with upcoming or recent elections has been documented under the Federal Observer program. As Barry Weinberg, Former Deputy Chief and Acting Chief of the Voting Section at DOJ, testified to at a hearing by the House Judiciary Subcommittee on the Constitution, the need for federal observers to document discriminatory treatment of racial and language minority voters in the polls has not waned. Mr. Weinberg further testified that minority language voters suffer additional discriminatory treatment when people who speak only English are assigned as polling place workers in areas populated by language minority voters. This fact is supported by years of community monitoring done by NGOs, including AAJC and its affiliates, which document complaints of widespread discrimination against language minorities across this country, such as:

- Challenges against Asian American voters at the polls alleging voters were not U.S. citizens or city residents, or that they had felony convictions because they looked "foreign" where voters were pulled from voting lines and forced to show passports or citizenship papers before they could vote.

¹⁴³ Asian American Justice Center, *A Community of Contrasts: Asian Americans and Pacific Islanders in the United States Demographic Profile* 11 (2006).

- Poll workers treating Asian American voters with limited English proficiency disrespectfully, refusing to allow them to use an assistor of choice, and improperly influencing, coercing, and ignoring their ballot choices.
- Poll workers being hostile or out rightly racist to Asian American voters and language assistance, refusing to allow them to vote or refusing to provide language assistance as mandated by law.

While federal observers have been sent to areas to monitor elections on behalf of language minority citizens, it has mostly been as a result of court orders because the Attorney General can only certify jurisdictions that are covered by Section 5. The only recourse DOJ has to monitor elections on behalf of language minorities is to send attorney monitors. Federal observers have special access to polling places under the authority of the Voting Rights Act even where access to DOJ attorney monitors is otherwise barred by state laws. It is precisely inside the polling site that language minority voters experience discrimination by poll workers or even other voters, who degrade them, use racial slurs when speaking to them, challenge their right to vote, or refuse to assist them – simply because they believe the Asian American voter looks “foreign”.

If federal observers were allowed into Section 203-covered jurisdictions, they would be able to document these discriminatory and intimidating incidents. As Mr. Weinberg testified, these facts are crucial and irreplaceable in the enforcement of the Voting Rights Act.

Finally, providing the Attorney General the authority to dispatch federal observers where incidents of discrimination and intimidation have been reported in Section 203-covered jurisdictions would not result in mandatory increases in the cost of the federal observer program. This modification would not mandate that the Attorney General deploy federal observers to every Section 203 covered jurisdiction. Rather, federal observers would only be deployed to jurisdictions where there has been evidence of voting discrimination, providing the Attorney General with another tool to combat voting discrimination. While the DOJ has been able to enforce the language minority provisions of the Voting Rights Act without federal observers in Section 203 jurisdictions, one wonders how much more – both qualitatively and quantitatively – could be achieved if the Attorney General deployed federal observers to Section 203 jurisdictions where discrimination has been documented.

Conclusion

On behalf of AAJC, I want to thank the Committee for the opportunity to provide a written statement on S. 2703 and its importance to the Asian American community. As this Committee knows, these provisions are essential to ensure meaningful and fair representation as well as equal voting rights for all Americans. The VRA helps remedy the continued discrimination experienced by Asian American voters. Because the expiring provisions are targeted to those areas with the most need, they are congruent and proportional to the discrimination experienced by minority voters. We are honored to be able to share our thoughts on the bill with the Committee. In particular, we are pleased to offer our support of S. 2703. I look forward to working with you to ensure its reauthorization by the end of this year.

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BYLINE: DEBORAH KONG; AP Minority Issues Writer

BODY:

Los Angeles County is urging its citizens to vote, vota, bumoto or hay bo phieu. In fact, residents there will have seven languages to choose from when they cast their ballots on Election Day: English, Spanish, Tagalog, Vietnamese, Chinese, Japanese and Korean.

Los Angeles is among 296 counties and municipalities across the country that are required by law to offer **multilingual** ballots because the local population is so diverse.

A decade ago, 248 counties had to offer bilingual or **multilingual** ballots under the federal Voting Rights Act. A new list was issued at the end of July, dropping some places but adding 75 others and creating challenges for elections officials.

In some counties facing the requirements for the first time, a scramble is on to find bilingual poll workers. Others are wondering how to produce ballots in American Indian languages that emphasize spoken over written formats. Several counties are worried about extra costs.

Critics, meanwhile, say English is America's language and providing services in other tongues fosters division. Proponents contend language assistance protects minorities and encourages them to exercise their right to vote.

"Every vote counts, as the 2000 Florida elections showed, and it is critical that those who are limited English-proficient be able to cast their vote," said Glenn Magpantay, staff attorney at the Asian American Legal Defense and Education Fund in New York.

The federal law applies to counties and municipalities where either 10,000 people or more than 5 percent of voting-age citizens speak a minority language. That group must have an illiteracy rate above the national average and members who report on census forms they don't speak English very well.

All election services the counties provide in English - absentee and regular ballots, instructions, voter information pamphlets, poll workers - must also be supplied in the minority language. Communities in 30 states must comply with the law.

In Denver County, Colo., officials are worried about finding 200 bilingual poll workers by November, said Alan McBeth, spokesman for the Denver Election Commission. So

far, they've got just 60.

Officials also haven't figured out how to fit a Spanish-language version of the ballot on voting machines' electronic screens, which can display only a limited amount of text, McBeth said.

Election Commissioner Jan Tyler estimates Spanish assistance will add up to \$80,000 to the more than \$500,000 it now costs to conduct an election. Denver will comply with the requirements, but Tyler - the granddaughter of Polish immigrants - doesn't agree with them.

"It's un-American to have to print ballots in other languages," she said. "I empathize completely with the immigrant experience. I still believe that people should learn to speak the language."

Elections officials in 17 states where American Indian languages are spoken face their own set of problems.

Many American Indian tribes have only recently adopted written forms of their languages, said Inee Yang Slaughter, executive director of the Indigenous Language Institute in Santa Fe, N.M.

Slaughter said it might be more effective in some cases to translate the ballots orally, "because the written format is fairly new for many people, especially perhaps the elders."

In South Dakota, Roberts County Auditor Dawn Sattler is hoping for guidance on providing materials in Sioux at a meeting with the Justice Department later this month.

"I have no clue," what to do, she said. "If it's hard to write it down, how are you supposed to have your ballots printed up?"

Some counties have to provide ballots in more three or more languages. In Santa Clara County, Calif., for example, the election will be held in English, Spanish, Chinese, Tagalog and Vietnamese.

Los Angeles' seven options are the most. Its March primary cost \$22.6 million, including about \$3.3 million to produce multilingual ballots and hire bilingual poll workers, said Grace Chavez, spokeswoman for the registrar of voters.

Washington D.C.-based U.S. English, Inc., says money spent on language assistance could be better used to teach newcomers English.

"We've always been able to communicate with one another through a common language, English," said spokeswoman Valerie Rheinlein. "You start whittling away at that, and you're going to have problems."

But Francisca Nunez, 65, is looking forward to using a Spanish-language ballot when she votes in Montgomery County, Md., in November.

"It's good that they translate the ballot," said Nunez, who moved to the United States from the Dominican Republic more than 20 years ago. "A lot of people don't go to vote because the vote is not in Spanish and they don't understand."

The Associated Press State & Local Wire

January 16, 2005, Sunday, BC cycle

SECTION: State and Regional

LENGTH: 406 words

HEADLINE: Harris County cracking down on voting by non-U.S. citizens

DATELINE: HOUSTON

BODY:

Officials are investigating how at least 35 foreign citizens, and possibly dozens more, were allowed to vote in elections in Harris county.

One of those illegal voters was a 73-year-old Brazilian woman whose registration was canceled in 1996 after she acknowledged on a jury summons that she was not a U.S. citizen.

But the following year she was again given a new voter card, which wasn't discovered until recently. Records show that since 1997 the woman voted at least four times in general and Democratic primary elections, most recently in November.

Last year, at least 35 foreign citizens either applied for or received voter cards by checking a box on the application saying they were U.S. citizens, said Harris County Tax Assessor-Collector Paul Bettencourt, who also is the county's voter registrar.

"If they check yes and they're not a citizen, there is no database that is open to the public that I know of that you can check against," he said.

Bettencourt is investigating at least 70 other possible violators and will send a list of suspected offenders to the Harris County district attorney.

Bettencourt said he believes the majority of non-citizens registered to vote were signed up by third party groups conducting mass voter-registration drives and there was probably no intent to deceive his office.

The best way to ensure that foreign citizens are unable to continue registering and voting is to have Congress pass a federal law setting up some form of citizenship verification, he said.

The Federation for American Immigration Reform, a Washington-based group that advocates reduced immigration, wants a "national citizenship verification procedure" to ensure that voters in U.S. elections are citizens.

"Making false claims of U.S. citizenship is all but impossible to detect," said federation president Dan Stein.

Some states and municipalities have allowed foreign citizens living in the United States to vote. Texas, for example, didn't require voters to be U.S. citizens until 1921.

Several municipalities in Maryland allow foreign residents to vote in local elections. Similar proposals are under discussion in New York and San Francisco.

But Arizona voters in November passed Proposition 200, which requires, in part, that new voters provide proof of U.S. citizenship before being allowed to register to vote.

The Associated Press State & Local Wire

August 8, 2005, Monday, BC cycle

SECTION: State and Regional

LENGTH: 557 words

HEADLINE: Elections officers investigate report that 14 **illegal aliens** voted

DATELINE: SALT LAKE CITY

BODY:

The Elections Division of the Lieutenant Governor's Office is looking into the report during last winter's legislative session that at least 14 illegal immigrants may have voted in an election.

The issue was raised during discussion of legislation on drivers' licenses for undocumented workers.

Legislative Auditor General John Schaff said more than 58,000 illegal immigrants had Utah drivers' licenses, nearly 400 of them used their license to register to vote in Utah, and a sampling of that group revealed at least 14 actually voted in an election.

As a result, the Legislature enacted a measure that provides undocumented workers may not get a regular driver's license but may get a driving privilege card that is not a valid form of identification.

Elections director Michael Cragun said he wants information on the possible illegal voters so county clerks can look at it and take appropriate action.

"If we find we've got someone who is not a citizen who has registered ... someone at the polling place can challenge their right to cast a ballot," he said. "As far as someone proven to be a noncitizen who did cast a ballot, that would be referred to the county attorney for prosecution."

Schaff said he has received the Election Division's request for records but may only be able to release them to the attorney general's office.

Assistant Attorney General Thom Roberts said his office might try to obtain the information if the lieutenant governor can't.

While lawmakers originally said they'd seek a more in-depth audit, Sen. Curt Bramble, R-Provo, who sponsored the legislation, has since said the audit served its purpose by identifying a problem and the legislation was designed to solve it. Bramble has said any follow-up should be handled by state investigative agencies.

A Department of Public Safety investigation, a joint effort with U.S. Immigration and Customs Enforcement and U.S. postal inspectors, has since been closed, according to Sgt. Dale Neal of Highway Patrol Investigation.

Neal said two suspects are being sought for federal mail and being in the country illegally. They allegedly charged people \$800 to help them get a driver's license in Utah.

Activists on both sides of the immigration debate said they have tried unsuccessfully to gain access to the voter registration information mentioned in the auditor's survey.

Frank Cordova, director of Utah Coalition of La Raza, said the survey was inconclusive but "has implicated the entire Latino community. They've made us all look suspicious and legally ineligible voters. That isn't true."

Cordova said he and others have worked for several years to register voters and have worked closely with Salt Lake County elections officials. It has always been made clear that only citizens can vote, he said.

Cordova said he wants to know "how many people registered, where they registered and if there is some fraud going on. Right now there's no answer to any of those."

Russell Sias, vice chairman of Utahns for Immigration Reform and Enforcement, has also been trying to access the information. Sias believes there are more undocumented individuals voting than the audit suggests, and he would like to see a full audit of the state's voter rolls.

©Apr 26, 2006 6:12 pm US/Central

Men Get Jail Time In Milwaukee Tire-Slashing Case

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(AP) MILWAUKEE A judge admonished a congresswoman's son and three other Democratic campaign workers for interfering with voters' civil rights as he sentenced them to jail Wednesday for puncturing the tires of some Republican vans on Election Day 2004.

Judge Michael B. Brennan exceeded the recommendation of prosecutors in sentencing the four men to jail time ranging from four to six months for misdemeanor property damage.

"Voter suppression has no place in our country," Brennan told the defendants in Milwaukee County Circuit Court. "Your crime took away that right to vote for some citizens."

The Republican Party wanted to use the vans to transport voters to the polls during the presidential election.

The men, including the son of U.S. Rep. Gwen Moore, D-Milwaukee, had pleaded no contest in January to misdemeanor property damage in a plea agreement with prosecutors who recommended no jail time.

Brennan told Moore's 26-year-old son, Sowande A. Omokunde, he was impressed by his expression of remorse and gave him the lightest sentence of four months in jail.

The judge cited prior criminal records when sentencing Michael Pratt, the son of former acting Milwaukee Mayor Marvin Pratt, and Lewis Caldwell to six months in jail.

Pratt, 33, was convicted of hazing in Walworth County in 1995 when he was a student at the University of

Wisconsin-Whitewater. Caldwell, 29, was convicted of causing injury when driving while intoxicated in 1999.

Lavelle Mohammad, a 36-year-old father of four, was given five months in jail. All four men were granted work-release privileges and were each ordered to pay \$1,000 in fines. The defendants also paid \$5,320 in total restitution for the damage to the 25 GOP vans.

The defendants were originally charged with felony property damage but accepted plea deals on the lesser charge as jurors deliberated following an eight-day trial in January. The jury found a fifth worker who did not accept the plea deal not guilty.

The four men each faced a maximum nine-month jail term and a fine of \$10,000 on the misdemeanor.

The state Republican Party had rented more than 100 vehicles that were parked in a lot next to a Bush-Cheney campaign office to transport voters and poll monitors on Nov. 2, 2004. The vandalism caused some delays in the GOP's Election Day work as party workers rounded up other vehicles. Democrat John Kerry won Wisconsin's 10 electoral votes in a close race.

Brennan told the four that "partisanship is not an excuse for breaking the law."

State Republican Party Executive Director Rick Wiley argued for more than probation during the sentencing hearing.

"This was a crime that warrants more punishment than what the plea agreement spells out," Wiley told the judge. After sentencing, Wiley said the jail sentences should deter people from similar crimes.

Moore, who was in the courtroom for her son's trial, commented only briefly when leaving the courthouse.

"I love my son very much. I'm very proud of him. He's accepted responsibility," she said.

The attorneys for the four defendants chronicled their clients' acts of kindness and volunteer efforts when arguing for leniency.

Rodney Cubbie, Pratt's attorney, talked about his client's social work in the foster care system and his desire to earn a second master's degree in order to teach. Cubbie argued for a fine and community service.

Omokunde told the judge that no one has the right to commit a crime in heat of a political battle.

"Your honor, I crossed the line," he said.

Gretchen Ehlke

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ELECTION 2004: Latino voters challenged

Scheme to get noncitizens on rolls alleged
 Atlanta Journal-Constitution, The (GA)
 October 28, 2004
 Author: TERESA BORDEN
 Staff

Willacoochie, Ga. -- Three residents here have made a controversial challenge **to** Latino voters in Atkinson County that questions their citizenship.

The challengers say they discovered a county commissioner's apparent **scheme to have noncitizens** register **to** vote and then cast ballots for him. The commissioner, Jerry Metts, has been indicted on seven counts of felony unlawful ballot possession related **to** the July 20 primary elections. He has pleaded not guilty.

The issue raises voting rights questions on the eve of a presidential election in which the Latino vote is expected **to** significantly influence both the turnout and the results. And it comes at a time of heightened concern over intimidation of minority voters. The question is, when does a legal challenge **to** a person's voting status become discrimination on the basis of ethnicity.

The **noncitizens** who voted, most of whom are legal residents, now worry that they might be deported because of what they say Metts persuaded them **to** do.

"He really got us into a problem," said Miguel Angel Contreras, a legal resident who is applying for citizenship. "He well knew that we were not supposed **to** vote. We told them we couldn't and, **to get him to** go away, we gave him our information."

But Clarissa Martinez, of the National Council of La Raza, said past allegations of voting by illegal immigrants or legal residents have been found questionable.

Latinos in Atkinson who are citizens are angry because, they say, they are being forced **to** prove their citizenship even though they have done nothing illegal.

"Because of the mistakes of others, we all now have **to** carry the blame," said Atanacio Gaona, a citizen naturalized in 1998 who pastors a small Pentecostal church in Willacoochie. "I feel like those citizens are now proving **to** me that I am not really a citizen. I should only have **to** show those documents **to** immigration officials."

The Atkinson County registrar in Pearson has scheduled a hearing at 6 p.m. today **to** sort out the voter challenge.

The controversy also puts the spotlight on Proposition 200, an Arizona initiative -- being watched closely by groups here that favor tighter immigration controls -- that would

require every voter there **to** show proof of citizenship before voting.

"I think it's a great idea," said Jane Russell, president of Georgians for Immigration Reform. "It's only common sense that the right **to** vote should be restricted **to** people who are legally here and are citizens."

Papers signed

The Atkinson County dustup began several months ago, when Metts, a two-term commissioner, faced Roland Mitchell Jr., another Democrat, for the District 3 County Commission seat. Because there was no Republican contender, the primary race was **to** decide the post.

Contreras and others say Metts approached them about voting weeks before the election. Celestino Gaona, Atanacio's brother, who is a legal resident but has not been naturalized, says he told Metts he could not vote because he was not a citizen. But Metts insisted that Gaona could vote if he had a driver's license and a Social Security card.

He said Metts took the documents and began typing on a laptop computer. A few days later, he says, Metts was back at his door, offering **to** help fill out papers Celestino Gaona had received by mail that day. He says he let Metts tell him exactly what **to** write, and then Metts offered **to** mail the papers for him. He now believes the papers were an absentee ballot.

Lazaro Cardosa, another legal resident, said the same thing happened **to** him. Now he is afraid. "That man hoodwinked us," Cardosa said.

Philip Liles and Frank Sutton, two of the voter challengers, supported Metts' opponent. They say they got curious when, during the vote counting, they realized District 3 had a large number of absentee ballots. Sutton then heard some Hispanics had registered **to** vote but might not qualify.

They asked the registrar for a list of Hispanic voters in the county and had a Hispanic friend point out those who were citizens. They filed a challenge against all Hispanic voters whom they did not know **to** be citizens, a total of 96.

"Our intent is not **to** profile any group of people," Liles said of the challenged voters. "This is not totally their fault. We don't have any intent **to** pursue charges against any of them."

Metts says he did nothing wrong, that like other candidates, he helped people register **to** vote. He says he told no one **to** vote without citizenship. If people marked "citizen" on the application, he said, that was something for the secretary of state **to** check.

Intimidation possible

Caught in the middle are the county's Latinos, some of whom may have committed a felony without knowing it. A Georgia Bureau of Investigation agent who looked into the case said he did not investigate that aspect of it, only the part involving Metts' possible handling of ballots.

Leslie Lobos, an attorney with Atlanta's Mexican American Legal Defense and Education Fund office, said that challenging voters' qualifications on the basis of their ethnicity is racial profiling, and that has a chilling effect on future voting.

She said that happened in Long County on July 12, when residents there challenged the citizenship of 48 Latinos. She said only eight showed up at the hearing to contest the challenge, and fewer than 10 showed up at the polls just a week later. She said there is also concern that there is a pattern to the challenges occurring just before an election.

"We do know that it exists," Lobos said. "We hope this won't be used to discourage voters wanting to participate in this process."

Caption:

Photo: Miguel Angel Contreras fears his citizenship application may be jeopardized by the voting scandal in Atkinson County. The papers he is holding challenge his voter registration. / TERESA BORDEN / Staff

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Punitive approach no longer needed

Lynn Westmoreland - For the Journal-Constitution
Monday, May 29, 2006

The Voting Rights Act of 1965 worked. It changed Georgia dramatically for the better.

I want to see the Voting Rights Act renewed. Like any product crafted in 1965, the law needs updating --- the states that had voting rights abuses 41 years ago aren't necessarily the states that have problems in 2006.

When first passed, the Voting Rights Act overturned the institutionalized discrimination embedded in the laws of Georgia and other Southern states.

As a result, Georgia today represents a model of voter equality for states with diverse populations.

In fact, an academic study documents that black Georgians vote at higher rates than white Georgians. There are nine black statewide elected officials --- most of whom defeated white opponents --- including our attorney general, the labor commissioner and three state Supreme Court justices, one of whom is chief justice. Four of our state's 13 members of the U.S. House are African-Americans --- two of whom represent majority-white districts. It would be difficult to find a state with a more diverse group of elected officials.

Today, our nation's best and brightest African-Americans flock to Georgia not for Freedom Rides, but for great opportunities and a high quality of life.

Yet, despite Georgia's revolutionary strides in voter equality, the Voting Rights Act still treats Georgia as if it's a backward society governed by the laws of Jim Crow.

The original Voting Rights Act created a formula to determine which states were denying minority citizens their right to vote. Congress applied the formula to the 1964 election turnout numbers and Georgia was one of several states that essentially failed the test. The law allowed the federal government to approve or disapprove all election law changes in those states, from redistricting to moving voting precincts.

Renewing the law as it is would keep Georgia in the penalty box for 25 more years. It doesn't make sense to subjugate Georgia to the whims of federal bureaucrats until 2031 based on the turnout of an election featuring Barry Goldwater and Lyndon Johnson.

If Georgia's sins can never be forgiven, should there be an Accused Witch Protection Act that applies only to Massachusetts? Should our foreign policy treat South Africa as if it's still governed by a racist apartheid regime?

The U.S. Supreme Court ruled in 1966 that singling out states in the Voting Rights Act was constitutional only because it was "narrowly tailored" to address a specific problem and "temporary."

We're already well past "temporary" at 41 years and we've addressed the specific problem.

I'm proposing that Congress update the Voting Rights Act by reviewing states' performance in 2004 elections. Without these changes, I feel sure the law will be thrown out by the courts because its criteria are now outdated, arbitrary and decidedly not "temporary."

The Voting Rights Act has served our nation well. We dishonor the accomplishments of the law if we pretend nothing's changed since 1965.

U.S. Rep. Lynn Westmoreland, a Grantville Republican, represents Georgia's 8th Congressional District.

IMPACT OF USING NON-HISPANIC WHITE DATA

Charles S. Bullock III¹
Ronald Keith Gaddie²

*Prepared for the American Enterprise Institute, for submission to the the United States
Senate Judiciary Committee and United State House of Representatives Judiciary
Committee Subcommittee on the Constitution*

June 6 2006

Some have raised concerns about our use of Census Bureau estimates for whites rather than for non-Hispanic whites in our longitudinal analyses of statewide registration and turnout, in our series of reports prepared for the American Enterprise Institute and submitted to the Senate Judiciary Committee.

The Census Bureau did not report estimates for non-Hispanic whites before 1998.³ In order to have comparable data beginning with 1980, our reports continued to focus on the same kind of racial data rather than switching to the non-Hispanic white estimates for the last four elections. To address concerns that failure to exclude white Hispanics resulted in misleading inferences about the relative levels of political activity of whites and blacks, in this report we review the consequences of adding estimates for non-Hispanic whites to the tables for six of the southern states subject wholly or partially to Section 5 (AL, LA, MS, NC, SC, and VA) and for the three comparison non-Section 5 states (AR, OK and TX).

There are no changes of consequence for Florida, where we previously possessed Latino participation data for the entire time series. For Georgia and Texas substituting non-Hispanic white figures for white estimates resulted in more consequential changes in the relationships between black and white registration and turnout. To address those changes we have submitted separate revised reports to American Enterprise Institute.

Briefly, however, in Texas the comparison of black versus no-Hispanic white registration and turnout from 1998 through 2004 reveals that black registration and turnout lag white registration and turnout for the entire period. Black registration lags white registration by an estimated 2.4 to 5.2 points, while black turnout lags white turnout by 0.1 to 7.6 points, with the latter difference observed in 2004. Black and white voter turnout lag the nation

for the period in question.⁴ This reverses out previous interpretation using the census data, for 1998-2004.

In Georgia, controlling for Hispanic ethnicity does increase the rates of white voter registration and turnout. However, from 1998-2004 black registration and turnout still exceeded white rates in 1998 and 2000 and lagged white registration and turnout in 2002, as we previously observed. In 2004, non-Hispanic white registration is 3.8 points greater than black registration, while non-Hispanic white turnout is now 3.0 points greater.⁵ This last relationship, in 2004, is the only change of consequence, and it falls just outside the sampling error for the survey.

In the remaining states examined, eliminating non-Hispanic whites produces higher estimates than for the remaining white adults. Although the non-Hispanic white figure is larger than the white registration figure, only infrequently does the increase in participation change the observed relationship. It may narrow or increase the difference between black and white voter registration rates, but usually the shifts are less than the size of the confidence interval for the white sample. Of 36 comparisons between African-American and white registration rates, in only six instances did the black figure exceed the white but not the non-Hispanic white estimate.

The instances in which the relationship changes and the magnitude of the shift in percentage points are: Alabama in 1998 (0.4), Arkansas in 2000 (1.7), North Carolina in 2004 (3.8), South Carolina in 1998 (0.5) and 2000 (1.6) and Tennessee in 2004 (1.5). In each of these instances the black registration figure exceeded the white figure but not the white, non-Hispanic figure. Each of the changes from white to non-Hispanic white is smaller than the confidence interval for the white sample except for the North Carolina shift of 3.8 points.

Of 36 comparisons between black and white turnout estimates, the direction of the relationship is never reversed. That is, there is never an instance in which the black turnout rate exceeded the white but not the non-Hispanic white rate. The closest situation to a reversal of direction comes in Alabama in 1998. In that year the turnout estimates for whites and blacks were equal at 51.6 percent while the estimate for non-Hispanic whites was 51.9 percent. This change of 0.3 points is less than the confidence interval.

REPORTED REGISTRATION IN ALABAMA AND OUTSIDE THE SOUTH, 1980 – 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
ALABAMA													
Black	62.2	57.7	71.4	75.4	68.4	65.3	71.8	66.3	69.2	74.3	72	67.6	72.9
White	73.3	70.2	77.2	74.3	75	74.9	79.3	73.3	75.8	74.1	74.5	73.7	73.8
White non- Hispanic										74.5	74.9	74.2	74.9
NON-SOUTH													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63	58.3	62	58.5	61.7	57	NA
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63	NA

REPORTED TURNOUT IN ALABAMA AND OUTSIDE THE SOUTH, 1980 – 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
ALABAMA													
Black	48.9	41.2	54.8	55.2	52.4	45.7	58.1	53.5	54.3	51.6	57.2	43.3	63.9
White	59.2	52	62.8	52.5	58.4	52.7	65.9	64.3	56.3	51.6	60.8	50.7	62.2
White non- Hispanic										51.9	61.1	51.3	63.1
NON-SOUTH													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	NA
White	62.4	53.1	63	48.7	60.4	48.2	64.9	49.3	57.4	45.4	57.5	44.7	NA

REPORTED REGISTRATION BY RACE IN LOUISIANA AND OUTSIDE THE SOUTH, 1980 – 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
LOUISIANA													
Black	69	68.5	74.8	71.9	77.1	72.0	82.3	65.7	71.9	69.5	73.5	73.5	71.1
White	74.5	67.5	73.2	71.4	75.1	74.1	76.2	72.7	74.5	75.2	77.5	74.2	75.1
White non-Hispanic										75.6	78.0	75.6	76.6
Non-South													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63.0	58.3	62.0	58.5	61.7	57.0	NA
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63.0	NA

REPORTED TURNOUT BY RACE IN LOUISIANA AND OUTSIDE THE SOUTH, 1980 – 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
LOUISIANA													
Black	60.1	32.0	66.4	55.8	61.5	55.9	71.5	30.9	60.9	46.0	63.2	46.9	62.1
White	65.6	23.6	64.7	57.5	67.5	50.2	68.3	35.6	62.6	35.7	66.4	51.0	64.0
White non-Hispanic										36.2	67.3	52.1	65.2
Non-South													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	NA
White	62.4	53.1	63.0	48.7	60.4	48.2	64.9	49.3	57.4	45.4	57.5	44.7	NA

REPORTED REGISTRATION BY RACE IN MISSISSIPPI AND OUTSIDE THE SOUTH, 1980 – 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
MISSISSIPPI													
Black	72.2	75.8	85.6	75.9	74.2	71.4	78.5	69.9	67.4	71.3	73.7	67.9	76.1
White	85.2	76.9	81.4	77.3	80.5	70.8	80.2	74.6	75.0	75.2	72.2	70.7	72.3
White non- Hispanic										75.8	72.6	72.1	73.6
Non-South													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63.0	58.3	62.0	58.5	61.7	57.0	NA
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63.0	NA

REPORTED TURNOUT BY RACE IN MISSISSIPPI AND OUTSIDE THE SOUTH, 1980 – 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
MISSISSIPPI													
Black	59.5	50.8	69.6	40.2	60.3	32.5	61.9	41.7	48.8	40.4	58.5	40.2	66.8
White	70.9	52.4	69.2	45.8	64.2	35.8	69.4	46.2	59.3	40.7	61.2	43.6	58.9
White non- Hispanic										41.1	61.9	44.6	60.0
Non-South													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	NA
White	62.4	53.1	63.0	48.7	60.4	48.2	64.9	49.3	57.4	44.7	57.5	44.7	NA

REPORTED REGISTRATION BY RACE IN NORTH CAROLINA AND OUTSIDE THE SOUTH, 1980 – 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
NORTH CAROLINA													
Black	49.2	43.6	59.5	57.1	58.2	60.1	64.0	53.1	65.5	57.4	62.9	58.2	70.4
White	63.7	62.5	67.0	65.8	65.6	63.6	70.8	63.9	70.4	65.6	67.9	63.1	69.4
White non-Hispanic										66.9	71.5	66.2	73.2
Non-South													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63.0	58.3	62.0	58.5	61.7	57.0	NA
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63.0	NA

REPORTED TURNOUT BY RACE IN NORTH CAROLINA AND OUTSIDE THE SOUTH, 1980 – 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
NORTH CAROLINA													
Black	38.8	30.4	47.2	39.1	46.6	48.1	54.1	28.3	48.7	38.2	47.6	42.2	63.1
White	55.9	41.7	59.1	47.1	55.2	49.9	62.4	38.4	56.4	40.5	55.9	43.5	58.1
White non-Hispanic										41.5	58.9	45.7	61.5
Non-South													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	NA
White	62.4	53.1	63.0	48.7	60.4	48.2	64.9	49.3	57.4	45.4	57.5	44.7	NA

REPORTED REGISTRATION BY RACE IN SOUTH CAROLINA AND OUTSIDE THE SOUTH, 1980 – 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
SOUTH CAROLINA													
Black	61.4	53.3	62.2	58.8	56.7	61.9	62.0	59.0	64.3	68.0	68.6	68.3	71.1
White	57.2	54.5	57.3	56.4	61.8	56.2	69.2	62.6	69.7	67.9	68.2	66.2	74.4
White non- Hispanic										68.4	69.8	68.2	75.5
Non-South													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63.0	58.3	62.0	58.5	61.7	57.0	NA
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63.0	NA

REPORTED TURNOUT BY RACE IN SOUTH CAROLINA AND OUTSIDE THE SOUTH, 1980 – 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
SOUTH CAROLINA													
Black	51.3	38.9	51.4	42.0	40.7	44.6	48.8	38.7	49.9	42.8	60.7	48.7	59.5
White	51.7	37.0	47.9	41.3	52.3	42.0	61.6	49.4	56.2	48.8	58.7	45.1	63.4
White non- Hispanic										49.3	60.0	46.4	64.3
Non-South													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	NA
White	62.4	53.1	63.0	48.7	60.4	48.2	64.9	49.3	57.4	45.4	57.5	44.7	NA

REPORTED REGISTRATION BY RACE IN VIRGINIA AND OUTSIDE THE SOUTH, 1980 – 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
VIRGINIA													
Black	49.7	53.6	62.1	66.5	63.8	58.1	64.5	51.1	64.0	53.6	58.0	47.5	57.4
White	65.4	60.8	63.7	63.3	68.5	61.9	67.2	63.6	68.4	63.5	67.6	64.1	68.2
White non- Hispanic										64.7	69.1	66.7	71.6
Non-South													
Black	60.6	61.7	67.2	63.1	65.9	58.4	63.0	58.3	62.0	58.5	61.7	57.0	NA
White	69.3	66.7	70.5	66.2	68.5	64.4	70.9	65.6	68.1	63.9	65.9	63.0	NA

REPORTED TURNOUT BY RACE IN VIRGINIA AND OUTSIDE THE SOUTH, 1980 – 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
VIRGINIA													
Black	42.9	44.3	55.0	42.5	47.7	32.0	59.0	33.8	53.3	23.8	52.7	27.2	49.6
White	58.3	46.2	57.8	36.8	61.1	39.6	63.4	50.4	58.5	32.4	60.4	37.8	63.0
White non- Hispanic										33.3	61.8	39.6	66.2
Non-South													
Black	52.8	48.5	58.9	44.2	55.6	38.4	53.8	40.2	51.4	40.4	53.1	39.3	NA
White	62.4	53.1	63.0	48.7	60.4	48.2	64.9	49.3	57.4	44.7	57.5	44.7	NA

REPORTED REGISTRATION BY RACE IN ARKANSAS, 1980 - 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
ARKANSAS													
Black	62.6	63.3	71.2	62.5	68.0	50.8	62.4	56.0	65.8	51.8	60.0	62.0	63.7
White	67.4	65.3	70.8	63.5	67.9	62.6	67.8	61.0	64.5	65.9	59.5	62.9	67.1
White non- Hispanic										66.3	61.2	64.4	69.4

REPORTED TURNOUT BY RACE IN ARKANSAS, 1980 - 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
ARKANSAS													
Black	50.8	47.7	56.9	43.3	49.6	34.5	46.4	34.5	50.6	31.1	52.2	44.0	49.4
White	58.6	54.3	61.5	47.9	57.3	48.2	60.7	43.1	52.1	45.0	49.0	46.1	58.6
White non- Hispanic										45.4	50.5	47.3	60.8

REPORTED REGISTRATION BY RACE IN OKLAHOMA, 1980 – 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
OKLAHOMA													
Black	51.9	59.2	60.7	58.5	59.8	51.6	65.5	49.8	67.1	60.3	57.4	54.2	61.8
White	67.7	63.3	72.6	68.4	66.5	69.2	75.5	68.5	71.3	65.1	69.5	69.3	71.4
White non- Hispanic										66.0	70.6	70.6	73.9

REPORTED TURNOUT BY RACE IN OKLAHOMA, 1980 – 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
OKLAHOMA													
Black	44.5	44.9	43.5	29.9	53.0	29.2	52.4	31.5	52.0	31.8	44.5	36.4	54.7
White	61.1	47.5	62.6	51.3	57.6	52.0	69.3	49.8	60.5	41.6	59.3	50.8	62.6
White non- Hispanic										42.5	60.4	51.8	64.8

REPORTED REGISTRATION BY RACE IN TENNESSEE, 1980 – 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
Black	69.4	67.1	78.5	73.0	74.0	68.5	77.4	70.0	65.7	64.8	64.9	54.1	63.9
White	66.9	68.5	70.2	65.0	64.4	63.3	63.4	63.9	66.3	63.9	61.9	62.3	62.6
White non- Hispanic										63.9	62.8	65.2	64.1

TENNESSEE

REPORTED TURNOUT BY RACE IN TENNESSEE, 1980 – 2004

	1980	1982	1984	1986	1988	1990	1992	1994	1996	1998	2000	2002	2004
Black	56.9	50.8	64.7	46.0	57.9	35.3	62.9	38.5	56.0	39.0	52.3	39.8	51.3
White	56.7	46.6	56.7	43.8	50.7	29.7	54.8	44.5	52.8	35.8	52.6	45.8	53.5
White non- Hispanic										36.0	53.3	48.0	54.8

TENNESSEE

Election Board Hiring Spanish Speakers

Steve Pickett
Reporting

(CBS 11 News) DALLAS The Dallas County Elections department is working to assist voters who may not speak English. The department is spending part of its budget to finance the recruitment and placement of bilingual polling precinct workers.

Voting ballots are already printed in English and Spanish. The elections department will now spend \$40,000 to recruit Spanish speakers to assist as precinct clerks. Federal law requires it.

Dallas County elections administrator Bruce Sherbet said, "The Voting Rights Act says if you have any precincts that have over five percent population that is Hispanic, then you're required to have, on Election Day, one clerk to assist any voter needing language assistance."

That assistance will include recruiting bilingual precinct workers, identifying precincts with high minority populations, and voter registration outreach.

During last Sunday's immigration reform march and rally, Democrats were registering people to vote.

Dallas Republican Hispanic Assembly president Jason Villalba accepts the targeting of Spanish speaking voters, but worries about the elections department spending too much time in traditional Hispanic democratic areas. "The concern would be if you focused exclusively on that group, to the exclusive of people outside those areas."

Dallas county Republican Party chair Kenn George acknowledges some may not like the fact that non-English speaking voters will get taxpayer-supported assistance at the polls.

But both political parties are already fighting over the growing Spanish speaking voting population.

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TESTIMONY OF
LINDA CHAVEZ
PRESIDENT, ONE NATION INDIVISIBLE
BEFORE THE
SENATE JUDICIARY COMMITTEE
REGARDING THE
BILINGUAL BALLOT PROVISIONS OF
THE VOTING RIGHTS ACT

June 13, 2006

Introduction

Thank you, Mr. Chairman, for the opportunity to testify before you today regarding the reauthorization of the bilingual ballot provisions of the Voting Rights Act, 42 U.S.C. 1973aa-1a, commonly referred to as Section 203.

My name is Linda Chavez, and I am president of One Nation Indivisible. I am also president of the Center for Equal Opportunity, a nonprofit research and educational organization that focuses on public policy issues that involve race and ethnicity, such as civil rights, bilingual education, and immigration and assimilation.

I have served as Staff Director of the U.S. Commission on Civil Rights (1983-1985), and Chairman of the National Commission on Migrant Education (1988-1992). In 1992, I was elected by the United Nations' Human Rights Commission to serve a four-year term as U.S. Expert to the U.N. Sub-commission on the Prevention of Discrimination and Protection of Minorities, and I was Co-Chair of the Council on Foreign Relations' Committee on Diversity from 1998-2000. Finally, I am the author of *Out of the Barrio: Toward a New Politics of Hispanic Assimilation* (Basic Books 1991), the second chapter of which is entitled, "Hispanics and the Voting Rights Act."

Section 203 requires certain jurisdictions to provide all election-related materials, as well as the ballots themselves, in foreign languages. The jurisdictions are those where more than 5 percent of the voting-age citizens are members of a particular language minority, and where the illiteracy rate of such persons is higher than the national illiteracy rate. The language minority groups are limited to American Indians, Asian Americans, Alaskan Natives, and those "of Spanish heritage." Where the language of the

minority group is oral or unwritten, then oral voting assistance is required in that language.

There are basically three policy problems with Section 203 that I would like to discuss today. First, it encourages the balkanization of our country. Second, it facilitates voter fraud. And, third, it wastes the taxpayers' money. In addition to these policy problems, in my view Section 203 is unconstitutional because, although Congress asserts it has enacted this law pursuant to its enforcement authority under the Fourteenth and Fifteenth Amendments, in fact this statute actually exceeds that authority.

Section 203 Balkanizes Our Country

America is a multiethnic, multiracial nation. It always has been, and this is a source of national pride and strength. But our motto is *E pluribus unum*--out of many, one--and this means that, while we come from all over the globe, we are also united as Americans.

This unity means that we hold certain things in common. We celebrate the same democratic values, for instance, share the American dream of success through hard work, cherish our many freedoms, and champion political equality. Our common bonds must also include an ability to communicate with one another. Our political order and our economic health demand it.

Accordingly, the government should be encouraging our citizens to be fluent in English, which, as a practical matter, is our national language. And, in any event, the government certainly should not discourage people from mastering English, and should not send any signals that mastering English is unimportant. Doing so does recent

immigrants no favor, since true participation in American democracy requires knowing English. *See Jose Enrique Idler, En Ingles, Por Favor, National Review Online, March 8, 2006, available at <http://www.nationalreview.com/comment/idler200603080757.asp>.*

Inevitably, however, that is what the federal government does when it demands that ballots be printed in foreign languages. It also devalues citizenship for those who have mastered English as part of the naturalization process. As Boston University president John Silber noted in his 1996 congressional testimony, bilingual ballots “impose an unacceptable cost by degrading the very concept of the citizen to that of someone lost in a country whose public discourse is incomprehensible to him.” **Quoted in John J. Miller, *The Unmaking of Americans: How Multiculturalism Has Undermined America’s Assimilation Ethic* (1998), page 133.**

Section 203 Facilitates Voter Fraud

Most Americans are baffled by the bilingual ballot law. They know that, with few exceptions, only citizens can vote. And they know that, again with only few exceptions, only those who speak English can become citizens. So why is it necessary to have ballots printed in foreign languages?

It’s a fair question, and there really is no persuasive answer to it. As a practical matter, there are very few citizens who need non-English ballots.

There are, however, a great many noncitizens who can use non-English ballots. And the problem of noncitizens voting is a real one. The Justice Department has brought numerous criminal prosecutions regarding noncitizen voting in Florida, as documented in

a recent official report. **Criminal Division, Public Integrity Section, U.S. Department of Justice, *Election Fraud Prosecution and Convictions, Ballot Access & Voting Integrity Initiative, October 2002 - September 2005.*** This problem has also been extensively reported on in the press. See Ishikawa Scott, "Illegal Voters," *Honolulu Advertiser*, Sept. 9, 2000; Dayton Kevin, "City Steps Up Search for Illegal Voters," *Honolulu Advertiser*, Sept. 9, 2000; Audrey Hudson, "Ineligible Voters May Have Cast a Number of Florida Ballots," *Washington Times*, Nov. 29, 2000 ("A sizable number of Florida votes may have been cast by ineligible felons, illegal immigrants and noncitizens, according to election observers. ...This would not be the first time votes by illegal immigrants became an issue after Election Day. Former Republican Rep. Robert K. Dornan of California was defeated by Democrat Loretta Sanchez by 984 votes in the 1996 election. State officials found that at least 300 votes were cast illegally by noncitizens."); "14 Illegal Aliens Reportedly Voted," KSL NewsRadio 1160, Aug. 8, 2005; Associated Press, Untitled (first sentence: "Maricopa County Attorney Andrew Thomas has charged 10 legal residents who are not U.S. citizens with fraudulently registering to vote, and more residents are being investigated, he said."), Aug. 12, 2005; Joe Stinebaker, "Loophole Lets Foreigners Illegally Vote," *Houston Chronicle*, Jan. 17, 2005; Lisa Riley Roche & Deborah Bulkeley, "Senators Target License Abuses," *Desert Morning News*, Feb. 10, 2005; Teresa Borden, "Scheme To Get Noncitizens on Rolls Alleged," *Atlanta Journal-Constitution*, Oct. 28, 2004; Associated Press, "Harris County Cracking Down on Voting by Non-U.S. Citizens," *Houston Chronicle*, Jan. 16, 2005; John Fund's Political Diary, *Wall Street Journal*, Oct. 23, 2000 (voter fraud a growing problem since "47 states don't require

any proof of U.S. residence for enrollment”); Doug Bandow, “Lopez Losing,” *American Spectator*, Oct. 28, 2005 (Nativo Lopez’s Hermandad Mexicana Nacional “registered 364 non-citizens to vote in the 1996 congressional race in which Democrat Loretta Sanchez defeated incumbent Republican Bob Dornan”).

Section 203 Wastes Government Resources

As I just noted, there are few citizens who need ballots and other election materials printed for them in languages other than English. The requirement that, nonetheless, such materials must be printed is therefore wasteful.

On the one hand, the costs of printing the additional materials is high. It is a classic, and substantial, unfunded mandate. For example, Los Angeles County had to spend over \$1.1 million in 1996 to provide Spanish, Chinese, Vietnamese, Japanese, and Filipino assistance. **General Accounting Office, *Bilingual Voting Assistance: Assistance Provided and Costs* (May 1997), pages 20-21.** Six years later, in 2002, it had to spend \$3.3 million. **Associated Press, “30 States Have Bilingual Ballots,” Sept. 25, 2002.** There are 296 counties in 30 states now that are required to have such materials, and the number is growing rapidly. See “**English Is Broken Here,**” *Policy Review*, **Sept-Oct. 1996.** Frequently the cost of multilingual voter assistance is more than half of a jurisdiction’s total election costs. **GAO May 1997, pages 20-21.** If corners are cut, the likelihood of translation errors increases. (Indeed, the inevitability of some translation errors, no matter how much is spent, is another argument for why all voters need to master English. See *The Unmaking of Americans*, page 133; Amy Taxin, “**O.C.’s Foreign-Language Ballots Might Be Lost in Translation: Phrasing Is Found To Differ by County, Leading to Multiple Interpretations and Possibly Confusion for**

Some Voters,” *Orange County Register*, Nov. 3, 2005; “Sample S.J. Ballot Contains Error: Spanish Translation Doesn’t Make Sense,” *Stockton Record*, Feb. 27, 2003; Jim Boulet, “Bilingual Chaos,” *National Review Online*, Dec. 19, 2000; English First Foundation Issue Brief, *Bilingual Ballots: Election Fairness or Fraud?* (1997), available at <http://www.englishfirst.org/ballots/efbb.htm>.)

On the other hand, the use made of the additional materials is low. According to a 1986 General Accounting Office study, nearly half of the jurisdictions that provided estimates said *no one*--not a single person--used oral minority-language assistance, and more than half likewise said *no one* used their written minority-language assistance. Covered jurisdictions said that generally language assistance “was not needed” by a 10-1 margin, and an even larger majority said that providing assistance was either “very costly or a waste of money.” **General Accounting Office, *Bilingual Voting Assistance: Costs of and Use During the November 1984 General Election*, Sept. 1986, pages 25, 32, 39.** According to Yuba County, California’s registrar of voters: “In my 16 years on this job, I have received only one request for Spanish literature from any of my constituents.” Yet in 1996 the county had to spend \$30,000 on such materials for primary and general elections. *The Unmaking of Americans*, page 134.

What’s more, to quote from John J. Miller’s excellent book, *The Unmaking of Americans: How Multiculturalism Has Undermined America’s Assimilation Ethic* (1998), pages 242-243: Getting rid of bilingual ballots “does not mean that immigrant voters who still have difficulty communicating in English would not be without recourse. There is a long tradition in the United States of ethnic newspapers--often printed in languages other than English--providing political guidance to readers in the form of

sample ballots and visual aids that explain how to vote. It would surely continue.” I should add that Mr. Miller concluded that “Congress should amend the Voting Rights Act to stop the Department of Justice from coercing local communities to print election materials in foreign languages.”

In sum, as a simple matter of dollars and sense, bilingual ballot are just not worth it. The money would be much better spent on improving election equipment and combating voter fraud.

Section 203 Is Unconstitutional

Finally, Mr. Chairman, I would suggest that Section 203 raises serious constitutional problems, and, if it is reenacted, may well be struck down as unconstitutional. It certainly should be.

The Supreme Court has made clear that only purposeful discrimination--actually treating people differently on the basis of race or ethnicity--violates the Fourteenth and Fifteenth Amendments. See *Washington v. Davis*, 426 U.S. 229 (1976); *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1976); *City of Mobile v. Bolden*, 446 U.S. 55 (1980). The Court has ruled even more recently that Congress can use its enforcement authority to ban actions that have only a disparate impact only if those bans have a “congruence and proportionality” to the end of ensuring no disparate treatment. *City of Boerne v. Flores*, 521 U.S. 507 (1997); see also *United States v. Lopez*, 514 U.S. 549 (1995). This limitation is likely to be even stricter when the federal statute in question involves areas usually considered a matter of state

authority. See, e.g., *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356 (2001).

Now, it seems to me very unlikely that the practice of printing ballots in English and not in foreign languages would be a violation of the Fourteenth or Fifteenth Amendments—that is, it is very unlikely that this practice could be shown to be rooted in a desire to deny people the right to vote because of race or ethnicity. See *Out of the Barrio*, page 46; see also Abigail Thernstrom, *Whose Votes Count?: Affirmative Action and Minority Voting Rights* (1987), pages 40, 57. Rather, it has perfectly legitimate roots: To avoid facilitating fraud, to discourage balkanization, and to conserve scarce state and local resources. Accordingly, Congress cannot assert that, in order to prevent discrimination in voting, it has authority to tell state and local officials that they must print ballots in foreign languages.

The rather garbled text of Section 203, however, apparently says that Congress was concerned not with discrimination in voting per se, but with educational disparities. That is, the poorer education that, say, Latinos receive is what makes bilingual ballots necessary. Of course, if these disparities are not rooted in discrimination, then there remains a problem with Congress asserting its power under Section 5 of the Fourteenth Amendment or Section 2 of the Fifteenth Amendment to require bilingual ballots. But let us assume that Congress did have in mind unequal educational opportunities rooted in educational discrimination, presumably by the states.

Even here, I think there are insurmountable problems. There is, in short, a lack of congruence and proportionality between the asserted discrimination in education and the bilingual ballot mandate in Section 203. Are all the language minorities covered by

Section 203 subjected to government discrimination in education--and, if not, then why are all of them covered? Are there language minorities that are subject to government discrimination that are not covered by Section 203--and, if so, then why aren't they covered? How often does education discrimination result in an individual not becoming fluent enough in English to cast a ballot? Isn't it much more likely that this lack of fluency has some other cause (like recent immigration, most obviously, or growing up in an environment where English is not spoken enough)? Finally, is it a congruent and proportional response to education discrimination to force states to make ballots available in foreign languages? How likely is Section 203 to result in the elimination of education discrimination? Does this "remedy" justify Congress's overruling of the legitimate reasons that states have for printing ballots in English and not in foreign languages?

Mr. Chairman, I am frankly skeptical that Congress can answer these questions satisfactorily.

I hope the committee will go into these hearings with an open mind, and not with a verdict-first-hearings-later mindset. Does anyone really believe that the reason for Section 203 has anything to do with remedying state discrimination in education? Of course not. As I discuss in *Out of the Barrio*, the Voting Rights Act of 1965 was motivated by a desire to stop discrimination; the later expansion of the Voting Rights Act at the behest of Latino special interest groups was simply about politics. There was little factual record established even to show that Hispanics were being systematically denied the right to vote. This disenfranchisement would have been particularly difficult to demonstrate in light of the number of Hispanics who had previously been elected to office, which included Governors, U.S. Senators, Members of the House of

Representatives, as well as numerous state legislators and local officials, many of these officials serving in jurisdictions that would soon be subject to the special provisions of the Voting Rights Act. **See also Thernstrom, chapter 3.** There is no credible way to equate the discrimination that African Americans in the South suffered to the situation of Latinos, who had voted--and been elected to office--in great numbers for decades. That was true when Section 203 was first enacted, and it is even more true now, which is what matters for purposes of reauthorization. The reason for the bilingual ballot provision is not and never has been about discrimination--it is about identity politics.

Conclusion

Let me conclude, Mr. Chairman, by saying again that, even if Section 203 were not unconstitutional, it would still be unwise legislation, because it encourages balkanization, facilitates voter fraud, and wastes the taxpayers' money. Congress should not reenact it.

Perpetual Gerrymandering

House Republican leadership is unhappy with the VRA for good reason.

By Roger Clegg

On Wednesday, the House Republican leadership announced that, in light of concerns expressed by several of its members about the proposed extension of the Voting Rights Act, a vote on the bill would be postponed. This was the right decision. The House Judiciary Committee thinks it has built a sufficient record over the past months to justify extending Section 5 of the Voting Rights Act for another 25 years. It hasn't.

Section 5 is the part of the VRA that requires certain "covered jurisdictions" — mostly in the Deep South, but also including scattered other areas, like the Bronx and Alaska — to get permission from the federal government before they make any change in any procedure that has to do with voting. A careful congressional record is necessary because the statute raises two sets of constitutional problems: concerns about federalism (since some states are singled out for treatment that would normally be beyond federal authority) and concerns about Section 5's inclusion of changes that are not tied to intentional racial discrimination (the usual scope of Congress's power).

For the record to persuade a reviewing court that Congress has not exceeded its authority, it needs to do four things. It is doubtful that the House's record does any of them.

First, the record should reassure the court that Congress considered this issue with some semblance of evenhandedness, rather than a verdict first, trial afterwards mentality.

But the latter was in fact the mentality, which is quite obvious. The record is stunningly one-sided. For instance, in the 170 pages of hearings on Justice O'Connor's opinion for the Supreme Court in *Georgia v. Ashcroft*, there is not a single submission that defends Justice O'Connor's opinion. In addition, there was not a single panel where more than one of the witnesses opposed reauthorization. Nor was there a single government official who testified or submitted a statement against reauthorization.

Second, the record must establish that, in 2006, the right of citizens to vote in the covered jurisdictions is widely being "denied or abridged . . . on account of race, color, or previous condition of servitude" (to quote the Fifteenth Amendment, the font of Congress's authority).

The record contains some evidence of purposeful racial discrimination in voting, but it is almost all scattered and anecdotal rather than systematic and statistical (the systematic and statistical evidence, as discussed below, all points the other way). What's more, much of the record evidence is not even about purposeful discrimination, which is what a court will be looking for, but instead is, at best, about practices that may have a disproportionate racial "effect."

Third, the record must establish that purposeful discrimination in the covered jurisdictions is much worse than in the noncovered jurisdictions.

In fact, there is very little, if any, evidence in the record that compares covered jurisdictions to

noncovered jurisdictions, and what comparisons there are undermine the bill. For example, one of the few discussions that compares, even implicitly, covered and noncovered jurisdictions — the statement by Charles D. Walton of the National Commission on the Voting Rights Act (NCVRA) — concludes that “discrimination in voting and in election processes in the northeastern states is a significant problem” and that there would be “a great benefit to having more of the country covered by the pre-clearance provisions of Section 5.”

A law review article by Laughlin McDonald of the ACLU’s Voting Rights Project is entitled “The Need to Expand the Coverage of Section 5 of the Voting Rights Act in Indian Country,” and proposes to do so “throughout the West.” Other submissions in the record complain about jurisdictions that are wholly uncovered or only partly covered: the states of Ohio, Florida, Missouri, and Indiana, for instance, and the cities of Milwaukee, Chicago, and Detroit. In general, the NCVRA held hearings all over the country, and all over the country it found problems — sometimes in covered jurisdictions, but often not.

Unsurprisingly, then, many of the House Republican leadership members from the South are particularly unhappy that their states are singled out for the penalty box.

Fourth, there should be careful discussion of why the extraordinary preclearance mechanism — and the use of an effects test — is still essential for addressing the intentional discrimination that does arise.

In fact, there is very little evidence in the record on this point.

The problem is not that Congress could have fulfilled these four requirements if it had been more careful. The problem is that, the more careful it is, the clearer it will be that, in fact, the extension of Section 5 simply cannot be constitutionally justified.

The House hearings included testimony from Professor Ronald Keith Gaddie and from my colleague Edward Blum, and the record included a series of exhaustive, and unrebutted, studies published by the American Enterprise Institute. All made quite clear that (a) there is no crisis in voting rights in 2006, and nothing even remotely comparable to what there was in 1965, and (b) there is no appreciable difference in the voting rights enjoyed in jurisdictions covered by Section 5 versus noncovered jurisdictions. So why, in 2006, are Texas and Arizona covered, while New Mexico, Oklahoma, and Arkansas are not? Why some counties in Florida and North Carolina, and not others? Why some boroughs in New York City, and not others? Why Alaska?

If the covered jurisdictions looked in 1965 like they look now, no one then would have given any consideration to a bill like Section 5. And yet many in Congress appear to think they can renew Section 5 in perpetuity.

Even putting aside constitutional requirements, there is an overwhelming reason why Congress should not want to reauthorize Section 5, even if it could: Its interpretation by the courts and the federal bureaucracy over the years has turned it into a powerful force for dragging jurisdictions into racial gerrymandering and racially segregated redistricting. That is bad for all Americans.

One last thing: The current bill also requires many jurisdictions to print ballots in foreign languages. This balkanizes the country, wastes taxpayers' money, facilitates voter fraud, and is — again — unconstitutional. Unsurprisingly, then, it's another provision in the current bill that many in the House Republican leadership are unhappy about, and it needs to come out, too. This is not a bill to be blithely passed along.

—Roger Clegg is president and general counsel of the Center for Equal Opportunity in Sterling, Virginia. He testified last month in the House against the extension of the Voting Rights Act.



June 28, 2006

The Honorable Arlen Specter
 Chairman
 Committee on the Judiciary
 United States Senate
 Room SD-224
 Washington, DC 20510

The Honorable Patrick J. Leahy
 Ranking Member
 Committee on the Judiciary
 United States Senate
 Room SD-224
 Washington, DC 20510

Dear Mr. Chairman and Senator Leahy:

On behalf of the Cuban American National Council, a national non-profit organization that provides direct human services to individuals of diverse racial and ethnic groups, I am pleased to submit this testimony in support of the reauthorization of the Voting Rights Act of 1965. The testimony is provided, in particular, to the Committee on the Judiciary's hearing of June 13, 2006, which focused on Section 203.

Thank you for the opportunity to submit this statement.

Sincerely,

Guarione M. Diaz
 President and CEO

cc: The Honorable Orrin G. Hatch
 The Honorable Charles E. Grassley
 The Honorable Jon Kyl
 The Honorable Mike DeWine
 The Honorable Jeff Sessions
 The Honorable Lindsey Graham
 The Honorable John Cornyn
 The Honorable Sam Brownback
 The Honorable Tom Coburn

The Honorable Edward M. Kennedy
 The Honorable Joseph R. Biden, Jr.
 The Honorable Herbert Kohl
 The Honorable Dianne Feinstein
 The Honorable Russell D. Feingold
 The Honorable Charles E. Schumer
 The Honorable Richard J. Durbin



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**SUBMITTED TO THE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
BY GUARIONE M. DIAZ, PRESIDENT AND CEO
CUBAN AMERICAN NATIONAL COUNCIL
RE: VOTING RIGHTS ACT OF 1965, SECTION 203
JUNE 28, 2006**

On behalf of the Cuban American National Council, I write to express my strong support for S 2703, the Fannie Lou Hamer, Rosa Parks and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, and urge you to vote in favor of S 2703, as introduced. Further, the CNC firmly supports the renewal of Section 203. The language assistance provisions of the Voting Rights Act, Section 203 was added to the VRA in order to counter discriminatory voting practices which excluded limited English proficient individuals from participating in the American political process. The Council applauds the positive action taken by the Congress in 1975, 1982, and 1992 and requests a 25-year continuation of the section. According to the 2000 decennial census, three-quarters of all voters covered by this provision are native-born citizens. Language assistance promotes the integration and political participation of people into American society. The continuation of Section 203 will affect the fundamental right of voting to native-born citizens, as well as naturalized citizens from Cuba and countries in which democracy is not practiced. Of equal importance is the continuation of the section to the Asian American, American Indian, and Alaskan Native community.

Although progress has been made to eliminate voting discrimination in this country, much work is left to be done. Cuban Americans, like other Hispanic Americans, are deeply respectful of the rights and responsibilities which they assume upon birth or naturalization in the United States. Many recall the absence of freedom and the absence of access to free speech and democratic processes. Their deep desire for freedom and genuine access of democracy is critical not only for themselves, but for family members and neighbors.

The abiding appreciation for democracy is deeply evident in the Cuban American community. For example, approximately 400 students enroll each year at the Cuban American National Council's Little Havana Institute in Miami, Florida. The Institute—which enjoys a retention rate of 87 percent—is an alternative high school for at-risk youth operated as one of Miami-Dade County Public Schools' secondary programs. Completion of the high school curriculum is based, in part, on students' successful



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completion of four required courses—American government, American history, world history, and economics. Many of our graduates have completed the American government course through lesson plans and classroom projects which incorporated a mock process for developing public policy, introducing legislation, debating issues, negotiating, and passing legislation. Mock debates among candidates, as well as voting for candidates and proposed referendums were also conducted by students, many of whom have been taught by Mr. Eduardo Martinez, a native of Cuba who left the Island during the Freedom Flights of 1967 and became a naturalized citizen of the United States. He was honored in 2003 by Miami Dade County Public Schools as one of the top two social studies teachers. His passion for democracy is shared by students, many of whom are now registered voters. They are a community of young individuals who wish to participate in the voting process and encourage others including older relatives—senior citizens—to exercise their right to vote by utilizing language assistance.

Access to voting and casting an effective ballot are important to students of the Little Havana Institute, and equally, to the thousands of other individuals served by the Council. One common goal is shared by those we assist whether they are moderate income families who receive financial literacy instruction, senior citizens residing in affordable housing communities, or refugees who aspire to one day become and contribute fully as citizens of the United States. That goal is the democratic process. The ability to exercise their right to vote is a hallmark of their citizenship. Whether they are individuals more adept in the Spanish language or in English, voting makes a difference to the Cuban American community. It is the demonstration of freedom and a voice in society.

Language assistance in preparation for voting, and on the date of voting, is a critical tool which assures voting as a knowledge-based practice. Democracy is achieved through the individual voter's knowledge and understanding of candidate positions, values, and issues. Language assistance provides a large percentage of Cuban Americans the right to vote and cast an effective ballot, the most direct form of articulating their positions on policies impacting their community and candidates for elected positions. Although the Eagleton Institute of Politics at Rutgers University reported that, "Cuban Americans voted in much higher percentages in 2000" than individuals of other distinct cultural heritage, the Council believes that language assistance for limited English proficient citizens will allow U.S. citizens of all cultural traditions to achieve the highest level of understanding concerning their country and to engage in the voting process. By reaching this goal and standard of quality, our country distinguishes itself as a global model of equality.



...a human services organization

The language assistance provisions of the Voting Rights Act received strong bipartisan support each time Congress previously considered them and this reauthorization process has been no different. The Council commends the bipartisan leadership of Senate leaders—Judiciary Chairman Arlen Specter, Ranking Member Patrick Leahy, and Senator Edward M. Kennedy—and House Judiciary Chairman James Sensenbrenner, Ranking Member John Conyers, Representative Mel Watt, and Representative Linda Sanchez, regarding HR 9/S 2703.

The Cuban American National Council urges your support of S 2703. Your leadership in renewing and restoring the Voting Rights Act to its original intent in protecting the right to vote is appreciated. Thank you.

FOR IMMEDIATE RELEASE
CRT

MONDAY MAY 15, 2006
(202) 514-2007
WWW.USDOJ.GOV
TDD (202) 514-1888

JUSTICE DEPARTMENT TO MONITOR ELECTIONS IN MASSACHUSETTS AND
PENNSYLVANIA

WASHINGTON-The Justice Department today announced that on May 16, 2006, the federal government will monitor a special municipal preliminary election in Boston and primary elections in Philadelphia and Reading, Pa., to ensure compliance with the Voting Rights Act.

Under the Voting Rights Act, the Justice Department is authorized to ask the Office of Personnel Management to send federal observers to areas that are specially covered in the Act itself or by a federal court order. Federal observers will be assigned to monitor polling place activities in Boston and Reading pursuant to federal court orders entered on Oct. 18, 2005 and Aug. 20, 2003, respectively.

The observers will watch and record activities during voting hours at polling locations in Boston and Reading. Civil Rights Division attorneys will coordinate the federal activities and maintain contact with local election officials.

In addition, Justice Department personnel will monitor the primary election in Philadelphia.

Each of the monitored counties has an obligation to provide all election information, ballots and voting assistance information in Spanish pursuant to Section 203 or Section 4(e) of the Voting Rights Act. In Boston, a settlement agreement approved by the federal court also requires that such information and assistance be provided in Chinese and Vietnamese. The observers and monitors will gather information concerning compliance.

Each year, the Justice Department deploys hundreds of federal observers from the Office of Personnel Management, as well as departmental staff, to monitor elections across the country. In 2004, a record 1,463 federal observers and 533 Department personnel were sent to monitor 163 elections in 105 jurisdictions in 29 states. Last year for off-year elections there were 640 federal observers and 191 Department personnel sent to monitor 47 elections in 36 jurisdictions in 14 states.

To file complaints about discriminatory voting practices, including acts of harassment or intimidation, voters may call the Voting Section of the Justice Department's Civil Rights Division at 1-800-253-3931.

More information about the Voting Rights Act and other federal voting laws is available on the Department of Justice Web site at www.usdoj.gov/crt/voting/index.htm.



CRIMINAL DIVISION
PUBLIC INTEGRITY SECTION
UNITED STATES DEPARTMENT OF JUSTICE

ELECTION FRAUD PROSECUTIONS & CONVICTIONS
BALLOT ACCESS & VOTING INTEGRITY INITIATIVE
OCTOBER 2002 – SEPTEMBER 2005

DISTRICT OF ALASKA (2000, 2002, 2004-Voting by Ineligibles), *United States v. Rogelio Mejorada-Lopez*, Case No. 05-CR-074: Involves a Mexican citizen, Rogelio Mejorada-Lopez, who completed several voter registration applications to register to vote in Alaska and who thereafter voted in the 2000, 2002, and 2004 general elections. On August, 15, 2005, the defendant was charged by Information with three counts of voting by a non-citizen in violation of 18 U.S.C. § 611.

United States Attorney: Timothy A. Burgess (907) 271-5071
District Election Officer: Deborah A. Smith
Assistant United States Attorney: Retta Randall

STATUS: 1 person charged by information.

DISTRICT OF COLORADO (2004-Voting by Noncitizen), *United States v. Shah*, Case No. 04-CR-00458: On November 1, 2004, Ajmal Shah was indicted on charges of providing false information concerning U.S. citizenship in order to register to vote in violation of 18 U.S.C. §§ 911 and 1015(f). On March 1, 2005, the defendant was convicted on both counts.

United States Attorney: William J. Leone (303) 454-0100
District Election Officer: Tom O'Rourke

STATUS: 1 person indicted; 1 person convicted.

NORTHERN DISTRICT OF FLORIDA (2002-Registration Fraud), *United States v. Chaudhary, a/k/a Usman Ali*, Case No. 04-CR-00059: On November 9, 2004, an indictment was returned against Chaudhary charging misuse of a social security number in violation of 42 U.S.C. § 408 and making a false claim of U.S. citizenship on a 2002 driver's license application in violation of 18 U.S.C. § 911. A superseding indictment was returned on January 4, 2005, charging the defendant with falsely claiming U.S. citizenship on a driver's license application and on the accompanying voter registration application. On May 18, 2005, the defendant was convicted by a jury of the false citizenship claim on his voter registration application.

United States Attorney: Gregory Robert Miller (850) 942-8430
District Election Officer: Len Register
Supervisory Assistant United States Attorney: Karen Rhew

STATUS: 1 person indicted; 1 person convicted.

NORTHERN DISTRICT OF FLORIDA (2000-Voting by Non-citizen), *United States v. Mohsin Ali*, Case No. 4:05-CR-47: On September 26, 2005, a misdemeanor information was filed against Mohsin Ali charging him with voting by a non-citizen in violation of 18 U.S.C. § 611.

United States Attorney: Gregory Robert Miller (850) 942-8430
District Election Officer: Len Register
Supervisory Assistant United States Attorney: Karen Rhew
Assistant United States Attorney: Winifred NeSmith

STATUS: 1 person charged by information.

SOUTHERN DISTRICT OF FLORIDA (Voting by Noncitizen), *United States v. Velasquez*, Case No. 03-CR-20233: On March 20, 2003, Rafael Velasquez, a former candidate for the Florida legislature, was indicted on charges of misrepresenting U.S. citizenship in 1998 in connection with voting and for making false statements in 2001 to the Immigration and Naturalization Service, in violation of 18 U.S.C. §§ 911, 1015(f) and 1001. On September 9, 2003, the defendant was convicted by a jury on two counts of making false statements on his nationalization application to the INS concerning his voting history.

United States Attorney: R. Alexander Acosta (305) 961-9100
District Election Officer: Karen Rochlin

STATUS: 1 person indicted; 1 person convicted.

SOUTHERN DISTRICT OF FLORIDA (Voting by Noncitizen), *United States v. McKenzie*, Case No. 04-CR-60160; *United States v. Francois*, No. 04-CR-20488; *United States v. Exavier*, No. 04-CR-60161; *United States v. Lloyd Palmer*, No. 04-CR-60159; *United States v. Velrine Palmer*, No. 04-CR-60162; *United States v. Shivdayal*, No. 04-CR-60164; *United States v. Rickman*, No. 04-CR-20491; *United States v. Knight*, No. 04-CR-20490; *United States v. Sweeting*, No. 04-CR-20489; *United States v. Lubin*, No. 04-CR-60163; *United States v. Bennett*, No. 04-CR-14048; *United States v. O'Neil*, No. 04-CR-60165; *United States v. Torres-Perez*, No. 04-CR-14046; *United States v. Phillip*, No. 04-CR-80103; *United States v. Bain Knight*, No. 04-CR-14047: On July 15, 2004, fifteen noncitizens were charged with

voting in various elections beginning in 1998 in Broward, Miami-Dade, St. Lucie, Martin, or Palm Beach County in violation of 18 U.S.C. § 611, and four of these defendants were also charged with making false citizenship claims in violation of 18 U.S.C. §§ 911 or 1015(f). Ten defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government

United States Attorney: R. Alexander Acosta (305) 961-9100
District Election Officer: Karen Rochlin

STATUS: 15 persons indicted; 10 persons convicted; 1 person acquitted; 4 cases dismissed.

SOUTHERN DISTRICT OF ILLINOIS (2002-Ballot Forgery), *United States v. Brooks*, Case No. 03-CR-30201: East St. Louis election official Leander Brooks was indicted on October 24, 2003, on charges of submitting fraudulent ballots in the 2002 general election in St. Clair County in violation of 42 U.S.C. §§ 1973i(c), 1973i(e), 1973gg-10(2)(B), and 18 U.S.C. §§ 241 and 371. The defendant pled guilty to all charges on February 12, 2004.

United States Attorney: Ronald J. Tenpas (618) 628-3700
District Election Officer: Hal Goldsmith

STATUS: 1 person indicted; 1 person convicted.

SOUTHERN DISTRICT OF ILLINOIS (2004-Vote Buying), *United States v. Scott*, Case No. 05-CR-30040; *United States v. Nichols*, No. 05-CR-30041; *United States v. Terrance Stith*, No. 05-CR-30042; *United States v. Sandra Stith*, No. 05-CR-30043; *United States v. Powell, et al.*, No. 05-CR-30044: On March 22, 2005, four Democratic precinct committeemen in East St. Louis, St. Clair County, were charged by information with vote buying in the 2004 general election in violation of 42 U.S.C. § 1973i(c). All four pled guilty the same day. Also on March 22, a grand jury indicted four additional Democratic precinct committeemen and one precinct worker on conspiracy and vote buying charges in violation of 18 U.S.C. § 371 and 42 U.S.C. § 1973i(c). A jury convicted all five defendants on June 29, 2005.

United States Attorney: Ronald J. Tenpas (618) 628-3700
District Election Officer: Hal Goldsmith

STATUS: 5 persons indicted; 4 persons charged by information; 9 persons convicted.

DISTRICT OF KANSAS (2002 & 2000-Double Voting), *United States v. McIntosh*, Case No. 04-CR-20142: A felony information was filed on October 28, 2004, against McIntosh for voting in both Wyandotte County, Kansas, and Jackson County, Missouri, in the general elections of 2002 and 2000 in violation of 42 U.S.C. § 1973i(e). A superseding misdemeanor information

was filed on December 15, 2004, charging McIntosh with causing the deprivation of constitutional rights in violation of 18 U.S.C. § 242, to which the defendant pled guilty on December 20, 2004.

United States Attorney: Eric F. Melgren (316) 269-6481
District Election Officer: Leon Patton

STATUS: 1 person charged by information; 1 person convicted.

EASTERN DISTRICT OF KENTUCKY (1998-Vote Buying), *United States v. Conley*, Case No. 03-CR-00013; *United States v. Slone*, No. 03-CR-0014; *United States v. Madden*, No. 03-CR-00015; *United States v. Slone, et al.*, No. 03-CR-00016; *United States v. Calhoun*, No. 03-CR-00017; *United States v. Johnson*, No. 03-CR-00018; *United States v. Newsome, et al.*, No. 03-CR-0019: Six persons were indicted on March 28, 2003, and four more persons were indicted on April 24, 2003, on charges of buying votes in connection with the 1998 primary in Knott County in violation of 42 U.S.C. § 1973(c). Five of the ten defendants pled guilty, two were convicted at trial, and three were acquitted. One defendant has appealed his conviction.

United States Attorney: Gregory F. Van Tatenhove (859) 233-2661
Criminal Chief/District Election Officer: James A. Zerhusen
Public Integrity Section Trial Attorney: Richard C. Pilger

STATUS: 10 persons indicted; 7 persons convicted; 3 persons acquitted.

EASTERN DISTRICT OF KENTUCKY (2002-Vote Buying), *United States v. Hays, et al.*, Case No. 03-CR-00011: On March 7, 2003, ten defendants were indicted on charges of conspiracy and vote buying for a local judge, John Doug Hays, in Pike County in the November 2002 general election in violation of 42 U.S.C. § 1973i(c) and 18 U.S.C. § 371. Five defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government.

United States Attorney: Gregory F. Van Tatenhove (859) 233-2661
District Election Officer: James A. Zerhusen
Assistant United States Attorney: Ken Taylor

STATUS: 10 persons indicted; 5 persons convicted; 1 person acquitted; 4 cases dismissed.

EASTERN DISTRICT OF KENTUCKY (2000-Vote Buying & Mail Fraud), *United States v. Turner, et al.*, Case No. 05-CR-00002: A grand jury indicted three defendants on May 5,

2005, for vote buying and mail fraud in connection with the 2000 elections in Knott, Letcher, Floyd, and Breathitt Counties in violation of 42 U.S.C. § 1973i(c) and 18 U.S.C. § 1341.

United States Attorney: Gregory F. Van Tatenhove (859) 233-2661
Criminal Chief/District Election Officer: James A. Zerhusen
Assistant United States Attorney: Ken Taylor

STATUS: 3 persons indicted.

MIDDLE DISTRICT OF LOUISIANA (2002-Perjury, Registration Fraud), *United States v. Braud*, Case No. 03-CR-00019: On March 6, 2003, Tyrell Mathews Braud was indicted on three counts of making false declarations to a grand jury in connection with his 2002 fabrication of eleven voter registration applications, in violation of 18 U.S.C. § 1623. Braud pled guilty to all counts on May 2, 2003.

United States Attorney: David R. Dugas (225) 389-0443
District Election Officer: James Stanley Lemelle

STATUS: 1 person indicted; 1 person convicted.

WESTERN DISTRICT OF LOUISIANA (2002-Registration Fraud), *United States v. Thibodeaux*, Case No. 03-CR-60055: St. Martinsville City Councilwoman Pamela C. Thibodeaux was indicted on December 10, 2003, for conspiring to submit false voter registration information, in violation of 18 U.S.C. § 371 and 42 U.S.C. § 1973i(c). The defendant pled guilty to both charges on April 12, 2005.

United States Attorney: Donald W. Washington (337) 262-6618
District Election Officer: William Flanagan

STATUS: 1 person indicted; 1 person convicted.

WESTERN DISTRICT OF MISSOURI (2004, 2002, & 2000-Double Voting), *United States v. Scherzer*, Case No. 04-CR-00401; *United States v. Goodrich*, No. 04-CR-00402; *United States v. Jones*, No. 05-CR-00257; *United States v. Martin*, No. 05-CR-00258: On December 13, 2004, two misdemeanor informations were filed charging Lorraine Goodrich and James Scherzer, Kansas residents who voted in the 2002 and 2000 federal elections in both Johnson County, Kansas and Kansas City, Missouri, with causing the deprivation of the constitutional right to vote for federal candidates by casting spurious ballots in violation of 18 U.S.C. §§ 242 and 2. Goodrich pled guilty on January 7, 2005, and Scherzer pled guilty on March 28, 2005.

On July 19, 2005, similar misdemeanor informations were filed charging section 242 violations in the 2004 general election by Tammy J. Martin, who voted in both Independence and

Kansas City, Missouri, and Brandon E. Jones, who voted in both Raytown and Kansas City, Missouri.

On September 8, 2005, Brandon E. Jones pled guilty to voting in both Raytown and Kansas City, Missouri, on November 4, 2004.

United States Attorney: Todd P. Graves (816) 426-3122

District Election Officer: Dan Stewart

STATUS: 4 persons charged by information; 3 persons convicted.

DISTRICT OF NEW HAMPSHIRE (2002-Civil Rights), *United States v. Raymond*, Case No. 04-CR-00141; *United States v. McGee*, No. 04-CF-00146; *United States v. Tobin*, No. 04-CR-00216; *United States v. Hansen*, No. 05-CR-00054: On June 21, 2004, two informations were filed charging Allen Raymond, former president of a Virginia-based political consulting firm called GOP Marketplace, and Charles McGee, former Executive Director of the New Hampshire State Republican Committee, with conspiracy to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. § 371 and 47 U.S.C. § 223. The charges stem from a scheme to block the phone lines used by two Manchester organizations to arrange drives to the polls during the 2002 general election. Raymond pled guilty on June 20, 2004, and McGee pled guilty on July 28, 2004.

On December 1, 2004, James Tobin, former New England Regional Director of the Republican National Committee, was indicted on charges of conspiring to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. § 371 and 47 U.S.C. § 223. On

April 7, 2005, an information was filed charging Shaun Hansen, the principal of an Idaho telemarketing firm called MILO Enterprises which placed the harassing calls, with conspiracy and aiding and abetting telephone harassment in violation of 18 U.S.C. §§ 371 and 2 and

47 U.S.C. § 223. On May 9, 2005, the information against Hansen was dismissed upon motion of the government, and on May 18, 2005, a superseding indictment was returned against Tobin charging conspiracy to impede the constitutional right to vote for federal candidates in violation of 18 U.S.C. § 241 and conspiracy to make harassing telephone calls in violation of 47 U.S.C.

§ 223. Trial is set to begin December 6, 2005.

Computer Crimes and Intellectual Property Section (CCIPS), Criminal Division

Chief: Martha Stansell-Gamm (202) 514-1026 (CCIPS)

Trial Attorneys: Andrew Levchuk (CCIPS)

Nicholas Marsh (Public Integrity Section)

STATUS: 1 person indicted; 2 persons charged by information; 2 persons convicted.

WESTERN DISTRICT OF NORTH CAROLINA (2002 & 2000-Voting by Noncitizen), *United States v. Workman*, Case No. 03-CR-00038: On April 7, 2003, a ten-count indictment was returned charging Joshua Workman, a Canadian citizen, with voting and related offenses in the 2002 and 2000 primary and general elections in Avery County in violation of 18 U.S.C. §§ 611, 911, 1001, and 1015(f). On June 30, 2003, the defendant pled guilty to charges of providing false information to election officials and to a federal agency.

United States Attorney: Gretchen C.F. Shappert (704) 344-6222
District Election Officer: Richard Edwards

STATUS: 1 person indicted; 1 person convicted.

WESTERN DISTRICT OF NORTH CAROLINA (2002-Vote Buying), *United States v. Shatley, et al.*, Case No. 03-CR-00035: On July 30, 2003, a grand jury returned a nine-count indictment charging Wayne Shatley, Anita Moore, Valerie Moore, Carlos "Sunshine" Hood and Ross "Toogie" Banner with conspiracy and vote buying in the Caldwell County 2002 general election in violation of 42 U.S.C. § 1973i(c) and 18 U.S.C. § 371. Anita Moore pled guilty on March 12, 2004. Valerie Moore pled guilty on April 28, 2004, and cooperated in the investigation. Wayne Shatley, Carlos "Sunshine" Hood, and Ross "Toogie" Banner were convicted by a jury of all counts on May 14, 2004.

United States Attorney: Gretchen C.F. Shappert (704) 344-6222
District Election Officer: Richard Edwards

STATUS: 5 persons indicted; 5 persons convicted.

WESTERN DISTRICT OF PENNSYLVANIA (Voter Intimidation), *United States v. Stewart*, Case No. 05-CR-00127; *United States v. Schiralli*, No. 05-CR-00126: On May 3, 2005, two sheriff's deputies in Allegheny County, Richard A. Stewart, Jr., and Frank Schiralli, were indicted on charges of making false declarations to the grand jury in violation of 18 U.S.C. § 1623.

United States Attorney: Mary Beth Buchanan (412) 644-3500
First Assistant United States Attorney: Robert Cessar
District Election Officer: A. Elliott McLean
Assistant United States Attorney: Stephen S. Stallings

STATUS: 2 persons indicted.

SOUTHERN DISTRICT OF WEST VIRGINIA (2004, 2002, & 2000-Vote Buying), *United States v. Mendez*, Case No. 04-CR-00101; *United States v. Porter*, No. 04-

CR-00145; *United States v. Hrutkay*, No. 04-CR-00149; *United States v. Stapleton*, No. 04-CR-00173; *Thomas E. Esposito*, No. 05-CR-00002: A felony information was filed on May 7, 2004, charging Logan County Sheriff Johnny Mendez with conspiracy to defraud the United States in violation of 18 U.S.C. § 371. Mendez pled guilty on July 19, 2004. On July 30, 2004, a felony information was filed charging former Logan County Police Chief Alvin Ray Porter, Jr., with making expenditures to influence voting in violation of 18 U.S.C. § 597. Porter pled guilty on December 7, 2004. On August 10, 2004, Logan County attorney Mark Oliver Hrutkay was charged by information with mail fraud in violation of 18 U.S.C. § 1341. Hrutkay pled guilty on January 7, 2005.

On September 9, 2004, Ernest Stapleton, Commander of the local VFW, was charged by information with mail fraud. Stapleton pled guilty on October 29, 2004. Finally, on January 10, 2005, an information was filed charging Thomas E. Esposito, a former Mayor of the City of Logan, with concealing the commission of a felony in violation of 18 U.S.C. § 4.

Acting United States Attorney: Charles T. Miller (304) 345-2200
 District Election Officer: Larry Ellis
 Assistant United States Attorney: Booth Goodwin

STATUS: 5 persons charged by information; 4 persons convicted.

SOUTHERN DISTRICT OF WEST VIRGINIA (1990-2004 Vote Buying), *United States v. Adkins, et al.*, Case No. 04-CR-00162: On August 25, 2004, Jackie Adkins was indicted for vote buying in Lincoln County in 2002 in violation of 42 U.S.C. § 1973i(c). A superseding indictment was returned on November 16, 2004, which added Wandell "Rocky" Adkins to the indictment and charged both defendants with conspiracy to buy votes in violation of 18 U.S.C. § 371 and additional substantive vote buys. A second superseding indictment was returned on May 5, 2005, which added three additional defendants, Gregory Brent Stowers, Clifford Odell "Groundhog" Vance, and Toney "Zeke" Dingess, to the conspiracy and vote buying indictment.

Acting United States Attorney: Charles T. Miller (304) 345-2200
 District Election Officer: Larry Ellis
 Assistant United States Attorney: Karen George

STATUS: 5 persons indicted.

EASTERN DISTRICT OF WISCONSIN (2004-Registration Fraud), *United States v. Davis*, Case No. 05-MJ-00454; *United States v. Byas*, No. 05-MJ-00455; *United States v. Ocasio*, No. 05-CR-00161; *United States v. Prude*, No. 05-CR-00162; *United States v. Sanders*, No. 05-CR-00163; *United States v. Alicea*, No. 05-CR-00168; *United States v. Brooks*, No. 05-CR-00170; *United States v. Hamilton*, No. 05-CR-00171; *United States v. Little*, No. 05-CR-00172; *United*

States v. Swift, No. 05-CR-00177; *United States v. Anderson*, No. 05-CR-00207; *United States v. Cox*, No. 05-CR-00209; *United States v. Edwards*, No. 05-CR-00211; *United States v. Gooden*, No. 05-CR-00212: On June 23, 2005, criminal complaints were issued against Brian L. Davis and Theresa J. Byas charging them with double voting in violation of 42 U.S.C. § 1973i(e). Five days later indictments were returned against convicted felons Milo R. Ocasio and Kimberly Prude, charging them with falsely certifying that they were eligible to vote in violation of 42 U.S.C. § 1973gg-10(2)(B), and against Enrique C. Sanders, charging him with multiple voting in violation of 42 U.S.C. § 1973i(e). On July 12, 2005, five more indictments were returned charging Cynthia C. Alicea with multiple voting in violation of 42 U.S.C. § 1973i(e) and convicted felons Deshawn B. Brooks, Alexander T. Hamilton, Derek G. Little, and Eric L. Swift with falsely certifying that they were eligible to vote in violation of 42 U.S.C. § 1973gg-10(2)(B).

On August 16, Indictments were filed against Brian L. Davis and Theresa J. Byas charging them with double voting in violation of 42 U.S.C. § 1973i(e). In addition, on the same day four more Indictments were returned charging convicted felons Ethel M. Anderson, Jiyto L. Cox, Correan F. Edwards, and Joseph J. Gooden with falsely certifying that they were eligible to vote in violation of 42 U.S.C. § 1973gg-10(2)(B).

On September 16, 2005, Milo R. Ocasio pled guilty and on September 21, 2005, Kimberly Prude was found guilty by a jury. On September 22, 2005, the court declared a mistrial in the case of the *United States v. Sanders*. On September 23, 2005, USA Biskupic filed a motion and order seeking leave to communicate with jurors to assist in determining whether to retry the defendant and permission was granted.

United States Attorney: Steven M. Biskupic (414)297-1700
District Election Officer: Richard Frohling

STATUS: 14 persons indicted; 2 persons convicted.

ELECTION FRAUD PROSECUTIONS SINCE OCTOBER 2002

ELECTION FRAUD OFFENSES	
	Total Number
PERSONS CHARGED (BY INDICTMENT, INFORMATION, OR COMPLAINT)	95
CONVICTIONS	55
DISMISSALS BY THE GOVERNMENT	8
ACQUITTALS	5

Desert Morning News (Salt Lake City)

February 10, 2005 Thursday

LENGTH: 1177 words

HEADLINE: Senators target license abuses

BYLINE: Lisa Riley Roche and Deborah Bulkeley Deseret Morning News

BODY:

A legislative audit shows Utah's "relatively lenient requirements" for obtaining a driver's license are being abused by illegal aliens -- a problem already under federal investigation that Senate leaders said Wednesday they plan to fix.

Their solution is a bill creating a new category of driver's license that could not legally be used for identification purposes -- a "driving privilege card" that could not, for example, be used to board an airplane.

The audit was privately requested by Senate President John Valentine, R-Orem, who said federal authorities are already investigating several Utah cities from which "contractors" are issuing several drivers' licenses. For example, the address of one Salt Lake City apartment was linked to 65 licenses issued over 15 months.

Utah Attorney General Mark Shurtleff said his office will join the effort. "Obviously we are very concerned about any kind of voter or driver's license fraud," Shurtleff said. "We'll aggressively pursue an investigation into the allegations."

Dave Ward, Immigration and Customs Enforcement resident agent in charge for central Utah, said a preliminary investigation has revealed a widespread problem.

"I've read the audit, and it's much larger," Ward said. "We're trying to figure out how big this operation is and how our homeland security is being compromised by this."

Valentine said when he received the audit, he "recognized we had a problem with the way Utah drivers' licenses are issued. We have to respond to that problem for the protection of our citizens."

More than 58,000 drivers' licenses and 37,000 personal identification cards have been issued by the state to people who appear to be undocumented aliens, according to the audit.

Some 383 of them also registered to vote, the audit found, and 14 -- who may or may not have been citizens -- actually cast ballots in an election.

An examination of a sample of 135 of the registered voters showed five were naturalized citizens who were eligible to vote. The rest were likely not eligible to vote, including 20 labeled deportable.

The findings raise concerns that Utah is being "used as a portal for undocumented aliens living out of the state" to get drivers' licenses, Legislative Auditor General John Schaff noted in his 3 1/2-page letter to the Senate president.

Ward said the auditor's office asked him to verify names thought to be illegal aliens who had fraudulently registered to vote. He is also sorting through a list from the Department of Public Safety of single addresses used for multiple licenses. Many names appear on both lists, he said.

"If in fact it's true, we've got a serious problem," Ward said. "I've got a couple thousand names. . . . I am going to be checking into every single one. So far, 90 percent are illegal aliens."

Ward said his office started looking into the "contractors" about two weeks ago. He's also working on a long-term investigation into illegal immigrants obtaining commercial licenses in Utah and using them elsewhere in the country.

Schaff recommended a more in-depth audit of the state Driver License Division as well as legislation modeled after a Tennessee law that identifies noncitizens as a separate class of drivers.

Valentine said the Legislative Management Committee will be asked to approve the audit, and the suggested legislation was introduced Wednesday.

The sponsor of SB227, Sen. Curt Bramble, R-Provo, said he did not unveil his proposal until the audit was completed. "This is a highly contentious issue," he said.

Bramble's bill would repeal a 1999 law that allows the use of a temporary identification number (ITIN), issued by the Internal Revenue Service, to obtain a Utah driver's license.

Those who support the licenses say they force illegal immigrants to learn the rules of the road and sign up for auto insurance. But others worry that easing license restrictions would allow terrorists like the Sept. 11 hijackers and other criminals to insinuate themselves into American society.

Utah is one of 10 states that permit illegal immigrants to get drivers' licenses.

Last July, Tennessee became the first state to establish a two-tier licensing process. That state's "certificate for driving" is available to illegal immigrants and other noncitizens, including foreign students.

The Utah bill would invalidate licenses already issued without a Social Security number on the holder's next birthday after July 1. The new "driving privilege card" would have to be renewed annually, at a cost yet to be determined. It would look different from a driver's license and would be stamped with the phrase, "FOR DRIVING PRIVILEGES ONLY -- NOT VALID FOR IDENTIFICATION," or something similar.

An attempt last session to alter the driver's license requirements failed after a demonstration just before lawmakers adjourned. The sponsor of that legislation, Sen. Bill Hickman, R-St. George, said if his fellow lawmakers had known about the problems associated with the existing licenses, "that bill would have moved through and very easily had been passed."

Gov. Jon Huntsman Jr. was briefed on the audit findings earlier this week by lawmakers and "is generally supportive of the bill," his spokeswoman, Tammy Kikuchi, said. "Of course, we'll have to watch it as it goes through the process."

Huntsman is concerned "about a Utah law permitting these licenses to be used for fraudulent purposes," Kikuchi said. "I think it is definitely a concern, especially if Utah is only one of a few states that have this."

Rep. Glenn Donnelson, R-North Ogden, said he's supporting Bramble's bill and will hold his own bill that would not allow illegal immigrants to drive at all.

"It does everything I wanted to do and gives them a little more leeway to drive," Donnelson said. "I'm comfortable with that."

Luz Robles, co-chairwoman of the Utah Hispanic Legislative Task Force, said her group acknowledges problems raised in the audit and will work with the governor and Legislature to come up with a solution.

Robles said those who misuse Utah's driver's license system deserve to be prosecuted, but she noted they comprise only a small number of illegal immigrants.

"There have been contributions made by many undocumented workers to Utah's economy," she said.

Matt Throckmorton, a former state lawmaker who remains actively opposed to illegal immigration, said Bramble's bill does solve some key problems.

"Sen. Bramble's bill is a significant step in the right direction to ensure there is no voter fraud and to ensure individuals are not obtaining benefits they're not entitled to obtain," he said, adding that people will still likely come to Utah to get drivers' licenses.

"We are going to become the highest destination state," he said. "That's a big issue."

However, Alex Segura, board member of Utahns for Immigration Reform and Enforcement, said his group won't support the bill because it still grants recognition to illegal immigrants.

"They are here illegally, they broke the law to get here," he said. "You don't give someone who broke the law ID." E-mail: lisa@desnews.com; dbulkeley@desnews.com

English First Foundation Issue Brief

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Bilingual Ballots: Election Fairness or Fraud?

Bilingual ballots remain as controversial today as they were in 1975--perhaps even more so. As Congress considers this aspect of the Voting Rights Act, it may well be forced to make a difficult choice.

Advocates of bilingual ballots are demanding that the Voting Rights Act be changed to require more bilingual ballots and election materials for more people. Opponents of the bilingual ballots see the upcoming renewal process of this part of the Voting Rights Act as a chance for Congress to rectify its error of 1975.

This issue brief is intended to provide a summary of potential controversies in this area.

Bilingual Ballots Not Part of Voting Rights Act for 10 Years.

Contrary to popular belief, bilingual ballots were not required by the Voting Rights Act until the 1975 amendments were added to it. That it took a decade for Congress to legislate in this area indicates that the problem of the Khmer-speaker confronted with a ballot written in English was not of the same intensity as that of an African-American attempting to register to vote at a rural Alabama courthouse in 1963.

Advocates of bilingual ballots had the same problem then that they do today: there is little evidence that bilingual ballots were needed by many people.

Granted, the Spanish-speaking citizens of Puerto Rico are United States citizens. But until recently, both English and Spanish were the official languages of the Island and both languages were taught in its schools. American Indians are also qualified voters who may or may not have language difficulties.

Fortunately for supporters of bilingual ballots, anecdotal evidence exists for virtually any point one might wish to prove. Abigail Thernstrom's book, *Whose Votes Count?* demonstrates that the need for bilingual ballots was scarcely evident even during the hearings Congress held on the issue. She notes on page 54 that the Mexican-American

Legal Defense and Education Fund (MALDEF) had a tough time finding any witnesses able to honestly testify as to their need for bilingual voting services:

If the hearings were a staged event, the performance was less than perfect. "We were able to produce those [needed] horror stories," a MALDEF representative would later say. "But not many of them. . . . We did it really by the skin of our teeth."

And again on page 56, Thornstrom notes:

Many of the charges came from a handful of witnesses reporting on very few Texas counties . . . "What we found," one lobbyist later frankly admitted, "we portrayed . . . as a giant state-wide pattern, which it really wasn't."

If the problem bilingual ballots were supposed to address among Hispanic citizens was hard to find, what of the American Indians?

The need for bilingual services among these voters turns out to be at least debatable. Senator Frank Murkowski (R-AK) was moved to introduce S.1595, the Alaska Native Languages Preservation and Enhancement Act of 1991. The Senate passed this legislation on November 25, 1991. This bill would allow \$10 million to be spent to preserve languages which are otherwise expected to die out shortly, primarily because children are not learning the ancestral languages, and have not been for some time. One does not need to preserve things which are growing robustly.

The question of continued need for this service is also begged by a statement in an article on Indian religion in Mother Jones:

[U]nlike on many reservations, the traditional language is alive and spoken everywhere; when the photocopier in the tribal office breaks down, the secretaries discuss how to fix it in Havasupai (emphasis added).<1>

The tribe in question has its reservation in the bottom of the Grand Canyon, which can be reached only by helicopter or a seven mile hike. Clearly, physical isolation has helped preserve their language. Most reservations are not nearly so remote from English-speaking America. That is why traditional Indian languages are disappearing.

Advocates of Bilingual Ballots Caught in Paradox of Their Own Design

Supporters of bilingual ballots have argued that these services are desperately needed. MALDEF released a report in 1982 which claimed bilingual ballots were essential for Hispanic voters. The MALDEF study reported that 70% of those citizens who spoke only Spanish would be less likely to register and vote if they could no longer get oral help in Spanish.<2> Fully 72% of monolingual Spanish speakers claimed they would be less likely to vote if bilingual ballots were discontinued.<3>

(It is not without interest that this same MALDEF 'study' claimed that fully 21% of the citizens classified as "English Monolingual" stated they would be "less likely" to vote "without Spanish help" and 14% of the "English Monolinguals" supposedly were less likely to vote without a bilingual ballot.<4> Why a substantial percentage of persons who speak just English needed "Spanish help" and bilingual ballots was not explained.)

Yet the same people who support bilingual ballots because people aren't learning English turn around and say a Constitutional amendment making English the official language of government in America is unnecessary because everyone is learning the language. To attack the proposed English Language Amendment (ELA), American Civil Liberties Union legislative counsel, Antonio Califa used two recent studies which "show that the rate of English language acquisition by both native-born and immigrant Hispanophones (first language heard is Spanish) is impressive."<5>

Califa went on to suggest that by the second generation, the sons and daughters of Hispanic immigrants have a "working knowledge in both the native language and English. By the third generation, English is the preferred language."<6> One study Califa quoted claimed that:

Eventually, 52% of the Hispanophones will adopt English as their principal language. Of the remainder, 39.7% will be Spanish bilingual. Spanish monolinguals comprise 8.3% of the native-born Hispanophone population.<7>

Yet another opponent of the English Language Amendment, Joseph Leibowicz, suggested that support for such a law was directed against Hispanics because Hispanics were not assimilating:

The proponents of the ELA are at least partially correct: the situation of Spanish speakers in the United States may actually be "unique" in several significant respects. . . .

All these elements--a substantial indigenous population; a continuing influx of new Spanish speakers; large, densely populated areas that are essentially monolingual Spanish; a high percentage of sojourners with no long-term commitment to American society--promote mother-tongue maintenance and may slow English acquisition.<8>

Thus, opposition to bilingual ballots is argued to be anti-Hispanic because (1) Hispanics are learning English anyway, making an English Language Amendment to the Constitution unnecessary and, simultaneously, that (2) Hispanics are not learning English, so bilingual ballots are necessary. And when MALDEF suggests that bilingual ballots help monolingual English-speakers to vote, one starts wondering whether advocates of bilingual ballots have allowed advocacy to triumph over accuracy in the name of preserving bilingual ballots.

The real intention of bilingual ballot advocates may be gleaned from a comment by a Canadian official:

According to Maxwell Yalden, the commissioner of official languages for Canada, "We do not have the separatist problem in Canada because we have two languages. We have the problem because we refuse to give status to the other [French] language."<9>

What this suggests is that bilingual ballots are an exercise in building self-esteem for professional ethnic activists. It does not matter to them if most Hispanics are learning English or not. The essential thing is that Spanish (and other languages) appear on the ballot; that the language of their immigrant ancestors is given "status" by the federal government. This is nothing more than taxpayer-funded occupational therapy.

One advocate goes so far as to suggest that inability to speak English is as immutable a handicap as a missing leg:

Admittedly, a person's language is not "immutable" as that term is used in the context of race, gender, or national origin. As one court has noted, however, for many who speak only one language, the practical reality is that "language may well be an immutable characteristic like skin color, sex or place of birth." For adults in particular, especially those with limited financial resources, learning a new language may be extremely difficult or impossible. The immutability of a trait suggests that courts should guard vigilantly against that trait's becoming the basis of discriminatory state actions.<10>

Thus, adults cannot be expected to learn English and, thanks to bilingual education programs, neither can children.<11> There is clearly an agenda at work here that is determined to destroy the linguistic unity of this nation of immigrants.

Those who are pushing this agenda evidently see nothing wrong with misrepresenting evidence, including Supreme Court cases, if that should further their cause. Consider a legal brief submitted to Congress by the firm of Hogan & Hartson on behalf of the Mexican American Legal Defense and Education Fund (MALDEF). This brief claims that "[a]nother major step towards the development of bilingual education in this country came in 1974 with the Supreme Court's *Lau v. Nichols* decision. . . . The Court also noted the effects of a school system's failure to provide special bilingual instruction."<12>

Actually, though MALDEF had asked the Supreme Court to order schools to conduct classes in Spanish for Spanish-speaking students, the Court refused to do so.<13> In fact, the Court explicitly refused to require schools to adopt any specific approach:

Teaching English to the students of Chinese ancestry who do not speak the language is one choice. Giving instruction to this group in Chinese is another. There may be others.<14>

English First is well aware that the federal government used the *Lau* ruling as a rationale for requiring so-called transitional bilingual education programs for Spanish-speaking children. MALDEF's 1992 brief uses artfully crafted language to convey a misleading impression to the nation's legislators.

English Required For Citizenship in Most Cases

It is safe to say that because of its nearby border, Hispanic immigrants from Mexico will demonstrate the greatest "need" for bilingual voting services among America's recent immigrants. This is because most immigrants are required to demonstrate a knowledge of English before they can achieve citizenship, and thus the right to vote. But a child born on U.S. soil is automatically a citizen, even if his or her parents arrived on U.S. soil illegally. Obviously Mexicans have an easier time crossing the border than, say, Taiwanese, simply because of geographic proximity.

By 1906, Congress had decided to require oral English literacy as a condition of becoming a naturalized American citizen.^{<15>} In 1950, Congress added the requirement that persons who wish to become citizens must "demonstrate an understanding of the English language, including an ability to read, write and speak words in ordinary usage in the English language."^{<16>}

Since only citizens may vote, legal immigrants who became naturalized citizens since 1950 can be expected to be at least somewhat literate in English. And since almost two full generations have passed since English literacy was required to achieve citizenship, it is no wonder that advocates of bilingual ballots must resort to opinion polls and a few horror stories. The need just doesn't exist.

Bilingual ballots are just one more way that well-meaning people hinder the progress of certain ethnic groups in this nation. Most Americans know, intuitively, that English is the language of this country and that those who do not learn it will be unable to take their rightful place in what remains the American dream. A 1990 poll reported in the Houston Chronicle found that 87% of Hispanics surveyed thought it their "duty to learn English."

It seems clear to English First that the "problems" bilingual ballots were supposed to resolve were, and remain, practically non-existent. A person who achieves citizenship, and thus the right to vote, is unlikely indeed to have absolutely no knowledge of the English language.

The Senate hearings on this issue also suggest that bilingual ballots are just the beginning. Many witnesses complained that there were X percent of a given minority in a place but only a much smaller percentage of that minority was elected to office. Bilingual ballots today may mean strict quotas for all minorities among elected officeholders tomorrow.

That policy is now underway for Hispanics. Gloria Molina represents many fewer voters than other supervisors in Los Angeles do. Her "Hispanic" district is full of Hispanics who are not citizens and thus not entitled to vote.

The pro-quotas side can be spotted by their constant use of the phrase "persons of voting age" in their complaints. If fewer Laotians of voting age vote than do whites, the quota

crowd shouts discrimination. Never mind that non-citizens, convicted felons, or persons who do not register to vote cannot legally vote.

Should Aliens (Legal and Illegal) Trigger Bilingual Requirements?

Section 203 is invoked by looking at census data for a given jurisdiction. If people identify themselves as citizens and speakers of another language, that is where the investigation stops.

The Census Bureau publicizes that it is forbidden to share its data with other agencies. Even so, the chances that a person who is here illegally will confess that to a census taker is at best problematic.

Takoma Park, Maryland, has decided to allow non-citizens to vote in local elections. Washington, D.C. is considering similar legislation. This is an open invitation to all kinds of fraud and abuse.

Will non-citizens be kept on a separate election roster at each polling place? If not, it is possible that the non-citizen may 'accidentally' be allowed to vote in federal or state elections. Will there be special "non-citizen" ballots or voting machines when elections combine federal and local matters? If not, the chance of ineligible voters shifting the results of elections strongly exists.

Unneeded Bilingual Ballots Quite Expensive

Birthday presents, car rebates and bilingual ballots have one thing in common: a person may not need something but will happily accept what appears to be free.

When the General Accounting Office was asked to investigate the costs of bilingual election services in 1986, it found the process less costly than might have been expected. Of the 375 political subdivisions (in 21 states) covered by the law, <17> 83 jurisdictions stated it cost roughly \$388,000 to provide written bilingual assistance and 39 jurisdictions stated it cost them about \$30,000 to provide oral assistance for the 1984 general election.<18>

Advocates of increased coverage for the act are welcome to suggest that this sum seems relatively small. Yet costs are held down on the basis of four factors:

(1) Most of this assistance was done in Spanish.

According to the GAO:

Hispanics were the most commonly served minority group, with 96 percent of the respondents that offered written assistance doing so for Hispanics, and 89 percent of those offering oral assistance serving Hispanics.<19>

Yet under the proposed legislation, there will not only be a vast increase in coverage of the act, but, because of other proposed amendments, in the number of languages in which assistance must be provided. Simply by increasing the amount of oral assistance required to assist speakers of relatively obscure Indian languages to vote, the act will doubtlessly drive up these costs, and probably by a substantial margin.

Asian and Pacific Islanders comprise just one census category but speak many languages. An interpreter fluent in the language spoken by most Cambodians will be of little help to a Pakistani who knows little English.

Section 203 requires that a county covered under it that "provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language." There will be a lot of translating that must be done in addition to that required for a ballot. All these materials cannot be produced in a multitude of languages at no cost to the taxpayer.

(2) Jurisdictions with large linguistic minorities are presently excluded from coverage.

Advocates of a renewal of Section 203 are also on record as wishing to eliminate or modify the requirement that a county must have at least 5% of its population be Limited English Proficient (LEP) citizens of voting age.<20>

To lower this threshold will impose vast new costs on those who can least afford it--urban America. Bilingual Spanish services would be required in Los Angeles, San Diego, Orange and San Bernadino Counties, CA, Cook County, IL, and Queens County, NY, while bilingual Asian (languages unspecified) services could be also required in Los Angeles and San Francisco Counties, CA and Kings, Queens and New York Counties, NY.<21>

In addition, hard pressed rural America will find its election costs greatly increased if the Native American Rights Fund has its way. This group suggests Section 203's bilingual requirements could be invoked if a group of speakers of a particular Indian language "live on or near a reservation or other identifiable Indian community, and they exceed five percent of the total Indian voting age population of that reservation or community."<22>

A community forced to provide bilingual services in any Indian language spoken by 5% of the population of a reservation will be forced to deal with some highly obscure and difficult to translate languages. Qualified interpreters may well be nonexistent. But the legal requirement will exist whether interpreters exist or not.

(3) Much of the translation help is provided by volunteers.

According to the GAO study:

Most jurisdictions incur no costs to provide oral assistance because they do not hire additional workers. Instead, they seek to find poll workers who are able to converse in the covered minority language. Also, jurisdictions generally pay bilingual poll workers at the same rate as monolingual workers. In some cases, jurisdictions do not actually have bilingual workers stationed at the polling places. Rather, someone is available to come to the polling place, if called, to provide assistance. These standby workers may be volunteers, or they may be paid, or paid only if they are actually called upon to assist at the polling place.<23>

According to the jurisdiction breakdowns in Appendix 2 of the GAO report, volunteers or other no additional cost services have predominated in most parts of the country. In fact it is so common that it is used as an argument as to why the costs of multi-language voting is supposedly not high: "for small counties, oral voting assistance may be provided at almost no cost as most interpreters volunteer their services gratuitously."<24>

Just because something has been free or relatively inexpensive to obtain in the past is no guarantee that it will remain inexpensive in the future. Gasoline used to be 25 cents a gallon, but a government should not count on filling its motor pool continuously at such a price. If Section 203 is renewed with expanded coverage, it will require many governments to locate interpreters of fairly uncommon languages.

A fluent Hmong-English translator who knows that the county will likely be sued if it does not use his services is less likely to donate them than is the Spanish major at the local college. Spanish translators are relatively plentiful. Translators of other languages are less so. The rules of supply and government-created demand will doubtlessly have an impact on the taxpayers at election time.

(4) Bilingual services could be legally targeted to those who specifically request them.

Complaints about the cost of bilingual ballots were rampant prior to the 1982 reauthorization of the Voting Rights Act itself. In 1976, the first year bilingual election materials and services were required, Los Angeles County was forced to spend \$854,360 just for the primary election.<25> Los Angeles was able to lower its costs to \$135,200 by the 1980 general election, primarily by "targeting" bilingual services only to those who request them.<26> "Targeting" also helped San Diego County reduce its bilingual election expenses from \$126,000 for the 1976 general election to \$54,000 in 1980.<27>

It appears that under proposed amendments to this part of the Voting Rights Act, targeting will be illegal. Furthermore, many districts which have voluntarily provided multilingual voting services in the past will be required to do so by law, which means informal and inexpensive approaches may have to be replaced with expensive and broad ones. Sacramento County, California calculates that the bill would add \$50,000 to the cost of every election just for bilingual ballots because it will be required to provide these services not simply for those few who request them.<28>

Supporters of the bill argue that bilingual (or multilingual) ballots should be required, "no matter what the cost is," as Los Angeles County Supervisor Gloria Molina told a Senate subcommittee. One advocate of an expansion of multilingual voting requirements put it even more bluntly:

Many people express an instinctive worry that a constitutional rule that requires states to provide multilingual voting assistance to every non-English speaker would be excessively costly and administratively burdensome in areas with only a few non-English speakers. As with most constitutional requirements, however, states would have the flexibility to develop systems for identifying voters needing the assistance and for implementing the multilingual system. Courts should nevertheless place a heavy burden on states to accommodate every voter needing assistance unless such accommodation would be clearly unreasonable. For example, if there were only one person within a 500 mile radius that needed assistance, and no one was available in that area to interpret the ballot, assistance might not be a reasonable demand on the state (emphasis author's).<29>

Granted, Congress is not considering setting the standard quite as high as this advocate suggests. But judges may have other ideas. While Congress did not think to require bilingual ballots until 1975, judges began requiring bilingual ballots and election materials for Puerto Rican voters in New York and Pennsylvania in 1974.<30>

Accurate Translations Cannot Be Taken for Granted.

Supporters of bilingual ballots suggest that without them, persons who do not understand English may well have "an incentive for such citizens to cast uninformed votes."<31> Yet they forget (or ignore) the fact that translation is far from an exact science. A bilingual ballot or interpreter may not convey the real meaning of a referendum issue or beliefs of a candidate. A vote cast on that basis is not only "uninformed;" it may well reflect precisely the opposite of a voter's real intentions.

This bill would require elections conducted in areas with Indian populations of a certain number to provide all materials in the language(s) of the affected tribes--even if the language does not have a written form. This opens the door to fraud and misrepresentation of issues by "interpreters." Such fraud has already been documented by U.S. Assistant Attorney General John Dunne during the 1988 and 1990 elections:

[E]ven when translators were available, the message conveyed to minority language voters often did not resemble the issue on the ballot and it was impossible for a minority language individual to cast an informed vote.<32>

In his oral testimony that same day, Mr. Dunne noted that a Victim's Rights Initiative was translated as referring to any number of things other than the issue at hand. He added that many Indian languages do not even have English equivalent words for complicated ballot questions.

When one considers that even fair-minded lifelong English speakers may disagree as to the proper wording of a ballot initiative on euthanasia, gun control or Proposition 13-style taxation limits, one realizes that accurate, disinterested translation cannot be taken for granted.

Washington Post columnist Richard Cohen mentioned this kind of problem in his column of March 5, 1992:

This [false advertising by candidates] is especially the case when it comes to commercials on ethnic radio stations or ads in ethnic newspapers. They amount to the back channel of politics. Often unmonitored by the press, they can be the vehicle for the dirtiest of politics.

Can Government Solve the Translation Problem?

Government bureaucrats are not known for finding the least costly way to accomplish a goal. If one interpreter makes mistakes, bureaucrats could demand localities pay another person to keep an eye on the interpreter. Or they could do what bilingual education bureaucrats attempted to do to Alaska: require the state pay to develop written forms of Eskimo languages and then teach them to the Eskimo children before teaching the same children English.

The ability to misrepresent issues in a language which does not have a written form should not be understated. A tape recording may seem like a good solution to this problem. But what of the voter who understands neither the ballot nor the tape? Demands for human translators are inevitable. And with human, on-site translators, there will always be the potential for abuse.

The costs of government certification of translators may be inferred from a study of court appointed translators by Bill Piatt, an opponent of official English:

Through 1986, the Administrative Officer of the Courts had spent over one million dollars in test development and administration for Spanish language interpreters, had administered a Spanish interpretation test more than seven thousand times (some took the test more than once), and yet had been able to certify only 292 interpreters.<33>

Since ballot referendum questions are written in language which often resembles "legalese," or are artfully drafted so one must 'vote yes to vote no,' the high cost of certifying courtroom interpreters would be multiplied many-fold if governments were forced to certify interpreters in all languages used in a given voting jurisdiction.

Don't Private Sector or Volunteer Translators Make Mistakes?

Obviously so. It is basically understood that one of the disadvantages of being unable to speak the national language is the constant threat of being given false or misleading information in one's native tongue.

Yet this statement simply demonstrates the dangers of government sponsored-translation services. The government cannot guarantee the accuracy of all translators at every polling place. Yet a person who seeks translation from a volunteer has vastly lower expectations than one seeking translation from a government employee or government certified individual. Those who seek the advice of partisan volunteers at the polling place know to take certain statements with a grain of salt. One does not expect officials of one's government to lie. Accordingly, a government translator may be accorded more credibility by voters than he or she may deserve.

Government-written bilingual ballots are unnecessary for another reason. I find when I go to vote that the problem is not getting help in casting my ballot but avoiding all the "helpers" and their literature as I walk to the polls. Political parties can be expected to print materials in whatever languages the electorate requires even if the Voting Rights Act itself were to vanish tomorrow.

The use of volunteer translators is already common. Of course, what is volunteered for free may be the product of a political agenda. We do well to remember a Passaic, New Jersey Assemblyman who managed to falsify 5,000 voter registration forms and a Patterson Council President, who told workers "they could register convicted criminals and immigrants with alien cards." And, as we have seen above, should the government require something, it is less likely to be able to get that service at no charge.

Are Bilingual Ballots Enough to Guarantee an Informed Vote?

The people most likely to understand the problems of bilingual ballots are precisely those who are bilingual. They tend to agree that the answer to this question is no.

There is an enlightening book out called *The Bilingual Courtroom*. The author suggests that there are many problems in translating legal language from English to another language, Spanish in this case. Sometimes there is literally no corresponding word in Spanish (or any other language) for an English word. And sometimes, a Spanish word which is used to mean the same thing as the English word also can mean something else entirely.

If the answer to this question is indeed "no" (a point all but conceded by organized bilingual ethnic activists) then bilingual ballots are not nearly enough. Congress might well consider requiring all political commercials, all campaign literature and all new coverage to be translated into every language spoken among the electorate.

It is worth noting that this is precisely what is argued in Bill Piatt's book, *Only English?* on page 150:

There may or may not be a right to be informed via broadcast media in a foreign language. As a result, while a voter arriving at the polls who suffers a language barrier may be entitled to a bilingual ballot, he or she may not understand the issues or the

positions of the candidates upon which he or she is voting if the public affairs programming in the local media has been presented exclusively in English.

Lawsuits in this area can be expected. And the outcome of such litigation is at best unpredictable.

Bilingual Ballots and Xenophobia

Much is made of the supposed threat of official English laws by supporters of bilingual ballots. The Mexican American Legal Defense and Education Fund (MALDEF) appears to argue that bilingual ballots must be required by the federal government because of the presence of official English state laws.

MALDEF's demands for bilingual ballots and bilingual government services of all kinds upset many people. These costly programs, like bilingual education, appear to have graduated a second generation of English illiterates who, MALDEF will claim, now need bilingual services as adults. This is the equivalent of a young man who kills his parents and then asks the court for mercy because he is an orphan.

Americans are traditionally welcoming of immigrants. And statistics show that most immigrants want to learn the language of this, their adopted country so that they can take advantage of the opportunities this nation has to offer. National, government enforced bilingualism is alien to the history of this nation. MALDEF may wish to make America another Canada in which only those fluent in both English and Spanish may dream of working for their government. But this is not the goal of the people MALDEF claims to represent, nor is it the wish of most other Americans.

MALDEF's bilingual policies and lobbying used to take place in a vacuum. Fish don't notice water and English-speakers used to take it as a given that English was this nation's language of government. MALDEF's successes came to the notice of the rest of America and the rest of America was outraged. They started passing official English initiatives by large majorities. (If ever allowed to work its will, Congress would too.)

Now MALDEF claims the laws its unceasing whining provoked demonstrate why America should accept more of their demands. This attitude is bound to make Americans less accepting of immigrants generally as it drives up the cost of accepting them.

Most Americans wish to continue to welcome refugees from troubled lands. But if that welcome requires hard-pressed taxpayers to import bilingual teachers, hire bureaucrats fluent in the new immigrants' language(s), reprint most government documents and otherwise meet the demands of the professional bilingual lobby, that welcome is jeopardized. MALDEF and its allies sow the seed of xenophobia and then complain when their crop comes in.

Furthermore, bilingual ballot provisions are sometimes used in ways which are a clear affront to the principles of democracy. The right to vote is fundamental. When Congress

legislates in this area, it must be careful that in the name of so-called "fairness" it does not invite new corruptions of the democratic process nor vast expenses upon states or candidates.

We do well to remember that not so long ago, the United States Supreme Court was forced to decide whether a successful citizen ballot initiative in the state of Florida violated the Voting Rights Act because the petitions used to put the measure on the ballot were not translated into Spanish in 6 of the 67 counties in Florida covered by the Act (*Delgado v. Smith* 88-1327). And this was not an isolated attempt to abuse the Voting Rights Act. A similar effort was made in Colorado.

This was not a use of the Voting Rights Act to protect the right of citizens to be heard. Instead, this was a case where an attempt was made to use the Voting Rights Act to deny the voice of the citizens of Florida, who passed the ballot measure by a vote of 84-16%

Obviously, since the measure in question was an official English amendment to the Florida constitution, we at English First had an interest in this decision. But every citizen, particularly those many African-American citizens who suffered so long without the right to vote, have a definite interest in seeing that those who would use the Voting Rights Act as a political weapon to overturn the results of fair elections are prevented from doing so.

Should Congress wish to continue along this path, English First regrets that there will be unfortunate, but predictable consequences. Resentment at the costs of a multi-language election process in which decisions can be regularly overturned by a judge in cahoots with representatives of special interest groups can only be expected to arise. Accordingly, Section 203 should not be renewed.

Notes

<1> Baum, *Sacred Places, MOTHER JONES*, Mar.-Apr. 1992, at 32, 37.

<2> Guerra, *Voting Rights and the Constitution: The Disenfranchisement of Non-English Speaking Citizens*, 97 *YALE L.J.* 1419, 1430 (1988).

<3> *Id.* at 1431.

<4> *Id.*

<5> Califa, *Declaring English the Official Language: Prejudice Spoken Here*, 24 *HARV. C.R.-C.L. L. REV.* 293, 314 (1989).

<6> *Id.* at 314.

<7> *Id.* at 316.

<8> Leibowicz, *The Proposed English Language Amendment: Shield or Sword?*, 3 *YALE L. & POL'Y REV.* 519, 522-23 (1985).

<9> *Id.* at 533.

<10> *Official English: Federal Limits on Efforts to Curtail Bilingual Services in the States*, 100 *HARV. L. REV.* 1345, 1352-1353 (1987).

<11> See Roos, *Bilingual Education: The Hispanic Response to Unequal Educational Opportunity*, 42 *LAW & CONTEMP. PROBS.* 111, 124-125, note 64 ("The most recent study of the impact on bilingual education on students . . . in 1978 . . . indicated no gain in student achievement in either English language skills or in mathematics . . . in some cases, comparable students in traditional classrooms made slightly greater gains in English languages skills. . . . The author, however, is of the deeply pessimistic view that educational research is not likely to shed much light on the subject. The author agrees with the opinion expressed at a meeting on October 5, 1977 . . . Vice President Mondale . . . stated that when all the research results were in, one had to trust one's instincts. And it was instinctive knowledge that children learn best in a language they understand.) Roos, at the time was the director of education litigation for MALDEF. If MALDEF is willing to support bilingual education despite research evidence of its failure to achieve its Congressionally mandated goal of improved English competence, one suspects that its agenda does not encompass improved English for children or a commitment to a disinterested search for workable solutions.

<12> HOGAN & HARTSON, *REDRESSING IMPEDIMENTS TO VOTING FACING LANGUAGE MINORITIES: THE NEED TO REAUTHORIZE AND EXPAND SECTION 203 OF THE VOTING RIGHTS ACT 74-75* (March 4, 1992).

<13> See Brief of Amici Curiae Mexican American Legal Defense and Education Fund, American G.I. Forum, League of United Latin American Citizens and Association of Mexican American Educators at 13, *Lau v. Nichols*, 414 U.S. 563 (1974) (No. 72-6520) ("Contrary to the specialized education physically handicapped children are given . . . Spanish-speaking children lag behind educationally until they make the extra effort to learn a language--English--very unlike the one with which they are familiar. Failure to provide Spanish language instruction damages the student not only educationally, but emotionally as well"[emphasis in original].)

<14> *Lau*, *supra*, at 565.

<15> Leibowitz, *The Official Character of Language in the United States: Literacy Requirements for Immigration, Citizenship, and Entrance into American Life*, 15 *AZTLAN* 25, 47 (1984).

<16> *Id.*

<17> The 375 figure may strike some readers as high. But there are two ways a jurisdiction may be federally required to provide bilingual election services. Section 203 of the Voting Rights Act of 1965 presently covers 197 counties. Statement of Supervisor Gloria Molina before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, Hearing on the Voting Rights Act Language Assistance Amendments of 1992 (February 26, 1992) ("Molina Statement"). However Section 4 of the Voting Rights Act also mandates bilingual assistance if certain conditions are met, a "formula [that] draws in the entire states of Alaska, Arizona, and Texas, and counties in California, Florida, Michigan, New York, North Carolina, and South Dakota." Statement of John Dunne, Assistant Attorney General before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, Hearing on the Voting Rights Act Language Assistance Amendments of 1992 (February 26, 1992) ("Dunne Statement").

<18> UNITED STATES GENERAL ACCOUNTING OFFICE, BILINGUAL VOTING ASSISTANCE: COSTS OF AND USE DURING THE NOVEMBER 1984 GENERAL ELECTION, September, 1986, at 1,2.

<19> Id. at 14.

<20> Molina Statement, *supra*, note x.

<21> Id.

<22> NATIVE AMERICAN RIGHTS FUND, AMERICAN INDIAN TRIBES AND SECTION 203: THE LANGUAGE ASSISTANCE PROVISION OF THE VOTING RIGHTS ACT (1991) at 5.

<23> GAO Report, *supra*, note 18, at 20.

<24> Guerra, *supra*, note 2, at 1435, note 92.

<25> S. REP. No. 417, 97th Cong., 2nd Sess. 65 (1982) reprinted in 1982 U.S. CODE CONG. & ADMIN. NEWS 177, 243.

<26> Id.

<27> Id.

<28> \$50,000 cost seen for Spanish Ballot, Sacramento Bee, February 26, 1992.

<29> Guerra, *supra*, note 2, at 1435, note 89.

<30> Id. at 1436, note 94.

<31> Leibowicz, *supra* note 8, at 548.

<32> Dunne Statement, supra, note 17.

<33> Piatt, Attorney as Interpreter: A Return to Babble, 20 N. MEX. L.R. 1, 6 (note 40), (Winter, 1990).

<34> N.Y. Times, Sept. 30, 1990.

Last modified: April 27, 1997. Corrections still in progress.

July 11, 2006, 5:58 a.m.

Backward March

The House moves to do Voting Rights wrongs

By Jim Boulet Jr.

House Republican leaders have decided to fast track what they may think is a simple reauthorization of the Voting Rights Act, H.R. 9. In their haste, they may well be writing an obituary for fair elections.

Let's look to the Left to see the danger. Liberal interest groups almost unanimously support the current legislation. They've read the bill, especially the ominous language of section 5 "criteria for declaratory judgment":

Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.

What do groups who have endorsed H.R. 9 believe to be obstacles to the right to vote? Common Cause has a list:

I.D. Requirements: "Once registered, voters need not bring identification with them to vote. Identification can consist of a broad range of documents so as not to discriminate against those without driver's license or other official ID."

Bans of Felon Voting: "The right to vote should be automatically restored to people who have been convicted of a felony and have served their time in prison."

Purging of Voter-Registration Lists: "Voter databases must be accurate and complete. A voter cannot be purged from the list unless there is direct communication from the voter, the registrar of another state, or from the courts (in the case of a voter who has committed a felony)."

Should H.R. 9 be signed into law, there will be a flood of lawsuits challenging every effort, including those opposed by Common Cause, to reduce the possibility of voter fraud as long as someone, somewhere can suggest a "disparate impact" upon a protected minority group.

Those protected minorities would now include all Limited English Proficient (LEP) voters everywhere in the United States.

Section 5 of H.R. 9 specifically cites the "guarantees set forth in section 4(f)(2)" of the Voting Rights Act for a reason. Section 4(f)(2) states:

No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

Those states and localities which have managed to avoid the cost of mandatory multilingual voting should be aware that the other side considers requiring people to vote in English to impose a disparate impact upon (LEP) voters.

To add insult to injury for state and local taxpayers, Section 8 of H.R. 9 replaces “census data” with “American Community Survey data in 5-year increments.” In other words, the discredited idea of “census sampling” would be imposed on the American voting system.

The American Community Survey is a sample, by its own admission:

The sample for the ACS uses a two-stage stratified annual sample of approximately 838,000 housing units designed to measure socioeconomic and demographic characteristics of housing units and their occupants.

The ACS determines an entire household Limited English Proficient if it contains just one speaker of any foreign language in the entire household (*American Community Survey 2004 Subject Definitions*, page 62). Last names matter to the ACS too: “Spanish and non-Spanish surnames are also used to assist in assigning an origin” (page 41). ACS believes, mistakenly, that every “Lopez” struggles with English.

An LEP individual, such as an illegal-alien farm worker, need reside in a community during just February and March in order to trigger bilingual ballot requirements for years, even if that LEP individual is long gone.

According to the “Advanced Methodology” section on the “Two Month” rule and the ACS: This rule states that if a person is staying in a sample unit at the time of survey contact, and is staying there for more than two months, he or she is a current resident of that unit whether or not the unit is also the person’s usual residence under census rules. ... If a person has no place where he or she usually stays the person is to be considered a current resident of the sample unit regardless of the length of the current stay.

In short, the Voting Rights Act could now also be known as “The Endless Election Litigation Act,” “The Vote Fraud Enabling Act,” and “The Mandatory Multilingual Elections Everywhere Act.”

House Republicans were denied a chance to amend this dreadful bill before the July 4th recess. Now it is back on the House agenda. And Senate Judiciary Committee Chairman Arlen Specter (R., Pa.) can be relied on to push it through the Senate before August recess if the House passes it.

Without amendment, that would be doing rights wrong.

— *Jim Boulet Jr. is executive director of English First.*

COLUMBIA UNIVERSITY
DEPARTMENT OF POLITICAL SCIENCE

June 21, 2006

Senator Arlen Specter
Chair, Senate Judiciary Committee
711 Hart Building
Washington, DC 20510

Dear Senator Specter:

I am a professor of political science at Columbia University. I have written a series of articles on the 1965 Voting Rights Act, detailing the emerging tradeoff between the substantive and descriptive representation of minority interests in Congress. I was also the expert witness for the state of Georgia in the redistricting following the 2000 Census, in the case that eventually became *Georgia v. Ashcroft*.

I am writing to you today to express my concerns regarding the clause in the Voting Rights Act renewal legislation that seeks to overturn the Court's verdict in *Georgia v. Ashcroft*. The VRA is about representation, pure and simple, not about electing certain candidates to office, and to say otherwise now is to profoundly misconstrue the Act's legislative history.

There are many ways to achieve representation, which we can divide into descriptive-based representation and substantive-based representation, the former focusing on maintaining minorities in office, and the latter on passing policies favored by the minority community. I do not believe we can say that either of these is intrinsically superior to the other, and there are times when they go hand-in-hand. Indeed, my research shows that this used to be the case – in past decades, the only way for minorities to have an effective voice in the political process was to elect as many minority candidates to office as possible. But now we live in a world of tradeoffs, where gains in descriptive representation generally come at the expense of substantive representation, and vice-versa. How these alternatives are traded off is fundamentally a political choice, and should be made through the political process.

What proponents of the current version of the re-authorization legislation are saying on this issue is that minority voters in covered jurisdictions, through their elected representatives, are to be prohibited from choosing substantive representation over descriptive, and that this prohibition should last for at least twenty five years – that their choices are limited to those plans that increase or maintain descriptive representation, even if this comes at a cost to substantive representation. This seems perverse and profoundly undemocratic; it embodies

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the view that interest groups and government officials know better what is best for minority voters than they do. This cannot be what the VRA was meant to lead to.

I have said publicly that I support re-authorization, and I would support it even in its present form if the alternative is no re-authorization at all. But the Act was supposed to bring minority voters to the point where regular politics can take over, where minorities can form coalitions and “pull and haul” to achieve their policy objectives like any other group. By construing the VRA to mean that minorities must favor descriptive representation above all else, the proposed amendments would actively prevent that from happening for the next quarter of a century.

On the other hand, I do agree that the standards set forth in *Georgia v. Ashcroft* for measuring substantive representation are vague, and that work still needs to be done on the question of how to implement the Court’s ruling in a fair, workable way. I urge you to consider alternative language in the re-authorization legislation that would preserve minorities’ ability to support laws that increase substantive representation, while still constraining states’ abilities to pass legislation antithetical to minority interests. I would be happy to work with you and your staff to develop such language.

Sincerely,

Prof. David Epstein

More Information Requests and the Deterrent Effect of Section 5 of the Voting Rights Act

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An earlier version of portions of this essay was prepared for delivery at the symposium Protecting Democracy: Using Research to Inform the Voting Rights Reauthorization Debate, The Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, University of California, Berkeley, School of Law (Boalt Hall), and the Institute of Governmental Studies, University of California, Berkeley, Washington, DC, February 9, 2006.

It is impossible to assess the impact of the Voting Rights Act (VRA) without a thorough consideration of the role of the Section 5 preclearance provision. Section 5 of the VRA was a response to a common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down. Congress therefore decided, as the Supreme Court held, “to shift the advantage of time and inertia from the perpetrators of the evil to its victims,” by “freezing election procedures in the covered areas unless the changes can be shown to be nondiscriminatory.”¹ As a result, Section 5 gave the Department of Justice (DOJ) and the United States District Court for the District of Columbia² the authority to directly review the potential impact of a broad range of proposed changes in electoral procedures and practices to determine if they might be discriminatory before they are actually implemented.³

Section 5’s impact is most commonly measured by the number of the DOJ’s objections to changes submitted by covered jurisdictions. Ball, Krane, and Lauth report that from 1965 to 1981, a total of 35,000 changes were submitted for preclearance. The DOJ objected to 815, or 2.3%, of these changes.⁴ Based on data maintained by the DOJ, from 1982 through July 29, 2005, a total of 387,673 changes were submitted to it by covered jurisdictions. The DOJ objected to a total of 2,282 changes, amounting to 0.6% of all changes during this period of time.⁵ Only 54 changes were objected to between 2000 and July 2005. The number of

¹ H.R. Rep. No. 94-196, at 57-58.

² Because so few changes are submitted to the DC District Court, we will refer to submission to the DOJ as the primary arena within which Section 5 is administered. We recognize that covered jurisdictions are free to choose to submit their proposed changes to the DC District Court for review.

³ 42 U.S.C. § 1973c.

⁴ Ball, Howard, Dale Krane, Thomas P. Lauth, *Compromised Compliance: Implementation of the 1965 Voting Rights Act*, Westport, CT: Greenwood Press, 1982, p. 137.

⁵ US Department of Justice. “Section 5 Objection Determinations.” Available at http://www.usdoj.gov/crt/voting/sec_5/obj-activ.htm.

objections, however, does not tell the whole story about Section 5's substantial impact in preventing voting discrimination.

In this report we assess the deterrent effect of Section 5 through another mechanism that the DOJ uses beyond issuing objections: the issuance of **more information requests (MIRs)**. A MIR is a request for more information on a change submitted to the DOJ. A More Information Letter is a formal letter from a senior official within the DOJ⁶ sent to a jurisdiction requesting that it provide additional information specific to a proposed change in voting procedure or practice in situations where the initial submission was inadequate to provide a basis for assessment. One or more MIRs may be included within a single More Information Letter. In these letters, the DOJ describes additional information it needs to fully evaluate whether or not a proposed change should be precleared.⁷ In this report, all data refer to the number of MIRs where more information was requested and not to the number of letters. We provide three examples of more information letters that contain these requests in Appendix A.

In issuing an MIR, the DOJ can signal to a submitting jurisdiction that it has concerns regarding the potentially discriminatory intent or effect of a proposed change. Often, the jurisdiction can be deterred from pursuing a proposed change as a result of the DOJ's concerns. We measure the impact of this MIR induced compliance by specifying if, after receiving the MIR, the covered jurisdiction decided to: (1) withdraw the proposed change,⁸ (2) submit a superseding change that replaced the original change, or (3) failed to respond to the change or

⁶ The official is typically the Chief of the Voting Section of the Civil Rights Division or his or her designee.

⁷ Department of Justice, 28 C.F.R. Part 51, §51.37, Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, as Amended.

⁸ The three letters in Appendix A resulted in withdrawals.

responded with insufficient information.⁹ Each of these three outcomes has the consequence of preventing the proposed change from being lawfully implemented.

Our analysis encompasses all changes submitted to the DOJ under Section 5 for the period 1982 through July 2005. We categorize these changes by year, type of change, and state. We then compare the number of changes to the number of objections. Finally, we note the number of MIRs issued and MIR induced outcomes.

Overall, we find that MIRs enhanced the deterrent effect of Section 5 by 51%. Our study reveals that 13,697 MIRs and 3,120 follow up requests were sent to jurisdictions from 1982 to 2005. A total of 1,162 changes that received an MIR led to withdrawals, superseding changes, or no responses. This is separate from and in addition to the 2,282 changes that were objected to by the DOJ during the same 23-year period. There is, however, notable variation in the relative impact of MIR outcomes to objections across the years examined. Significantly, MIR induced outcomes have had a much greater deterrent effect since 1999 when the number of objections decreased substantially. By our count, from 1999 to July 2005, 357 changes were deterred through the MIR process, compared to only 59 objections during the same period. MIR induced outcomes thus deterred potentially discriminatory changes at a rate six times greater than objections between 1999 and July 2005.

Recently, MIRs have become far more frequently issued than objection letters, demonstrating that they are a valuable measure of assessing both compliance with and the continued need for Section 5 of the Voting Rights Act. MIRs are among the mechanisms used by the DOJ to promote submission, facilitate full review, and develop greater understanding of the preclearance process with all the relevant players. Taken together, the number of objections

⁹ Collectively, we refer to these categories as MIR induced outcomes. The inference that we draw from the MIR induced outcomes is supportable based upon our analysis. We note, however, that there could be some circumstances in which a voting change is withdrawn as a result of circumstances external to preclearance.

and the number of MIR induced outcomes reveal that Section 5 has deterred and blocked the implementation of many discriminatory voting practices and procedures in covered jurisdictions.¹⁰ The deterrent effect of these two measures also demonstrates the clear need to maintain the Section 5 preclearance provision of the Voting Rights Act in the covered jurisdictions.

Sources of Data

Our analysis utilizes data provided by the Department of Justice. We requested any combination of reports that showed changes, objections, and more information requests by year, jurisdiction, and change type for years 1982-2005. Additionally, we requested any reports showing MIRs since 1982 that resulted in changes being withdrawn and then subsequently resubmitted.

The DOJ provided Submission Tracking and Processing System (STAPS) Statistic Reports for Changes and Objections by year and state, and by year and change type. No statistics report combining both state and change type for submissions and objections was available. No statistics report was available for More Information Requests that showed change type and/or state, and no statistics report was available for withdrawals. One MIR report was available that listed total MIRs by submission number. The DOJ also provided a Submission Listing Report: Follow-up and Study Report for the Action ASK for all states. Initially, DOJ produced this information broken down by state, but in the process of making information requests DOJ's records software was updated and the report was modified to include all states. The updated 3,483 page report provides a summary of everything that happened within a

¹⁰ Although it is not the focus of this analysis, Section 5 also serves a broader deterrence function by causing many legislators and election administrators, acting with an awareness of preclearance standards borne of experience, to steer clear of retrogressive voting changes from the outset.

submitted change receiving an MIR; therefore, it is more instructive of MIRs than the reports that solely summarize changes and objections.

In the end, we coded the following information for each submitted change receiving an MIR: state, county, sub-jurisdiction, submission number, change type, number of MIRs, more information follow-ups, and the final outcomes of the original change submitted for the period 1982-July 2005. Summary reports with this information are not maintained by the DOJ. We generated all of these summary statistics based on the detailed information on each submission maintained by the DOJ.

The MIR data were coded into fifteen change types to mirror the categories used by the DOJ. These categories were: redistricting, annexation, polling place, precinct, re-registration or voter purge, incorporation, bilingual procedures, method of election, form of government, consolidation or division of political units, special election, voting methods, candidate qualifications, voter registration procedures, and miscellaneous.¹¹

Outcomes of the issuance of MIRs were initially coded into the twenty-seven categories used by the DOJ. These were further reduced to fourteen categories to be consistent. As previously stated, we focus our analysis on three specific outcome categories: (1) objections, (2) no objection, and (3) the total of withdrawals, no determination (ND)/superseded, and no response.¹² “Objections” refer to the issuance of a formal objection letter by the DOJ. “No objection” refers to an approval in the process of preclearance. The “withdrawal” category contains all submitted changes that ended in withdrawal or no determination/withdrawal. Changes that ended in “ND/superseded” occur when the jurisdiction has decided to submit another proposed change to replace the change initially submitted. Finally, the “no response”

¹¹ A listing of all categories of change type appears in Appendix B.

¹² A complete listing of coding categories for the impact of MIRs is provided in Appendix C.

category includes changes initially submitted that resulted in an MIR, more information follow-up requesting still more information, or additional information received. In these circumstances, no additional information was ever sent by the jurisdiction or the additional information sent was insufficient for the DOJ to make a determination on the change. In each of the circumstances -- a withdrawal, no determination superseded, and no response -- the initial change has no legal approval to be implemented. As such, the impact of each of these outcomes can be understood as similar to the outcome that results from the issuance of a letter of objection. That is, the submitted change cannot be legally implemented.¹³ Equally important, in each of these circumstances, the final outcome of the change was determined by the submitting jurisdiction: the jurisdiction chose to withdraw, supersede, or not provide the information necessary.

The Context of Compliance

Table 1 reveals that the total number of changes submitted by covered jurisdictions varies from year to year. The smallest number of changes submitted was 12,416 in 1983 and the largest number was 22,763 in 1992. The numbers went up in 1992 and 2002, predictably in years in which reapportionment and related redistricting have their greatest impact as a result of new population data provided by a decennial Census.¹⁴ A grand total of 387,673 changes were submitted between 1982 and June of 2005.

As indicated in Table 2, the largest number of changes, 94,261 (24.3%) were submitted for approval to modify polling places, followed by annexations at 78,186 (20.2%), precincts at

¹³ We are aware that the DOJ does not have the capacity to monitor whether or not all of these changes are subsequently implemented. We note that the DOJ is in the same position when it issues an objection letter.

¹⁴ Reapportionment and redistricting periods encompass not only redistricting plans, but other related voting changes, including voting precinct boundaries to correspond to new districts, polling place changes to address new voting precinct boundaries, changes in voter registration locations, and many other related election rules and procedures. In addition, Table 1 and Figure 1 both illustrate that while objections increased at the time of the decennial census, during the last two cycles, MIR outcomes build even as the Census approaches and continue at high levels in the years immediately following. Activity of both kinds subsides in the mid-decade period. This pattern is likely to continue as it stands to reason that the greatest opportunity to implement discriminatory voting changes occurs at the time when the highest number of voting changes is required.

53,438 (13.8), and voter registration procedures at 41,337 (10.7%). These four types of changes accounted for a total of 68.9% of all changes submitted. The category of “miscellaneous” accounted for 53,492 (13.8%) of all submissions. The main categories of submitted changes did not vary dramatically across the seventeen years examined.

More submitted changes consistently come from the states of Texas and Georgia relative to any other states, as revealed in Table 3. This is most likely because those states contain a large number of governmental jurisdictions including counties, cities/towns, school districts, water districts, and sanitation districts, among others. Texas and Georgia have more counties than any other covered states, with 254 and 159, respectively. Texas surpasses all of the other states by far with a total of 162,397 submitted changes from 1982-2005. Georgia follows Texas with a total of 53,646 submitted changes, or just under one-third the number from Texas. Virginia, Arizona, Alabama, Louisiana, and South Carolina comprise a third major group with 28,768, 26,773, 24,428, 23,903, and 23,594 submitted changes respectively. The number of submitted changes drops significantly to 12,305 from North Carolina (where only forty counties are covered by Section 5) and 11,753 from Mississippi.

A reexamination of the data in Tables 1-3 allows us to see the number of changes objected to by the DOJ by year, change type, and state. The total number of objections decreased dramatically since 1995.¹⁵ For the years 1982 to 1994, a yearly average of 165 were issued as compared to the period 1995-2004 when the annual average was only 13.4. It is evident from Table 2 that three types of changes account for the largest bulk of objections: annexations, methods of election, and redistrictings. Together these three types of changes account for 80.2% of all objections issued between 1965 and the present. As revealed in Table 3,

¹⁵ The reason for the decrease in the number of objections is beyond the scope of this report. However, for the reasons discussed below, it is apparent that during the period 1995 to 2004, MIRs have had a proportionally greater deterrent effect than during other periods.

the top six states with the largest number of objections in rank order are South Carolina with 796, Georgia with 370, Louisiana with 274, Alabama with 198, Texas with 194, and Mississippi with 151. Together these six states account for 87% of all objections since Section 5 was enacted.

Patterns in the Issuance of More Information Requests

Following the analysis above, we now examine the issuance of MIRs by year, change type, and state. It becomes immediately apparent in column three of Table 1 that the total number of MIRs issued over the time period, 13,697, far exceeds the number of objections. MIRs exceed objections by a factor of six. However, similar to the decrease in the number of objections after 1994, there is a decrease in the number of MIRs over this time period. From 1982 to 1994 an average of 899.5 MIRs were issued per year, whereas the annual average for the period 1995 to 2004 was only 199.7.

The top five categories in which MIRs were issued are annexations, methods of election, polling places, precincts, and redistrictings. Similar to the issuance of objection letters the categories of annexations, methods of election, and redistrictings, account for a substantial portion, 56.2%, of all MIRs. However, as reflected in Table 2, MIRs encompassed a much wider range of voting changes than the objections. Examination of Table 3 reveals that the same five states of Georgia, Texas, Louisiana, South Carolina, and Alabama are again the top states to receive MIRs. Together they account for 74.2% of all MIRs issued between 1982 and 2005.

Assessing the Outcomes of MIRs

The above analysis suggests that MIRs can play a significant role in the overall process of preclearance leading to compliance with the Voting Rights Act. MIRs are issued with considerable frequency. Their focus can be consistent with that of objections; however, they also have been utilized to clarify the impact of a broader range of voting procedures and practices.

In this section, we assess the impact of MIRs on the documented outcomes of voting procedures and practices as determined by the DOJ. We pay special attention to comparing these documented outcomes to the issuance of formal objections by the DOJ.

Examination of Table 1 reveals that not every submitted change resulting in an objection was preceded an MIR. A total of 2,282 objections were made to proposed changes during 1982 to July 2005, yet only 763 of these objections were preceded by the issuance of a MIR at some point in the process of review. By comparison, the sum of MIR induced outcomes of withdrawals, superseded changes, and no responses, separate from objections across the same time period, is 1,162. This means that MIRs have directly affected over a thousand additional changes, thus making their implementation illegal. As a result, MIRs increased the impact of the DOJ's efforts to promote compliance with Section 5 by 51% between 1982 and July 2005.

Table 2 reveals that there is considerable variation in the impact of MIRs by change type, relative to objections. As stated earlier, the largest number of objections to changes during the period examined blocked proposed annexations (1,016). MIRs, by comparison, had their greatest deterrent effect preventing implementation of discriminatory methods of election, where 359 changes were deterred. Two change types where the DOJ issued its second and third highest numbers of objections, methods of election (426) and redistrictings (388), resulted in similarly high MIR induced outcomes, including 359 changes regarding methods of election and 198 redistricting changes. The third highest number of MIR induced outcomes was for polling place changes (183). Precinct changes received the next highest number of MIR induced outcomes of (109). Interestingly, annexations had the largest difference in the impact of MIRs relative to objections. Although annexations were the change type that led to the largest number of objections, they were only affected by the issuance of an MIR in 58 submitted changes.

Table 3 depicts state comparisons of the impact of MIRs relative to objections. The rank ordering of states where MIRs have affected the most changes is distinct from the list of those receiving the most objections. The largest impact of MIRs was in Texas (366), followed by Georgia (193), Alabama (181), South Carolina (103), Mississippi (93), and Louisiana (73). In Texas, MIRs had a disproportionately heightened effect in comparison to objections. Proposed changes resulted in MIR outcomes at a rate 1.89 times greater than objections since the time of the last Section 5 renewal in 1982.

Finally, Table 1 illustrates that the impact of MIRs, relative to objections, has grown dramatically since 1999. The number of submitted changes affected by MIRs was consistently greater than the number of changes affected by objections from 1999 to July 2005. The ratio of MIR affected outcomes to objections was 22.4 in 1999, 12.5 in 2000, and 8.8 in 2001. It drops noticeably lower in 2002, but MIRs still affected more than two times the number of changes affected by objections.

Figure 1 provides a graphic comparison of objections and MIR induced outcomes by year for 1982 to 2005. The uniqueness of the period from 1999 to 2005 is clearly apparent: MIRs had a much greater effect on voting changes than did objections.¹⁶ This pattern suggests that MIRs are having a strong deterrent effect that is underrepresented by examining Section 5 objections alone.

MIRs, Compliance, and the Deterrent Effect of Section Five

Although rarely studied as a critical part of assessing the impact of Section 5, it seems apparent that MIRs are another major way that the DOJ affects the extent that covered jurisdictions comply with the Voting Rights Act. Our analysis of data provided by the DOJ for the period 1982-2005 allows us to reach three main conclusions regarding the critical role of

¹⁶ MIR outcomes also outnumbered objections in both 1990 and 1996.

MIRs in the larger processes of preclearance and compliance under Section 5. First, MIRs are issued at far higher rates than letters of objection. As such, they have the potential to impact a wider range and larger number of electoral changes, compared to objections, submitted to the DOJ for review. Second, the frequency of MIRs varies by change type, and especially by state. Third, MIRs prevented implementation of 1,162 additional voting changes from 1982 to 2005, increasing the impact of Section 5 preclearance an additional **51%** above that of objections alone. This effect is significantly greater in the recent period of 1999 to 2005 where MIRs deterred **605%** more changes than did formal objections. Interestingly, MIRs do not have their greatest impact on submitting jurisdictions because they ultimately result in the issuance of formal objections to changes. Well under half of all objections also contained an MIR. Rather, MIRs have an impact entirely separate from whether an objection is issued. We also find that there is variation in this impact across change types and by state.

This research has direct implications on the Section 5 reauthorization process. Assessments of the impact of Section 5 and the need for maintaining Section 5 must include the impact of more information requests on preventing discriminatory voting changes from being implemented. We have demonstrated that MIRs can be studied and their impact can be specified. Public officials, scholars, and other analysts run the risk of underestimating the impact of Section 5--and also underestimating the need for continuing Section 5--if they do not fully consider the role of MIRs in the larger processes of preclearance and compliance.

Section 5 represents the great promise of full and effective voter enfranchisement regardless of race, color, or language status. We trust that our analysis of MIRs brings additional insight about the scope of and impact of Section 5. As Congress weighs the renewal of the temporary provisions of the Voting Rights Act, it must consider the serious consequences for

segments of the population that for so many years have been kept at the margins of voting, representation, and from participation in the policy-making process. The full impact of Section 5 preclearance must be examined, and understood including the impact of MIRs, as Congress considers the provision's renewal.

Fraga and Ocampo
 More Information Requests
 Table 1

Changes, Objections, and More Information Request Outcomes by Year, 1982-2005

Year	All Submissions		More Info Requests			Outcomes for Changes Receiving a MIR						
	Changes	Objections	# of MIR	More Info Foil	No Objection	Objection	Withdrawal	Superseded	No Response	MIR Outcome	MIR Outcome and Objections	MIR Outcome/All Objections
1982	14287	111	954	94	845	45	5	1	1	7	118	0.06
1983	12416	70	1023	334	785	65	45	10	3	58	128	0.83
1984	16489	110	1067	246	853	25	26	2	8	36	146	0.33
1985	14418	172	978	93	799	49	19	0	4	23	195	0.13
1986	21898	639	1346	374	966	33	33	6	33	72	711	0.11
1987	15321	85	700	73	467	95	22	2	5	29	114	0.34
1988	18957	135	468	276	222	45	16	16	17	49	194	0.36
1989	12499	168	480	133	254	42	22	15	6	43	211	0.26
1990	17900	110	1108	303	755	71	60	18	92	170	280	1.55
1991	19253	129	1183	122	772	86	77	5	1	83	212	0.64
1992	22763	92	980	69	706	45	64	9	9	82	174	0.89
1993	17858	193	752	315	496	56	56	1	11	68	261	0.35
1994	18222	133	654	194	419	31	25	0	10	35	168	0.26
1995	14149	32	323	41	297	5	7	1	3	11	43	0.34
1996	18592	9	180	20	151	6	11	0	3	14	23	1.56
1997	15854	18	223	58	198	5	4	3	4	11	29	0.61
1998	14826	17	107	42	74	10	11	0	3	14	31	0.82
1999	13642	5	274	147	151	6	8	104	0	112	117	22.40
2000	16558	6	267	42	183	4	5	0	61	66	72	11.00
2001	14497	10	301	93	184	14	72	1	15	88	98	8.80
2002	18564	23	185	39	100	19	49	3	2	54	77	2.35
2003	16295	9	70	7	47	6	11	1	6	18	27	2.00
2004	17035	5	67	5	53	0	8	0	5	13	18	2.60
2005	5380	1	7	0	1	0	0	0	6	6	7	6.00
Total	387673	2282	13697	3120	9778	763	656	198	308	1162	3444	0.51

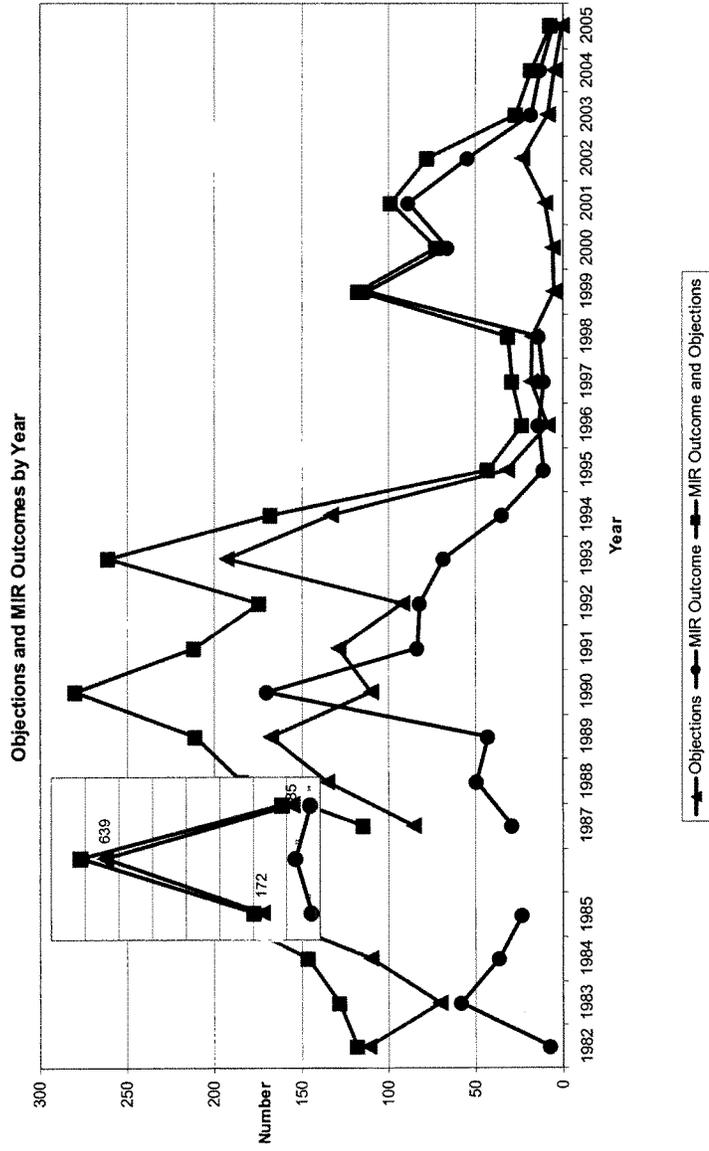
Table 2
Changes, Objections, and MIR Outcomes by Change Type, 1982-2005

Change Type	All Submissions		MIRs Issued		Outcomes for Changes Receiving MIR							
	Changes	Objections	# of MIR	More info Foll	No Objection	Objection	Withdrawal	Superseded	No Response	Total MIR Outcome (W.S, NR)	MIR Outcome and Objections	MIR Outcome/All Objections
Redistricting	8694	388	1234	227	676	246	131	40	27	198	586	0.51
Annexation	78186	1016	3734	811	3161	17	39	0	19	58	1074	0.06
Polling Place	94261	31	1927	391	1374	29	136	1	46	183	214	5.90
Precinct	53438	37	1318	191	916	43	73	3	33	109	146	2.95
Reregistration or Voter Purge	275	7	83	21	46	3	13	0	5	18	25	2.57
Incorporation	3691	3	117	37	98	0	3	0	3	6	9	2.00
Bilingual Procedures	2916	6	95	30	72	4	7	0	6	13	19	2.17
Method of Election	14780	426	2728	921	1569	314	149	117	93	359	785	0.84
Form of Government	2202	35	206	43	160	10	3	0	12	15	50	0.43
Consolidation or Division of Political Units	1161	9	88	12	71	2	8	0	2	10	19	1.11
Special Election	25401	49	326	65	208	25	10	15	13	38	87	0.78
Voting Methods	4473	1	43	7	33	1	3	0	3	6	7	6.00
Candidate Qualifications	3367	13	285	90	211	6	7	1	5	13	26	1.00
Voter Registration Procedures	41337	19	445	29	391	7	29	1	1	31	50	1.63
Miscellaneous	53492	242	1068	245	792	56	45	20	40	105	347	0.43
Totals	387674	2282	13697	3120	9778	763	656	198	308	1162	3444	0.51

Table 3
Changes, Objections, and MIR Outcomes, 1982-2005

State	All Submissions		MIRs Issued		Outcomes for Changes Receiving a MIR						MIR Outcomes and Objections	MIR Outcomes/All Objections
	Changes	Objections	# of MIR	More Info Foll	No Objection	Withdrawal	Superseded	Total MIR Outcome (W,S, NR)				
ALABAMA	24428	198	1159	301	743	58	64	24	93	181	379	0.91
ALASKA	5537	2	315	115	311	0	3	0	1	4	6	2.00
ARIZONA	26773	32	534	149	454	12	9	4	15	28	60	0.88
ARKANSAS	7	0	1	1	0	0	0	0	0	0	0	-
CALIFORNIA	3374	60	186	9	114	2	4	1	0	5	65	0.08
COLORADO	132	0	0	0	0	0	0	0	0	0	0	-
FLORIDA	3514	14	196	242	177	4	8	0	0	8	22	0.57
GEORGIA	53646	370	3274	539	2528	102	156	12	25	193	563	0.52
HAWAII	289	0	0	0	0	0	0	0	0	0	0	-
ILLINOIS	13	0	0	0	0	0	0	0	0	0	0	-
LOUISIANA	23903	274	1512	400	1047	159	45	15	13	73	347	0.27
MASSACHUSETTS	18	0	0	0	0	0	0	0	0	0	0	-
MICHIGAN	365	0	24	1	19	0	5	0	0	5	5	-
MISSISSIPPI	11753	151	874	126	499	123	58	14	21	93	244	0.62
NEW HAMPSHIRE	227	0	0	0	0	0	0	0	0	0	0	-
NEW MEXICO	201	1	59	57	55	0	0	1	3	4	5	4.00
NEW YORK	4217	14	121	75	34	4	51	0	2	53	67	3.79
NORTH CAROLINA	12305	142	832	96	582	75	22	4	3	29	171	0.20
SOUTH CAROLINA	23594	796	1188	234	856	77	36	3	64	103	899	0.13
SOUTH DAKOTA	2011	1	51	0	50	0	0	0	0	0	1	0.00
TEXAS	162397	194	3034	760	2038	129	185	120	61	366	560	1.89
VIRGINIA	28768	31	337	15	271	18	10	0	7	17	48	0.55
WYOMING	201	0	0	0	0	0	0	0	0	0	0	-
Totals	387673	2280	13697	3120	9778	763	656	198	308	1162	3442	0.51

Figure 1



May 25, 2006

Members
United States Senate
Washington, D.C. 20510

Dear Senator:

We are very pleased that the renewal of the Voting Rights Act has been launched as a bipartisan, bicameral effort, with the leadership of both parties committed to a timely reauthorization of the expiring provisions in the Act.

The Friends Committee on National Legislation joins hundreds of national organizations and local groups in urging you to signal your support for voting rights for all Americans by co-sponsoring S.2703, which was introduced by Judiciary Committee Chair, Senator Arlen Specter, with ranking member Senator Patrick Leahy and Senator Edward Kennedy. These initial sponsors have been joined (so far) by 41 others.

The Voting Rights Act, which was initially adopted in 1965, has been renewed four times under the leadership of both parties, and has guaranteed the right to vote to millions of citizens among racial, ethnic, and language minorities.

The renewable provisions of the Voting Rights Act are still needed. You may be aware that the House Judiciary Subcommittee on the Constitution held 10 hearings on the Voting Rights Act in 2005 and found significant evidence that barriers remain in many jurisdictions, keeping eligible voters from equal opportunities to participate in elections. The Senate Judiciary Committee has received these findings from the House, and is scheduling a few additional hearings to complete the record. In addition, the Leadership Conference on Civil Rights has sponsored state studies in fourteen states, documenting continued attempts to discriminate against certain minority voters. (See www.RenewtheVRA.org)

It is important for the Senate to move ahead to renew the Voting Rights Act now, so that work can be completed on the bill this year. The election season and other priorities may intervene next year; the strong bi-partisan support that this bill enjoys now should result in strong Senate support for the basic rights guaranteed by this legislation.

Section 5 of the Voting Rights Act is designed to prevent discrimination before it becomes a fact. It requires jurisdictions with a history of discrimination and with

evidence of continuing discrimination to “pre-clear” changes in voting procedures and laws, to ensure that the changes will not have the purpose or effect of discriminating on the basis of minority race or language. S. 2703 renews Section 5 and restores it to its original congressional intent, by authorizing the attorney general to block the implementation of voting changes that are motivated by a discriminatory purpose.

Because the right to vote is so fundamental to American democracy, it is appropriate to prevent abuse of that right in jurisdictions where there is reason to believe that discriminatory laws and procedures may continue to re-appear. *As in current law, the renewed Section 5 will allow jurisdictions to establish a new record of non-discrimination, and to remove themselves from Section 5 reviews.*

The bill also renews Section 203 to continue to provide language-minority citizens with equal access to voting. You may have heard a concern about welcoming new citizens who do not speak English and facilitating their participation in the exercise of their citizenship by providing materials in their first language. *In fact, about three-quarters of the people who need language assistance are native-born citizens who are more proficient in a first language other than English.* Ballot measures are complex enough when presented in one’s first language. How well would any of us do in our second or third language (if we have one)? The Voting Rights Act is not about excusing *new* citizens from a requirement to learn English; it is about giving *all* citizens the best opportunity to participate meaningfully in the fundamental rights of citizenship.

The Voting Rights Act continues to provide legal protection to one of the most basic rights of citizens – the right to vote. If you have co-sponsored S. 2703, thank you. We hope you will support Senate action on the legislation in the next several weeks. If you have not yet co-sponsored S. 2703, we urge you to step forward with other Senate leaders to endorse the renewal of the Voting Rights Act.

Sincerely,

Ruth Flower
Senior Legislative Secretary
Friends Committee on National Legislation

Testimony of Margaret Fung
 Executive Director
 Asian American Legal Defense and Education Fund
 Before the U.S. Senate Committee on the Judiciary

Hearing on the Voting Rights Act:
 Continuing Need for Section 203's Provisions
 for Limited English Proficient Voters
 June 13, 2006

Good afternoon, Mr. Chairman and Members of the Committee. My name is Margaret Fung, and I am the executive director of the Asian American Legal Defense and Education Fund (AALDEF). Thank you for the invitation to testify today on the topic of minority language assistance under section 203 of the Voting Rights Act. We are glad to have the opportunity to express our support for S. 2703, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.

AALDEF is a 32-year old New York-based national organization that promotes and protects the civil rights of Asian Americans through litigation, legal advocacy and community education. Our programs focus in the areas of immigrant rights, economic justice for workers, hate violence and police misconduct, language access to services, youth rights and educational equity, and voting rights and civic participation.

Since 1988, AALDEF has monitored elections and conducted multilingual exit polls to document barriers to voting faced by Asian Americans. In 1994, AALDEF led the campaign to secure the first fully translated Chinese-language ballots in New York. In November 2004, we conducted the nation's largest multilingual exit poll of 11,000 Asian American voters in eight states—New York, New Jersey, Massachusetts, Pennsylvania, Virginia, Rhode Island, Michigan and Illinois—to assess the needs of Asian American voters with limited English proficiency and to document voter problems.

AALDEF has litigated cases to defend the voting rights of Asian Americans. Last February, we filed a lawsuit on behalf of Asian American organizations and individual voters against the New York City Board of Elections for violations of section 203 of the Voting Rights Act. Chinatown Voter Education Alliance v. Ravitz, Civ. No. 06-CV-913 (S.D.N.Y. Feb. 6, 2006). We are currently seeking to intervene in the Justice Department's lawsuit against the New York State Board of Elections for non-compliance with the federal Help America Vote Act, U.S. v. New York State Board of Elections, Civ. No. 06-CV-0263 (N.D.N.Y. Mar. 1, 2006), to ensure that new voting machines in New York will have the capability to present multilingual ballots and voter verifiable paper records under section 203. And in 1997, we represented Asian American voters who intervened in Diaz v. Silver, 978 F. Supp. 96 (E.D.N.Y. 1997)(per curiam), aff'd, 522 U.S. 801 (1997), a constitutional challenge to New York's 12th Congressional District, which established that Asian Americans in Manhattan and Brooklyn constitute a "community of interest" that should be kept together within a single legislative district. AALDEF has also submitted section 5 comments to the Justice Department, objecting to voting changes that diluted minority voting strength in New York City's school board elections.

Fourteen years ago, I testified before the House Judiciary Subcommittee on Civil and Constitutional Rights, in support of the Voting Rights Language Assistance Act of 1992 and its inclusion of a numerical trigger for section 203 coverage. In November 2005, I testified again before the House Judiciary Subcommittee on the Constitution about the success of section 203 of the Voting Rights Act in promoting Asian American civic participation.

AALDEF has prepared a new report, *Asian Americans and the Voting Rights Act: The Case for Reauthorization*, which is attached to this statement. In my testimony today, I will summarize some key findings in our report and would like to request that the full 47-page report and accompanying appendices be included in the official record.

Overcoming a Legacy of Discrimination

Asians in America were barred for over 150 years from becoming naturalized citizens and thus were not eligible to vote. In the 20th century, laws prevented Asian Americans from owning property, testifying against white men in court, marrying Caucasians, and ordered their evacuation into concentration camps. The citizenship restrictions were finally rescinded in 1943 for Chinese Americans, and for other Asian immigrant groups in 1952. As a result, this legacy of discrimination effectively blocked Asian Americans from participating in the political process until the civil rights era of the 1960's.

That is why the Voting Rights Act of 1965 has such significance for the Asian American community. It has only been in the last fifty years that most Asian Americans have exercised their right to vote and had a voice in governmental policies affecting their lives. When the language assistance provisions of the Voting Rights Act were enacted in 1975 and then expanded in 1992, section 203 helped to remove other obstacles for Asian American voters not yet fluent in English.

Section 203 has opened up the political process for Asian Americans, especially first-time voters and new citizens. At the most fundamental level, translated ballots in voting machines have enabled Asian Americans to exercise their right to vote privately and independently inside the polling booth. According to AALDEF's 2004 exit poll of 11,000 Asian American voters, almost one-third of all respondents needed some form of language assistance in order to vote, and the greatest beneficiaries of language assistance (46%) were first-time voters. Of those polled, over 51% of Asian American voters got their news about politics and community issues from the Asian-language media.

Section 203 and the Increase in Asian American Voter Participation

There are over 14 million Asian Americans nationwide. According to the 2000 Census, more than half (53%) acquired citizenship through naturalization. Over 40% of the Asian American population is limited English proficient. (The following groups had the highest rates of limited English proficiency: Korean (59%), Vietnamese (59%), Chinese (52%), Cambodian (41%), Bangladeshi (39%), Thai (36%), Laotian (33%), and Pakistani (26%).)

Asian Americans are now a growing segment of the electorate, and this can be attributed in large part to section 203 of the Voting Rights Act. Section 203 covers localities where more than 10,000 or over 5% of the voting age citizens in a political subdivision are members of a single minority language group, have literacy rates below the national average, and do not speak English very well. Currently, language assistance is available to over 672,750 Asian Americans in 16 jurisdictions in 7 states:

Alaska, California, Hawai'i, Illinois, New York, Texas and Washington. The five languages covered include Chinese, Korean, Filipino, Vietnamese, and Japanese. Asian American voter registration grew 58% from 1996 to 2004, as compared to Latino registration (45%), Black registration (15%), and White registration (7%). Asian American voter turnout also grew 71% from 1996 to 2004, with 3 million Asian Americans voting in the 2004 elections. By comparison, Latino turnout grew 57%, Black turnout grew 26%, and White turnout grew 15%.

The number of Asian American elected officials in federal, state and local positions has also increased since the passage of section 203 of the Voting Rights Act, from 120 in 1978 to a total of 346 in 2004. In New York City, which has the nation's largest Asian American population, the first Asian American City Councilmember was elected in 2001 and the first Asian American State Assemblyman was elected in 2004, a decade after Queens County was covered under section 203. In Houston, Texas, the first Vietnamese American was elected to the state legislature in 2004, within years after Vietnamese language assistance was required in Harris County under section 203. And in California, the number of Asian Americans elected to the state assembly increased from zero in 1990 to nine in 2005. Eight of these nine legislators were elected in counties covered by section 203.

The Ongoing Need for Language Assistance

Because a large proportion of Asian Americans are new citizens and first-time voters, there is a continuing need for section 203. In our report, we cite results from AALDEF's 2004 exit poll survey of 7,247 Asian American voters in New York City, in which 46% said that they were limited English proficient. Among Chinese American voters, 56% were limited English proficient and 37% needed language assistance to vote. Among Korean American voters, 65% were limited English proficient and 42% needed language assistance to vote.

AALDEF's voter survey in November 2005 revealed that among first-time Asian American voters, 69% were limited English proficient. Sixty-eight percent of first-time voters used an interpreter to vote and 53% used translated materials. Similar rates of usage have existed in previous years in which AALDEF documented the use of language assistance.

Behind the statistics, of course, are the real voters. Asian Americans might not vote as often without translated ballots or interpreters, since they may not fully understand the voting process or do not want to make errors. For example, Shiny Liu, a Chinese American voter from Queens County, New York, is one of the Asian American plaintiffs we represent in our Section 203 lawsuit against the New York City Board of Elections. She described why translated ballots and voting materials are still necessary:

The first time I voted was in 2003. I used an interpreter and a ballot that was translated into Chinese. Now, I know how to vote, so I vote alone without any assistance. I have voted on ballots in English before, but I am not comfortable doing so because I am not confident that I properly understand the English. I would rather vote on ballots translated into Chinese because I can be sure of who and what I am voting for.

As Ms. Liu expressed, a ballot can be overly complicated to understand if the voter has limited English skills. Indeed, even a native-born English speaker often can be confused

by the complex language of a referendum or the technical instructions for casting a provisional ballot.

Byung Soo Park, another plaintiff in AALDEF's lawsuit against the New York City Board of Elections, understands the importance of learning English. Because of his demanding work schedule as a truck driver, Mr. Park has little time to learn English:

I became a citizen in October 2001 and registered to vote at the Korean American Voters' Council office with the help of their staff. Ever since I first registered to vote, I have never missed an election. Every time I vote I need to use the assistance of an interpreter. I want to learn English but I have no time because I am a truck driver and work long hours on the road. Korean Americans should be treated as United States citizens because that is what we are. I want us all to be treated equally.

For Mr. Park and countless other new citizens, economic barriers have hindered their ability to learn English. Nevertheless, they understand the importance of civic participation, and they cherish the right to vote. With renewal of the language assistance provisions of section 203, Asian Americans can continue to have a meaningful voice in our democracy.

Voting Discrimination Against Asian Americans Persists Today

Anti-Asian remarks by elected officials and poll workers, combined with voter harassment, improper identification checks, and the outright refusal to provide language assistance required by the Voting Rights Act, demonstrate that Asian Americans still face hostility at the polls today. For example, here are some recent incidents cited in our report:

- In the 2005 elections in Edison, New Jersey, a Korean American mayoral candidate, Jun Choi, was repeatedly ridiculed by two radio hosts, who mocked Asian American accents and said too many Asians gambled in Atlantic City. The campaign manager of Choi's opponent said, "[Asians] walk in here. They don't know what they're doing, and their countryman is telling them who to vote for." Choi won the mayoral election.
- In 2004 in Queens County, New York, a poll site coordinator said, "I'll talk to [Asian voters] the way they talk to me when I call to order Chinese food," and then said random English phrases in a mock Chinese accent.
- In Kings County, New York, a poll site coordinator asked, "How does one tell the difference between Chinese and Japanese?" and brought her fingers to the side of each eye moving her skin up and down.
- In the 1999 City Council elections in Palisades Park, New Jersey, the White mayor made racial appeals to his constituents, warning that Korean Americans were "attempting to take over our town and change it inside out." In a letter opposing a Korean American city council candidate, the mayor wrote, "Now we are faced with a new problem—one that threatens to wipe out our history and our heritage. . . Our quality of life will be brought to an abrupt and chaotic end."

Unfortunately, as you can see, voting discrimination against Asian Americans, both subtle and overt, is ongoing and persistent. Section 203 and the other temporary

provisions of the Voting Rights Act have prevented and remedied such discrimination, and these provisions should be renewed.

Language Assistance Is Integral to our Democracy

A basic tenet of our democracy is that all citizens should be able to elect candidates of their choice and have a voice in governmental decision making. Without section 203, Asian Americans with limited English skills might not vote as often or might not even register to vote. As George Washington University Law Professor Spencer Overton points out in his new book, *Stealing Democracy: The New Politics of Voter Suppression*, section 203 of the Voting Rights Act has given politicians and parties the incentive to reach out and seek the support of American citizens who have previously been excluded. This improves the quality of our democracy, because it enables all citizens to be informed voters and have a stake in our society.

Language assistance under Section 203 of the Voting Rights Act recognizes the value of citizenship by encouraging greater participation of limited English proficient voters in the political process. AALDEF and many Asian American community groups had hoped that section 203's numerical trigger of 10,000 voting age citizens would be lowered to provide coverage for smaller language minority communities.* Although S. 2703 does not change the numerical trigger in section 203, we support the provision that allows the use of updated Census data and more frequent testing for coverage under section 203.

Conclusion

Section 203 of the Voting Rights Act removes barriers to the fundamental right to vote and helps to promote meaningful civic participation among all segments of our society. We urge Congress to renew section 203, together with the other temporary provisions of the Voting Rights Act, so that we can move closer to a broad and inclusive democracy for all Americans.

*By lowering the numerical trigger from 10,000 to 7,500 voting age citizens of a single language minority, section 203 would increase coverage for 2 additional language groups (Cambodian and Asian Indian) in 17 jurisdictions. Most significantly, a 7,500 trigger would add Chinese coverage in Sacramento County, California; Cambodian in Los Angeles County; Korean in Cook County, Illinois; and Asian Indian in Queens County, New York. Lowering the trigger to 5,000 would cover 8 Asian language groups (the same 5 languages under the current trigger, plus Cambodian, Asian Indian, and Thai) in 21 jurisdictions, including Chinese and Vietnamese in Fairfax County, Virginia, and Chinese in Montgomery County, Maryland.

**WHY SECTION 5 IS STILL NEEDED:
Examples Where Continued and Persistent Voting Discrimination
Has Been Prevented and Remedied by Section 5 and Other Provisions
of the Voting Rights Act**

**Testimony of Jon Greenbaum
Director of the Voting Rights Project
Lawyers' Committee for Civil Rights Under Law**

**Presented to the Senate Judiciary Committee
July 19, 2006**

To the Honorable Arlen Specter, Chairman, Senate Judiciary Committee and the Honorable Patrick J. Leahy, Ranking Member, Senate Judiciary Committee:

The Lawyers' Committee thanks you for your commitment to the voting rights of all Americans, and particularly for your consideration and support of Senate Bill 2703, which provides for reauthorization of the temporary provisions of the Voting Rights Act. As you are well aware, the combination of permanent and temporary provisions of the Voting Rights Act has changed the lives of minority citizens in the United States by enabling them to participate fully in the electoral process free from discrimination.

During the course of the Senate Judiciary Committee's consideration of Senate Bill 2703, which provides for reauthorization of the Voting Rights Act, some witnesses have testified about their view that jurisdictions covered under the Section 4 coverage formula have changed, and that requiring these jurisdictions to comply with the preclearance provisions of Section 5 is unfair.

The Lawyers' Committee reaches a different conclusion based on our extensive research on recent voting discrimination. The Lawyers' Committee created the National Commission on the Voting Rights, a politically and ethnically diverse body that held ten field hearings in 2005. In February 2006, the Commission issued a report, *Protecting Minority Voters: The Voting Rights Act at Work, 1982-2005*. Three Commissioners have testified before this Committee or before the House Subcommittee on the Constitution with respect to Voting Rights Act reauthorization and the Commission's entire record of several thousand pages is part of the Senate record. Additionally, the Lawyers' Committee had primary editorial responsibility for ten of the fourteen state reports commissioned by the Leadership Conference on Civil Rights.

From this extensive research, it is apparent that not only is the record of recent discrimination in voting massive, but that many of the places that inspired the creation of the Voting Rights Act or that engaged in extensive voting discrimination during the early years of the Act continue to discriminate against those the Voting Rights Act aims to protect. The analysis below examines ten counties covered by Section 5 and reviews the stubborn and systematic resistance of governing bodies—and the constituents that helped them retain electoral control—to political empowerment of minority voters. It is important to note that these incidents of discrimination have been continuously exhibited in spite of Section 5 coverage. The examples provided below demonstrate the link between historic and present day voting discrimination that opponents of reauthorization claim does not exist.

If Section 5 is not reauthorized, the hundreds of thousands of minority citizens in the jurisdictions documented here and millions of minority citizens in other covered jurisdictions will be subject to extensive voting discrimination without the effective and efficient remedy Section 5 provides. Almost all of the discrimination discussed below relies on Section 5 determinations by the Department of Justice or on litigation and therefore cannot be dismissed as anecdotal.

The jurisdictions examined are Charleston County, South Carolina; Cochise County, Arizona; Dallas County, Alabama; DeSoto Parish, Louisiana; Dougherty County, Georgia; Grenada County, Mississippi; Hale County, Alabama; Lancaster County, South Carolina; Sumter County, South Carolina; and Waller County, Texas.

1. Charleston County, South Carolina

Beginning just before the passage of the Voting Rights Act of 1965, the city of Charleston systematically expanded its geographic area to diminish the electoral power of its black citizens. In 1974, after almost ten years of failing to seek Section 5 preclearance of these annexations, the city of Charleston submitted 25 annexations to the Attorney General pursuant to Section 5. In his objection letter, Assistant Attorney General for the Civil Rights Division J. Stanley Pottinger included a table that broke down the number of people added per annexation by race.¹ In not one of the 25 annexations were more blacks than whites added. Some of the more stunningly disproportionate annexations were those of November 10, 1964 (1,275 whites; 44 blacks); May 23, 1967 (198 whites; 2 blacks); October 28, 1969 (192 whites; 12 blacks); and July 17, 1973 (137 whites; 0 blacks). In light of these annexations (with a resulting cumulative gain of 3,456 white people), persistent racial bloc voting, and allegations of racially motivated annexations, the Department of Justice denied preclearance for the annexations.²

Charleston's retrogressive annexations did not end in the 1970s, despite the Department of Justice's objection. Throughout the 1990s, primarily through a series of annexations, the city enlarged its population by some 16,000 people, but reduced the percentage of voting-age blacks from 42% to 34%.³ The benchmark redistricting plan for the city after the 2000 Census would have included six districts with majority-black populations, but only five with black voting-age majorities.⁴ In the new plan, the city took advantage of this district in which the black population was big enough to be the majority in total population. It added to that sixth district an area that was expecting "rapid population growth" in the coming years, Daniel Island. That area would be "mostly white," given the prevailing prices of real estate there.⁵ The Department of Justice concluded based on this and other demographic data that "in a matter of only a few years" the whites would outnumber the blacks in what was claimed to be a majority-black district for purposes of complying with the Voting Rights Act.⁶ Whereas a slight change in the plan would have remedied this problem, the city officials responded that they did not want to make the

¹ Letter from J. Stanley Pottinger to Morris D. Rosen at 2 (Sept. 20, 1974).

² *Id.* at 4. Mr. Pottinger added in his letter that had the annexations been submitted individually in a timely manner, some might have been precleared; the delay of the city in submitting the changes and its subsequent submission of them simultaneously doomed all the changes with significantly disparate effects on the racial composition of the city.

³ The following draws substantially on John C. Ruoff & Herbert E. Buhl III, *Section 5 and the Voting Rights Act in South Carolina Since 1982* (2006).

⁴ *Id.* at 23.

⁵ Letter from R. Alex Acosta to Francis I. Cantwell at 2 (Oct. 12, 2001).

⁶ *Id.*

change, because it would interfere with their goals of “neighborhood cohesiveness and maintaining constituent consistency.” This explanation was unacceptable to the Department.⁷ In response, Daniel Island was incorporated into a different district, and the district to which it was going to be added remains a majority-black district.⁸ The Charleston city council currently has five black members.⁹ This instance highlights the importance of applying Section 5 to imminent, if future, retrogression. As the Supreme Court has said, “Section 5 looks not only to the present effects of changes but to their future effects as well.”¹⁰

In recent years, as the following excerpt from 2006 report of the National Commission on the Voting Rights Act explains, Section 2 and Section 5 have worked together, with Section 5 at times providing the necessary protection for minority voters with significant savings in government resources:

The differences between Section 2 and Section 5 are exemplified by two very different legal remedies that were recently obtained in Charleston County, South Carolina. In one, the Department of Justice and private plaintiffs filed an action in 2001 alleging that the at-large method of electing the nine-member county council, in combination with racially polarized voting, diluted minority voting strength in violation of Section 2.¹¹ In a county that was more than one-third black, no black candidates preferred by black voters had been elected in a decade, despite a cohesive black vote for several of them. The court’s opinion favoring the plaintiffs found a pattern of racially polarized voting. It also pointed to several instances in which African American voters were harassed and intimidated at the polls, and to political campaigns in which white candidates overtly or subtly raised the issue of race.¹²

The opinion was affirmed unanimously by the Court of Appeals for the Fourth Circuit,¹³ and in the first election by districts, in 2004, black voters

⁷ *Id.* at 3.

⁸ Ruoff & Buhl, *supra* note 3, at 23.

⁹ See <http://www.ci.charleston.sc.us/dept/content.aspx?nid=661>.

¹⁰ *Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 420 (2000), *quoted in* Letter from R. Alex Acosta to Francis I. Cantwell at 2 (Oct. 12, 2001).

¹¹ Much of the following discussion is contained in South Carolina voting rights attorney Armand Derfner’s recent testimony before Congress. See *Statement of Armand Derfner before the Subcommittee on the Constitution of the House Committee on the Judiciary*, 20 Oct. 2005, available at <http://judiciary.house.gov/OversightTestimony.aspx?ID=479> (last visited 7 Jan. 2006).

¹² *United States v. Charleston County*, 316 F. Supp. 2d 268, 277-278, 286 n.23, 295-97 (D.S.C. 2003).

¹³ *United States v. Charleston County*, 365 F.3d 341 (4th Cir. 2004), cert. denied, 125 S. Ct. 606 (2004).

elected three black council members favored by black voters. The Section 2 suit responsible for this result was very expensive. Charleston County spent more than \$2 million defending its discriminatory election system. The county was ordered to pay the 56 Chapter Five private plaintiffs' attorneys' fees, which amounted to several hundred thousand dollars. In addition, the Department of Justice expended substantial resources in attorney time, travel costs, expert fees, and deposition expenses.

Like the county council, the Charleston County School Board has nine members. At the time of the county council trial, a majority of the school board, elected by a different method from that used by the county council, was black.¹⁴ In 2003, while the county council case was on appeal, the South Carolina General Assembly, led by legislators from Charleston County, enacted a law changing the method of electing [members of] the school board to that which had been successfully challenged in the county council case. The Department of Justice objected to the change on the ground that it would decrease minority voting strength.¹⁵ The Section 5 process thus prevented the implementation of a discriminatory voting change that could have taken several years and millions of dollars to invalidate in a Section 2 lawsuit.

2. Cochise County, Arizona

As of the 2000 Census, Cochise County was a majority white area in southeast Arizona, with Latinos comprising the second-largest racial group, at 26.5% of the County's almost 90,000 voting-age residents.¹⁶ From the early 1970s to 2006, the temporary provisions of the Voting Rights Act have been used on behalf of Latino voters to vindicate their voting rights.

In 1972, the Cochise County College Board broke up concentrations of Latino voters, limiting their voting power, when it redistricted. In mid-July 1973, the Cochise County Attorney was advised by the Department of Justice that its Cochise College Board redistricting plan would require Section 5 approval. In late October, the County submitted its first request for approval. Two years passed with a series of incomplete submissions. Exasperated, the Department of Justice noted that "in view of the protracted pendency of this submission and your indication that the specific information we sought cannot be supplied, we have concluded that no useful purpose would be served by further delaying the Attorney General's determination."¹⁷ The submitted plan had

¹⁴ *Charleston County*, 316 F. Supp. 2d at 283.

¹⁵ Letter from R. Alexander Acosta to C. Havird Jones, Esq., 26 Feb. 2004, available at <http://judiciary.house.gov/OversightTestimony.aspx?ID=479> (last visited 7 Jan. 2006).

¹⁶ U.S. Census Bureau, Census 2000 Summary File 1 (SF 1) 100-Percent Data www.census.gov (last visited July 17, 2006).

¹⁷ Letter from J. Stanley Pottinger to Richard J. Riley at 3 (Feb. 3, 1975).

fragmented Spanish surname concentrations of population in two districts,¹⁸ diminishing Latinos' ability to elect their candidate of choice. Although the Department objected then, from 1975 to 1980 the County used a different plan, for which it did not seek preclearance.

Then, in 1983, the County adopted a new plan for the college district. The redistricting plan of 1983 was similarly discriminatory against Latinos. The County again provided inadequate responses to requests for additional information from the Department of Justice and was slow in providing its responses. In 1985, when the Department finally had enough data—much of which it had to obtain on its own—it found that whereas the benchmark plan would have provided the County's Latino community with one district in which it would have a citizen voting-age majority, the proposed plan gave it none. Because of the availability of non-discriminatory alternative plans and the lack of any explanation from the County about why it had again split the Latino vote, the Department objected to the plan.¹⁹

Because of its significant Latino population, Cochise County is covered by Section 203 of the Voting Rights Act for Spanish language. With an illiteracy rate more than ten times the national average, voter assistance is all the more crucial for effective exercise of the franchise by minority voters.²⁰ Concern about the ability of minority citizens to vote has led to federal monitors being sent to examine elections in Cochise since 2004.²¹

The Department of Justice sued the County in 2006 over its failure to translate election-related materials adequately and provide those materials to voters with limited proficiency in English. It had also not publicized the elections or registration deadlines, and had not provided information about early or absentee voting adequately available for those needing it in Spanish. Cochise County did not contest the lawsuit and the proposed settlement agreement is before the court.²²

3. Dallas County, Alabama

Before the Voting Rights Act could provide protection for blacks and deterrents against violation of their voting rights, events in Dallas County, and the County seat, the city of Selma, precipitated the passage of Section 5. The following excerpt is taken from *The Impact of the Voting Rights Act in Alabama Since 1982* (forthcoming 2006):

¹⁸ *Id.*

¹⁹ Letter from Wm. Bradford Reynolds to Sherry Marcell (Nov. 3, 1986).

²⁰ James Thomas Tucker & Rodolfo Espino, *Voting Rights in Arizona, 1982-2006* 14, available at <http://www.civilrights.org/issues/voting/ArizonaVRA.pdf>.

²¹ Tucker & Espino, *supra* note 20, at 50.

²² See *Gonzales v. Cochise County*, Case No. CV-06-304-TUC-FRZ ¶¶ 13-17 (D. Ariz.). Help America Vote Act ("HAVA") violations were also alleged in the Complaint, with the Attorney General objecting to failures by the County to post voting information in accordance with HAVA.

In Dallas County, Alabama, the Department of Justice instituted litigation in April 1961. At the time, only 1% of blacks in Dallas County were registered. After the Department of Justice would successfully eliminate one disfranchising device in court, Dallas County would implement one or more new disfranchising devices. As a result, by 1965, less than 5% percent of blacks in Dallas County were registered. The experience in Dallas County was used as a prime example by Congress in 1965 for the necessity of Section 5.²³

Of course, Dallas County came to have an even more significant meaning pertaining to the Act. The nationally televised images of the violent assault on unarmed marchers crossing the Edmund Pettus Bridge in Selma – the county seat of Dallas County – on March 7, 1965, provided the impetus for President Lyndon Johnson to announce eight days later that he would be sending a voting rights bill to Congress. Less than five months later, the Voting Rights Act was signed into law.

Once blacks had the ability to vote, oppressive efforts by whites moved to tactics employed to dilute the black vote. Resistance to black electoral empowerment meant that Section 5 was invoked to protect black voters in Dallas County several times well into the 1980s. First, in 1980, the city of Selma tried to redistrict its councilmanic wards in a way that would significantly reduce the black population of a district in which a black candidate had narrowly lost in the previous election.²⁴ The Department of Justice would not let it do so. Then, in 1983, Selma passed an ordinance that would redistrict its wards, after they had been redistricted as single-member districts under a court-ordered plan. At the time, the city was 52.6% black, with 48.5% of the voting-age population. Blacks had actually been succeeding at the time in getting their candidates elected in five of the ten districts. Under the new plan, they could only realistically expect to elect their candidate of choice in four districts. The Department of Justice emphasized that having a 6-4 solution versus a 5-5 solution was not the problem, or rather was the likely outcome anyway given how severely polarized voting was along racial lines. The problem was that the city hadn't made an earnest effort even to *try* to redistrict in a manner that would roughly reflect the city's voting age population, even though alternatives that did a better job of doing so were proposed and rejected by the city council.²⁵

A couple of years later, after a federal district court held Dallas County's at-large system for electing county commissioners violated Section 2 of the Voting Rights Act, the County submitted a districting plan with four single-member districts for Section 5 preclearance. Although moving from at-large voting to a single-member system in and of itself improved black electoral power, and therefore was not retrogressive in effect, there was ample evidence of discriminatory purpose. The hearings developing the proposed

²³ H. Rep No. 89-439, at 10-11.

²⁴ Letter from Drew S. Days III to W. McLean Pitts (Apr. 29, 1980).

²⁵ Letter from Wm. Bradford Reynolds to Philip Henry Pitts (Apr. 20, 1984).

plan were closed to the black community, and one existing precinct was effectively bisected to prevent the black community in the precinct from electing an already-announced black candidate over the white incumbent.²⁶

Sections 2 and 5 worked in tandem to battle discrimination in Dallas County's board of education electoral system as well. After a federal court held that the County's at-large system violated Section 2 by diluting black voting power, the County submitted a revised plan. But where it had followed the Voting Rights Act's prescription as to the method of election, by adopting a single-member districting system, the County then simply channeled the disenfranchising purpose behind the at-large system into a districting plan that packed many voters into one district and fragmented the rest, minimizing their opportunities to elect members to the board. This met with a Section 5 objection.²⁷ Section 5 thus protected the rights to political participation that minority voters had secured through Section 2.

Attempts to limit blacks' ability to elect their representatives of choice continued into the next decade.²⁸ Following the 1990 census, the black population of Selma increased its majority to 58.4%,²⁹ roughly the majority it enjoyed in Dallas County as a whole.³⁰ To counter these majorities, the County and city adopted different tactics. The Dallas County Board of Education submitted three different redistricting plans to the Department of Justice, with not one of them being approved,³¹ and Selma submitted two different redistricting plans for election of its councilmembers, neither of which was given preclearance,³² because both evinced discriminatory intent, specifically the intent to keep African Americans from controlling the council, as one might expect based on their population. All of the proposed plans packed blacks into districts where possible, and split up other concentrations to minimize their electoral influence. After the revised plans were approved, black candidates won enough elections to secure majorities in both governing bodies.

4. DeSoto Parish, Louisiana

Officials in DeSoto Parish have used different techniques over the years to suppress black voting power. In 1969, the DeSoto Parish Police Jury passed an ordinance authorizing a

²⁶ Letter from Wm. Bradford Reynolds to Cartledge E. Blackwell, Jr. (Jun. 2, 1986).

²⁷ Letter from Wm. Bradford Reynolds to John E. Pilcher (June 1, 1987).

²⁸ The following discussion draws substantially on data presented in *The Impact of the Voting Rights Act in Alabama Since 1982* (forthcoming 2006).

²⁹ Letter from John R. Dunne to Philip Henry Pitts (Nov. 12, 1992).

³⁰ Letter from John R. Dunne to John E. Pilcher (May 1, 1992).

³¹ Letters from John R. Dunne to John E. Pilcher (May 1, 1992; July 21, 1992; and December 24, 1992).

³² Letter from John R. Dunne to Philip Henry Pitts (Nov. 12, 1992); Letter from James P. Turner (March 15, 1993).

change in its procedures for electing police jurors from ward-by-ward to at-large elections in 1971. The Department of Justice objected because of the retrogressive effect the law might have, but this was not its first objection to the tactic.³³ Rather, the objection followed an earlier objection to the enabling legislation, which had amended several of Louisiana's laws related to elections, apportionment of police jurors, and redistricting of police jury wards. Among other things, the legislation had removed the required minimum number of jury wards, meaning any parish in the state could adopt at-large elections. That legislation was later invalidated in its application to reapportionment of a parish school board.³⁴

Then, in 1991, the Department objected to the redistricting of the police jury, as well as the realignment of voting precincts and creation of more precincts. The redistricting plan would have reduced the number of black-majority districts from five to three of the eleven total districts, even though blacks constituted 44% of the population and 42% of the voting age population of the parish. In light of the racial polarization that characterized police jury elections in DeSoto, the Department concluded that the plan would result in "a significant retrogression in minority voting strength in the parish as a whole."³⁵ It made no decision as to the voting precinct changes, because the validity of those changes would depend on whatever police jury plan was ultimately adopted. The plan that was eventually approved had four majority-black districts.

The 1992 redistricting plan for the DeSoto Parish School Board met with an objection on Section 5 grounds as well, because despite comprising 42% of the voting-age population of the parish, only three of the eleven districts in the plan submitted had black voting-age population majorities.³⁶ The objection should not have surprised anyone: the plan was the same one that had been adopted for the police jury redistricting—the same plan that the Department had objected to the previous year. The parish passed the plan, with little public input and in spite of a suggested alternative that would have provided for four majority-black districts.

Ten years later, in late 2002, the Department of Justice again interposed an objection to the school board's redistricting plan. Although in five of the districts, according to the benchmark plan, there were black voting-age majorities (and black candidates being elected), the proposed plan provided for only four districts in which blacks would have the opportunity to elect their representative of choice.³⁷

Dougherty County, Georgia

In the midst of deep segregation in the 1940s and 1950s, some blacks began organizing voter registration drives under Reverend E. James Grant in Albany, the County seat in

³³ Letter from David L. Norman to F. N. Gillespy (Aug. 6, 1971).

³⁴ See *LeBlanc v. Rapides Parish Police Jury*, 315 F. Supp. 783 (D.C. La. 1969).

³⁵ Letter from John R. Dunne to R.U. Johnson (Oct. 15, 1991).

³⁶ Letter from Deval L. Patrick to Walter Lee (Apr. 25, 1994).

³⁷ Letter from Andrew E. Lelling to Walter C. Lee and B.D. Mitchell (Dec. 31, 2002).

Dougherty County.³⁸ Even after passage of the Voting Rights Act of 1965, discriminatory changes in election laws still undermined effective exercise of the franchise by blacks. This was accompanied by overt racist acts against blacks in Albany and other places around Georgia.³⁹

With the Voting Rights Act in place, a series of measures were taken in the early 1970s to limit blacks' enjoyment of the franchise. In 1971, after initially receiving an incomplete submission by the city of Albany of information necessary for the Department of Justice to apply Section 5 preclearance standards, the Department objected to the city's change of polling places.⁴⁰ The problem, said the Department, was that the Georgia legislature had passed a law that was not precleared but that required Dougherty County and city of Albany elections to be held the same day. Voting in two different places in one day would disproportionately affect blacks, who often would have to travel more substantial distances in order to vote in both places. The problems with these proposed changes and their anticipated effects on blacks continued into 1972.⁴¹

Then, in 1973, the city took advantage of the income disparities between the races by changing its election laws in ways that led to a Section 5 objection.⁴² The changes included "substantial filing fees and deposits as a prerequisite to qualification for candidacy" without providing, as required by court precedent, for an alternative method for those unable to pay the fees. The fiscal inequality between whites and blacks in Albany meant the hefty fees would be significantly more onerous for black candidates to meet.⁴³ Section 5 stopped black candidates from being priced out of the political market.

In 1982, after a change in racial demographics over the previous decade, Dougherty County submitted a redistricting plan for the election of commissioners, pursuant to Section 5.⁴⁴ There were more blacks and fewer whites, yet the plan did not reflect this, having "unnecessarily" packed most of the County's blacks into two majority-black districts. The Department of Justice refused to preclear the change, because its "analysis of the plan under submission indicate[d] that its inevitable effect" would be to "dilute the voting strength of black citizens in Dougherty County."⁴⁵

At the same time, Georgia's redistricting plan for the state House of Representatives also threatened to diminish black voting power in Dougherty County. The Department of Justice objected:

³⁸ Lee W. Formwalt, *Moving Forward by Recalling the Past . . . : A Brief History of the Albany and Southwest Georgia Civil Rights Movements*, Albany Herald (Nov. 15, 1998).

³⁹ *Id.*

⁴⁰ Letter from David L. Norman to James V. Davis (Nov. 16, 1971).

⁴¹ Letter from David L. Norman to James V. Davis (Jan. 7, 1972).

⁴² Letter from J. Stanley Pottinger to James V. Davis (Dec. 7, 1973).

⁴³ *Id.* at 2.

⁴⁴ Letter from Wm. Bradford Reynolds to C. Nathan Davis (July 12, 1982).

⁴⁵ *Id.* at 1.

[U]nder the benchmark plan there was one district in Dougherty County with a substantial black majority (80.4 percent) and one district with a nominal black majority (50.8 percent), while the 1981 plan redrew the Dougherty County districts to have one district with a black majority of 73.5 percent while the next most heavily-black district was reduced to 45.9 percent.⁴⁶

A decade later, in the 1992 House redistricting plan for Georgia, the Department of Justice concluded that “a finger-shaped area of Dougherty County had been placed into a majority-white district based in neighboring counties, apparently as a means of keeping an equal number of white and black members in county’s legislative delegation.”⁴⁷ The plan had been designed to limit black voting power in other ways as well, without giving serious consideration to the alternative plans that would not have done so.

As recently as 2002, there are still documented instances in which white elected officials have used redistricting plans to limit black voting power in Dougherty County. In Albany, the 2000 Census showed blacks made up 60.2% of the voting age population and as of September, 57.3% of the city’s registered voters were black. In one ward, the Census showed that blacks were now 51% of the population, but the proposed redistricting plan fractured that population, making blacks only 31% of the ward. The Department of Justice had harsh words for this attempt to maintain white dominance in the ward, noting “the evidence implies an intent to continue the city’s practice of ensuring that two majority white wards are maintained in the city, despite the major increases in black population in Ward 4 to a level over 50% black.”⁴⁸ This was not a hard conclusion to draw, given that the city’s own submission claimed one of its redistricting criteria was to “maintain ethnic ratios” by having four majority-black districts. The city offered no convincing explanation for why this necessitated moving the black population of Ward 4 to a ward that was already 90% black. This was part of a wholesale attempt to limit the progress blacks could make toward equality in Albany, including various ways in which segregation was maintained in the city’s school system.⁴⁹

Grenada County, Mississippi

The history of Section 5 objections here spans the gamut of voting rights abuses, with every possible attempt made to maintain white control of Grenada’s elected positions. In Grenada County, the Department of Justice interposed objections to at-large elections, numbered posts, and a multi-member plan in 1971. In 1972, the Department objected to at-large elections and numbered posts again, as well as a majority vote requirement. In 1975, an objection to certain annexations by the County was withdrawn after the County

⁴⁶ Robert Kengle, *Voting Rights in Georgia, 1982-2006* at xii (2006), available at <http://www.civilrights.org/issues/voting/GeorgiaVRA.pdf>.

⁴⁷ *Id.* at xiii.

⁴⁸ Letter from J. Michael Wiggins to Al Grieshaber, Jr. at 2 (Sept. 23, 2002).

⁴⁹ See Lee W. Formwalt, *Albany Movement*, *The New Georgia Encyclopedia* (2003).

annexed a minority area. In 1976, the Department objected to a redistricting plan for election of district supervisors. In 1987, the Department objected to the redistricting again, noting that black residents of the County had had no “meaningful input” into the redistricting plan design.⁵⁰

The next year, the County tried to change the method of selecting the two school district trustees who represent areas of the County outside the city of Grenada from at-large elections to appointment by the board of supervisors of the County; electing them in an at-large system would have allowed blacks more representation on the board. Taking into account the prevalence of racially polarized voting, the Department objected because the change “would be retrogressive to the significant black voting strength in the outlying area of the county.”⁵¹

More recently, some instances of discrimination in Grenada have been subtler, with facially neutral efforts that, when applied, clearly show the racial struggle is ongoing in the city. This is hardly surprising, for the racial composition of the city could hardly be more even: the 2000 Census counted 7,333 white residents and 7,342 black residents.⁵² One example of this subtle discrimination took place in a special referendum held by the city in late 1996. One of the procedural aspects of the election was a limit on those who transported voters to voting booths from assisting more than one of those voters in the voting booth. In January of 1997, four months after holding the referendum, the County submitted that election for preclearance. Despite claims of the city that the rule was adopted by mistake and in any event not applied during the election, the Department of Justice objected, citing reports of voters prohibited from receiving assistance under the auspices of that rule, remarking on the rule’s violation of Section 208 of the Voting Rights Act, and noting that all reports of the rule’s application related to black voters.⁵³

The city of Grenada’s gradual shift to becoming a majority-black district has nonetheless led to more desperate, not-so-subtle attempts to maintain white control. While the city had a slim white majority according to the 1990 Census, a special census commissioned by the city and conducted by the Census Bureau in 1997 revealed that the racial demographics had changed to the point that now blacks comprised a majority of the voting-age population. Officials in Grenada tried to delay the electoral consequences of this shift however they could. Grenada avoided having municipal elections several times, such that the only way elections were held was by a court order from the Mississippi Supreme Court requiring special elections to be held in February 1998.⁵⁴ The city also responded to Department of Justice requests with incomplete submissions repeatedly. In July 1998, the Department of Justice was granted summary judgment on Grenada’s

⁵⁰ Letter from Wm. Bradford Reynolds to George C. Cochran (June 2, 1987).

⁵¹ Letter from Wm. Bradford Reynolds to Holmes S. Adams at 2 (May 9, 1988).

⁵² U.S. Census Bureau, Census 2000: Summary File 1 (SF 1) and Summary File 3 (SF 3), www.census.gov (last visited July 12, 2006).

⁵³ Letter from Isabelle Katz Pinzler to James McRae Criss (March 3, 1997).

⁵⁴ *Hubbard v. City of Grenada*, No. 3:96CV172-S-A, 1998 U.S. Dist. LEXIS 11949, at *1 (N.D. Miss. July 1, 1998).

violation of Section 5,⁵⁵ the relief being immediate elections under a plan that would ensure black majorities in three wards and 45% of the population in a fourth, according to the 1990 Census. In August 1998, the Department of Justice blocked three actions by Grenada County in relation to the election of city councilmembers: an annexation, a cancellation of a general election, and a redistricting plan for the city of Grenada. In its letter interposing an objection to the changes, the “adverse impact” of the proposed actions on minority voters was deemed to be “substantial.”⁵⁶ To battle the black demographic—and, inevitably, electoral—takeover, the annexation would have increased the geographic area of the city by almost 400%, adding enough white voters to tip the scales back so that whites were the majority again; the redistricting plan would have reduced electoral opportunities for black voters; and the cancellation seemed to have been based on a fear that black candidate would win in one of the city’s majority-black wards.⁵⁷ Thus, every change was based on the intent to discriminate against black voters.⁵⁸

The continued Voting Rights Act violations by the County of Grenada have led the Department of Justice to send election observers to its precincts as recently as the 2000 federal election, with a total of 171 observers having been sent since 1967.

Hale County, Alabama

Voting rights for blacks in Hale County have been endangered since before the passage of the Voting Rights Act, and would be in great jeopardy still today, were it not for the protection offered by its soon-to-be expiring provisions. The following excerpt is taken from *The Impact of the Voting Rights Act in Alabama Since 1982* (forthcoming 2006):

Hale County, a Black Belt county, serves as an example of a majority-black county where the effort to suppress full black electoral participation has persisted, and only because of the Voting Rights Act—particularly the preclearance and the examiner/observer provisions—have African Americans been able to overcome this entrenched and continuing discrimination.

Prior to the passage of the Voting Rights Act, African Americans in Hale County who wanted to register and vote faced tremendous obstacles – the poll tax, literacy tests, and harassment. As of May 1964, only 3.9% of the black voting age population was registered to vote.⁵⁹ On August 9, 1965, three days after the Voting Rights Act was passed, the

⁵⁵ *Id.* at *12.

⁵⁶ Letter from Bill Lann Lee to T.H. Freeland IV at 2 (Aug. 17, 1998).

⁵⁷ *Id.* at 2-3.

⁵⁸ *Id.* at 6. The objection was withdrawn in 2005 when blacks comprised a majority of the city council and its annexations were no longer deemed to be racially selective.

⁵⁹ *United States v. Hale County*, 496 F. Supp. 1206, 1211 (D.D.C. 1980) (three-judge court).

Department of Justice certified Hale County as a jurisdiction where a federal examiner had the authority to register black voters.⁶⁰ Not coincidentally, on August 10, 1965, the Alabama Legislature passed legislation changing the method of electing Hale County commissioners from single-member districts to at-large voting.⁶¹

Though Hale County began to elect its commissioners at large, Hale County did not submit this voting change to at-large elections until 1974. The Department of Justice objected to the change.⁶² Hale County then sought preclearance from the District Court of the District of Columbia. In reviewing the change, the court found black candidates lost all thirty times they ran for county-wide office, including eleven times for county commissioner. The court found that the elections were characterized by racial bloc voting, that black citizens suffered from educational and economic impediments traceable to a history of discrimination that impacted their right to vote, and that black voters were subjected to intimidation and harassment in trying to exercise their right to vote. The court found that these factors, when combined with at-large voting, prevented black candidates from getting elected county commissioner.⁶³ The court held that Hale County failed to show that the change did not have a discriminatory purpose or effect and it denied preclearance.⁶⁴

Since the 1982 reauthorization, much of the focus has been on the elections in the City of Greensboro, the county seat in Hale County, and the Voting Rights Act has played a major role. The city attempted to deannex property "shortly after it became known that subsidized public housing would be built on the property and that there was a strong perception in both the black and white communities that such housing would be occupied largely or exclusively by black persons. . ."⁶⁵ The Department of Justice objected to the change.

⁶⁰ The federal examiner provisions, contained at Sections 6-9 and 13, apply to all the jurisdictions subject to the coverage formula in Section 4(a). Examiners have the authority to register voters and to monitor elections by utilizing federal observers. In the early years of the Act, examiners were used for both purposes. Over time, the registration function of the examiner has become used less frequently, to the point where it is not used at all today, whereas the monitoring function has continued. See United States Department of Justice, Voting Section, *About Federal Examiners and Observers*, available at http://www.usdoj.gov/crt/voting/examine/activ_exam.htm (last viewed July 5, 2006).

⁶¹ *Hale County*, 496 F. Supp. at 1210.

⁶² Letter from J. Stanley Pottinger to Sue W. Seale (Apr. 23 1976).

⁶³ *Hale County*, 496 F. Supp. at 1212-15.

⁶⁴ *Id.* at 1215-16.

⁶⁵ Letter from William Bradford Reynolds to John C. Jay, Jr. (October 21, 1985).

In 1987, the city's at-large method of electing its five county commissioners was challenged as part of the *Dillard* litigation. Though the city admitted to a Section 2 violation shortly after the litigation was filed, it took *ten* years for a final remedial plan to be implemented.⁶⁶ During the litigation, the Department of Justice objected to two different plans under Section 5 adopted by the city council on the grounds that, given the history of discrimination and the pattern of racially polarized voting, the plans limited black voters to the opportunity to elect two of the five council members even though blacks comprised 62 percent of the total population and 56 percent of the voting age population. The Department found that both plans fragmented the black population.⁶⁷ Ultimately, the plan ordered by the court was drawn by a court-appointed Special Master. Although the Special Master did not consider race at all when drawing the plan and instead followed "traditional redistricting criteria," the plan contained three districts where two-thirds or more of the population was black.⁶⁸

Observers have played a critical role in elections in Hale County. Beginning in 1966, observers have monitored elections in Hale County twenty-two times, including twelve times since 1982. In the June 5, 2006, primary election, the Department of Justice sent observers to "ensure that the right of voters to participate in the primary election is not denied on the basis of their race."⁶⁹ Testifying before the National Commission on the Voting Rights Act, Alabama State Senator Bobby Singleton spoke of the significance of federal observers. In particular, he testified about a particularly intense election in 1992:

We had at that time, still, white minorities . . . in that community who were still in control of the electoral process, holding the doors, closing the doors on African-American voters before the . . . voting hours were over. I . . . had to go to jail because I was able to snatch the door open and allow people who was coming from the local fish plant . . . whom they did not want to come in, that would have made a difference in the . . . votes on that particular day. We've experienced that in the city of Greensboro . . . over and over again, and even in the county of Hale.⁷⁰

⁶⁶ *Dillard v. City of Greensboro*, 956 F. Supp. 1576 (M.D. Ala. 1997).

⁶⁷ Letter from John R. Dunne Nicholas H. Cobbs, Jr. (December 4, 1992); Letter from James P. Turner to Nicholas H. Cobbs, Jr. (January 3, 1994).

⁶⁸ *City of Greensboro*, 956 F. Supp. at 1581-82.

⁶⁹ U.S. Department of Justice, "Justice Department to Monitor Elections in Alabama, California, New Jersey, New Mexico and South Dakota," June 5, 2006, *available at* http://www.usdoj.gov/opa/pr/2006/June/06_crt_347.html (last viewed July 5, 2006).

⁷⁰ National Commission on the Voting Rights Act, *Protecting Minority Voters: The*

Singleton further testified about how critical observers were in enabling minority voters to elect a majority on most of the elected bodies in Hale County, including school board, county government, most city councils, as well as a black circuit court judge, black circuit clerk, and state representative.⁷¹ Hale County exemplifies both the continuing persistence of voting discrimination against African Americans in Hale County and the success of Voting Rights Act in remedying and preventing that discrimination.

Lancaster County, South Carolina

In the years following passage of the Voting Rights Act of 1965, at-large elections were used in many jurisdictions covered by Section 5 where larger white populations voting as a bloc could submerge any minority voting power. Lancaster County was no exception.⁷² In 1972, 1976, and 1984, Lancaster County adopted staggered terms for election of its at-large county board of education members and area boards of trustees.⁷³ The Department of Justice warned the County repeatedly that at-large elections in areas where racial bloc voting exists would be subject to Section 5 scrutiny, because this electoral system “limits the potential for black voters to participate effectively in the electoral process by reducing the ability of those voters to use single-shot voting.”⁷⁴ The County ultimately adopted a single-member system.⁷⁵

Other election law changes in Lancaster County have also been met with Section 5 objections. Along with a host of other electoral changes, the city of Lancaster began requiring majority votes for judicially contested elections in 1976.⁷⁶ The changes were only submitted on October 25, 1982, and the Department of Justice objected in December to the majority-vote requirement, having already objected to an identical proposed change in 1978.

The city later experienced other Voting Rights Act problems when the NAACP filed a Section 2 lawsuit against it in 1989. Following a settlement, the city adopted a redistricting plan that expanded the city council’s size and changed the election system from a seven-member at-large electoral structure to a hybrid system, in which six of nine councilmembers were elected from single-member districts. The Department objected

Voting Rights Act at Work 1982-2005 62-63 (2006).

⁷¹ *Id.* at 63.

⁷² The following discussion draws substantially on Ruoff & Buhl, *supra* note 3.

⁷³ *See id.* at 33; Letter from Wm. Bradford Reynolds to C. Havird Jones, Jr. (Apr. 27, 1984); Letter from J. Stanley Pottinger to Treva Ashworth (July 30, 1974).

⁷⁴ Letter from Wm. Bradford Reynolds to C. Havird Jones, Jr. at 1 (Apr. 27, 1984).

⁷⁵ Ruoff & Buhl, *supra* note 3, at 33.

⁷⁶ Letter from Wm. Bradford Reynolds to Paul S. Paskoff (Dec. 27, 1982).

the change, because the effect of the changes would be to reduce black representation on the council in favor of white councilmembers' incumbency.⁷⁷

Sumter County, South Carolina

In Sumter County, the history of discrimination in voting is a long one.⁷⁸ The Sumter County Council instituted at-large elections in 1967, allowing white majorities to dominate where a single-member district system would have in all likelihood provided blacks some representation on the Council. The Council did not seek preclearance, and operated the at-large system until 1974. After passage of the 1975 Home Rule Act, Sumter changed its structure in accordance with the Act's designation of a Council-Administrator form with at-large elections. On December 3, 1976, the Department of Justice objected to implementation of the form, and an injunction was ultimately issued by the U.S. District Court for South Carolina, enjoining the at-large system.⁷⁹

After several failed requests to the Attorney General for reconsideration of the Section 5 objection, the County managed to convince a three-judge panel that the requests for consideration were in fact preclearance requests, and that the Attorney General had failed to interpose an objection in time to stop the changes.⁸⁰ The Supreme Court rejected this argument and reversed the lower court's decision.

When, in 1984, the Council attempted to secure a declaratory judgment preclearing its adoption of at-large elections, the District Court of the District of Columbia rejected the proposed plan, citing the dearth of elected black officials under the at-large system—only one had been elected in the years in which it was in place. The Court held that “[a] fairly drawn single-member district plan for the Sumter County Council is more likely to allow black citizens to elect candidates of their choice in three of seven districts (or 42.8 percent of the representation on the Council).”⁸¹ Among the Court's findings was a failure by the Council to show that “the legislature did not pass Act 371 in 1967 for a racially discriminatory purpose at the insistence of the white majority in Sumter County” or “that the at-large system was not maintained after 1967 for racially discriminatory purposes and with racially discriminatory effect.”⁸² Thereafter, elections for the Council were single-member.

The racial composition of the Council had substantially changed by 2001, following the adoption of the single-member system. Three of its members were black, with Sumter County overall having a 47% black (and 49% non-Hispanic white) population. One district, District 7, had seen a particularly extreme demographic shift in the 1990s, and despite having a white elected official, was now 59% black. Redrawing the district, the

⁷⁷ Ruoff & Buhl, *supra* note 3, at 33.

⁷⁸ The following discussion draws substantially on Ruoff & Buhl, *supra* note 3.

⁷⁹ *See id.* at 17.

⁸⁰ *Blanding v. Dubose*, 509 F. Supp. 1334 (D.S.C. 1981).

⁸¹ *County Council of Sumter County v. United States*, 596 F. Supp. 35, 37 (D.D.C. 1984).

⁸² *Id.* at 38.

County reduced that majority of 59% to a minority of 49%, and the Department of Justice objected to the plan, finding it to be retrogressive.⁸³

There were several attempts over the succeeding months to obtain preclearance, with public hearings to evaluate alternatives, all racially charged and to no avail. At one of these meetings, a white council member was heard to say that the objections were “about black power,” while another moved to appeal the decision to the Supreme Court, “because it was . . . imperative to defend the rights of Asian (.9 percent of the population) and Hispanic (1.8 percent of the population) minorities who would get no district.”⁸⁴ The Council ultimately remained without a plan until November 25, 2003, when a new plan was adopted. With a 55% black voting-age population, a black member was elected commissioner of District 7.⁸⁵

Waller County, Texas

Prairie View, a majority-black city in Waller County, is home to Prairie View A&M University, a historically black institution of higher education. During the 1970s, when students wanted to vote, the County registrar made many attempts to stop them from doing so, contending they were not legally residents of the County. Stopping the students was especially important, because at the time, according to the 1970 Census, blacks had a slim majority of the County’s population, at 52.5%, and the proposed changes would exclude 2,000 blacks from voting.⁸⁶ Given that the 1970 Census put the population of Waller County just above 14,000 people (including those not eligible to vote),⁸⁷ eliminating the students would have drastically changed the racial dynamic of Waller County elections and maintained white control of Waller County’s elected positions. These tactics were struck down by a federal district court, which found the efforts to prevent students from voting violated the Fourteenth and Twenty-Sixth Amendments. The Court of Appeals affirmed, and the Supreme Court summarily affirmed in favor of the students.⁸⁸

In the early 1990s, indictments of several students at Prairie View A&M were issued for “illegal voting”, but the indictments were subsequently dropped.⁸⁹ This was yet another

⁸³ Letter from Ralph F. Boyd, Jr. to Charles T. Edens (June 27, 2002).

⁸⁴ Ruoff & Buhl, *supra* note 3, at 18.

⁸⁵ *Id.* at 19.

⁸⁶ Letter from J. Stanley Pottinger to Hayden Burns (July 27, 1976).

⁸⁷ U.S. Census Bureau, *1970 Census of Population: Texas*, Vol. I, Part 45, at 28, available at

<http://www2.census.gov/prod2/decennial/documents/00496492v1p45s1ch02.pdf>.

⁸⁸ *Symm v. United States*, 439 U.S. 1105 (1979), *aff’g United States v. Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978) (holding unconstitutional the denial to Prairie View students of the presumption of bona fide residency extended to other Walker County residents).

⁸⁹ National Commission on the Voting Rights Act, *Protecting Minority Voters: The Voting Rights Act at Work 1982-2005* 65 (2006).

example of using misreadings of residency requirement technicalities to try to get around protection for minority voters.

Discrimination against blacks has survived through 2004 in Waller County. Two students from the University tried to run for local office in the March 2004 primary. One of them vied for a seat on the Walker County Commissioners' Court, which is the governing body of the County. Students at the University were threatened by the white criminal district attorney, who said he would prosecute as voting in that election as a felony. He withdrew these threats after the University's NAACP chapter and five students sued him, barely a month before the election. Five days after the lawsuit was filed, the Commissioners' Court voted to limit severely the hours of operation of the early-voting polling place closest to the University campus. With the primary falling during the students' spring break, this change had a disproportionate effect on them. This was no accident, and certainly not without precedent—using the academic calendar to prevent blacks in the University community from voting was first challenged in 1978, when school district elections were scheduled during summer vacation months.⁹⁰

In response, the University student NAACP chapter filed a Section 5 enforcement action against Waller County for the change.⁹¹ The County canceled the proposed changes, and with their voting rights restored by Section 5, over 300 students voted during the early voting period. The outcome was a victory for the student running in the primary, who would in all likelihood have lost otherwise.

Students are not the only blacks who have been confronted by resistance from some whites to their full participation in the political process. Although it was not the first time redistricting had been used to limit the election of black officials, 2001 was the most recent attempt to do so in Waller County. In 2001 the Department of Justice objected to several proposed changes that would have had retrogressive effects on minority voting strength, including redistricting plans, voting precinct changes, polling place switching and elimination, and early voting changes. In one precinct, the redistricting plan for county commissioner would have carved apart the politically cohesive group of blacks and Latinos that together had been electing their candidate of choice for the past five years, in close elections, over white candidates that received solid backing from white supporters. Without Section 5, the marginal success rate of black candidates in that precinct would have in all likelihood vanished under the proposed plan as soon as the next election.⁹²

⁹⁰ Letter from Drew S. Days III to Richard G. Sedgely (Mar. 10, 1978).

⁹¹ See generally National Commission on the Voting Rights Act, *supra* note 89, at 65-66.

⁹² Letter from J. Michael Wiggins to Denise Nancy Pierce (June 21, 2002).

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June 28, 2006

DEPARTMENT OF POLITICAL SCIENCE

Senator Arlen Specter
Chair, Senate Judiciary Committee
711 Hart Building
Washington, D.C. 20510

Dear Senator Specter:

I am a professor of political science and Director of the Center for the Study of African-American Politics at the University of Rochester. In January of 2007 I will join the faculty of Columbia University as a professor of political science. I have written extensively on African-American political participation, and most recently co-authored a study assessing the political participation of African-Americans since the civil rights movement. I have also been an expert witness to describe the importance of considering communities of interests in the state redistricting process.

I am writing you in support of renewing the Voting Rights Act (S. 2703). While some have argued that the section has outlived its purpose, those views substantially underestimate the power of the legislation in ensuring that minority voters have the ability to elect representatives of their choice. Eliminating Section 5 would encourage the return of electoral mechanisms that have the unfortunate consequence of diluting the influence of minority voters. Although a few commentators have speculated on the ability of minority voters to have their political interests represented in majority white districts through "substantive" representation, dismantling the ability of minority voters to elect representatives of their choice by sprinkling them into multiple legislative districts would severely limit political voices in minority communities. Diluting the influence of minority voters through schemes to maximize their "substantive representation" is akin to the type of redistricting strategies that were once used to suppress minority political power. Section 5 has allowed minority groups to overcome the barriers of diluting their political voices and it is important that the legislation remains a protector of minority voting rights.

In addition to providing minority voters with an equal opportunity to elect representatives of their choice, the Voting Rights Act, and by extension the Section 5 provision, has indirectly sustained the civic participation of African Americans since its inception. In a recently published longitudinal study I co-authored on the civic activism of African-Americans since the 1970s (*Countervailing Forces in African-American Civic Activism, 1973-1994*, Cambridge University Press, 2006, with Valeria Sinclair-Chapman and Brian McKenzie), we show that the indirect effects of Section 5 has been critical to bringing African-American citizens into the political mainstream. In the study we find that in states covered by the Voting Rights Act, the

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participation of African Americans in activities such as working for a better government group or contacting representatives about a problem was substantially enhanced by black office-holding. Indeed, the effects of descriptive representation on the civic participation of southern African-Americans were so potent in the first two full decades after the passage of the Voting Rights Act that it overshadowed the negative effects of debilitating economic forces in black communities, such as double-digit unemployment, rising prices in goods and services, and rising income gaps, which all lowered blacks' civic participation during the 21-year period of our analysis. The findings of the study indicate that the gap in the civic participation of whites and blacks could not have been narrowed in the states covered by Section 5 without the ability of black voters to elect public officials of their choice. Taking away the ability of minority voters to elect representatives of their choice might have the unintended consequence of lowering their civic participation.

While Section 5 does not, and certainly should not, guarantee the election of minority representatives from majority-minority districts, whoever is elected from those districts would have to prioritize the interests of their mostly minority constituency. Indeed, majority-minority districts may not be needed in every locality, depending upon the extent of racial bloc voting and white crossover voting. Unfortunately, there are many communities where racial bloc voting persists. Section 5 ensures that minority interests are not put on the back burner and its renewal would help to sustain the progress of civic inclusion of minorities that has been the hallmark of the Voting Rights Act.

If you have any questions about the potential effects of a weakened Voting Rights Act on minority civic participation, please feel free to call on me for assistance.

Respectfully,

Fredrick C. Harris
Associate Professor of Political Science
Director, Center for the Study of African-American Politics

http://writ.news.findlaw.com/commentary/20060530_hasen.html



What Congress Should Consider Before Renewing the Voting Rights Act: A Chance to Preempt Supreme Court Invalidation, and Better Protect Minority Voting Rights
 By **RICHARD L. HASEN**

Tuesday, May. 30, 2006

Important provisions of the Voting Rights Act (VRA) expire next year, unless renewed by Congress. The good news is that a vigorous debate is taking place over whether, and how, the relevant VRA provisions should be amended before they are renewed. The bad news is that this debate is taking place among academics, not among Members of Congress.

Rather than considering changes to the relevant VRA provisions, Congress seems poised to simply renew them in their present form for another 25 years . But that move could embolden the new Roberts Supreme Court to strike the Act down as unconstitutional. Moreover, a simple renewal squanders an opportunity for Congress to take a more serious look at how it can fix its voting laws to better protect minority voting rights in the Twenty-first Century.

Before it closes the "deal" on VRA renewal, Members of Congress should look more carefully at what can, and should, be done.

The Voting Rights Act Provisions that Are Up for Renewal

First, the basics. Not all of the provisions of the VRA are up for renewal. For instance, one of the pillars of voting rights litigation -- Section 2, which guarantees members of protected minority groups across the nation a fair chance to participate in the political process -- is a permanent provision of the Act.

What provisions are up for renewal? Among them are bilingual ballot requirements for areas with large populations of voters whose first language is not English, and rules for election observers in places where there could be problems at the polls.

But by far the most important expiring provision is Section 5 of the Act, the "preclearance" provision.

The Crucial "Preclearance" Requirement: DOJ Approval of Voting Changes

The "preclearance" requirement came straight out of the Civil Rights Movement.

Back in 1965, Congress decided that it had had enough of Southern jurisdictions' clever attempts to avoid creating equality at the ballot box. When the federal government would challenge a racially discriminatory voting test--for example, a literacy test--as unconstitutional, the jurisdiction would stop the practice, only to put another racially discriminatory practice in its place. So Congress decided that those states with a history of racial discrimination needed to get "preclearance" from the Department of Justice (or a special three-judge court) before making changes in its voting rules - and, to this effect, enacted Section 5. To survive the "preclearance" process, the state had to prove that its voting change would not make the position of minorities worse off.

South Carolina challenged the "preclearance" remedy as unconstitutional, arguing that Congress didn't have the power to require states--and only some states--to submit to what some have called "federal receivership." But the Supreme Court, citing the covered jurisdictions' "pervasive," "flagrant," and "unremitting" history of racial discrimination in voting, upheld section 5 of the VRA as a permissible exercise of congressional power.

In 1975 and 1982 Congress renewed section 5, and added additional jurisdictions to the list: Today, section 5 covers 9 (mostly Southern) states and portions of seven other states -- including California, Florida, New York, and New Hampshire.

The 1982 renewal takes us to 2007, and it expires unless renewed by Congress.

Currently, as I noted above, there's broad consensus in Congress that the expiring provisions of the Voting Rights Act should be renewed in some form. (A few House members from Georgia and Texas are making noises about extending the act nationally, but this appears to be just political posturing for the folks back in their districts.)

Indeed, Republican leaders in the House and the Congressional Black Caucus apparently have already struck a deal that would renew the expiring provisions for another 25 years in virtually the same form as today. And in the Senate, identical legislation has 22 co-sponsors.

So what's not to love about the rare spirit of bipartisanship (or wish to put this interest behind them in an election year) which apparently has overtaken Congress on this issue? I have two concerns - both serious.

Why the Supreme Court Might Strike Down the Renewed Preclearance Requirement

First, there is a very serious risk that the Roberts Court would strike down a renewed section 5 as unconstitutional.

The Supreme Court, as part of its "New Federalism" jurisprudence, has recently been limiting the ability of Congress to pass civil rights laws. Beginning with the 1997 case of *City of Boerne v. Flores*, the Court has held that Congress must produce a strong evidentiary record of intentional state discrimination to justify laws that burden the states. In addition, whatever burden is placed on the states must be "congruent and proportional" to the extent of the violations.

Under this standard, Congress could well have an evidentiary problem with a renewed section 5, for several reasons:

First, because the Act has been so effective as a deterrent it will be hard to produce enough evidence of intentional discrimination by the states so as to justify the extraordinary preclearance remedy for another 25 years. Although the House record for VRA renewal runs for literally thousands of pages, there's just not that much in it that shows that the states covered under section 5 are engaging in patterns of intentional racial discrimination.

Indeed, DOJ rarely objects to any voting changes submitted for preclearance anymore. From 1998-2002, DOJ objected to a meager 0.05% of preclearance requests.

Second, the House record seems to show that the problems that do continue to exist occur across the nation, not just in the covered jurisdictions. So the Court may insist on evidence that the covered jurisdictions present greater problems than the rest of the nation to justify the geographically-selective preclearance remedy.

Some observers argue that the Court will give a pass on Congress's requirement to produce evidence precisely because it understands that section 5 has been such a good deterrent - and thus that the absence of evidence is only proof of the effectiveness of the law.

I hope that this theory is right, but I am not confident that the new Supreme Court would be inclined to so hold. The problem with such a theory is that it would justify preclearance for an undetermined amount of time into the future. Under this theory, how would we ever know if the law was no longer necessary?

In addition to the problem of producing enough evidence of intentional state discrimination, there is also the tailoring issue. The current Act uses a formula for coverage based on the jurisdiction's voter registration or voter turnout and its prior use of a discriminatory test or device for voting, such as a literacy test.

Unwisely, the proposed amendments would not update this formula in any way - even though the Act relies on data from the 1964, 1968, or 1972 elections. Those voter turnout figures-- and particularly, the figures for voter turnout in minority communities--bear little resemblance to turnout figures today.

Though the Court's most recent "New Federalism" case, *Tennessee v. Lane*, seems to have eased the burden a bit when it comes to the Court's requiring Congress to produce enough evidence of state misconduct Justice O'Connor provided the swing vote in that case. In the Roberts Supreme Court, as NYU Professor Sam Issacharoff has noted, Justice Kennedy's vote is likely to be pivotal, and it is not at all clear that Kennedy would find a 25-year renewal of section 5, using old turnout numbers, to pass constitutional muster.

The Urgent Need to Update the VRA

Putting aside the constitutional issue, there's another problem: The law needs to be updated to fit the Twenty-First Century.

If Congress were designing legislation to help minority voters today, it likely wouldn't single out those jurisdictions covered by section 5 as the place where minorities need the most help. It might target Florida and Ohio. It certainly would target voter identification requirements that put financial burdens on poor and minority voters. It might do something about the racially discriminatory impact of felon disenfranchisement laws. But it wouldn't create an act so geographically limited, and it probably wouldn't limit DOJ's scrutiny to changes in voting procedures. Existing voting procedures can also be racially discriminatory.

In addition, recent experience with DOJ shows that it might be making some decisions on preclearance with an eye on partisan politics. For example, documents leaked to the *Washington Post* show that political appointees at DOJ overruled career attorneys on whether or not to preclear the controversial Texas redistricting and Georgia voter identification laws. Some see these preclearance decisions as benefiting Republicans.

Accordingly, Congress - if it reviewed the VRA with an eye to fairness - might want to consider whether aggrieved minority voters should be able to appeal DOJ grants of preclearance. The Supreme Court interpreted the current VRA to prevent such appeals.

Legislation This Important Shouldn't Take Risks on Court Invalidation

In the end, the "deal" in place in Congress appears based on a roll of the dice - with Congress betting that the Roberts Court wouldn't dare invalidate section 5 of the Voting Rights Act.

That bet may well be wrong, as I indicated above. It's true that it would be bad public relations for the Court. But Courts don't worry about P.R. anywhere near as much as legislators do.

The common wisdom is that if the Court did strike the measure down, Congress would then pass a more narrowly tailored law. So, according to this argument, if a narrowly tailored law is what the Court insists upon, we'll get it one way or the other. But it is not clear that the political coalition that could pass the renewed VRA in its current form would reach agreement on a narrower VRA after Supreme Court invalidation.

In addition, and crucially, these arguments ignore the effect of having a decision on the books that partially overrules the VRA. As I recently told the Senate Judiciary Committee, a Supreme Court holding striking down section 5 of the Act could pave the way for striking down the (now more important) section 2 of the Act - under which key voting rights litigation now proceeds, and other civil rights laws as well. If section 5 is held to exceed Congressional power, might other civil rights laws be held to do the same?

Congress Should Fix the VRA Now, and Not Risk Court Invalidation

It would be far better for Congress to undertake a serious discussion now about how to fix section 5, than to take the risk of leaving this matter to a potentially hostile Court.

One of the simplest and best fixes would make it easier for jurisdictions that already have made great progress when it comes to protecting minority rights to "bail out" from preclearance requirements. The law contains a bailout provision now, but that provision can be streamlined and improved in ways that will improve the chances of its being upheld by the Supreme Court.

The VRA has been an unqualified success in remarkably increasing minority voter registration and turnout, increasing the number of African-American and Latino elected officials, and increasing the ability of minority voters to effectively exercise their right to elect representatives of their choice.

Congress should spend the time to ensure this laudable, effective law will, when renewed, continue to serve its important function of continuing to protect minority voting rights in this country. That means, among other things, making sure that it that will pass constitutional muster in the Supreme Court.

Richard L. Hasen, the William H. Hannon Distinguished Professor of Law at Loyola Law School Los Angeles, has organized a [forum](#) for election law scholars on the question of VRA reauthorization at his [Election Law Blog](#).

ILLEGAL VOTERS

Honolulu Advertiser, The (HI)

September 9, 2000

Author: Ishikawa Scott; Staff Advertiser Final

Non-U.S. citizens to be stopped at polls

By Scott Ishikawa, ADVERTISER CAPITOL BUREAU

With absentee walk-in voting beginning Monday for the primary election, voting officials are fine-tuning procedures to head off illegally registered **voters** at the polls.

State Office of Elections spokeswoman Aisha Wang said an ineligible person's name will be crossed off the **voter** register at the precinct. If the person affirms to be a U.S. citizen during questioning, election officials will have the **voter** re-register by filling out an affidavit verifying U.S. citizenship. The person also will be advised that it is **illegal** to fill out the form falsely.

Ineligible **voters** will not be required to show documents verifying U.S. citizenship, such as a birth or naturalization certificate. But bringing such documents to the **voter** precinct may help speed up the re-registering process, said Genny Wong of the Office of the City Clerk, which handles **voter** registration on Oahu. And precinct officials may note in their records that the **voter** showed proof of citizenship, Wong said.

Election officials believe many of the non-U.S. citizens who registered did so unknowingly, and the issue is not a result of **voter** fraud. They speculated a number of factors may have resulted in the **voter** irregularities, including language barriers and the ease of **voter** registration.

The issue arose after a cross-check between Hawaii registered **voters** and people who applied for state identification cards. Officials found 543 Oahu residents who were not U.S. citizens had registered to vote.

About 160 of that group have since responded to the city, saying they had become naturalized U.S. citizens or asked to be taken off the **voter** rolls.

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City steps up search for illegal voters

By Scott Ishikawa and **Kevin Dayton**, ADVERTISER STAFF WRITERS

City election officials yesterday said they will intensify their efforts to find about 380 non-U.S. citizens who could be registered illegally to vote.

They are some of the 543 Oahu residents who registered to vote but who are not U.S. citizens. City officials announced the figure Tuesday after cross-checking Hawaii registered **voters** with people who applied for state identification cards.

About 120 ineligible **voters** initially responded to a city questionnaire about the discrepancy, saying they had become naturalized U.S. citizens or asked to be taken off the **voter** rolls.

Since Tuesday, another 40 people have verified their citizenship or asked to be removed from the **voter** list, according to City Council Chairman Jon Yoshimura. The City Clerk's Office discovered the discrepancy.

Of the 162 people who responded, a total of 101 have verified that they became naturalized citizens, and 61 asked to have their names taken off the **voter** rolls.

Another 30 sent back the city questionnaire but did not check either option, suggesting that they might have not understood the form. Another 126 questionnaires were returned to sender.

Yoshimura said the city might send a second letter to those who have not responded before the Sept. 23 primary.

"We're determining how to track these people down, whether its by phone or other means of communications," he said. "This is our No. 1 priority for the next two weeks."

State chief election officer Dwayne Yoshina met with Oahu clerk officials yesterday to discuss ways of tracking ineligible **voters** at the polls. One option is to provide **voter** precinct officials with a list of the remaining ineligible **voters**. Any who showed up to vote would be asked to show papers verifying citizenship.

But Yoshimura is optimistic that nearly all of the remaining ineligible **voters** will be found before the primary. He encourages other non-citizens who registered to come forward, as the city does not intend to prosecute.

"And we are also not asking residents to turn in other ineligible **voters**. That is not our intent," he said.

Yoshimura said it will take some time before election officials can determine whether any of the ineligible **voters** cast ballots in past elections.

"We have to make sure they did not become naturalized citizens during that period," he said. "That is going to take checking and double-checking before we release those kind of numbers."

Gov. Ben Cayetano said he wants the state attorney general to investigate how the ineligible **voters** were registered, but doubts it is a case of **voter** fraud.

"I don't think there is anything sinister," Cayetano said. "These things happen because English is a second language to many of them."

Deborah Phillips, chairwoman of the Arlington, Va.-based Voting Integrity Project, said her organization also looked into the possibility that noncitizens might be registered to vote in Hawaii. VIP is a national nonpartisan **voter** rights organization that, among other things, attempts to combat **voter** fraud.

She said the group wanted to explore the possibility that someone might be registering noncitizens without their knowledge, then casting fraudulent votes using their names.

She said 1999 research stalled because the U.S. Immigration and Naturalization Service so far has not released needed information.

The group focused on one Hawaii precinct characterized by large numbers of mail-in absentee votes. VIP then "refined" the list of absentee **voters**, identifying names it believed to be noncitizens. Phillips declined to explain how those names were selected, but said the process did not involve focusing on ethnic surnames.

VIP submitted to INS a list of people who voted in the 1998 election whom it believes to be aliens, and asked that the agency confirm each person's immigration status.

Don Radcliffe, district director of INS, said he is not familiar with VIP's request, and doesn't see how the immigration service could comply with it. Citizenship status is private information under federal law, and can't be released to anyone outside of government, he said.

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June 7, 2006

Honorable Arlen Specter
 Chairman, Senate Judiciary Committee
 711 Hart Building
 Washington, DC 20510

Dear Senator Specter:

I write concerning the extension and amendment of the Voting Rights Act now pending before the Judiciary Committee. I write as a lawyer and political scientist who has spent nearly his entire career researching and writing about ethnic and racial conflict—and especially about its amelioration—in the United States and in divided societies around the world. In the last 20 years or more, I have been especially concerned about the impact, benign or malign, of electoral systems on conflict between groups, and I have written and also consulted for international authorities on this subject. (For a brief introduction to my work on this, see “Electoral Systems: A Primer for Decisionmakers,” *Journal of Democracy*, Vol. 14, no. 4 (October 2003), pp. 115-27.)

I have long been an interested observer of the evolution of the Voting Rights Act and in years past (although not recently) served as an expert witness in a number of voting rights cases. The Voting Rights Act has, of course, been an exceedingly effective instrument for guaranteeing the right to vote that had been so long and so egregiously denied and for facilitating minority political participation more generally. The Act has also, however, allowed or encouraged the creation of minority-majority voting districts that have had and will continue to have mixed results in the field of ethnic and racial conflict and reconciliation. On the one hand, minority-majority districts have vastly increased the proportion of minority legislators nationwide, quashing forever the idea among minority citizens that others would always govern them. On the other hand, such districts in many places have changed the complexion of politics in rather unhealthy directions and have been a barrier to electoral reform. Permit me to elaborate briefly on some of these consequences before I comment specifically on the bill before the committee.

First, if white candidates are shielded from the electoral impact of black voters because those voters are removed from their electoral districts, those candidates need not be attentive to the interests of those voters. (The same is, of course, reciprocally true of black candidates and white voters.) The surest way for the electoral process to have minority interests receive attention is for candidates to be dependent on minority voters for support. When, because of the Act, minority voters are placed in separate districts, the result is to elect minority officeholders but without necessarily optimizing the impact of minority votes in electing candidates who will attend to their interests. Too often the result has been both political and racial

Honorable Arlen Specter
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polarization in legislatures that could have been avoided if candidates had greater incentives to move to the center to please a heterogeneous set of voters.

Second, it seems clear that the United States is entering a new period of electoral innovation. States and municipalities are adopting, often on an experimental basis, new ways of choosing representatives. Among the new systems are the alternative vote, the single transferable vote, and list-system proportional representation. Two of these systems, which are in wide use in other democracies, require multi-member constituencies, which are frowned on under the rather rigid standards of section 5. Often the results of adopting electoral innovations are unforeseeable. The Voting Rights Act, however, frequently requires exactly the kind of foreseeable results in the electoral process that will stop innovation in its tracks. The result is that those jurisdictions subject to the Act will be effectively barred from electoral reform that may create better representation, while the rest of the country is able to experiment and to choose electoral systems freely.

A third point needs to be made before I comment directly on the pending bill. The Voting Rights Act is based, as it should be, on history, specifically on an extensive history of racial discrimination. Decisions under the Act by the Department of Justice and the courts inevitably must be based, in considerable measure, on that history. But legislative policymaking is, of course, a forward-looking exercise. When we look forward in the United States, it takes no particular prescience to see that large-scale immigration will have a great impact on the political process in coming decades. The Voting Rights Act also applies to certain non-black minority groups whose numbers and geographic concentration are likely to increase greatly. If the Act's provisions are extended as they stand, the prospect is for increased creation of minority-majority districts among those groups, so that a significant and growing fraction of legislators will be elected from racially- and ethnically-defined districts.

No doubt the worst forecasts of such segmentation may be alarmist, but it is certainly possible that we will have, in many districts, something approaching what were called in British colonial times ethnically reserved seats and communal electoral rolls—that is, seats marked for members of particular groups elected by safe majorities of those groups alone. If we wish to incorporate immigrants into the United States in ways that smooth their path to equal citizenship and make their voices effective, we would do well to avoid anything that makes the electoral outcome I have described more likely. (Segmented electorates of this kind also have the potential over time to do great damage to the two-party system, but this is a theme—and a somewhat speculative one—that I am unable to pursue adequately in a relatively brief letter.)

That brings me to the present bill. As witnesses before the Judiciary Committee have testified, the House bill you are considering proposes to extend section 5 of the Voting Rights Act for an additional quarter century on the basis of a very thin record of current practices of discrimination. Covered jurisdictions would be singled out for Department of Justice preclearance, which is inevitably a discretionary process, vulnerable to partisan pressure, and with no provision for more liberal bailout than is currently allowed. Section 5 was considered in 1965 a draconian remedy for despicable practices of voter exclusion; it is still draconian and stigmatizing for the jurisdictions subject to it, but it is now based not on voter exclusion but on debatable assumptions about the effects of proposed electoral changes. The Supreme Court has held that such provisions bear a heavy burden of factual justification. That burden has not been carried here. Extension of section 5 risks a judicial determination of the inadequacy of congressional findings at the very time when Congress has expressed—as you yourself have—serious concern that congressional findings have met with insufficient respect in the Supreme Court.

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The House bill also proposes to overrule *Georgia v. Ashcroft*, 539 U.S. 956 (2003), a section 5 case in which the Supreme Court expressed considerable sympathy with a conception of minority participation far less rigid than the one being used for preclearance by the Department of Justice. Justice O'Connor's majority opinion held that evaluation of a minority's opportunity to participate in the political process should not depend solely on whether the minority would be likely to elect a minority candidate but could be affected by the minority's ability to be influential in a district consisting of minority and majority voters together. The decision in *Georgia v. Ashcroft* is exceedingly sensible. It seeks to avoid locking minority voters up exclusively in minority-majority districts wherever that is feasible. Given my earlier point concerning the desirability of maximizing minority influence, I think it is clear that the decision should not be overruled. Flexibility, not rigidity, in the pursuit of minority success in politics should be the touchstone.

If *Georgia v. Ashcroft* were not overruled, and if section 5 were not renewed, the result would not be to diminish minority voting rights. Section 2 would still be available nationwide to deal with the evils section 5 was originally enacted to deal with in covered jurisdictions, but now presumably using flexible standards of the sort the Court has approved. And, then, with any luck, the United States will not drift unwittingly into being the sort of divided society in which electorates are segmented for several major ethnic and racial groups, each of which gets to go its own way at the polls, heedless of the interests of the others and heedless of the need to engage in political compromise.

These are, as I know you recognize, supremely important choices for the future of our nation. They deserve the most serious consideration. I wish you well in your committee's deliberations.

Please feel free to call upon me if I can offer any clarification or assistance.

Yours respectfully,



Donald L. Horowitz

DLH:jma

Loophole lets foreigners illegally vote*'Honor system' in applying means the county can't easily track fraud**Houston Chronicle (TX)**January 16, 2005**Author: JOE STINEBAKER; Staff*

Dozens of foreign citizens, and perhaps hundreds more, have been allowed to **vote** in U.S. elections in Harris County because of the county's reliance on an "honor system" that effectively allows almost anyone to **vote**.

At least 35 foreign citizens either applied for or received voter cards last year by checking a box on the application saying they were U.S. citizens, said Harris County Tax Assessor-Collector Paul Bettencourt, who also is the county's voter registrar.

"If you check that you're a citizen, you'll get a card, unless we have some previous knowledge of your name," he said. "If they check yes and they're not a citizen, there is no database that is open to the public that I know of that you can check against."

Besides the 35 confirmed noncitizen applicants last year, Bettencourt is investigating at least 70 others and will send a list of suspected offenders to the Harris County district attorney, who can charge them with a misdemeanor if they haven't voted or a felony if they have. Although Bettencourt canceled the applications and registrations of the initial 35, he acknowledges there are sure to be more who have avoided detection.

"Because it's an honor system, fraud certainly exists," he said. "You never know what level of fraud you have, but we know of non-U.S. citizens voting, that's for sure."

The Federation for American Immigration Reform, a Washington-based group that pushes to reduce immigration, advocates a "national citizenship verification procedure" to ensure that voters in U.S. elections are citizens.

Federation President Dan Stein says it is virtually impossible to determine how many foreign citizens are voting here.

"Making false claims of U.S. citizenship is all but impossible to detect. It's a huge, gaping, massive hole in the whole integrity of our enforcement structure," he said.

Without citizenship verification, he said, Americans should have serious questions about the integrity of their electoral process.

"If we continue to have things like Florida in 2000 and these close elections being swung by ineligible voters, the very legitimacy of the electoral process itself is being thrown into question by ineligible voters voting," he said. "While we sit around concerned about hanging chads and whether **votes** are counted, no one seems interested in ensuring that people who register are citizens."

Bettencourt's office has three ways of catching ineligible foreign voters - tips from the public, U.S. Immigration and Customs Enforcement checks during the naturalization process and records forwarded from District Clerk Charles Bacarisse's office.

Bettencourt said the most effective is the list from Bacarisse, which contains the names and addresses of prospective jurors who said they were unable to serve because they were not citizens. Bettencourt's office routinely compares those names with the list of registered voters.

The process recently uncovered the case of a 73-year-old Brazilian woman whose registration was canceled in 1996 after she acknowledged on her jury summons that she was not a citizen. The woman reapplied in 1997, again claiming to be a U.S. citizen, and was again given a voter card, which was recently discovered after she filled out a change-of-address form with Bettencourt's office. Records show that the woman has voted at least four times in general and Democratic primary elections since 1997, most recently in November.

The issue of **foreigners** voting in local elections came up recently with the discovery that Henning Eilert-Olsen, a Norwegian living in Katy, had voted in the state legislative race between Talmadge Heflin and Hubert Vo in November. Democrat Vo defeated incumbent Republican Heflin by 33 **votes**, but Heflin is contesting the election in the state House.

Eilert-Olsen filled out a **vote** application form noting that he was not a U.S. citizen, but was given a voter card anyway. He said he voted a straight Republican ticket in the election.

Many critics of voting by foreign citizens are surprised to find that the U.S. Constitution is silent on the subject. Some states and municipalities have allowed foreign citizens living in the United States to **vote**. Texas, for example, didn't require voters to be U.S. citizens until 1921. That year, an amendment to the state constitution took the **vote** from foreign citizens, who had been allowed to cast ballots since 1869.

Several municipalities in Maryland allow foreign residents to **vote** in local elections. Similar proposals are under discussion in New York and San Francisco.

Other parts of the country are moving in the opposite direction. Arizona voters in November passed Proposition 200, which was backed by The Federation for American Immigration Reform. The initiative requires, in part, that new voters provide proof of U.S. citizenship - a birth certificate and naturalization papers with photo ID, for example - before being allowed to register to **vote**. Federation President Stein said the U.S. Department of Justice is reviewing the new law to determine whether it violates the Voting Rights Act.

No such effort is under way in Harris County. Bettencourt said the best way to ensure

that foreign citizens are unable to continue registering and voting here is to have Congress pass a federal law setting up some form of citizenship verification.

"There are obvious holes in the system," he said. "And if those holes are to be plugged, it's going to take federal legislation."

Bettencourt said he believes the majority of noncitizens registered to **vote** were signed up by "third party" groups conducting mass voter registration drives. He said he doubts that there was any intent to deceive his office but that most of the problems arose as a result of improper processing.

Human Events™

Foreign Language Ballots Cause a Rebellion

by Phyllis Schlafly
Posted Jul 03, 2006

The Washington establishment is shocked at the discovery that Americans don't like the idea of the federal government forcing local governments to provide foreign-language ballots. That's one more indication of how out of touch our leaders are with grass-roots America.

For many months, the establishment had planned a legislative coup to reauthorize the Voting Rights Act for a whopping 25 years (even though it isn't due to expire until 2007). Passage had been confidently announced on May 2 in a bipartisan photo-op news conference on the Capitol steps.

The media were on board. The president was in sync. No need, thought the powers that be, to have hearings or public debate.

No need, even, to allow members of Congress to offer amendments to the bill. So the Rules Committee, exercising its presumed wisdom, ruled against such impertinence.

The Washington Post described the reaction as a "GOP rebellion" that surprised people with its "intensity." Americans in the hinterland are not surprised by the intensity of feeling on this subject, but they are pleasantly encouraged that Republicans in the House had the gumption to stage a rebellion.

For that, we can credit Rep. Steve King, R-Iowa, who got 80 House Republicans to sign his letter demanding deletion of the sections of the Voting Rights Act that require state and local governments to print ballots in foreign languages. The letter said, in part, "The multilingual ballot mandate encourages the linguistic division of our nation and contradicts the melting pot ideal that has made us the most successful multiethnic nation on earth."

On May 18, the usually pompous Senate, by 63 to 34, passed the Inhofe amendment to make English our official language and declare that no one has an affirmative right to receive government services in a language other than English. Remarkably, this happened in the midst of the Senate's consideration of the Kennedy-McCain bill to import 66 million foreigners who don't speak English.

Public opinion is clearly on the side of the English language: 27 states have adopted English-language laws. A Zogby poll reported that 79% of Americans favor making English our official language.

Foreign-language ballots make no sense because only U.S. citizens can vote, and foreigners can't be naturalized unless they demonstrate "the ability to read, write and speak words in ordinary usage in the English language."

The Voting Rights Act, first passed in 1965 and reauthorized several times, is a civil rights landmark whose purpose was to assure that blacks will not be denied the right to vote. Although blacks do not need, and never needed, foreign language ballots, the law was hijacked during its 1975 reauthorization by foreign-language pressure groups that had other political goals.

The U.S. has many problems with election machinery, but preventing blacks from voting is no longer one of them. The Voting Rights Act has long since served its original purpose and today is anachronistic and highly discriminatory against nine states that are still required to get Justice Department approval if they make the slightest change in any voting procedure.

Some argue that the U.S. needs to provide foreign-language ballots in order to accommodate native-born Americans who don't speak English. But that argument actually cuts in favor of Rep. King's amendment.

To any extent that it is true that the United States has large numbers of native-born Americans who don't speak English, this means that immigrants are not assimilating into U.S. culture but instead are keeping their native tongue into the second and third generations. All the more reason why America should provide inducements to learn English - such as printing ballots only in English.

America should not become a nation where immigrants continue to live in neighborhoods where they only associate with and do business with others who speak a foreign language, and let their children grow up without learning English. The result is that young people grow up isolated both from the country their parents left behind and from the culture of their adopted country.

Public schools used to be the vehicle by which the children of millions of immigrants from all over the world became Americanized into good and valuable citizens. In recent generations, public schools have failed miserably in their duty to teach English to the children of immigrants, instead allowing them to speak their native tongues in a system of language apartheid (aka bilingual education).

Those who demand foreign-language ballots are having a petty tantrum like French President Chirac who, although he speaks fluent English, deliberately spoke French in a one-to-one interview with President Bush last year, requiring Bush to have an interpreter.

Congress will make a terrible mistake if leadership doesn't allow representatives to vote on King's amendment to delete the requirement for foreign-language ballots from the Voting Rights Act. We don't want to be a bilingual nation and suffer the problems of other countries with "linguistic division.

Exclusive:
Just Say No ... to Bilingual Ballots

by Newt Gingrich
Posted May 08, 2006

Legislation to reauthorize the historic Voting Rights Act contains a bad idea for America and for all our voting rights. It would continue to force certain counties to provide ballots and election materials in foreign languages.

Supporters say that requiring bilingual ballots strengthens our democracy by allowing everyone to participate. But the reality is the opposite. By sending the message that learning English isn't important, bilingual ballots help consign immigrants to the margins of our democracy.

And Roger Clegg of the Center for Equal Opportunity has pointed out another problem with the federal government's requiring bilingual ballots: If only United States citizens can vote, and one of the requirements for being a citizen is that you learn English, why in the world would we need bilingual ballots? The answer, unfortunately, is election fraud. Non-citizens are using these ballots. How exactly does this strengthen our democracy?

Fifty-six members of the House have rightly called on Judiciary Committee Chairman James Sensenbrenner (R-Wis.) to remove the bilingual ballot requirement from the Voting Rights bill. Congress should just say "no" to bilingual ballots and "yes" to English-only federal election ballots.

Hastert Hears the Heartland: Enough With the Pork!

Just when it seems like Congress doesn't understand the growing frustration of conservatives over pork-barrel spending, the Republican leader in the House of Representatives gives a sign that he, at least, is listening.

The Senate passed a \$109-billion "emergency" spending bill last week. The word "emergency" is in quotation marks for a reason: The "emergencies" the pork-laden bill addresses include such items as \$6 million to help sugar cane growers in Hawaii and \$10 million to equip fishing boats with electronic logbooks.

All in all, the bill contains about \$17 billion in pet projects. So House Speaker Dennis Hastert (R-Ill.) put his foot down. He called the bill "dead on arrival." And then Hastert decided to really speak his mind: "President Bush requested \$92 billion for the War on Terror and some hurricane spending. The House used fiscal restraint, but now the Senate wants to come to the table with a tab that's \$17 billion over budget. The House has no intention of joining in a spending spree at the expense of American taxpayers."

Well done and well said, Speaker Hastert.



WASHINGTON OFFICE
NATIONAL MINISTRIES DIVISION

PRESBYTERIAN CHURCH (USA)

May 4, 2006

Dear Representative,

The General Assembly is the highest governing body of the Presbyterian Church (USA). There is a long history of approval for equal rights, opportunity and access to societal benefits and the benefits accorded to citizenship. Portions of this history are recounted below. The Voting Rights Act of 1965 needs to be reauthorized to assure that everyone has this right of citizenship. **Support HR 9.**

As early as 1956 the PCUSA General Assembly called upon Christians to work to eliminate the poll tax "and other restrictions which prevent many citizens from exercising their legal rights at the polls and which affront the dignity of persons ..." In 1957, with very strong words, the General Assembly went on record against means such as poll taxes and severe literacy tests used to deny voting rights to certain minority citizens, noting the price of this corporate dishonesty is political demagoguery in its worst form.

The 1962 Assembly urged federal leadership to eliminate racial restrictions of voting rights by any of the states. A 1960 Statement "urged state legislatures and the United States Congress to continue to work for legislation that will effectively secure and protect the rights of all citizens to vote, regardless of race; commends efforts to stimulate, train and protect 'African American' and other citizens in the exercise of their responsibility and vote by such agencies as United Church Women, the Southern Christian Leadership Conference, the Young Women's Christian Association, the National Association for the Advancement of Colored People, and the League of Women Voters; and Urged United Presbyterians to participate actively in these or other such legitimate efforts and to defend them against unwarranted and irresponsible attacks."

The 1963 Assembly, impressed with the civil rights movement, invited its principal leader, Martin Luther King, Jr., to address the Assembly. The 1981 and 1982, Assemblies also supported extension of the Voting Rights Act of 1965. A 1982 Statement "Affirms all efforts to include actively all citizens in the election process, including the use of bilingual ballots as mandated by the Voting Rights Act, and declares its opposition to actions by government that have the effect of discouraging such exercise of citizens rights."

The Presbyterian Church (USA) has 2.2 million members across the United States and Puerto Rico in 11,200 congregations. If you have further questions on this item, please contact me at 202-543-1126.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rev. Elenora Giddings Ivory".

Rev. Elenora Giddings Ivory
Director Washington Office, Presbyterian Church (USA)

Written Testimony of Alexander Keyssar

Matthew W. Stirling, Jr. Professor of History and Social Policy
Chair, Democratic Institutions and Politics
Kennedy School of Government
Harvard University

Submitted to the Senate Committee on the Judiciary
June 12, 2006

I submit this testimony to the Senate Committee on the Judiciary in the hope that it may prove to be of assistance in considering renewal of the special provisions of the Voting Rights Act of 1965. I am aware that the committee has been holding hearings on this subject and that some questions have been raised regarding the necessity, or desirability, of renewing Section 5's pre-clearance provision as well as the language assistance provisions in Section 203.

I write as a scholar and as an historian who has spent many years studying the history of voting rights in the United States. In addition to numerous articles in scholarly journals and the popular press, I am the author of The Right to Vote: The Contested History of Democracy in the United States, published in the fall of 2000 (with a slightly updated paperback edition published the following year).¹ That book is a history of the right to vote in the United States from the nation's founding through the late 1990s. I am currently the Matthew W. Stirling, Jr., Professor of History and Social Policy at the Kennedy School of Government, Harvard University.

Contemporary political scientists, law professors, and voting rights lawyers are better equipped than I to analyze the operation and impact of specific provisions of the VRA since 1965. But as an historian, I would like to locate the current deliberations against the backdrop of the prolonged effort to achieve universal suffrage in the United States, an effort that stretched from the 1780s through the 1960s. Key features of that backdrop – and the dynamics of the history – seem to be directly relevant to your deliberations regarding reauthorization of the Voting Rights Act.

¹ The book was awarded prizes as the best book in American history in 2001 by both the American Historical Association and The Historical Society. It was also a finalist for the Pulitzer Prize in History, the Los Angeles Times Book Award, and the Francis Parkman Prize.

Several historical patterns seem to be particularly pertinent, and they are itemized below.

1. The expansion of voting rights in the United States has been a very long and slow process. At our nation's birth, the franchise was highly restricted; and it took until roughly 1970 for the United States to achieve something close to universal suffrage. That the process took so long reveals a dimension of our history that is uncomfortable but that we need to acknowledge: our polity has always possessed men and women who opposed equal political rights for all citizens.
2. Progress in the expansion of the franchise has been piecemeal and fitful, not steady and gradual. There have been prolonged periods when efforts to broaden the franchise were stymied, sometimes followed by breakthrough moments where a great deal was achieved. The most prominent landmarks in the history of suffrage were: the early nineteenth century (when most property and tax requirements were removed); the post-Civil War era of Reconstruction (when the Fourteenth and Fifteenth Amendments were passed); 1920 (when the Nineteenth Amendment was finally ratified, enfranchising women); and the 1960s when both Congress and the Supreme Court took pioneering steps to guarantee democratic rights to Americans. The Voting Rights Act, of course, was at the center of this last surge in democratization.

The broad historical pattern suggests that progress towards expanding democratic rights has been possible only at particular historical junctures. It also suggests that curing systematic discrimination or bans in voting rights has generally been a prolonged process, taking many years to achieve. It took seventy-five years of organizing for women's suffrage to be achieved – and even longer for African Americans to secure their basic political rights.

3. In the course of our history, the right to vote has sometimes been narrowed as well as expanded: there have been many episodes where gains were reversed, and men and women who possessed the right to vote were subsequently disenfranchised. In some instances, such as women in New Jersey between 1790 and 1807, large groups of citizens who possessed the right to vote were subsequently disenfranchised by new legislation. In other examples, the reversals were partial, undercutting constitutional provisions or the intent of early legislation: e.g. in some states that had banned property or tax-paying requirements for voting for constitutional offices, those requirements were later re-instituted for municipal elections.

Among the many groups of voters who experienced these rollbacks in democratic rights, in different places and at different times, were: Native Americans (in various states); non-citizen declarants (in more than a dozen states); paupers or recipients of public welfare (roughly a dozen states); men and women who were illiterate (many states) or

illiterate in English (e.g. New York); men and women who did not pay taxes; convicted felons; and citizens whose jobs prevented them from getting to the polls before sundown.²

Indeed, disenfranchisements have been so frequent that during one prolonged period in our nation's history (roughly 1870 to 1920), the dominant trend was towards narrowing the franchise and reducing the proportion of citizens who possessed the right to vote. The progress of democracy in the United States has not been unilinear.

4. These rollbacks and reversals have been of immense significance in the history of racial restrictions on the right to vote. This sad pattern became visible even before the Civil War. Between 1790 and 1820, African Americans were disfranchised in three states where they had initially been permitted to vote; elsewhere de facto discrimination was formalized in law. In 1835, North Carolina added the word "white" to its constitutional requirements for voting; and in 1857 the Supreme Court ruled that African Americans, free or slave, could not be citizens of the United States. At the end of the 1850s, the percentage of African Americans who could vote in the United States was smaller than it had been at the nation's founding.³

This pattern, of course, was repeated in dramatic fashion in the decades that followed the Civil War. The Fourteenth and Fifteenth Amendments provided a solid constitutional foundation for banning

² For details and documentation, see Keyssar, Right to Vote, Chapters 3, 5, 7.

³ Keyssar, Right to Vote, pp. 54-55.

racial discrimination in voting, and for a decade or more (depending on the state), African Americans turned out to vote in large numbers, in both the South and the North. During the final decades of the nineteenth century, however – as is well known – the vast majority of African Americans in the South were disfranchised once again, thanks to the operation of a panoply of devices expressly designed to keep blacks from voting; this occurred in all of the jurisdictions covered by the Voting Rights Act of 1965.

Indeed, it was precisely this reversal – the disfranchisement of previously and formally enfranchised African Americans – that led to, and demanded, the Second Reconstruction of the 1960s and the passage of the Voting Rights Act of 1965. The VRA was, in effect, legislation designed to enforce the Fifteenth Amendment, which had already been the law of the land for nearly a century. The VRA was deemed necessary precisely because many states had chosen – for decades – to deliberately circumvent the Fifteenth Amendment.

5. In this context, the pre-clearance provision of Section 5 of the VRA must be understood as a mechanism to prevent another round of rollbacks and reversals in the gains achieved by African Americans. The drafters of the VRA clearly recognized that the historical record made a powerful case for ongoing oversight and protection of the voting rights of African Americans: just as the Fifteenth Amendment had been circumvented by devices such as literacy tests, the intent of

the Voting Rights Act could readily be circumvented through other devices or alterations in the structure or mechanisms of elections. The pre-clearance provision was designed to prevent such circumventions, which would deprive American citizens of their political rights.

6. The denial of political rights to language minorities also has a long and complex history, dating back at least to the passage of the first literacy tests in the middle of the nineteenth century. As late as the 1940s, eighteen states denied the franchise to men and women who could not establish that they were literate in English. Although such restrictions were often justified as methods of insuring that the electorate was well-informed, in practice they commonly served to suppress the political participation of particular ethnic populations. The same was true of the more informal barriers that existed when non-English speaking citizens encountered ballots printed only in English. Section 203 of the 1975 Voting Rights Act constituted an affirmative step by the federal government to prevent the barrier of language from becoming a barrier to political participation.⁴

Conclusion

Over the very long run, the history of the right to vote in the United States is a history of increasing inclusion, of growing democratization. But that very long-run perspective ought not obscure how contested, and embattled, that history has been. Not all changes in voting rights law have been for the better; our country has not always

⁴ Keyssar, Right to Vote, pp. 227, 265.

moved in the direction of greater democratization; frequently, in one state or another, the change has been in the opposite direction.

As this Committee considers renewal or reauthorization of key provisions of the Voting Rights Act, I would urge it to be mindful of this historical record. Our history (as well as the history of other nations) makes plain that the right to vote can be as fragile as it is fundamental, and that a society committed to democracy needs to safeguard that right with great energy and ongoing zeal.

Thank you for permitting me to submit this testimony for your consideration.

Testimony of Peter N. Kirsanow Before the Senate Judiciary Committee
on
The Continuing Need for Section 203's Provisions
for Limited English Proficiency Voters
June 13, 2006

Mr. Chairman, Senator Leahy, members of the Committee I am Peter Kirsanow, a member of the U.S. Commission on Civil Rights ("Commission") and a member of the National Labor Relations Board. I am appearing in my personal capacity.

The Commission was established by the Civil Rights Act of 1957 to, among other things, act as a national clearinghouse for denials of voting rights and equal protection. The Commission played a central role in providing the predicate information and rationale for passage of the Voting Rights Act of 1965 ("Act"). The Commission also provided analyses for the extension and expansion of the Act's temporary provisions in 1970, 1975 and 1982.

In furtherance of the Commission's clearinghouse function the Commission recently held a hearing on the reauthorization of the temporary provisions of the Act. My assistant and I also reviewed additional data on the matter. The hearing made clear that few pieces of legislation have been as successful as the Act in satisfying its objective. This assessment, however, does not necessarily apply to Section 203.

The purpose of the Commission hearing, and the report that issued therefrom, was to provide Congress and the President with a factual record upon which to consider reauthorization of the Act's temporary provisions. The Commission report makes no recommendations on whether any or all of the temporary provisions should be reauthorized.

Nonetheless, I respectfully submit that in its deliberations regarding the Act's temporary provisions Congress consider at least four issues: (1) cost and waste; (2) fraud and error; (3) racial/ethnic profiling in coverage and enforcement; and (4) constitutional compliance.

First, cost as a function of efficacy. The evidence shows that the cost to covered jurisdictions of section 203 compliance is disproportionate to its utility.

As K.C McAlpin has noted, two GAO reports found that in most covered jurisdictions bilingual ballots are barely used and evidence suggests that the low usage rate does not justify the cost. In fact, the 1986 GAO report found that in most responding jurisdictions not one voter used any form of language assistance. Moreover, when asked, nearly 90% of jurisdictions reported no need for minority language assistance whatsoever.

In contrast to its sparse usage, the cost of minority language assistance can be substantial. The average covered jurisdiction spends an estimated 13% of all election costs on minority language assistance. Some jurisdictions spend more than 50% on such assistance and the costs are increasing rapidly—by as much as 40% over an election cycle in some jurisdictions.

The cited costs are monetary only. They do not include the effects of fraud and error. Bilingual or multilingual election materials necessarily increase the risk of both. Non- English materials can confound the gatekeepers of voting integrity.

Reports abound of ballots that convey false or misleading information. For example, in one case a bilingual ballot transposed party labels, converting a Democrat candidate into a Republican and vice versa. In another case, the “yes” and “no” on a ballot proposition were reversed. Proofreaders simply miss such errors.

Further, bilingual language requirements facilitate voting by those ineligible to vote. Just in the last few years there have been scores of instances, particularly in Florida and California, in which substantial numbers of non-citizens voted. It is uncertain how many outcomes may have been affected.

A third issue that merits consideration is the use of racial profiling and stereotyping to monitor and enforce Section 203. It would be unlawful for elections officials in a given jurisdiction to disenfranchise voters with ethnic surnames on the basis of suspect citizenship status. Yet the practice of reviewing surnames to monitor compliance with Section 203 is used by the federal government itself.

Voter registration lists are reviewed for surnames common to language minority groups to determine whether polling places in areas presumed to have sizeable concentrations of limited English proficiency voters are providing adequate bilingual assistance. The purpose may be benign, but it is racial/ethnic stereotyping nonetheless. Ethnic surnames are not proxies for limited language proficiency

This racial profiling and stereotyping also implicates the constitutional issues of Section 203’s congruence and proportionality. The factual and logical bases for eliminating discriminatory access to the polls by providing bilingual election materials are, at best, underdeveloped.

One of the justifications often cited for Section 203 – unequal educational opportunities afforded language minorities-- could easily be applied to blacks and other groups not usually viewed as being of limited English proficiency. Moreover, the coverage triggers related to literacy could easily be applied to many black communities as well as certain white ones, but are not—raising equal protection and congruence and proportionality issues.

It is respectfully submitted that prior to reauthorizing Section 203, Congress adopt the recommendation of my former colleague, Christopher Edley, now Dean at Boalt Hall. Dean Edley advises that with respect to Section 5 Congress appoint a commission to study and report on some of the issues just discussed, particularly matters related to coverage formulae and definitions. The same should be done for section 203.

Thank you Mr. Chairman.

Bilingual Bailout
Making sense of bilingual voting requirements.

By Peter Kirsanow

In a previous piece I noted that the Senate Judiciary Committee is currently holding hearings on reauthorization of the temporary provisions of the Voting Rights Act, including the bilingual-assistance provisions of Section 203. There's no doubt Congress will vote to reauthorize the temporary provisions; the only question is the nature of any amendments thereto.

Bilingual ballot requirements have been in existence for 30 years and Congress is considering reauthorizing the requirements for another 25 years effective in 2007. That would mean that by their expiration these "temporary" provisions will have been in effect for 56 years.

Some reauthorization-hearing witnesses suggest that since it should only take a few years for someone to become proficient enough in English to vote, the bilingual requirements should sunset sooner, with certain safe harbors for more recent immigrants. Otherwise, bilingualism may become an engrained feature of voting, particularly with increasing levels of immigration on the horizon.

In addition, some witnesses have highlighted the dissonance between bilingual voting requirements and the requirement that almost all applicants for citizenship be able to read, write, speak, and comprehend English at the level of everyday usage. As I indicated in a previous article, it may make sense to target Section 203's coverage to individuals exempt from the citizenship requirement pertaining to English proficiency.

Any change to section 203 will meet significant resistance. It's not exactly unknown for common sense to yield when race or ethnicity are part of the equation, no matter how oblique. This is also the case for bilingual-ballot requirements, despite the fact that a recent Rasmussen poll shows that 85 percent of Americans favor making English the official language of the United States and only 11 percent oppose — presumably more than enough political cushion to do the right thing.

An amendment that might meet less resistance than others yet still provide substantial benefits would be an opt-out provision for jurisdictions whose "limited English proficient" ("LEP") citizens make little or no use of bilingual election materials.

Opt-out provisions are consistent with the history and structure of the Voting Rights Act. Jurisdictions subject to Section 5's preclearance provisions (requiring covered jurisdictions to get approval from the attorney general or the U.S. District Court for the District of Columbia before implementing any changes in voting practices or procedures) have a bailout option.

An opt-out provision would allow covered jurisdictions to means test whether bilingual election materials are truly needed in their area. Given that two GAO reports found that

in most covered jurisdictions bilingual ballots are rarely used, it's likely that a majority of states and political subdivisions covered by Section 203 would be eligible to opt-out.

The experience of Section 5's opt-out provisions shows, however, that few jurisdictions choose to invoke the mechanism, despite the fact that, as noted by Gerald Herbert, former acting chief of the civil-rights division of the Department of Justice, up to 90 percent of covered jurisdictions are eligible to bail out . Professor Mike McDonald speculates that one reason few jurisdictions attempt to opt out is a lack of information and resources to prepare opt-out litigation. Another reason may be political — officials in a jurisdiction eligible for opt-out may decline to do so out of concern for appearing racially/ethnically insensitive.

A Section 203 opt-out amendment could be crafted to avoid Section 5's problems by placing the burden on the attorney general to certify, after a defined period of review, that section 203 (1) is effective in providing voting access to LEP voters and (2) remedies a demonstrated practice of depriving LEP citizens of the right to vote. If the Attorney General fails to make such a certification the opt-out provision would automatically trigger at the conclusion of the review period and the bilingual election requirement would lapse.

Bilingual ballot-requirements are costly, consuming up to 50 percent of all election funds in some jurisdictions. Jurisdictions shouldn't be saddled with paying millions for materials that are barely used without a means to unburden themselves

—Peter Kirsanow is a member of the National Labor Relations Board. He is also a member of the U.S. Commission on Civil Rights. These comments do not necessarily reflect the positions of either organization.

June 20, 2006, 6:09 a.m.

The English Franchise
Amending bilingual voting.

By Peter Kirsanow

The Senate is in the midst of hearings concerning reauthorization of the temporary provisions of the Voting Rights Act. The House version of the bill that would reauthorize such provisions for another 25 years is named the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Reauthorization and Amendments Act of 2006. It's difficult for any politician to oppose, or even propose amending, a piece of legislation with a name like that, regardless of its merits, without being vulnerable to considerable demagoguery. This is especially the case in an election year.

Indeed, it looks as if Congress is moving rapidly toward reauthorization, although the Senate Judiciary Committee seems to be considering a few amendments that might strike most Americans as just common sense. Yet, because the amendments would be attached to a bill that's at least tangentially related to race/ethnicity, passage is far from assured.

Take, for instance, Section 203, the minority language assistance provisions that require hundreds of jurisdictions in 30 states to provide election materials, including ballots, in at least one language other than English. Several witnesses during both the House and Senate hearings on the requirement testified in favor of wholesale reauthorization.

But some senators expressed puzzlement about the standards for triggering the requirement. In essence, a jurisdiction must provide ballots in a foreign language if (1) more than 5 percent of its voting age citizens are members of a language minority group who do not speak or understand English well enough to participate in the electoral process, and (2) the illiteracy rate of the persons in such a group is higher than the national illiteracy rate. "Illiteracy" for purposes of Section 203 means not having completed the 5th grade.

What troubled the senators was obvious: if certain citizens do not understand English well enough to participate in the electoral process, how did they become citizens in the first place? After all, in order to become citizens most applicants must take a test demonstrating that they can read, write, speak, and understand English. They must also comprehend basic civics well enough to correctly answer (in English) a series of questions concerning U.S. history and government. Anyone who can pass the test should easily qualify as being able to read at least at a 5th-grade level. Here's a sample of the type of questions contained in the citizenship test:

How many amendments are there to the Constitution?
 What is the Bill of Rights?
 Which of the following amendments does not address or guarantee voting rights? (multiple choice)
 Who becomes president if the president and vice president die?
 Who is the chief justice of the Supreme Court today?
 What are the original thirteen states?
 Whose rights are secured by the Constitution?

Whose rights are guaranteed by the Bill of Rights?

It's probable that a significant percentage of English-speaking citizens who've completed the 12th grade can't answer most of the above questions correctly. It's also likely that anyone who can read — let alone answer correctly — these questions in English can also negotiate the following ballot provision without need for translation into another language:

President of the United States (Vote for one) William Jefferson Clinton (D) Robert Dole (R)

Proponents of unedited reauthorization contend that some ballot propositions contain language much more complex than a simple choice between two candidates. But many who attended the Senate Judiciary Committee hearing noted that ballot propositions are confusing not because the language they are in, but because of the way in which they are written. Moreover, ballot initiatives and propositions are a function of state and local concern. It remains a matter of debate whether Congress has authority under Article I, Section 4, to mandate the provision of bilingual ballots for other than federal elections.

Since in order to become a citizen one must read well enough to cast a ballot, there's a good argument that Section 203 should be narrowed to apply primarily to the small cohort of applicants who are exempt from the citizenship test-taking requirements noted above. The exempt cohort consists primarily of individuals who are lawfully admitted into the U.S. and either (a) are over 55 and have had permanent residence totaling 15 or more years, (b) are over 50 with permanent residence totaling 20 or more years, or (c) are suffering from a medically determinable mental or physical impairment that affects their ability to learn English.

The amendment needn't take effect immediately. It could be phased-in to provide affected individuals sufficient notice and opportunity to become proficient enough in English to choose between candidates Smith and Jones. Moreover, bilingual requirements in other sections of the Voting Rights Act pertaining to or affecting, for example, American Indians, Native Alaskans, or residents of Guam, Puerto Rico, or the Virgin Islands would remain undisturbed.

The Senate recently voted overwhelmingly to recognize English as the common language of the United States. An amendment to the Voting Rights Act that calibrates bilingual ballot assistance to those naturalized citizens who aren't *required* to read English would facilitate that commonality.

—Peter Kirsanow is a member of the National Labor Relations Board. He is also a member of the U.S. Commission on Civil Rights. These comments do not necessarily reflect the positions of either organization.

Statement of Senator Patrick J. Leahy
Ranking Member, Senate Judiciary Committee
On the Continuing Need for Section 203 of the Voting Rights Act
June 13, 2006

Today, we continue, and I hope conclude, our hearings on the reauthorization of the Voting Rights Act. I am glad that the Committee has finally resumed these hearings after weeks of delay and several postponements. I look forward to working with the Chairman to complete our Committee's work on this historic bipartisan legislation by the end of the month. This hearing will focus on the critical continuing need for Section 203, one of the Act's critical language assistance provisions to ensure that our language minorities are protected and can participate fully in the democratic process of elections.

In the last few weeks, the Republican-led Senate devoted significant time to debating a constitutional amendment that even its supporters knew had no hope of passage. It failed not only to attract the necessary 67 votes but failed even to garner 50 votes. Instead of writing discrimination into the Constitution, we should be enforcing the Constitution's guarantees against discrimination.

The Voting Rights Act implements the guarantee to full participation for racial and language minorities. We should complete the work that was begun last year in the House of Representatives. This work reached an important milestone at the beginning of May when Senators and Representatives on both sides of the aisle joined to introduce our historic bicameral and bipartisan bill reauthorizing the Voting Rights Act. Thanks to hard work we have built a robust record in 18 Committee hearings to support reauthorization.

As demonstrated in the Senate and House hearings, the Act remedies discrimination which still impedes millions of Americans from fully exercising their right to vote. It is important that we conclude our Senate hearings and report our bipartisan bill in the next few weeks so that the Senate can complete action on reauthorization this year. By reporting our bill in June, it will allow us to work with the Republican and Democratic leaders on Senate consideration so that this critical legislation can be reauthorized during the short legislative session still available this year. There are less than 12 weeks in session before the scheduled adjournment of the Senate.

There are few things as critical to our Nation, and to American citizenship, as voting. Like the rights guaranteed by the First Amendment, the right to vote is foundational because it secures the effective exercise of all other rights. As people are able to register, vote, and elect candidates of their choice, their interests and rights get attention. The very legitimacy of our democratic Government is dependent on the access all Americans have to the political process.

The enactment of the Voting Rights Act in 1965 transformed the landscape of political inclusion. As amended, the Act contains important provisions for language assistance. Section 203, added as part of the second reauthorization of the Voting Rights in 1975,

broadened this landscape by allowing millions more American citizens to participate fully in our democracy. Section 203, which requires bilingual voting assistance for certain language minority groups, was enacted to remove obstacles to voting posed by illiteracy and lack of bilingual language assistance resulting in large measure from unequal educational opportunities available to language minorities. These provisions helped overcome discriminatory barriers which limited access to the political process for language minority groups and resulted in low turnout and registration. Along with Section 4(f)(4), Section 203 has led to extraordinary gains in representation and participation made by Asian Americans and Hispanic Americans.

Hispanic-American populations have been one of the primary minority language groups to benefit from the protections of the bilingual provisions of the Voting Rights Act. For example, effective implementation of the bilingual provisions in San Diego County, California, helped increase voter registration by more than 20 percent. And voter turnout among Hispanic Americans in New Mexico rose 26 percent between 2000 and 2004 after television and radio spots were aired in districts with Spanish educated listeners about voter registration and absentee ballots. Yet there is still work to be done. Historically, Hispanic Americans have low voter turnout and less than 1 percent of all elected offices in the United States are held by Hispanic Americans.

I was troubled during the immigration debate that the rhetoric of some Members of the Senate appeared to be anti-Hispanic in supporting the adoption of an English language amendment. Senator Salazar and I wrote to the President following up on this provision. We asked whether the President will continue to implement the language outreach policies of President Clinton's Executive Order 13166. A prompt and straightforward affirmative answer would have gone a long way. Sadly, we have received no response from this White House.

I understand why this amendment to the immigration bill provoked a reaction from the Latino community as exemplified by the May 19 letter from the League of United Latin American Citizens, the Mexican American Legal Defense and Educational Fund, the National Association of Latino Elected Officials Educational Fund, the National Council of La Raza and the National Puerto Rican Coalition and from a larger coalition of interested parties from 96 national and local organizations.

Until that vote, in our previous 230 years we had not found it necessary or wise to adopt English as our official or national language. I believe it was in the Commonwealth of Pennsylvania that the state legislature shortly after the Revolutionary War authorized official publication of Pennsylvania's laws in German as well as English to serve the German-speaking population of that state. We have been a confident nation unafraid to hear expressions in a variety of languages and willing to reach out to all within our borders. That tradition is reflected in Section 203 and in President Clinton's Executive Order 13166.

We demean our history and our welcoming tradition when we disparage languages other than English and those who speak them. I have spoken about our including Latin phrases

on our official seal and the many States that include mottos and phrases in Latin, French and Spanish on their State flags. We need not fear other languages. We would do better to do more to encourage and assist those who wish to be citizens to learn English, but we should recognize English, as Senator Salazar's amendment suggested, as our common and unifying language.

I hope that the President will join with us to protect language minority voters. As a presidential candidate, then-Governor Bush told a New Hampshire audience in September 1999, "English-only would mean to people 'me, not you.'" As the *Washington Times* noted last week:

"Mr. Bush speaks some Spanish and occasionally peppers speeches and conversations with words and phrases from the language. Speaking to a group of adults taking civics lessons yesterday at the Catholic Charities-operated Juan Diego Center, he lapsed into Spanish. Asked whether Mr. Bush planned to drop Spanish from his stump speeches, a White House spokeswoman said she does not expect that to happen."

We have been engaged in a contentious debate about immigrants who are not yet citizens, but the issue we are talking about today affects people who are American citizens. These provisions provide assistance to American Indians, who speak languages which preceded the first English speakers on this continent. These are citizens who are trying to vote but many of them are struggling with the English language due to disparities in education and the incremental process of learning. It is imperative that all citizens be able to exercise their rights as citizens, particularly a right as fundamental as the right to vote. Renewing the language provisions of the Voting Rights Act that are expiring and continue to be needed, will help make that a reality.

Over the course of the hearings, we have heard from outstanding panels of witnesses. I want to thank the distinguished witnesses we will hear from today. Deborah Wright is the Acting Assistant Registrar-Recorder for Los Angeles County, California. She will testify about the administration of Los Angeles County's comprehensive program that provides much-needed assistance to limited-English proficient (LEP) voters throughout Los Angeles County, California. Los Angeles County is the largest and most diverse local election jurisdiction in the United States, providing assistance in more languages than any other county.

Margaret Fung is the executive director of the Asian American Legal Defense and Education Fund (AALDEF). Since 1988, AALDEF has monitored elections and conducted multilingual exit polls to document barriers to voting faced by Asian Americans.

John Trasviña is an old friend to many of us on the Committee and now serves as the interim President and General Counsel of the Mexican American Legal Defense and Educational Fund (MALDEF). MALDEF and the National Association of Latino Elected and Appointed Officials (NALEO) have prepared a report for inclusion in the record that documents the inadequate availability in Section 203 jurisdictions of English as a Second

Language educational services required to become fully proficient in English as an adult. These witnesses will testify about the ongoing need for language assistance in voting so that all American citizens can participate fully in our democracy.

I welcome all the witnesses here today. I hope that we conclude these hearings and report our bill without delay so that we can complete the important work of reauthorizing this historic bipartisan, bicameral legislation.

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May 4, 2006

Co-Sponsor Voting Rights Reauthorization and Amendments Act of 2006 (S. 2703)

Dear Senator:

On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we write to vigorously support and urge you to co-sponsor S. 2703, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 (VRARA). S. 2703 is critical to ensuring the continued protection of the right to vote for all Americans.

The Voting Rights Act (VRA) is considered by many to be our nation's most effective civil rights law. Congress enacted the VRA in direct response to evidence of significant and pervasive discrimination taking place across the country, including the use of literacy tests, poll taxes, intimidation, threats, and violence. By outlawing the tests and devices that prevented minorities from voting, the VRA put teeth into the 15th Amendment's guarantee that no citizen can be denied the right to vote because of the color of his or her skin. The VRA was initially passed in 1965 and has been renewed four times by bipartisan majorities in the U.S. House, and signed into law by both Republican and Democratic presidents. In the 41 years since its initial passage, the VRA has enfranchised millions of racial, ethnic, and language minority citizens by eliminating discriminatory practices and removing other barriers to their political participation. In doing so, the VRA has empowered minority voters and has helped to desegregate legislative bodies at all levels of government.

Throughout the 109th Congress, during ten oversight hearings that considered the ongoing need for the VRA, the House Judiciary Subcommittee on the Constitution found significant evidence that barriers to equal minority voter participation remain. The oversight hearings examined three of the VRA's key provisions that are set to expire in August of 2007: Section 5, which requires that certain jurisdictions with a history of discrimination in voting obtain federal approval prior to making any changes affecting voting, thus preventing the implementation of discriminatory practices; Section 203, which requires certain jurisdictions to provide language assistance to citizens who are limited-English proficient; and Sections 6 through 9, which authorize the federal government to send observers to monitor elections for compliance with the VRA.

The evidence gathered by the House subcommittee revealed continuing and persistent discrimination in jurisdictions covered by Section 5 and Section 203 of the VRA. The oversight hearings found that a second generation of discrimination has emerged that

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Walter J. Hinton, III



serves to abridge or deny minorities their equal voting rights. Jurisdictions continue to attempt to implement discriminatory electoral procedures on matters such as methods of election, annexations, and polling place changes, as well as through redistricting conducted with the purpose or the effect of denying minorities equal access to the political process. Likewise, the oversight hearings demonstrated that citizens are often denied access to VRA-mandated language assistance and, as a result, the opportunity to cast an informed ballot. We are confident that the Senate Judiciary Committee hearings will further bolster the need to renew and restore the VRA.

S. 2703 is a direct response to the evidence of discrimination that was gathered by the subcommittee. It addresses this compelling record by renewing the VRA's temporary provisions for 25 years. The bill reauthorizes and restores Section 5 to its original congressional intent, which has been undermined by the Supreme Court in *Reno v. Bossier Parish II* and *Georgia v. Ashcroft*. The *Bossier* fix restores the ability of the Attorney General, under Section 5 of the Act, to block implementation of voting changes motivated by a discriminatory purpose. The *Georgia* fix clarifies that Section 5 is intended to protect the ability of minority citizens to elect their candidates of choice. Section 203 is being renewed to continue to provide language-minority citizens with equal access to voting, using more frequently-updated coverage determinations based on the American Community Survey Census data. The bill also keeps the federal observer provisions in place, and authorizes recovery of expert witness fees in lawsuits brought to enforce the VRA.

The right to vote is the foundation of our democracy and the VRA provides the legal basis to protect this right for all Americans. We urge you to support this critical civil rights legislation. To co-sponsor the VRARA, please contact Dimple Gupta, Chief Counsel in Senator Specter's office, at (202) 224-5225, Dimple_Gupta@judiciary-rep.senate.gov; Kristine Lucius, Senior Counsel in Senator Leahy's office, at (202) 224-7703, Kristine_Lucius@judiciary-dem.senate.gov; or Charlotte Burrows, Counsel in Senator Kennedy's office, at (202) 224-7878, Charlotte_Burrows@judiciary-dem.senate.gov. If you or your staff have any further questions, please feel free to contact Nancy Zirkin, LCCR Deputy Director, or Julie Fernandes, LCCR Senior Counsel, at (202) 466-3311.

Sincerely,

Wade Henderson
Executive Director

Nancy Zirkin
Deputy Director



LEAGUE OF WOMEN VOTERS[®]
OF THE UNITED STATES

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Kay J. Maxwell
Greenwich, Connecticut

May 9, 2006

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Executive Director
Nancy E. Tate

To: Members of the U.S. Senate

From: Kay J. Maxwell, President

Re: Support S. 2703, Reauthorization of the Voting Rights Act

The League of Women Voters of the United States is pleased to endorse S. 2703, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006. We believe that the Senate should pass this legislation as drafted and we urge you to support and cosponsor this important civil rights bill.

The League of Women Voters has supported the Voting Rights Act and its reauthorization for decades. Since our founding in 1920, protecting and promoting the right of every citizen to vote has been a guiding principle of the League of Women Voters. The Voting Rights Act has institutionalized that principle by outlawing discriminatory practices in elections and protecting the rights of minority voters. Americans are proud of the Voting Rights Act and rely on it to protect the essential expression of our democracy, the citizen's right to vote.

As the Senate begins hearings on the reauthorization, we note that there is still significant evidence that there are major barriers to equal minority voter participation. Unfortunately, some minority voters still face obstacles to voting, whether from attempts to dilute the strength of minority voters through unfair redistricting or from the lack of bilingual ballots for citizens who are limited English proficient – the contemporary equivalent of the last century's literacy test.

As important provisions of the Voting Rights Act are set to expire in 2007, the League believes that it is critical that Congress reauthorize Section 5, the pre-clearance provision, Section 203, the language assistance provision as well as Sections 6 through 9, the observer provisions. These sections need to be reauthorized to continue to provide a strong deterrent and the necessary oversight of persistent voting rights violations.

Leagues and League members throughout the country will be engaging citizens and raising awareness about the importance of the Voting Rights Act. We urge you to cosponsor and strongly support S. 2703.

Westlaw.

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Legal Affairs
 November/December, 2003

Argument***18 COLOR INSIDE THE LINES**

The **Voting Rights Act** is One of the Best Laws Ever Passed. It should be Scrapped

Edward Blum, Roger Clegg [FNa1]

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IT DIDN'T MAKE HEADLINES IN MANY NEWSPAPERS, BUT the U.S. judicial system delivered a significant decision last year when a three-judge panel concluded that the current racial environment in southern California is better than that of Mississippi circa 1959. Most Americans might think this is obvious, but the determination was a blow to activists who rely on the **Voting Rights Act**, a once-important piece of legislation that has outlived its usefulness.

The case, *Cano v. Davis*, was a challenge to two Congressional districts and one state senate district drawn by the Democrat-led California State Legislature after the last round of reapportionment. The plaintiffs, a large group of Hispanic activists represented by the Mexican American Legal Defense and Educational Fund, claimed that the state had improperly drawn these districts to "dilute" the voting power of Latinos in southern California and thus stymie the electoral chances of Hispanic candidates. Without a trial on the merits, the three judges (all appointed by Democrats) tossed out MALDEF's lawsuit, an unusually quick outcome for a voting rights case. The Supreme Court summarily affirmed the lower court's decision.

MALDEF had claimed that the three districts were "racial gerrymanders" resulting from the legislature's "predominant" use of race in the line-drawing process, which segregated voters into ethnically defined districts and violated the Equal Protection Clause of the U.S. Constitution as well as the **Voting Rights Act**. In years past, irregularly shaped districts hadn't bothered MALDEF. For at least a decade, in courts from coast to coast, the organization had enthusiastically defended racially gerrymandered voting districts shaped like bug splats, districts that made their counterparts in California look chunky and compact. But the new California districts made it less likely that Hispanic candidates would displace white incumbents who ran in these districts.

From the way MALDEF was arguing, you might assume that these white incumbents had acquired their seats as a result of anti-Hispanic sentiments among voters. In fact, these incumbents were elected--and will likely be reelected for the foreseeable future--because the voters who elected them are mostly indifferent to their race and ethnicity. The California court noted this indifference when it ruled against the plaintiffs. If the white voters in these districts voted for or against candidates because of the candidates' race or ethnicity, MALDEF would probably have prevailed. But because white voters throughout the country are increasingly colorblind--or at least color-indifferent--groups like MALDEF and the NAACP are going to have a very hard time convincing federal courts that minorities

still need their own safe and secure voting districts.

TO UNDERSTAND THE SIGNIFICANCE OF CANO, A LITTLE history is required. The **Voting Rights Act** of 1965 was among the most effective pieces of legislation passed during the second half of the twentieth century. National public opinion in support of the VRA was strong, nearly five to one in favor of its passage. Even in the South, support for the bill among white adults was 49 percent. As Abigail Thernstrom noted in her seminal book *Whose Votes Count?*, the act's simple and enduring aim was to provide the right to vote to Southern blacks. To achieve this goal, Lyndon Johnson demanded that his staff write the "goddamnedest and toughest" voting rights bill they could devise.

By every measure, they did. Less than three years after the VRA's passage, voter registration among blacks in Georgia had jumped from 19 percent to 51 percent; in Mississippi, black registration swelled from less than 7 percent to nearly 60 percent. Like most "temporary" laws, however, the VRA remains in place today. And like most civil rights laws, the two most radical provisions in the VRA--Sections 2 and 5--have been transmogrified into an often unworkable and indecipherable law that guarantees more race-consciousness, not less.

Section 5 required that any changes to voting procedures in the principally Southern jurisdictions covered by the law be "precleared" by the U.S. attorney general or the U.S. District Court for the District of Columbia before being implemented. Unlike the act's meaty Section 4, which ended literacy tests, poll taxes, and other pernicious devices that had blocked black participation at the polls, Section 5 was not a major concern during Congressional debate. Its inclusion in the bill was designed to trump any new contrivances jurisdictions might impose to slow the growth of black voting. Given the "massive resistance" to school desegregation and other civil rights actions by the *19 federal government at the time, it was not an unreasonable addition to the law.

Beginning with *Allen v. State Board of Elections* in 1969, however, the courts expanded Section 5 from guaranteeing black access to the polls to guaranteeing the "effectiveness" of their vote. Not only blatant and obvious but also subtle and even unintentional actions were held to violate the law. As a result, hundreds of jurisdictions began going hat-in-hand to the Department of Justice, asking permission to annex land, change voting district lines, expand the number of representatives to an elective body, and so forth. Again, much of this was understandable in the years immediately following the passage of the VRA, since Southern chicanery required the DOJ to keep a close eye on unusual developments in voting procedures. But as judges and bureaucrats got in the habit of stretching the meaning of the VRA to reach any and all ends they considered desirable, the groundwork was laid for abuses. What started out as a tool to prevent anyone from being turned away at the ballot because of skin color turned into a means of second-guessing perfectly legitimate, nonracial rules concerning, for example, ballot security and absentee ballots.

LIKE SECTION 5, SECTION 2 OF THE ORIGINAL ACT HAS BEEN reinterpreted by the courts, and, more importantly, by Congress. Originally, this section allowed no qualification or prerequisite to voting to be imposed by any state or jurisdiction on account of race. Grandfather clauses are the classic example of a racist pretext for excluding black voters. Section 2 began as little more than a clone of the Fifteenth Amendment, a simple ban on discrimination that was a shield, not a sword. But like so many civil rights laws, it was unwisely amended by Congress in an attempt to circumvent a Supreme Court decision some politicians and civil rights activists didn't like. In *City of Mobile v. Bolden* (1980), the Supreme Court ruled that Section 2 required a showing of a discriminatory intent--a reasonable enough standard, but one viewed as too difficult to meet by some critics. And so, instead of proscribing a jurisdiction's discriminatory treatment of blacks at the ballot box, the amendments, made in 1982, forbade any governmental action that had a racially disproportionate result.

Consequently, any voting practice that was determined to be a denial of a minority group's ability to elect its representative of choice was now subject to the VRA's Section 2 prohibitions. But Congress didn't provide much guidance about how one proves this denial, and hundreds of jurisdictions were baffled by what the statute actually meant. In 1986, the Supreme Court was forced to step in to provide a framework for establishing a claim about the "dilution" of the minority vote in a district. The court created three conditions, the third with the sharpest teeth: If whites typically vote as a bloc to defeat the minority candidate of choice, then racial gerrymandering could be used to offset this phenomenon.

But the abuses of the VRA continued. By the 1990s, supporters of racial proportionality in the voting rights section of the civil rights division at the DOJ were demanding the creation of "max-black" voting districts--districts drawn to maximize the number of black voters in them--and were rejecting plans drawn by state legislatures that didn't meet racial quotas specified by the division. What's more, the "results" language enabled activists to challenge perfectly legitimate rules, like not letting felons vote, as illegal discrimination because of their racially disproportionate effects. The original 1965 **Voting Rights Act** was one of the best and most effective pieces of legislation ever passed; its 1982 amendments proved to be among the worst and most destructive. What had begun as an effort to ensure all citizens the right to vote had degenerated into a DOJ-led extortion racket. In order to receive the federal government's preclearance of their reapportionment plans, states had to racially gerrymander them to the nth degree.

IRONICALLY, AS THE POWER OF THE VRA CONTINUED TO grow, its reason for existing began to disappear. By the 1980s, whites were sometimes voting for black candidates even when there was a white candidate in the race. (Blacks, on the other hand, still rarely vote for a white candidate if there is a black candidate in the race; the same is generally true of Hispanics, to whom the VRA's protections were extended in 1975.) Simply put, the voting habits of white Southerners, and nearly all white *20 Americans, are today colorblind to an extent that only the wildest optimists would have envisioned in 1965.

This turn of events has MALDEF and the NAACP struggling to find new and innovative ways to prove to judges that whites still act as a cohesive voting bloc to defeat minority candidates. Without this proof, using the VRA to demand the creation of Rorschach-blot-shaped districts that guarantee the election of a Hispanic or black candidate is difficult or impossible. Furthermore, a series of Supreme Court decisions from the 1990s makes it clear that the Fourteenth Amendment demands the government look with heightened suspicion on any racial considerations in redistricting.

And so, after two decades of complaining about the effects of certain voting districts--not the intent used to create them--the racial advocacy groups now find their reliance on the amended Section 2 of the VRA a problem. It was the amended Section 2 on which they unsuccessfully relied in *Cano v. Davis*. A similar outcome is increasingly likely elsewhere as well. As the district court noted in *Cano*, although Latinos constitute a majority in the districts they challenged, the plaintiffs were unable to demonstrate that whites vote sufficiently as a bloc to defeat the preferred candidate of Hispanics. Throughout America, this is old news: Minority candidates have attracted so much white crossover voting during the last 15 years that their success at winning elections doesn't raise an eyebrow.

SO SHOULD WE RUE THE TWO DECADES OF VRA MISAPPORTIONMENT, but rest assured that the act is now functioning as it was originally intended to? The answer is no. Even if the most abusive lawsuits are being thrown out by courts, unjustified litigation continues and it has bad consequences. It is expensive and unpredictable, and its mere threat is enough to push some jurisdictions to continue gerrymandering. The post-2000 census reapportionment--in Virginia, Georgia, Mississippi, Texas, and elsewhere--still spawned lawsuits revolving around whether there was too much or too little attention paid to race. In many cases, the jurisdictions want to gerrymander, and Section 5 gives them a fig leaf to justify their actions.

If there are fundamental problems with a statute--if the premise on which it is based no longer exists--then Congress ought to rewrite it. As an institutional and constitutional matter, the courts shouldn't be thrust into the political process any more than is necessary. It is misguided to place more and more reliance on judges who often don't understand the messy, but by no means illegitimate, political minutiae of the redistricting process.

Minority voters are no longer disenfranchised, and to pretend that they are helps no one. The ballots of black voters are increasingly marginalized for the simple reason that nearly 90 percent of them can be counted on to vote straight-Democrat, so they are taken for granted by Democrats and written off by Republicans. The VRA amendments actually facilitate this race-driven voting behavior, the result of which is bad for both parties in the long run. Republicans don't get into the habit of campaigning for black votes or develop the skills for successfully doing so, because in most local elections there are practically no black voters in any district they can hope to win. Furthermore, isolating blacks and Hispanics in safe "minority-majority" districts pushes their leadership to the left because more moderate constituencies are gerrymandered out, and it marginalizes more moderate and conservative minorities.

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The **Voting Rights Act** now thwarts the desegregation of voting districts, a result that calls the constitutionality of the act into question, encourages identity politics, and is bad in the long run for Democrats and Republicans, minorities and nonminorities. (The law is also dubious in continuing to treat the South differently from the rest of the country and requiring ballots to be made available in foreign languages.) Since the act is up for **reauthorization** in 2007 anyway, it's time to start thinking about how to reincorporate the court's constitutional standard into Sections 2 and 5: Is the right to vote being abridged because of race, or not?

It's up to Congress to fix what it broke. The pro-gerrymandering provisions of the **Voting Rights Act** need to be repealed, and the VRA needs to be returned to its original conception: a mechanism to ensure that people are not treated differently according to race when they vote.

[FN1]. **Edward Blum** is director of legal affairs for the American Civil Rights Institute. **Roger Clegg** is general counsel of the Center for Equal Opportunity.

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Los Angeles Times

March 25, 2006 Saturday
Home Edition

SECTION: CALIFORNIA; Metro; Metro Desk; Part B; Pg. 6

HEADLINE: **Ventura** County Plugs Hole in Voting System With Ink;
To comply with a federal order to end bias against Latinos, it's replacing punch cards with pens.

BYLINE: Gregory W. Griggs, Times Staff Writer

BODY:

Ventura County election officials are replacing their decades-old punch-card voting system in time for the June 6 primary election.

After more than 30 years of voting with punch cards, most county voters will now mark their choices with ink. Those who have trouble seeing the ballots or using the pens will be able to vote on computer touch screens.

County officials say their new systems will serve Spanish-speaking voters better and ensure that those who are disabled can cast secret ballots.

The county has used punch-card technology for more than three decades, but officials agreed in 2004 to replace the system under a federal consent decree.

The U.S. Department of Justice had accused the county of discriminating against Latinos, who make up about a third of the population, by failing to employ sufficient numbers of bilingual poll workers or to provide adequate Spanish-language voting materials.

The settlement required the county to print bilingual ballots. But Gene Browning, the county's assistant registrar of voters, said the old punch cards could not be printed easily in two languages.

The new system, which cost \$6 million, was paid for using federal and state funds. It was manufactured by Oakland-based Sequoia Voting Systems. And like the punch-card system, it uses paper.

Although other counties have opted to switch entirely to computer touch screens, Browning said county voters made it clear that they still wanted a paper-based system.

"Whenever they would hear about counties going totally electronic, the reaction was: 'We need to have paper,' " he said.

In the new system, voters will feed their completed ballots into optical scanners that will instantly check for errors. The scanners will kick back incomplete ballots or ones filled out incorrectly, with too many candidates selected.

Once approved, results will be recorded on memory cards, which will later be uploaded into a centralized elections computer in Ventura. A percentage of the paper ballots also will be hand-counted to verify results, Browning said.

At each polling place, voters who are visually impaired or have difficulty using a pen will be able to cast secret ballots using computer touch screens. The machines will be equipped with headphones for people to hear the choices on the ballot.

California passed a law in 2004 requiring electronic ballot machines to also use some form of paper verification. Counties have until June 2006 to comply.

To meet the deadline, Riverside County in January agreed to spend \$14.2 million to replace its 6-year-old touch-screen voting machines with newer models that provide paper confirmation.

By never abandoning paper-based voting, Ventura County showed its fiscal prudence, said Kim Alexander, president of the California Voter Foundation.

"Counties that go all electronic typically spend three times more to purchase new equipment," Alexander said.

*ENGLISH IS BROKEN HERE***Allowing voters to cast foreign-language ballots degrades the idea of citizenship.**

California's Yuba County is getting ready to spend \$12,000 this November on election materials that nobody will use. That's because the federal government forces local officials to print voting information in Spanish for every election.

"Bilingual ballots are an enormous waste of county resources," says Frances Fairey, Yuba County's registrar of voters. In last March's primary election, this county north of Sacramento was forced to spend \$17,411 on Spanish-language election materials. But, according to Fairey, "In my 16 years on this job, I have received only one request for Spanish literature from any of my constituents."

The biggest problem with bilingual ballots, however, is not that they go unused in Yuba County, but that they are used in so many other places. Thousands of Americans are voting in foreign languages, even though naturalized citizens are required to know *English*. The National Asian Pacific American Legal Consortium estimates, for instance, that 1 percent of Chinese-American voters in New York City and 14 percent in San Francisco used some form of bilingual assistance in the November 1994 elections. Though these figures may be overstated, proportions anywhere near this magnitude are devastating to democracy. As Boston University president John Silber noted in congressional testimony last April, bilingual ballots "impose an unacceptable cost by degrading the very concept of the citizen to that of someone lost in a country whose public discourse is incomprehensible to him."

A nation noted for its diversity needs certain instruments of unity to keep the pluribus from overrunning the unum. Our common citizenship is one such tool. Another, equally important, is the *English* language. It binds our multiethnic, multiracial, and multireligious society together. Not everyone need speak *English* all of the time, but it must be the lingua franca of civic life. Since the voting booth is one of the vital places in which citizens directly participate in democracy, it must be the official language of the election process.

It is not, however, and political jurisdictions ranging from Yuba County to New York City can pin this mess on the perversion of voting-rights legislation. The Voting Rights Act of 1965 guaranteed blacks the right to vote in places, particularly the South, where they had been systematically blocked from electoral participation, often through the use of bogus "literacy tests." But as Manhattan Institute scholar Abigail Thernstrom has shown in her comprehensive book *Whose Votes Count?*, it did not take long for this important piece of civil rights legislation to expand in dangerous ways.

After the Act's passage in 1965, civil rights groups toiled to expand its authority. When the law came up for reauthorization in 1975, Hispanic organizations argued that *English*-language ballots were the equivalent of literacy tests. People whose first language was Spanish needed special protections in order to vote, they claimed, citing low turnout among Hispanics. This was sheer quackery. Literacy tests in the South were used for the fraudulent purpose of keeping blacks away from elections. Low Hispanic turnout was mainly due to the fact that so many Hispanics were not citizens and therefore ineligible to vote.

Nevertheless, Congress sided with the activists. It required bilingual ballots in any political district where "language minorities" made up at least 5 percent of the total population and less than half of the district's citizens were either registered to vote or had voted in the 1972 presidential election. It also required that bilingual election materials be made available to voters in every county in which the language-minority population had an "illiteracy rate"--meaning "failure to complete the 5th grade," a trait that includes many immigrants--above the national average. Interestingly, "language minorities" were not defined by language (a cultural characteristic), but by ancestry (a genetic one). The category included only "persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage." French Canadians living in Maine, the inhabitants of Little Italy in New York City, and the Pennsylvania Dutch received no special assistance. By the early 1990s, the foreign-language ballot provisions of federal voting-rights law applied to 68 jurisdictions in the United States.

The bilingual-ballot mandate bloated even further in 1992, when Congress said that counties with more than 10,000 residents who speak the same language and who are not proficient in *English* must provide bilingual voting ballots, even if their potential users make up less than 5 percent of the overall population. This applied to heavily populated areas with large numbers of non-*English*-speaking residents, such as Chicago, New York City, and San Francisco. To comply, New York City had to purchase new voting machinery because its old equipment did not have enough space for all the Chinese characters that the law said it must provide. Los Angeles County now offers ballots in Chinese, Japanese, Korean, Spanish, Tagalog, and Vietnamese. In the three elections between November 1993 and November 1994, the county spent more than \$1.2 million to print voting materials in these foreign tongues. The Mexican American Legal Defense and Education Fund has called this "a particularly small price to pay." This "small price" could have paid for a year's tuition at UCLA for 308 Los Angeles residents.

Ballot initiatives are often worded very precisely. Will translations always convey the exact *English*-language meaning of every initiative? In a deliberative democracy, they must. On a 1993 New York ballot question, translators printed the Chinese character for "no" where it should have said "yes." More important, immigrant voters should not even need bilingual ballots. We have required naturalization applicants since 1907 to demonstrate *English*-language proficiency. In order to become citizens--and thus gain the right to vote--the foreign-born have to demonstrate the ability to speak, read, and write simple *English*. A handful of them are granted exemptions. Naturalization applicants who are over the age of 50 and have lived in the United States for 20 years do not have to

meet the *English* requirement. But they only make up about 7 percent of all citizenship applicants. The other 93 percent have to pass the test. So why do we assume they lose their *English* skills on Election Day? Meanwhile, foreign-language voting sends one more message to immigrants that assimilation is not an important part of civil society.

A popular antidote to bilingual ballots is declaring *English* the official language of the United States. But that is like declaring the bald eagle its official bird--it's essentially symbolic. Many self-proclaimed official-*English* advocates in Congress have no intention of repealing foreign-language ballot laws or federal funding of bilingual education. When Senator Ted Stevens of Alaska opened hearings on an official-*English* bill last December, he proudly announced that "the bill does not affect existing laws which provide bilingual and native language instruction. Those statutes are integral parts of our national language policy." Message to civil rights activists: We're not going to change a thing.

In a speech to the 1995 American Legion convention in Indianapolis, Republican presidential candidate Bob Dole announced that "*English* must be recognized as America's official language." But he said nothing about bilingual ballots. As a senator in 1992, Dole voted to expand their use.

In August, the House of Representatives passed a bill that would repeal the federal government's unfunded bilingual ballot mandate by amending the Voting Rights Act. It would not deny local communities the right to print non-*English* voting materials, should they choose to pay for it themselves. Nor would it stop voters from taking punch cards into the election booth. No companion bill, however, has been introduced in the Senate.

There is a long tradition in the United States of ethnic newspapers--often printed in languages other than *English*--providing political guidance to their readers in the form of sample ballots and visual aids that explain how to vote. In the absence of bilingual ballots, this practice could continue and expand. Perhaps we should also allow voters to bring a friend or relative into the booth, just as blind voters can do. The polling place would remain open to people who have trouble with *English*, but it also would remind them that *English*--or even broken *English*--is the common language of American democracy.

~~~~~

By John J. Miller

John J. Miller, a Bradley Fellow at The Heritage Foundation, is the vice president of the Center for Equal Opportunity.

Testimony of

Mauro E. Mujica  
Chairman of the Board,  
U.S. English, Inc.

Before the  
Senate Judiciary Committee

“Continuing Need for Section's 203 Provisions for Limited English Proficient Voters.”

226 Dirksen Senate Office Building  
Washington, DC

13 June 2006

Thank you, Mr. Chairman and members of the committee for giving me the opportunity to testify today regarding Section 203 of the Voting Rights Act.

My name is Mauro E. Mujica, and I am Chairman of the Board of U.S. English, Inc., a nonprofit organization based in Washington, D.C. U.S. English was founded in 1983 by one of your former colleagues, Senator S.I. Hayakawa, and we have now grown to over 1.8 million members. Our organization focuses on public policy issues that involve language and national identity.

Mr. Chairman, I am a naturalized citizen, I speak Spanish regularly with my family and friends, and I am proud to speak four languages fluently. My concerns about Section 203 are not the result of animus to other languages or the people who speak them.

I recognize that any section of any law that has been in effect for a generation has a presumption in favor of reauthorization. I also know that it will take political courage to revisit anything that is part of the laudable Voting Rights Act. Still, I believe that if this committee brings its independent judgment to bear, it will see that the considerable costs of Section 203 outweigh its now questionable benefits.

There are numerous problems with the section, but I want to focus on four:

First, the law is completely at odds with a century old legal tradition. Under 8 USCS § 1423, nearly all immigrants must demonstrate English language proficiency to be eligible for naturalization. If English is a necessary condition for citizenship, and citizenship is a necessary condition for legal voting, then foreign language ballots are a legal contradiction at best. At worst, they are an invitation to winking violations of the citizenship requirements, which were just reaffirmed when this body voted overwhelmingly for Senator Inhofe's Amendment. Under Senate Amendment 4064, passed of the recent immigration bill, a citizenship applicant must demonstrate ability in English, not just show that he or she is on the path to learning English.

Second, to the degree that law has an expressive purpose or a "teaching effect," Section 203 sends exactly the wrong message. According to the Census, there are 54 different languages spoken in American homes by more than 50,000 people. But in most places where Section 203 is triggered, government translated voting materials send the message to Spanish speakers—and only Spanish speakers—that English is optional.

When a person steps into a voting booth, his or her civic attention is at its zenith. And at that very moment, government sends a signal that English is not really necessary to join our national political conversation. Ironically, this message will not be sent to the Spanish speaker in Boise or the Chinese speaker in Wichita. It will be sent only to those who live in high enough language concentrations to trigger Section 203's requirements. In short, it will be sent to the very people for whom demographic clustering makes the transition to English less of a life necessity.

Third, Section 203 is an unfunded mandate that imposes substantial and often wasteful costs on local governments. Now these costs are generally in the millions, which is not much from the perspective of a *federal* budget. But the costs are onerous in the context of more modest local budgets.

I want to cite but a few examples from around the country:

- In Los Angeles County, carrying out the Section 203 mandates added almost 15 percent to the cost of the 2004 general election, raising the total budget to \$16.3 million. (Los Angeles Times, Nov. 1, 2005)
- In Orange County, Calif., officials estimate that it will cost \$20 million per election to comply with the Section 203 requirement to print every ballot in five languages. (Orange County Register, April 1, 2006)

The costs are multiplied by the inevitable errors that arise from translation:

- In 2000, six voting sites in Flushing, New York features Chinese language ballots with the political parties of all state candidates reversed (Village Voice, Nov. 14, 2000)
- In Miami, officials were forced to pull a referendum off the ballot because the absentee Spanish language ballots had multiple errors, which fatally tainted those ballots. Officials were forced to post signs telling voters that their votes on the referendum wouldn't count. (Miami Herald, Nov. 2, 2000)

Amid the substantial costs and waste, multilingual ballots are often unused.

- In King County, Wash., only 24 of the 3,600 Chinese ballots prepared for the Sept. 2002 primary election were used. were issued, but only 24 were used. In the November general election, only 109 Chinese ballots were cast – and just 19 of these were done in polling places. (Seattle Post-Intelligencer, Nov. 23, 2002)
- In Lakin County, Kan., where 27 percent of the population is Hispanic, only 10 people needed bilingual assistance in the Nov. 2002 election. (Garden City Telegram, Nov. 9, 2002)
- In Orange County, Calif. despite the staggering costs, only 0.7 percent of voters request foreign language materials. In other words, Orange County will be forced to spend about \$20 million for \$10,000 voters, which is a staggering \$2,000 per bilingual ballot recipient. Even under the most generous definition of cost/benefit analysis, this does not meet the test. (Orange County Register, Apr. 1, 2006)

Now, Orange County may be seen as exceptional, because of its high number of speakers of foreign languages. But it is the very type of county that Section 203 was designed to impact. If Section 203 works as currently formulated, Orange County should be a shining example of success. But here, we see in boldest relief where Section 203 fails any rational cost/benefit test.

Finally, Section 203's provisions were originally touted as a remedy for a history of discrimination against people of Hispanic, Asian, and Native American heritage by use of language as a proxy. But the Congressional findings that lead the lines to be drawn at those groups could well be anachronistic. For one, the Supreme Court's *Lau* decision has

given us a generation of language minority students for whom schools must take affirmative steps to remedy the language deficit.

While language can always be used as a proxy for discrimination in any era, is there any evidence on the record that, in 2006, a Chinese speaker is more likely than say, an Arabic speaker to face such discrimination? I respectfully submit that unless the Congress of 2006 finds that the conditions that animated the 1976 findings persist, the rationale for reauthorization will be less a careful intent to remedy discrimination than a desire to avoid the wrath of constituencies who see ballots in their native tongue as a proxy for their political power.

Though Section 203 may have originated with the best of intentions, we should make the decision that binds us for the next generation on the conditions of today, not the conditions of a generation ago. Today, Section 203 provides selective benefits at the cost of a Balkanizing message. I oppose the reauthorization of Section 203's language in its current form. I respectfully urge this committee to craft a policy that more closely reflects legal and economic sense, and one which promotes what voting and being an American is all about.


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Tarrant County Commissioner, TX

Hon. Juan Zapata  
Florida State Representative

**Executive Director**

Mr. Arturo Vargas

†Deceased

May 9, 2006

Dear Senator:

On behalf of the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund, I write to express our support for S. 2703, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, and to urge you to co-sponsor this critical legislation. Swift passage of S. 2703, without amendment, is essential for the continued protection of the right to vote for all Americans, including Latino U.S. citizens. The NALEO Educational Fund is the leading nonprofit organization that facilitates full Latino participation in the American political process, from citizenship to public service. Our constituency includes the more than 6,000 Latino elected and appointed officials nationwide.

Latino U.S. citizens have experienced a long legacy of electoral discrimination that continues in many areas of this country. Congress recognized this fact in the Voting Rights Act of 1965 (VRA), when it removed language barriers to political participation by Puerto Rican citizens. Ten years later, Congress extended Section 5 and Section 203 coverage to "persons of Spanish Heritage" because of the extensive record of discrimination against Latinos in education and voting, including the use of literacy tests, poll taxes, intimidation, threats, and violence. These provisions have been a bulwark to stop efforts to deny Latino U.S. citizens of their fundamental right to vote and to participate at all levels of government. Since 1985, the number of Latino elected officials has grown by over 60 percent, from 3,147 to 5,041 in January 2005.

Despite the great strides Latinos have made under the VRA, we still have a long way to go. Although Latinos comprise 8.2 percent of all voting age U.S. citizens in the United States, Latinos comprise only 1 percent of all elected officials. The national registration and turnout rates of Latino voting age U.S. citizens continue to trail those of non-Latino Whites, by 17.3 percent and 7.9 percent, respectively. Language barriers pose significant obstacles for Latino voters in many parts of the United States, which are compounded by widespread violations of constitutional and statutory protections for voters who need assistance with navigating the complexities of the voting process. Many jurisdictions continue to purposefully erect barriers with the purpose or effect of denying Latino voters their first right of citizenship: an equal and meaningful voice in the democratic process.

Throughout the 109<sup>th</sup> Congress, during Senate and House oversight and legislative hearings considering the ongoing need for the VRA, there has been significant evidence that barriers to equal minority voter participation remain. The hearings have examined three of the VRA's key provisions that are set to expire in August of 2007: Section 5, which requires that certain jurisdictions with a history of discrimination in voting obtain federal approval prior to making any changes affecting voting, thus preventing the implementation of discriminatory practices; Section 203, which requires certain jurisdictions to provide language assistance to citizens who are not yet fully proficient in English; and Sections 6 through 9, which authorize the federal government to send observers to monitor elections for compliance with the VRA.

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□ 1314 Texas Ave., Suite 1630  
Houston, TX 77002  
(713) 228-6400  
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□ 60 East 42<sup>nd</sup> St., Suite 2222  
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Voting Rights Reauthorization and Amendments Act of 2006 (S. 2703)

Page 2

The evidence gathered during the hearings highlights the continuing need for the expiring provisions of the VRA. Two states (Arizona and Texas) and twelve political subdivisions of four additional states are covered under Section 5's approval requirement because of discriminatory practices against Latino voters. Texas leads the nation in discriminatory voting changes stopped by Section 5 and in the number of successful voting discrimination cases. The impact on the local level is clear in communities such as Bexar County (San Antonio), where Section 5 prevented the elimination of early polling places serving predominately Latino neighborhoods.

In addition, four states (Arizona, California, New Mexico, and Texas) and 65 political subdivisions in sixteen additional states are covered by Section 203 and are required to provide language assistance to Latino U.S. citizens who do not yet speak English proficiently enough to navigate the complexities of the voting process. Section 203 really makes a difference to these communities. In San Diego County, California, Latino registration was up 21% one year after the Department of Justice successfully sued the County for violating Section 203. The federal observer provisions have been a key part of enforcement of Sections 5 and 203, particularly in Arizona, California, Illinois, New Mexico, New York, and Texas.

S. 2703 is a direct response to the evidence of discrimination that has been gathered by Congress. It addresses this compelling record by renewing the VRA's temporary provisions for 25 years. The bill reauthorizes and restores Section 5 to its original congressional intent, which has been undermined by the Supreme Court in *Reno v. Bossier Parish II* and *Georgia v. Ashcroft*. The *Bossier* fix restores the ability of the Attorney General, under Section 5 of the Act, to block implementation of voting changes motivated by a discriminatory purpose. The *Georgia* fix clarifies that Section 5 is intended to protect the ability of minority citizens to elect their candidates of choice. Section 203 is being renewed to continue to provide language-minority citizens with equal access to voting, using more frequently-updated coverage determinations based on the American Community Survey Census data, which will help ensure that Section 203 remains responsive to the growth in the nation's Latino population. The bill also keeps the federal observer provisions in place, and authorizes recovery of expert witness fees in lawsuits brought to enforce the VRA.

The right to vote is the foundation of our democracy and the VRA provides the legal basis to protect this right for all Americans. The VRA helped fuel Latino political progress, by increasing the number of Latinos elected to serve in public office and enhancing opportunities for Latino voters to become full participants in the American political process. S. 2703 will now shape the future of our democracy, by making it stronger, more vital and responsive to all of our citizen's voices. We urge you to support this critical civil rights legislation. To co-sponsor S. 2703, please contact Dimple Gupta, Chief Counsel for the Constitution in Senator Specter's office, at (202) 224-5225, [Dimple\\_Gupta@judiciary-rep.senate.gov](mailto:Dimple_Gupta@judiciary-rep.senate.gov); Kristine Lucius, Senior Counsel in Senator Leahy's office, at (202) 224-7703, [Kristine\\_Lucius@judiciary-dem.senate.gov](mailto:Kristine_Lucius@judiciary-dem.senate.gov); Charlotte Burrows, Counsel in Senator Kennedy's office at (202) 224-4031, [Charlotte\\_Burrows@judiciary-dem.senate.gov](mailto:Charlotte_Burrows@judiciary-dem.senate.gov); or Gaurav Laroia, Counsel in Senator Kennedy's office, at (202) 224-7878, [Gaurav\\_Laroia@judiciary-dem.senate.gov](mailto:Gaurav_Laroia@judiciary-dem.senate.gov). If you or your staff have any further questions, please feel free to contact Dr. James Tucker at (202) 546-2536, [jtucker@naleo.org](mailto:jtucker@naleo.org), or Rosalind Gold at (213) 747-7606 ext. 120, [rgold@naleo.org](mailto:rgold@naleo.org).

Sincerely,

  
Arturo Vargas  
Executive Director

## NATIONAL CONGRESS OF AMERICAN INDIANS



May 5, 2006

Dear Senator:

On behalf of the National Congress of American Indians, the nation's oldest and largest organization of American Indian and Alaska Native tribal governments, I write to express our support for S. 2703, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, and to urge you to co-sponsor this important legislation. Swift passage of S. 2703 will ensure the continued protection of the right to vote for all Americans, including the first Americans. Attached please find an NCAI Resolution passed by tribal leaders calling upon Congress to reauthorize the Voting Rights Act.

Native Americans have experienced a long history of disenfranchisement as a matter of law and of practice that, unfortunately, too often persists today. Native Americans were given citizenship in 1924, but it took nearly 40 years for all 50 states to eliminate all express legal impediments to Indian voting. New Mexico, the last state to give Native Americans the franchise, did not do so until 1962—3 years before the passage of the Voting Rights Act. In addition, many states required that Indians be “civilized” or move away from their reservation communities before being permitted to vote. Once given the right to vote, Indians faced the same discriminatory mechanisms—poll taxes, literacy tests, and intimidation—that kept other minorities from voting.

Several of the provisions of the Voting Rights Act, which many people consider to be our most effective civil rights law, that will expire in 2007 have been important for ensuring the right to vote for American Indians and Alaska Natives. Several jurisdictions with large Native populations—including all of Arizona and Alaska and certain counties in South Dakota—are “covered jurisdictions” for Section 5 purposes. This coverage has protected Native communities from a number of attempts to diminish the Native voice through changes to the methods of conducting elections, the locations of polling places, or redistricting schemes.

In addition, the value of Section 203 to Indian country cannot be overstated. Today, 88 jurisdictions in 17 states are covered jurisdictions that need to provide language assistance to American Indians and Alaskan Natives. In many Native communities, tribal business is conducted exclusively or primarily in Native languages. Many Native people, particularly our elders, speak English only as a second language. Even if they have English language skills, many Indian people have said that they feel more comfortable speaking their Native language and are better able to understand complicated ballot issues in their Native language.

Furthermore, it is the policy of the federal government, as expressed in the Native American Languages Act of 1990 (NALA) to “preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages.” The NALA was the first, and may be the only, federal law to guarantee the right of a language minority group to use its language in “public proceedings.” Disenfranchising Native Americans by failing to provide language

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## NCAI HEADQUARTERS

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assistance in the electoral process to those who need it would surely violate this statutory right. Section 203 ensures all Native people, particularly our elders, many of whom speak English poorly if at all, have access to the ballot box. At the same time, it recognizes the importance of preserving and honoring indigenous languages and cultures.

Although we have made tremendous progress in the past 40 years, discrimination against American Indians and Alaska Natives in voting is still a reality in many communities. For example, a recent report from the New Mexico State Advisory Committee to the United States Commission on Civil Rights recounts the ways in which the Voting Rights Act has been used to protect Native voters in New Mexico, but noted that American Indians are still dramatically underrepresented in statewide offices as a result of persistent discrimination. Similarly, a recent report on voting rights in Alaska found that the State of Alaska, where Alaska Natives make up 19% of the population, continues to conduct English-only elections, despite being covered by both Section 203 and Section 4(f)(4). The report also states that 24 remote Alaska Native villages did not have a polling place in the 2004 election. S. 2703 is a direct response to this type of evidence of ongoing discrimination.

With more and more Native people participating in elections for the first time, the protections of the Voting Rights Act will continue to be critically important to ensuring that all individuals have full and meaningful access to participation in our democracy. We urge you to support this critical civil rights legislation. To co-sponsor S. 2703, please contact: Dimple Gupta, Chief Counsel for the Constitution in Senator Specter's office, at (202) 224-5225, [Dimple\\_Gupta@judiciary-rep.senate.gov](mailto:Dimple_Gupta@judiciary-rep.senate.gov); Kristine Lucius, Senior Counsel in Senator Leahy's office, at (202) 224-7703, [Kristine\\_Lucius@judiciary-dem.senate.gov](mailto:Kristine_Lucius@judiciary-dem.senate.gov); Charlotte Burrows, Counsel in Senator Kennedy's office at 202-224-4031, [charlotte\\_burrows@judiciary-dem.senate.gov](mailto:charlotte_burrows@judiciary-dem.senate.gov); or, Gaurav Laroia, Counsel in Senator Kennedy's office, at (202) 224-7878, [Gaurav\\_Laroia@judiciary-dem.senate.gov](mailto:Gaurav_Laroia@judiciary-dem.senate.gov). If you or your staff have any further questions, please feel free to contact Virginia Davis, NCAI Associate Counsel, at (202) 466-7767.

Sincerely,



Joe Garcia  
President, National Congress of American Indians

## NATIONAL CONGRESS OF AMERICAN INDIANS



The National Congress of American Indians  
Resolution #TUL-05-090

**TITLE: Support Reauthorization of Provisions Set to Expire in the Voting Rights Act**

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Randy Noka  
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Ute Mountain Ute Tribe

**WESTERN**  
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**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, through its unique relationship with Indian nations and tribes, the federal government has established programs and resources to meet the educational needs of American Indians, Alaska Natives, and Native Hawaiians, residing on and off their reserved or non-reserved homelands; and

**WHEREAS**, while the Indian Citizenship Act made Native Americans eligible to vote in 1924, state law determined who could actually vote, which effectively excluded many Native Americans from political participation for decades; and

**WHEREAS**, the Voting Rights Act was enacted to remove barriers to political participation and prohibit the denial of the right to vote on account of race or color and as a result, the Voting Rights Act has guaranteed millions of Americans the equal opportunity to participate in the political process and is considered one of the most successful civil rights laws ever enacted by Congress; and

**WHEREAS**, while much progress has been made in the area of voting rights, significant hurdles to securing voting rights for still remain as documented by a recent court case in South Dakota detailing three decades of systematic voting rights abuses against Native Americans; and

**WHEREAS**, while most of the Voting Rights Act is permanent, some provisions are set to expire in 2007, including: a requirement that states with a documented history of discriminatory voting practices obtain approval from federal officials before they change election laws; provisions that guarantee access to bilingual election materials for citizens with limited English proficiency; and the authority to send federal examiners and observers to monitor elections in order to prevent efforts to intimidate minority voters at the polls.

**NOW THEREFORE BE IT RESOLVED**, that the NCAI, in light of the history of discrimination that minorities have experienced when voting, and the proven effectiveness of the Voting Rights Act, encourages Congress to:

1. Re-enact the Section 5 pre-clearance requirements for 25 years, consistent with the time period adopted with the 1982 extension. These provisions directly impact nine states (South Dakota, Arizona, California, New York, Florida, Michigan, Louisiana, Mississippi, and Texas) with a documented history of discriminatory voting practices, and local jurisdictions in seven others by requiring them to submit planned changes in their election laws or procedures to the U.S. Department of Justice or the District Court in Washington, D.C. for pre-approval. Congress should also consider options for modifying the mechanism by which coverage is determined in order to expand coverage to additional areas with a high concentration of Native Americans.
2. Renew Section 203 for 25 years so that the indigenous people of what is now called the United States and other Americans who are limited in their ability to speak English can continue to receive assistance when voting. Of the 466 local jurisdictions impacted by this provision, 102 jurisdictions must assist American Indians and Alaska Natives in 18 states. Congress also should modify the formula by which these covered jurisdictions are identified in order to provide more communities with Section 203 assistance.
3. Renew Sections 6 to 9, which authorize the attorney general to appoint election monitors and poll watchers to ensure voters are free from harassment, intimidation, or other illegal activity at the polls on Election Day; and

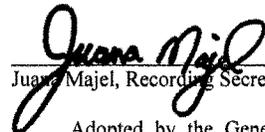
**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

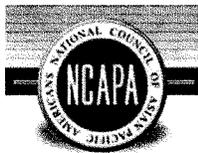
The foregoing resolution was adopted at the 2005 Annual Session of the National Congress of American Indians, held at the 62<sup>nd</sup> Annual Convention in Tulsa, Oklahoma on November 4, 2005 with a quorum present.

  
\_\_\_\_\_  
Joe Garcia, President

**ATTEST:**

  
\_\_\_\_\_  
Juana Majel, Recording Secretary

Adopted by the General Assembly during the 2005 Annual Session of the National Congress of American Indians held from October 30, 2005 to November 4, 2005 at the Convention Center in Tulsa, Oklahoma.



May 18, 2006

Re: Voting Rights Act Reauthorization and Amendments Act of 2006

Dear Senator,

On behalf of the National Council of Asian Pacific Americans (NCAPA), a coalition of 21 leading national APA organizations, and the other undersigned Asian American groups, we write to vigorously support and to urge you to co-sponsor the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 (S. 2703). NCAPA, founded in 1996, serves to represent the interests of the greater Asian American community and to provide a national voice for Asian American issues. S. 2703 is critical to ensuring the continued protection of the right to vote for all Americans, including Asian Americans.

The Voting Rights Act (VRA) is our Nation's most successful civil rights law and has enjoyed strong bipartisan support. Congress enacted it in direct response to persistent and purposeful discrimination through literacy tests, poll taxes, intimidation, threats, and violence. The VRA has enfranchised millions of racial, ethnic, and language minority citizens by eliminating discriminatory practices and removing other barriers to their political participation. In the process, the VRA has made the promise of democracy a reality for Asian Americans.

Key provisions of the Voting Rights Act of 1965, are scheduled to expire in 2007, including Section 203, the language assistance provisions. Section 5 prevents voting practices with a discriminatory purpose or effect from being implemented. Section 203 requires certain jurisdictions to provide language assistance to voters in areas with high concentrations of citizens who are limited-English proficient and illiterate. Sections 6-9 authorize the federal government to use observers in elections to monitor VRA compliance.

The Act is designed to combat voting discrimination and to break down language barriers to ensure that Asian Americans and other Americans can vote. Asian Americans have long suffered discrimination at the polls and still face language barriers when attempting to vote. Asian American citizens with limited English proficiency can have difficulty understanding complex voting materials and procedures. The language assistance provision has made democracy real for many Asian American citizens by guaranteeing effectively remove language barriers to voting and permitting all eligible voters to participate fully in the democratic process by casting meaningful ballots in U.S. elections. Sections 5 and the federal examiner and observer program has prevented voting practices that would have harmed Asian American voters.

While progress has been made under the VRA, much work remains to be done. The reality is that there is continuing significant discrimination in voting that is still pervasive in jurisdictions covered by the expiring provisions of the Act. S. 2703 addresses this continued voting discrimination by renewing and restoring the VRA's temporary provisions for 25 years.

c/o National CAPAD  
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**OFFICERS**

*Lisa Hosogawa, Chair*  
National Coalition for Asian Pacific  
American Community Development

*Kiran Ahuja, Vice Chair of Programming*  
National Asian Pacific American  
Women's Forum

*Jeff Caballero, Vice Chair of Membership*  
Asian Pacific American Community  
Health Organizations

*Ho Tran, Secretary*  
Asian & Pacific Islander American  
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*Doua Thor, Treasurer*  
Southeast Asia Resource Action Center

**MEMBER ORGANIZATIONS**

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Asian American Justice Center  
Asian & Pacific Islander American  
Health Forum  
Asian and Pacific Islander American  
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Asian Pacific American Labor Alliance,  
AFL-CIO  
Association of Asian Pacific  
Community Health Organizations  
Hmong National Development, Inc.  
Japanese American Citizens League  
Korean American Coalition  
National Alliance of Vietnamese American  
Service Agencies  
National Asian American Pacific Islander  
Mental Health Association  
National Asian Pacific American Bar  
Association  
National Asian Pacific American  
Women's Forum Consortium  
National Asian Pacific Center on Aging  
National Coalition for Asian Pacific  
American Community Development  
National Federation of Filipino  
American Associations  
National Korean American Service &  
Education Consortium  
Organization of Chinese Americans  
Sikh American Legal Defense and  
Education Fund  
South Asian American Leaders of  
Tomorrow  
Southeast Asia Resource Action Center

The right to vote is the foundation of our democracy and the VRA provides the legal basis to protect this right for all Americans, including Asian Americans. We urge you to support this critical civil rights legislation and to oppose any attempts to weaken the VRA, especially Section 203. To co-sponsor S. 2703, please contact: Dimple Gupta, Chief Counsel for the Constitution in Senator Specter's office, at (202) 224-5225, [Dimple\\_Gupta@judiciary-rep.senate.gov](mailto:Dimple_Gupta@judiciary-rep.senate.gov); Kristine Lucius, Senior Counsel in Senator Leahy's office, at (202) 224-7703, [Kristine\\_Lucius@judiciary-dem.senate.gov](mailto:Kristine_Lucius@judiciary-dem.senate.gov); Charlotte Burrows, Counsel in Senator Kennedy's office at 202-224-4031, [charlotte\\_burrows@judiciary-dem.senate.gov](mailto:charlotte_burrows@judiciary-dem.senate.gov); or, Gaurav Laroia, Counsel in Senator Kennedy's office, at (202) 224-7878, [Gaurav\\_Laroia@judiciary-dem.senate.gov](mailto:Gaurav_Laroia@judiciary-dem.senate.gov). If you or your staff have any further questions, please feel free to contact Terry M. Ao, AAJC Senior Staff Attorney, at (202) 296-2300.

Sincerely,

Asian American Institute

Asian American Justice Center

Asian & Pacific Islander American Health Forum

Asian and Pacific Islander American Vote

Asian Pacific American Labor Alliance, AFL-CIO

Hmong National Development, Inc.

National Alliance of Vietnamese American Service Agencies

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Sikh Coalition

South Asian American Leaders of Tomorrow

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Janet Murguía, President

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The Honorable Arlen Specter  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

**Re: Voting Rights Act Reauthorization and Amendments Act of 2006**

Dear Chairman Specter and Congressman Leahy:

On behalf of the National Council of La Raza (NCLR), the largest national Latino civil rights organization in the U.S., I am writing to strongly support S. 2703, the "Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 (VRAVA)." Thank you for the leadership role, along with Senator Edward M. Kennedy, which you both have taken on this important legislation and for your commitment to further develop the strong record begun by the House Judiciary Committee through hearings in the Senate Judiciary Committee. Your continued support and sponsorship of S. 2703 is imperative to renew and restore the vitality of the Voting Rights Act of 1965.

The right to vote is a fundamental civil right for all Americans, and NCLR supports efforts to remove barriers that inhibit Americans, especially the most vulnerable in our society, from exercising their right to vote. NCLR works to protect the right to vote for eligible Latinos and to encourage civic participation.

The Voting Rights Act of 1965 (VRA) is the most successful civil rights law ever enacted. Designed to strengthen the Fifteenth Amendment of the Constitution, it eliminated voting barriers, such as literacy tests and poll taxes, which kept African American, Latino, and other minority voters away from voting booths and without a political voice. The VRA prohibits discrimination based on race and national origin and requires certain jurisdictions to provide language assistance to minority voters.

Three key provisions of the VRA will expire next year, unless they are renewed. Section 5 prevents voting practices with a discriminatory purpose or effect from being implemented.

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Section 203 requires certain jurisdictions to provide language assistance to voters in areas with high concentrations of citizens who are limited-English-proficient and less literate than the national average. And, Sections 6-9 authorize the federal government to use observers to monitor VRA compliance.

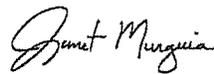
While progress has been made under the VRA, there is still much work to be done. For example, despite the fact that the language assistance provision of the VRA has been in place for the past 30 years, there is evidence that some jurisdictions are still not in full compliance with the federal language assistance requirements, and that Latino voters still face discrimination based on language capability. Failure to reauthorize the language minority provisions of the Act would result in the disenfranchisement of more than four million Latinos.

In addition, Section 5 has been critical to preserving the voting rights of Latinos because it allows a discriminatory change to be stopped before harm is done. The states of Texas and Arizona as well as certain counties in New York are covered by Section 5 of the VRA, which has made a significant difference in the ability of Latino voters in these areas to exercise their right to vote. As more Latinos move to historically-covered jurisdictions such as Georgia and Louisiana, Section 5 will provide protections needed there as well.

S. 2703 addresses these issues by renewing the VRA's temporary provisions for 25 years. The bill reauthorizes and restores Section 5 to the original congressional intent that has been undermined by the Supreme Court in *Reno v. Bossier Parish II* and *Georgia v. Ashcroft*. The *Bossier* fix prohibits implementation of any voting change motivated by a discriminatory purpose. The *Georgia* fix clarifies that Section 5 is intended to protect the ability of minority citizens to elect their candidates of choice. Renewal of Section 203 will ensure that language minority citizens will continue to be provided with equal access to voting without language barriers, using coverage determinations based on the American Community Survey Census data. The bill also keeps the federal observer provisions in place and authorizes recovery of expert witness fees in lawsuits brought to enforce the VRA.

Again, thank you for your leadership on this issue, and I urge you both to continue to vigorously support S. 2703.

Sincerely,



Janet Murguía  
President and CEO

05-13-2006

**Opening Argument - More Racial Gerrymanders**Stuart Taylor Jr. ([Email this author](#))

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When conservative Republicans such as House Speaker **Dennis Hastert** and Senate Majority Leader **Bill Frist** jointly sponsor Voting Rights Act amendments with such liberal Democrats as Rep. **John Conyers** and Sen. **Edward Kennedy**, be suspicious.

They are steamrolling through Congress bipartisan legislation to renew for the next 25 years a much-misunderstood, largely anachronistic provision (Section 5) of the Voting Rights Act, including amendments that are driven by racial-identity politics and that would aggravate ideological polarization.

The amendments would turn back the clock on racial progress by requiring even more racial gerrymandering of election districts than under current law. And the extension of Section 5, as currently drafted, would perpetuate an extraordinarily punitive oversight regime that gives to federal political appointees and not-exactly-apolitical bureaucrats at the Justice Department unreviewable power to dictate state and local election rules in nine (mostly Southern) states and some other jurisdictions.

Why would broad bipartisan majorities of House and Senate incumbents want to do that? To help themselves win re-election, for starters. More specifically, Democrats are pandering to the demands of black and Hispanic politicians for safe seats and to the ideological obsessions of the civil-rights lobby, which still sees America as so steeped in racism that whites just won't vote for minority candidates.

Never mind that Douglas Wilder, an African-American, was elected governor of Virginia in 1989; **Bill Richardson**, a Hispanic, was elected governor of New Mexico in 2002; Colin Powell might well have been elected president of the United States had he run in 1996; nine of the 34 Georgia officials elected statewide are black; and so on, and so on.

As for the Republicans, they are terrified of being characterized as racists if they oppose anything that carries the "voting-rights" label. Such demagoguing works because most Americans don't understand that this legislation is not mainly about the basic right to cast a meaningful ballot -- which is secure -- but about mandating safe seats for incumbents and other minority politicians.

Second, many Republicans also believe -- perhaps incorrectly -- that drawing so-called "majority-minority" urban districts for black and Hispanic Democrats will "bleach" the surrounding suburban districts and thus help Republicans beat white, moderate Democrats there. That was the result of the racial gerrymanders of the 1990s: The number of (very liberal) black and Hispanic Democrats in the House went up; the number of (more moderate) white Democrats went down -- and this helped Republicans take and keep control of the House. This was good for black and Hispanic politicians. It was not so good for black and Hispanic voters.

But Republicans who think that they will benefit by renewing their alliance of convenience with the civil-rights lobby may be in for a surprise, as explained below.

In any event, the pending legislation "will ensure heavily packed minority congressional districts that stifle

competition, ideologically polarize elections, and insulate Republican representatives from minorities and minority representatives from Republicans," as Edward Blum, a scholar at the American Enterprise Institute, said in congressional testimony.

Bad as this is for the body politic, writes Roger Clegg of the Center for Equal Opportunity, it is good for incumbent politicians: "Both parties, especially Republicans, are politically happy with segregated districts and uncompetitive contests."

While Blum and Clegg are conservatives, leading liberal scholars have also raised concerns about the wisdom and the constitutionality of major aspects of the pending legislation to extend and amend Section 5, and have called for reducing the Justice Department's power to dictate state and local voting rules.

"It is far from clear that the injustices that justified Section 5 in 1965 can justify its unqualified re-enactment today," said professor Samuel Issacharoff, a leading liberal expert on election law at New York University Law School, in Senate testimony on May 9. He also noted that federal Section 5 interventions in statewide redistricting have been "rife with accusations of partisan motivation." And he questioned whether "minority voters are well served by being packed in increasingly concentrated minority districts."

The Voting Rights Act's permanent provisions protect against the vestiges of discrimination in voting that no doubt remain, especially in scattered localities where old-fashioned racism remains strong. Section 2, for example, supports court challenges to dilution of minority voting power.

Section 5, on the other hand, was adopted in 1965 as a temporary measure to prevent evasion by the state and local governments with the worst histories of suppressing the black vote. They must obtain Justice Department "preclearance" of redistricting plans and of even the smallest change in voting rules.

But so effective have other Voting Rights Act provisions been that little evidence exists that most governments in the nine covered states are more hostile to minority voters than are governments that the law doesn't cover. Indeed, there is little evidence of systematic discrimination by any state government, despite a huge research effort by the civil-rights lobby to find and magnify such evidence.

Not only are the terms of the proposed re-enactment unduly strong medicine for what discrimination in voting rules remains; enforcement of Section 5 has actually aggravated racial gerrymandering and has sometimes been partisan.

The Justice Department earned a rebuke from the Supreme Court in 1995 for insisting that Georgia, among other states, adopt a racial gerrymander of its congressional districts so extreme as to violate the Constitution's equal protection clause. The George H.W. Bush Justice Department, in its alliance of convenience with the civil-rights lobby, had pushed for such racial gerrymanders. But Republicans should beware what the next Democratic president's Justice Department might do, especially with some of the pending amendments.

One would overrule a 2003 Supreme Court decision to bar states from replacing any of their existing majority-minority districts -- safe seats for black or Hispanic politicians -- with districts that are more racially integrated. This despite strong evidence that more-integrated districts would be better both for minority voters and for attaining what Rep. **John Lewis**, D-Ga., a civil-rights icon, once called the goal of

a community "where we would be able to forget about race and color, and see people as people, as human beings, just as citizens."

Justice Sandra Day O'Connor quoted Lewis's words in her majority opinion in the 2003 ruling *Georgia v. Ashcroft*. She added that a central purpose of the Voting Rights Act was "to foster our transformation to a society that is no longer fixated on race." Accordingly, she held that a state may, if it chooses, reduce the number of majority-minority districts in order to increase overall minority voting power by creating larger numbers of more-integrated "influence districts." Those are districts controlled by coalitions of minority and white Democrats.

Influence districts also tend to be more competitive and to choose candidates who are more moderate than the extreme liberals who tend to dominate majority-minority districts and the extreme conservatives who tend to dominate "bleached" suburban districts.

But now Congress is poised to require more segregated districts, and thus to enhance both our fixation on race and our ideological polarization. **John Lewis** -- who has sadly let party loyalty and solidarity with racist allies trump his nobler principles -- is a co-sponsor.

Other pending amendments to Section 5 would effectively overrule two other Supreme Court decisions, in 1997 and 2000, by allowing Justice Department officials to veto any change in voting rules that they subjectively label unfair to minorities, even if the change leaves minority voters no worse off than before. This would make it especially easy for Justice Department officials to devise pretexts for grinding partisan axes.

Which brings us back to why House Republicans may be in for a surprise if they hope to reap the same political gains that they did in the 1990s from helping the civil-rights lobby create majority-minority districts.

Once Democrats win the presidency, they will have the motive, the means, and the opportunity to stick it to Republicans by manipulating the Justice Department's enlarged power over state and local voting rules in the nine covered states -- all of them red. And Democrats have become more adept since the 1990s at creating fairly safe seats for black and Hispanic Democrats without making the adjacent suburban districts safe for Republicans.

So by casting aside their supposed color-blind principles in pursuit of political self-preservation, among other sins, Republicans may be paving the way for their own return to permanent minority status, at least in the House.

This they richly deserve, for many a reason. I wish that I could be confident that a Democratic majority will be better.

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Published Thursday, July 6, 2006, in National Review Online.

## **Look South: Americans could learn from Mexican elections.**

**John R. Lott Jr. & Maxim C. Lott**

Claims of stolen elections are not just an American phenomenon. Threats of massive street protests and protracted recount battles have followed Sunday's Mexican presidential election. Several million votes have allegedly been misplaced in the closely contested balloting.

Despite this ruckus, Mexicans have something to teach Americans about how to run an election. Many types of vote fraud that have been alleged in American elections simply could not occur in Mexico.

A lot is at stake in Mexico, with the relatively pro-business National Action party (PAN) candidate leading the socialist Democratic Revolution party (PRD) candidate by slightly less than one percentage point. The election will determine whether Mexico will see more privatization or a return to more government ownership, and whether the North American Free Trade agreement is supported or gutted.

After Mexico's 1988 election, when the Institutional Revolutionary party (PRI) was accused of staging a computer crash that gave them the votes needed to stay in power, major reforms were implemented. In the wake of these reforms, our neighbor to the south now enjoys anti-voting-fraud laws and procedures that are in many ways better than ours.

To begin, Mexico spends much more than the U.S. on measures to prevent vote fraud. All voters in Mexico must present voter IDs at the polls, which include not only a photo but also a thumbprint. The IDs themselves are essentially counterfeit-proof, with special holographic images, imbedded security codes, and a magnetic strip with still more security information. As an extra precaution, voters' fingers are dipped in indelible ink to prevent them from voting multiple times.

Voters cannot register by mail — they have to go in person to their registration office to fill out forms for their voter ID. When a voter card is ready three months later, it is not mailed to the voter as it is in the U.S. Rather, the voter has to make a second trip to a registration office to pick it up. Sunday's election was the first in which absentee ballots were available, but only if for voters requested one at least six months before the election.

Opponents of a photo-voter-ID system in the United States argue that any such system would keep voters from the polls — and would impact mostly lower-income voters. Yet in Mexico, where about 40% of the population is below the poverty line, strict voter-ID rules have actually increased voter turnout. In the three presidential elections since the 1991 reforms, 68 percent of eligible citizens have voted, compared to only 59 percent in

the three elections prior to the rule changes. People may even take more interest in the races when they are assured that their elections will not be fraudulent.

The current election is a real test of the Mexican system. But even here, the problems may be overblown. The missing-votes claims made by the leftwing PRD are largely overstated. The “missing” votes aren’t really missing at all. They are all recorded, and they weren’t included in the official total because the ballots were left blank or were missing a signature. They were set aside only when representatives of all political parties agreed that they could not be read, so recounting these votes would certainly not change the outcome of the election. In any case, the strict voting requirements in place in Mexico have certainly made things less chaotic than they otherwise would have been.

Every close election in the U.S. seems to be followed by shouts that one side or the other benefited from voting irregularities. Many counties in the U.S. have more people registered as voters than officially living in the county — an impossibility in Mexico.

And it’s not just Mexico. Many countries require some type of voter ID. Examples include Canada, France, Germany, Italy, Poland, the United Kingdom, India, Pakistan and South Africa.

How does Mexico, with less than a quarter of our per capita GDP, have a better system for dealing with vote fraud? The answer lies in Mexico’s history of corruption. Mexico, more than the United States, has seen the disastrous problems associated with vote fraud. And now they have largely solved those problems.

Ironically, with Americans still debating the presidential-election results of Florida 2000 and Ohio 2004, it turns out that the United States has a few things to learn from Mexico.

## ■ CAPITOL HILL III

## The Longest 'Emergency'

Congress debates (sort of) the Voting Rights Act of 1965

RAMESH PONNURU

In mid-June, a relatively small number of House Republicans persuaded their leaders to delay a floor vote on a bill officially called "The Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006."

California Democratic congresswoman Maxine Waters was furious, which is not unprecedented. "The notion that a handful of Republicans from southern states can rally enough support to hijack reauthorization of the Voting Rights Act is a slap in the face to the civil-rights pioneers after which this legislation is named," she said. "This delay is inexcusable." She added that Republicans have a "moral obligation," "out of respect" for those three women, to pass the bill immediately, "without amendments."

Howard Dean, chairman of the Democratic National Committee, agreed: "The renewal of the Voting Rights Act has broad bipartisan support and should not be held hostage by congressional Republicans pandering to the far Right of their party."

Some journalists piled on. When Rep. John Carter, a Texas Republican, suggested that the Voting Rights Act should be amended so as not to force states and localities to print ballots in foreign languages, the *Austin American Statesman* editorialized that he had "blurt[ed] out embarrassing comments." It lamented that such "historically illiterate griping stopped cold a vote to renew the 1965 Voting Rights Act for another 25 years."

Actually, much of the Voting Rights Act is permanent law and doesn't have to be

Mr. Ponnuru is an NR senior editor and the author of *Party of Death*, available from Regnery.

renewed. It's the "emergency" sections of the act that are up for reauthorization. When Congress wrote the act, many southern states were engaged in extraordinary efforts to deny black citizens their Fifteenth Amendment right to vote. Congress therefore authorized extraordinary federal interventions for five years. But the deadline was extended in 1970, 1975, and 1982—in that last case, for 25 years.

Dean is right to say that another 25-year extension has "broad bipartisan support." President Bush, Senate majority leader Bill Frist, Speaker Denny Hastert, and the chairmen of the Senate and House Judiciary Committees—Arlen Specter and James Sensenbrenner, respectively—are on board, as are almost all Democrats. The House Judiciary Committee voted 33–1 for the extension. Sensenbrenner wants the full House to vote on the committee's version of the bill without being free to offer amendments.

The renegade Republicans who have Waters and Dean so exercised are not trying to get rid of the Voting Rights Act. They are, in the main, objecting to two specific provisions of the act. The first, as mentioned, is the act's requirement that some states and localities print ballots in languages other than English. Since immigrants are supposed to have English proficiency to become citizens, many congressmen think that it serves no good purpose to print ballots in other languages, let alone to require it. If they cannot eliminate this requirement altogether, they want at least to allow localities that have not had many requests for foreign-language ballots in recent elections to stop printing them.

Not all of the congressmen who want to loosen this requirement are southerners, as Waters suggested. Their leader is Steve King, a Republican congressman from Iowa, who thinks it odd that something called the "Voting Rights Act" should be debated without congressmen having the chance to vote to modify it. He is the one member of the House Judiciary Committee who voted against the act's extension.

The second provision requires officials in several "covered jurisdictions," mostly in the South, to get "pre-clearance" from the Justice Department before they change any of their election laws or procedures. This requirement is a practical burden, since it means that moving a voting booth

a block may have to wait on federal approval. Some southern congressmen also take it as an insult.

Lynn Westmoreland, a freshman Republican congressman from Georgia, has led the charge against this provision. A trio of think-tankers has provided intellectual support for him: Abigail Thernstrom (the Manhattan Institute), Ed Blum (the American Enterprise Institute), and Roger Clegg (the Center for Equal Opportunity). They point out that the covered jurisdictions show no sign of treating black and Hispanic voters less fairly than other jurisdictions. In Georgia, a covered state, blacks are more likely than whites to register to vote and to vote. Liberals today tend to think that a felon, having spent his time in jail, deserves to regain the right to vote. But they don't think that after 40 years Georgia should regain the ability to set its own election rules. Indeed, Clegg and the others argue that Congress is exceeding its constitutional powers by continuing to single out such states.

Jeff Lungren, a spokesman for Sensenbrenner, defends the law by noting that it is possible for a jurisdiction to work with the Justice Department to end its covered status. Eleven counties in Virginia have done that since the 1982 reauthorization. Georgia's problem is that it keeps submitting election-law changes that don't pass muster. The Justice Department has objected to the state's proposed changes 91 times since 1982—more times, Lungren points out, than it objected to proposed changes between 1965 and 1982.

Those data can, however, be read in more than one way. If only eleven counties have escaped the Justice Department in 25 years, maybe the standards for doing so are too high. Does anyone believe that those counties have changed dramatically more than the rest of the South? For that matter, does anyone believe that Georgia treats black voters worse over the last 25 years than it did over the previous 17?

Charlie Norwood, another Republican congressman from Georgia, is trying to amend the act. Most of the covered states got that way because of their statistics on minority voting in 1964. He wants to determine which jurisdictions are covered based on the last three elections, and continually update the list. Westmoreland says that his state shouldn't be "in the penalty box for 66 years, with no hope for a reprieve."

Many of the Republicans who favor extending the act, with no floor amendments, are just afraid of being called racist or, what amounts to the same thing, "against the Voting Rights Act." Other Republicans, however, believe that the law has benefited them and will keep doing so. In the 1990s, the act was used to pack black voters into congressional districts so as to elect black candidates (and to pack Hispanic voters into districts so as to elect Hispanics). These "majority minority" districts have been overwhelmingly Democratic. Creating them, by concentrating Democratic voters, has reduced the total number of Democratic-leaning districts. Congressman Tom Feeney, a Florida Republican, says that the Voting Rights Act was as important as the Contract with America in giving his party control of Congress, and that it remains vital. This is a reasonable assessment.

This racial gerrymandering has also made congressional elections less competitive. It has contributed to the racial polarization of the parties, keeping Republican House members from representing many black or Hispanic voters and keeping such voters from being able to vote for many viable Republican candidates for House seats. It has also made it harder for minority candidates to develop the multiracial followings necessary to win statewide office.

The Supreme Court has struggled to interpret the Voting Rights Act and the Fourteenth Amendment's equal-protection clause so as to be consistent with each other. In *Georgia v. Ashcroft*, a 2003 case, Justice Sandra Day O'Connor wrote a characteristically muddled decision for the Court. The ruling gave state legislatures more leeway in drawing lines for congressional districts.

They had previously been required to maximize the number of minority officeholders who were likely to be elected, or at least to keep that number from falling. O'Connor's ruling allows legislatures to create districts with large minorities of black (or Hispanic, or Asian) voters. Those voters could combine with some

white voters to elect their favored candidates. That way, black voters might end up having more influence over the government.

O'Connor thus, to her credit, moved away from the pernicious idea that only black officeholders can represent black voters. But she moved closer to the idea that only liberals, be they white or black, can represent black voters. Think about how this would work in practice. Let's say an election put Democrats in charge of what was normally a Republican state, and they enacted a gerrymander that locked their power in place. A Democratic gerrymander would almost certainly increase the total number of districts that were dominated either by black voters or by a combination of blacks and white liberals. O'Connor's rules would be no obstacle to such a plan. But when the Republicans had a chance to redraw the lines, the rules would be a nearly insuperable obstacle. Any redistricting plan of theirs would reduce minority influence.

In other words, O'Connor's decision gave legislatures added leeway only to help Democrats. It would put the federal government in the position of putting a thumb on the scales in favor of Democratic redistricters.

Top Republican officials think that the *Georgia v. Ashcroft* rules could eventually cost their party 10–20 House seats. So even if the

Voting Rights Act has helped Republicans in the past, there is no guarantee that it will continue to do so. The Republican supporters of extending the act's expiring provisions think that they contain language that heads off this threat. They're wrong. Both the text and the legislative history of the act suggest that it enshrines, rather than eliminates, the double standard on partisan gerrymanders.

The bill will thus promote the racial balkanization of the electorate without helping the Republican party. A Senate Republican aide sums it up: "When you're cutting a deal with the devil, you'd better be damned clear on the terms of the deal." NR

## DEFENSE

# That Shield, Not a Sword

How goes Ronald Reagan's goal of anti-ballistic-missile defenses?

TAYLOR DINERMAN

THE uproar over the expected North Korean missile test brings the question of missile defense, once again, to the fore. Before Ronald Reagan gave his 1983 "Star Wars" speech, both Democrats and Republicans believed that the only way to counter the USSR's nuclear threat was to deter aggression with an arsenal of our own while negotiating (dubious) arms-control agreements. Since then, the GOP has been the pro-missile-defense party, and the Democrats have remained mostly opposed.

After launch, a nuclear missile is most vulnerable in its boost phase, when moving at relatively slow speeds and releasing a huge amount of heat that makes it easy to target. But it can also be intercepted in its mid-course phase, when the warheads, along with any decoys, have been deployed; and in its terminal phase, when the warheads dive toward their targets and the decoys burn up in the atmosphere. Reagan's Strategic Defense Initiative included ideas that would intercept missiles in all three phases.

In spite of limited budgets and the ABM treaty's restrictions on testing and development, the Strategic Defense Initiative Organization (SDIO) made impressive progress. It found that a space-based defense that could hit a missile in its boost phase was technologically possible. This project, known as Global Protection Against Limited Strikes, was ready to move into testing and production in 1993, when it was canceled by Bill Clinton's first defense secretary, Les Aspin, who reportedly boasted that he was going to "take the stars out of Star Wars."

Mr. Dinerman writes a weekly column for [TheSpaceReview.com](http://TheSpaceReview.com).

**Both the text and the legislative history of the Voting Rights Act suggest that it enshrines, rather than eliminates, the double standard on partisan gerrymanders.**

METROPOLITAN DESK

## Race Question Dominates House Seat Fight

By JONATHAN P. HICKS (NYT) 614 words  
Published: June 13, 2006

Some of Brooklyn's most prominent black officials said yesterday that they wanted to enlist party leaders at the national level to prevent a white politician from winning a Congressional seat long held by black politicians.

In a news conference after a meeting of about two dozen black elected officials and civic leaders, including United States Representative Major R. Owens, the leaders sharply criticized the motives of David Yassky, a white City Councilman who is running for the Congressional seat currently held by Mr. Owens and, before him, by Shirley Chisholm.

After 24 years in Congress, Mr. Owens is not running for re-election this year. In addition to Mr. Yassky, there are three black candidates running for the Congressional seat: State Senator Carl Andrews, City Councilwoman Yvette D. Clarke and Chris Owens, who is the congressman's son and a former member of a community school board.

Mr. Owens added that Mr. Yassky's campaign was a reflection of "opportunism and personal ambition."

"Is it well meaning?" Mr. Owens asked. "Perhaps. Is it opportunistic? Of course."

The Yassky bid has brought to the forefront latent racial tensions in a historically black district, anchored by Crown Heights and Flatbush, that also includes some wealthy white areas of Brooklyn like Park Slope. Several black and Hispanic elected officials in Brooklyn have accused Mr. Yassky of taking advantage of the fact there are several black candidates in the race and that he could win against a divided black electorate.

In yesterday's news conference Mr. Owens and City Councilman Albert Vann, the organizer of the meeting, insisted that Mr. Yassky had every right to run for the Congressional seat. But both men said that the councilman's candidacy signaled insensitivity to the history of voting rights districts -- created to assure minority representation in Congress -- and black political history in Brooklyn.

"If you respected us and our struggle, you wouldn't even think about moving into a district and to take this seat," said Mr. Vann, a Brooklyn Democrat, who led the meeting.

Mr. Owens played a major role in the talks and in the news conference, referring to Mr. Yassky as "a candidate with no history and no compatibility with the district." He noted that at the time Mr. Yassky announced that he would run for Congress, the councilman lived in an adjoining district represented by Representative Nydia M. Velázquez.

"He couldn't adequately represent the district, no matter what his color was," Mr. Owens

said. Other officials at the news conference charged that Mr. Yassky's campaign was largely financed by contributors who do not live in Brooklyn.

Mr. Owens and other black officials said that to push their cause, they would communicate with Howard Dean, the chairman of the Democratic National Committee, as well as the state chairman, Assemblyman Herman D. Farrell Jr., and Assemblyman Vito Lopez, the Brooklyn Democratic chairman.

The talks among the officials, participants said, were aimed at exploring whether one or more of the black candidates might drop out of the race or whether Mr. Yassky might be persuaded to withdraw.

But Mr. Yassky made it clear that he had no such plans. "I believe I can make a difference in Washington," he said. "As long as I believe I can be effective and get results, I'm going to keep this campaign going. And I'm very encouraged by the voters' response."

When asked in an interview, Mr. Yassky did not respond directly to comments by either Mr. Vann or Mr. Owens. "The people who decide the election are the voters in the 11th Congressional District," Mr. Yassky said. "And I'm working as hard as I can to make sure that this candidacy is about results."

<http://www.nytimes.com/2006/07/10/nyregion/10brooklyn.html>

The contest has received national attention because of its racial overtones. Mr. Yassky, who is white, moved into the district to compete against four black candidates. (One, Assemblyman Nick Perry, has since dropped out.) The predominantly black district has long been represented by a black politician, and Mr. Yassky has been criticized by some prominent Democrats in Brooklyn who call him an opportunist.

\* \* \*

The congressman acknowledged that some Democrats have hinted that his son's withdrawal would reduce the competition among black candidates and help make sure that the seat did not go to Mr. Yassky.

## **In Shirley Chisholm's Brooklyn, Rancor Over White Candidacy**

By **DIANE CARDWELL** (NYT) 1659 words  
Published: June 25, 2006

For the last four decades, the predominantly black population of central Brooklyn has been represented in Washington by one of its own, a tradition that dates to the 1968 victory of Shirley Chisholm, the first black woman elected to Congress.

But now, in a district whose boundaries were drawn to strengthen black voting power, residents are locked in a wrenching, racially charged debate over a white politician's campaign for Congress.

The candidacy of that politician, David Yassky -- who has built a reputation as an accomplished, independent-minded councilman -- has led to angry accusations of racial carpetbagging. It has also spawned calls by black politicians that he abandon the contest and that Senators Hillary Rodham Clinton and Charles E. Schumer, Mr. Yassky's mentor, take sides in the fight.

But perhaps more important, the hostilities say much about the evolving nature of black neighborhoods like Crown Heights and Brownsville and the profound repercussions on politics.

As the forces of immigration and gentrification have altered the demographics of these communities, ethnic and racial blocs that once promoted their own candidates have fractured, with voters now choosing among politicians of various backgrounds.

Nowhere is the phenomenon more stark than in the contest for the 11th Congressional District, where American- and Caribbean-born blacks vie for power and a steady influx of whites has heightened the worry that blacks will be displaced, from their neighborhoods and from the political hierarchy. It is a fear that Mr. Yassky's candidacy has intensified, so much so that a group of black and Hispanic politicians are discussing ways to make sure he loses.

At the center of it all is Mr. Yassky, 42, a mild-mannered former law professor who, colleagues say, is a true believer in the power of government to improve lives. After volunteering on political campaigns over summers during high school, he began working for the Koch administration while in college and eventually became chief counsel to the House Subcommittee on Crime, working under Mr. Schumer.

As a Congressional aide for six years, he said, he "became completely convinced that you could do things that were worth doing," like the gun control laws and other public safety measures he helped enact.

A Brooklyn Heights resident who was elected to the City Council in 2001, Mr. Yassky emerged as a key voice in pushing the Bloomberg administration to include subsidized housing in the gigantic waterfront rezoning in Williamsburg and Greenpoint and banning soda and candy in vending machines in public schools.

So when Mr. Yassky heard that Representative Major R. Owens was retiring this year after serving for more than two decades, he did some soul-searching before he decided to run. "A big question for myself," he said, "was, 'Do I think this is the right thing to do, do I think I can represent the whole district, and represent Brownsville as effectively as I can represent Park Slope?'"

In a decision his detractors have cast as opportunism, he concluded that he could, arguing that the aim of voting rights legislation was, at root, to ensure that minority interests were adequately represented. "Does that mean that the person who represents that district has to be African-American himself or herself?" he said, going back through the thought process he used in deciding to run. "And I guess the answer is no."

But his candidacy has led to the resurfacing of racial tensions in an area still scarred by the Crown Heights violence that pitted blacks against Hasidic Jews in 1991. Mr. Yassky's critics say that he is calculating that the other candidates will splinter the black vote, allowing him to win by capturing whites, who make up 21.4 percent of the district, according to the 2004 Almanac of American Politics, which used 2000 census figures. Blacks make up 58.5 percent.

The district had fewer whites in the 1990's, before it was redrawn, expanding into Cobble Hill, Brooklyn Heights and more of Park Slope. The 1994 almanac listed its population as 74 percent black and 16 percent white.

The contest among Mr. Yassky's three black opponents is complex on its own, and all have rejected demands that they pull out of the race to coalesce around a black candidate.

City Councilwoman Yvette D. Clarke, a popular incumbent who already represents a critical part of the district, challenged Representative Owens in a three-way primary two years ago and came in second. Mr. Owens's son, Chris Owens, a former community school board member, is seeking to succeed his father.

And State Senator Carl Andrews is working to distance himself from the Democratic organization, where he was close to Clarence Norman Jr., the former Brooklyn Democratic leader who was convicted on corruption charges last year.

Mr. Andrews is expected to receive formal endorsements today from former Mayor David N. Dinkins, City Comptroller William C. Thompson Jr. and State Attorney General Eliot Spitzer.

The Rev. Al Sharpton has been among those working to ensure that a black is elected from the district, which was drawn in the 1960's to enhance minority representation. He said he had met with Mr. Yassky and argued against his candidacy. "Given our underrepresentation in terms of this state in terms of blacks we can't afford not to try and keep a voter-rights seats in the hands of who it was designed for," Mr. Sharpton said.

He added: "The issue is, why would you think there's not a black as qualified and who could do just as good a job in Washington? So the inference is when someone moves into our district, they're telling us, 'Well, ain't nobody in the district who can do what I do.' "

Mr. Yassky says the district needs a lawmaker who will deliver on issues like providing jobs, access to health insurance and housing. "It's a district that needs Congress to pay attention and care and do what it's supposed to do. And I just felt increasingly strongly that I could do something."

But critics see him as simply an ambitious politician who faces term limits in 2009 and is looking for a more prominent stage.

Last year, Mr. Yassky had planned to run for Brooklyn district attorney but abandoned the effort. Mr. Yassky only recently moved into the Congressional district -- he had lived three blocks outside it -- as he began to campaign in earnest.

Of his opponents, only Mr. Owens would go after Mr. Yassky directly yesterday, with Ms. Clarke and Mr. Andrews sidestepping or downplaying the issue of race.

"He went from a four-way race for district attorney in which he was one of three white candidates, where he decided he couldn't win, to a four-way race for Congress in which he is the only white candidate," Mr. Owens said. "I think it's a very calculated move on his part."

Critics have also said that Mr. Yassky is out of touch with the black population, noting that many of his supporters hail from wealthy, predominantly white areas like Park Slope and Brooklyn Heights or from gentrifying neighborhoods like Victorian Flatbush.

But at the same time, Mr. Yassky has attracted support from some blacks in the district, including some who said they found him appealing when he spoke at their churches. Others, like supporters active in the Boerum Hill housing projects that he currently represents, say he has been a vigorous advocate.

"We've had this seat for many years and nothing's been done with it," said Charlene Nimmons, who is with the Wyckoff Gardens Tenant Association. Referring to Mr.

Yassky, Ms. Nimmons, who is black, said, "I know what he's done, and I can see him continuing that."

Indeed, there are signs that many voters are focused on the issues that affect their daily lives, and not the race of a candidate.

"I'm looking for someone who can deal with economic issues, immigration issues and basically decrease crime -- we need to deal with the gun problem," said Neikisha Charles, 19, a immigrant from Grenada who was shopping at a supermarket in Brownsville where Mr. Yassky was campaigning one Saturday. She said that she had not yet chosen a candidate, but that she had heard Mr. Yassky speak at her church and liked what he had to say.

"Race is a social construct as I see it, so it really doesn't matter as long as he deals with what needs to be done," she said.

But as Mr. Yassky works to spread his message about the need to promote a more aggressive Democratic agenda in Washington, race is clearly weighing on the minds of some voters. As he campaigned that same Saturday in Ditmas Park, a part of Flatbush where home values have been rapidly rising, some nonblack voters expressed qualms about his candidacy. One white couple told Mr. Yassky that they planned to vote for Chris Owens. And at a greenmarket, Joe Wong, 29, an Asian-American, said that he, too, was leaning toward Mr. Owens because he opposed the Atlantic Yards development and because he had reservations about voting for a nonblack candidate.

"I'm not totally sold on that, but it's just the fact that it was created as a majority-minority district and the fact that blacks are underrepresented in the Congress as it stands," Mr. Wong said, adding that he did not support efforts to push Mr. Yassky out of the race.

"I'm not saying he wouldn't do a good job representing the district and the minorities that are in the district," he said, "it's just I haven't made up my mind whether or not that's a good enough reason for me to vote for someone or not."

For his part, Mr. Yassky remains philosophical and determined.

"More African-Americans in Congress rather than fewer is a good thing, but you also want to have a district, including, certainly, a district that's majority African-American represented really effectively in Congress," he said. "The voters may decide they don't want to hire me, but I absolutely intend to give them that choice."



**CHRIS NORBY**  
 Supervisor, Fourth District  
 Orange County Board of Supervisors

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 chris.norby@ocgov.com  
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June 9, 2006

The Honorable Arlen Specter  
 711 Hart Building  
 Washington, DC 20510

Dear Senator Specter:

The multilingual ballot sections of the Voting Rights Act perpetuate negative stereotypes, are outdated, vague and violate the spirit of assimilation that holds our country together.

Naturalized voters pass a citizenship test in English. Immigrants study for months to and take special classes to prepare for this test. Should the law presume they are incapable of voting in English?

According to the current interpretation of the VRA, my County of Orange must provide translations in Spanish, Vietnamese, Chinese and Korean.

Multilingualism perpetuates the false stereotype that immigrants are not learning English, either by lack of desire or ability. Today's naturalized citizens have higher education and income levels than in past generations.

Complex ballot propositions are difficult enough to explain in English, let alone other languages. Chinese uses over 20,000 characters, with a simplified system (on the mainland) and a traditional system (in Taiwan and Hong Kong) that is distinctly different. Not surprisingly, most Chinese-American voters in Orange County are well-educated professionals who overwhelmingly in English.

The original Voting Rights Act of 1965 empowered African-Americans to vote, which they had long been denied in the Jim Crow-era South. The law ended blatant race-based political discrimination. It had nothing to do with multilingual voting. It was only in renewals of the Voting Rights Act that multilingual ballot requirements crept in, and those rules have become onerous.

The method for determining which voters are non-English speaking is highly suspect. Census forms ask us whether we speak English "Very Well, Well, Not Well or Not at All." Only those

checking "Very Well" are judged capable of voting in English. Speaking English "Well" should be good enough. It was obviously good enough to pass the citizenship test. In addition, all immigrants who have not finished the fifth grade are presumed illiterate. When more than 5 percent or 10,000 people of the voting-age population in a county meet both these criteria, the non-English-ballot requirements take effect.

If these standards are left unchanged, after the 2010 census my county could be required to print ballots in Tagalog, Hindi, Punjabi, Urdu, and Farsi, depending on future immigration patterns

Such confusing rules allow DOJ agents to push us far beyond what the law actually requires. Last year, we were required send 118,856 "outreach" letters offering voters foreign-language ballots. We got hundreds of angry responses back from voters who were insulted at the suggestion they couldn't speak English. (*Attachment 1*)

All of our voter pamphlets will soon be required to contain all five languages, even those sent to native English speakers. This would cost us over \$20 million per election, incite anti-immigrant feelings and give the voter pamphlet the bulk of a phone book.

DOJ agents have given our Registrar a list of Spanish, Vietnamese, Korean and Chinese surnames. Based on surnames alone, we are to assume that 25% of voters with these names are limited English-speaking. (*Attachment 2*)

Most of our voters with Spanish, Vietnamese, Korean and Chinese surnames were born in this country, while others took these names upon marriage. The rest all took the citizenship test in English. It is insulting to stereotype people's language ability based on their names!

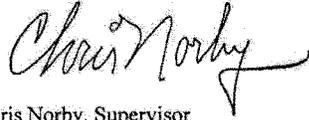
The multilingual requirements are now creeping into court decisions. A recent recall election in Santa Ana was placed in doubt by the Ninth Circuit Court because the petitions were written only in English. Similar petitions are being challenged all over the state, limiting citizens' right to petition for recall and state and local initiative elections. Yet, the Voting Rights Act has no mandate whatsoever for multilingual petitions.

I urge a total reexamination of the need for multilingual ballots. If they are kept, five simple clarifications that would greatly improve the Voting Rights Act and these have submitted these in writing for your consideration: (*Attachment 3*)

- 1) Accept the naturalized voters' self-description of their own English ability. Speaking English "well" or "very well" should both be considered adequate.
- 2) Non-English voting material should only be provided to those who request them.
- 3) Delete the numerical threshold of 10,000 and raise the 5% threshold to 10%.
- 4) English fluency assumptions must never be based on a voter's surname.
- 5) Any multilingual ballot provisions do not apply to petitions.

Let the values of the Voting Rights Act reflect that of civic assimilation, not static schisms. Let voting be a tool for unity, not division.

Sincerely,

A handwritten signature in black ink that reads "Chris Norby". The signature is written in a cursive style with a long, sweeping tail on the letter "y".

Chris Norby, Supervisor  
Orange County, Fourth District

Jul 12 06 11:02a

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818047860245

P.2



## CITY OF SALEM, VIRGINIA

OFFICE OF THE GENERAL REGISTRAR  
P.O. BOX 207      191 GLAY STREET  
ZIP CODE 24154

June 23, 2006

The Honorable Arlen Specter  
United States Senate  
Chairman, Senate Judiciary Committee  
711 Hart Building  
Washington, DC 20510

The Honorable Patrick J. Leahy  
United States Senate  
Ranking Democratic Member,  
Senate Judiciary Committee  
433 Russell Senate Office Building  
Washington, DC 20510

RE: Voting Rights Act of 1965, as amended

Dear Senators Specter and Leahy:

I am the General Registrar in Salem, Virginia. I have worked in the Office of the General Registrar in Salem for eighteen years, including the last two years in my current capacity. My understanding is that the Judiciary Committee of the United States Senate is currently reviewing whether to reauthorize the expiring provisions of the Voting Rights Act, including the preclearance and bailout sections. I am writing to share Salem, Virginia's experience with the bailout process.

On May 25, 2006, the City of Salem, Virginia filed a complaint in the United States District Court for the District of Columbia, seeking to "bailout" from coverage under the special provisions of the Voting Rights Act. A copy of the complaint is

enclosed. Under Section 5 of the Voting Rights Act, the city is currently required to obtain preclearance from either the District Court for the District of Columbia or the Attorney General for any change in voting standards, practices, or procedures. If the District Court grants the city a declaratory judgment that the city qualifies for a "bailout," the city will no longer need federal approval for changes affecting voting.

During my time in the Registrar's Office, I have not been responsible for making the city's Section 5 submissions, but I am familiar with the submissions and the process because they affected my work. Generally, the process of making submissions is routine and not a huge burden on the office's resources. On occasion, however, we have made changes requiring preclearance with elections approaching and needed a prompt decision by the DOJ. We believe DOJ has been cooperative and responsive to our requests for expedited review. For example, we moved a polling place just prior to the recent May 2<sup>nd</sup> election. The DOJ gave us an answer (i.e., preclearance) in plenty of time to prepare for the election. My experience has been that the DOJ will not use the 60 days it has by statute to make a decision when minor changes are involved, or if the circumstances require an expedited response.

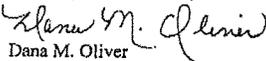
Similarly, the DOJ has been cooperative, rather than adversarial, in our pursuit of the bailout. In fact, the DOJ has worked with our legal counsel to facilitate our pursuit of the bailout. We understand, for example, that the DOJ interviewed people in the Salem community and to review our records to make sure that we have met our obligations under the Voting Rights Act. The DOJ is making sure that we meet the requirements for a bailout and has provided us feedback to ensure that we provide all of the information necessary for the DOJ to make an informed decision. All of the indications are that the City will meet the requirements for a bailout and we expect the bailout to be forthcoming.

The process of seeking a bailout has been neither time-consuming nor expensive. It took me about a week, working off-and-on, to put the materials together to support our complaint. The Voting Rights Act requires jurisdictions seeking to bailout to present evidence of minority voter registration and turnout, changes in minority voting

participation over time, and disparities (if any) between minority and non-minority participation levels. We do not keep voting statistics by race, but we were able to show that as of 2005, 78.7 percent of our voting age population was registered to vote. Employees of the DOJ also did some of the leg work, and they reviewed our files and theirs to check whether we had submitted all of our voting changes for preclearance. The overall costs of a bailout for the City will be less than \$5000, which includes all legal fees and costs. This is not an insignificant sum for a city our size, but it was not unduly burdensome either. Moreover, we believe a bailout will be cost-effective for the City in the long run, and will enable us to make routine voting changes without delay.

I am aware that several other jurisdictions located in Salem's vicinity plan to seek a bailout after the June statewide primary election. I am currently working with three registrars in our area and have heard there are an additional eight jurisdictions interested in pursuing bailout. Based on our experience in Salem, I believe that more jurisdictions would seek to bailout if they were aware of the opportunity and understood the requirements. It does not require the time and money that many jurisdictions assume it does, and it is not a burdensome process either. In my opinion, bailout provides a real option for those jurisdictions that have complied with their Section 5 obligations and no long warrant federal oversight.

Sincerely,

  
Dana M. Oliver  
General Registrar,  
Salem, Virginia

June 13, 2006

The Honorable Arlen Specter  
Chairman  
Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Specter:

When the Senate Judiciary Committee considers the reauthorization of the Voting Rights Act (VRA), we the undersigned ask you to oppose the reauthorization of the multilingual election requirements in Sections 203 and 4(f)(4).

Today as our nation becomes more diverse, it is even more critical to protect our nation's linguistic unity than it has been in the past. Requiring states and local governments to provide election materials in various languages undermines that objective and sends the message that it is okay, even desirable, for our citizenry to be divided by language. Public opinion polls show that by overwhelming margins, Americans of every background reject that idea.

There is no rationale for renewing these provisions which Congress adopted as a temporary expedient to make up for a lack of educational opportunities and hence higher illiteracy rates among certain groups within our society. That rationale has long since been superseded by the widespread availability of educational opportunities and illiteracy rates that are heavily influenced by immigration.

Multilingual election materials are redundant, heavy-handed, and wasteful. They are redundant because federal law already guarantees every voter the right to bring an interpreter into the voting booth with him if he cannot understand a ballot written in English.<sup>1</sup> Thus the law protects the right of every citizen to cast an informed ballot and has the added advantage of not favoring particular language groups.

Two different Government Accountability Office (GAO) reports to Congress have shown that the mandatory provision of multilingual ballot materials is an expensive federal mandate and that such materials are hardly used. Yet the U.S. Justice Department expends enormous resources on the stringent enforcement of these wasteful provisions, forcing cities and county election officials around the country to spend taxpayer funds for satisfying a demand that does not exist, in order to appease various interest groups.

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<sup>1</sup> See 42USC1973aa-6.

Finally, multilingual ballots and election materials are an affront to generations of immigrants past and present, who have worked hard and made great sacrifices to learn English in order to naturalize and become American citizens.

The U.S. has a long, proud tradition of welcoming and integrating newcomers to our society. It is our duty as Americans to continue this tradition within acceptable limits and according to our laws. Therefore, we urge you and the Committee to reaffirm the 'Melting Pot' heritage that has enabled us to forge one nation out of millions of immigrants from all over the world by opposing renewal of the multilingual election requirements of the VRA.

Thank you for your attention to this matter. We look forward to working with you on this very important issue.

Sincerely,

Organizations

Eagle Forum (Phyllis Schlafly)  
 The American Legion (Marty Justis, Director of Americanism and Children & Youth Division)  
 One Nation Indivisible (Linda Chavez)  
 Family Research Council (Tom McClusky, Acting VP of Gov. Affairs)  
 Coalitions for America (Paul Weyrich)  
 The American Conservative Union (J. William Lauderback, Exec. Vice President)  
 ProEnglish (KC McAlpin, Exec. Director)  
 Let Freedom Ring (Colin Hanna)  
 U.S. Business and Industrial Council (Kevin L. Kearns, President)  
 RightMarch.com (William Greene, President)  
 American Family Association (Donald E. Wildmon, President)  
 African American Republican Leadership Council (Alex St. James, Chairman)  
 U.S. English (Mauro Mujica)  
 Southeastern Legal Foundation (Shannon Goessling, Exec. Director)  
 Conservative Leadership PAC (Morton Blackwell)  
 English First (Jim Boulet)  
 Population Research Institute (Stephen Mosher, President)  
 Tradition, Family, Property, Inc. (C. Preston Noell III, President)  
 Renew America (Stephen Stone, President)  
 Government is Not God Political Action Committee (Rev. William Murray)  
 Families Across America (Evelyn Peters-Washington, President)  
 Maryland Taxpayers Association (Richard Falknor, Exec. Vice President)  
 American Research Foundation (Phil Kent, President)  
 Christian Coalition of America (Jim Backlin, VP for Legislative Affairs)  
 Council for Citizens Against Government Waste (Thomas A. Schatz, President)  
 American Values (Gary Bauer)

Individuals\*

Ed Meese, former US Attorney General / Heritage Foundation

Matt Spalding / Heritage Foundation

John Fonte / Hudson Institute

Ken Boehm / National Legal and Policy Center

Bob Barr, former US Representative from Georgia

Amy Ridenour / National Center for Public Policy

Don Feder / Jews Against Anti-Christian Defamation

\* endorsed by named individual only, organization listed solely for identification purposes.



WHITE HOUSE INITIATIVE ON  
ASIAN AMERICANS AND PACIFIC ISLANDERS

June 26, 2006

Re: Voting Rights Act Reauthorization and Amendments Act of 2006

Dear Senator,

As Chairman of the President's Advisory Commission on Asian Americans and Pacific Islanders, I strongly encourage you to reach a bipartisan consensus on the Voting Rights Act Reauthorization and Amendments Act of 2006 (S. 2703). In particular, I encourage you to consider the importance of Section 203, which requires that certain state and local jurisdictions provide assistance in languages other than English to voters who are limited English proficient. This provision helps to ensure that the voters are casting their ballots effectively and correctly.

President George W. Bush established the President's Advisory Commission on Asian Americans and Pacific Islanders to improve the quality of life of Asian Americans and Pacific Islanders through greater participation in federal programs where they may be underserved. Over the past year and a half, the Commission has conducted 14 community site visits all across the country. One of the major concerns we have as a Commission is that some communities do not seem to have equal access to federal resources as the result of language barriers. If this is the case with federal resources, we hope the Voting Rights Act (VRA) is able to ensure that citizens do not face the same challenges when it comes to their right to vote.

The VRA has enjoyed strong bipartisan support, and I hope you to continue defending U.S. citizens' right to vote. One of the greatest things about the United States is that it encourages people who have been here for a long time and who have been contributing to society to be civically engaged. In fact, certain persons are exempt from English literacy requirements when applying for citizenship, such as the elderly who have resided in the United States for a long period of time, the physically or developmentally disabled, and certain Hmong veterans who helped the United States during the Vietnam War and came to the United States as refugees.

Voting can be an intimidating and complicated process, even for voters who are native English speakers. For new citizens whose first language is not English, the voting process is even more difficult to maneuver. Language assistance also helps native-born voters who, due to limited educational opportunities, are limited English proficient. Pride is rarely compromised in many Asian cultures, and without language assistance, many simply decide to avoid the entire process rather than ask for help. For many new citizens, one of the most cherished rights upon becoming a U.S. citizen is the right to vote—a right that many did not have in their native country.

I urge you to consider the importance of Section 203 of the VRA and how it impacts communities that include citizens with limited English proficiency. We would all like to participate in our country's democratic process, so please allow the VRA to provide the legal basis to protect this right for all Americans.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rudy P. Mantua'.

Rudy P. Mantua, Chair  
President's Advisory Commission on  
Asian Americans and Pacific Islanders

06/30/2006 3:04PM



## Office of the Commissioners of Berks County

**Mark C. Scott, Esq., Commissioner**

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June 12, 2006

Arlen Specter, Chairman  
Senate Judiciary Committee  
711 Hart Senate Office Building  
Washington, D. C. 20510

Dear Chairman Specter,

I am writing to urge you to oppose reauthorization of the multilingual election requirements of the Voting Rights Act.

These requirements under Sec.203 and 4(f)(4) unnecessarily divide our nation by language. In Berks County, we have experienced the ugly divisions caused by language first hand. In 2003, the Justice Department sued Berks County for not providing enough Spanish language voting assistance and for not creating a friendly polling environment for Spanish speaking voters. As a result of this lawsuit, and an ensuing lopsided settlement, our county is now required to hire Spanish speaking poll workers and print ballots in Spanish.

As you can imagine, this is an issue about which people feel very strongly. Many of my constituents, including many lifelong Democrats, have expressed to me their outrage at being forced to pay the cost of providing voting assistance in Spanish. For more than 200 years English has been the common unifying language of the United States. In Berks County, this tradition is being rapidly overtaken by a form of linguistic separatism that threatens the very fabric of our common American culture.

The heavy-handed and overly aggressive tactics used by the Justice Department to prosecute Berks County were entirely unjustified. Throughout this ordeal, DOJ lawyers have treated county officials, including myself, with a high degree of condescension or contempt. I truly believe most Americans would be outraged if they knew the kind of intimidation and bullying their tax dollars are financing in the cause of official multilingualism.

There is absolutely no reason why Berks County should be required to hire bilingual poll workers and print ballots in Spanish. It is already the law of the U.S. that in order to naturalize, and therefore acquire the right to vote, immigrants must demonstrate the ability to "read, write,

- 2 -

and speak English in ordinary words and phrases (8USC1423). This is entirely appropriate for a nation whose constitution and founding documents are written entirely in the English language.

The federal government should not be spending tax dollars to prosecute Berks County and others for failing to provide election assistance when it is already the law that voters must be able to read and understand a ballot in English.

Furthermore, illiterate voters, including non-English speakers who cannot read English language ballots, are already permitted by law to take a person of their choice into the polls to assist them on election day (42USC1973aa-6). This is preferable to forcing Berks County and others to hire bilingual poll workers and print ballots in foreign languages since it puts the burden to understand English ballots on U.S. citizens exercising their right to vote, not on taxpayers.

The high cost of multilingual elections, in both monetary and societal terms, is not justified. The amount of money expended to hire bilingual poll workers and print Spanish language ballots in Berks County has resulted in minimal suffrage by the affected population. The Department of Justice has provided no statistical evidence that voter participation increased as a result.

In many instances, multi election materials are not even used by voters. It is my understanding that a 1987 report by the Government Accountability Office (GOA) found nearly half (46%) of respondents said NO ONE used oral minority language assistance provided under Sec.203 and 4(f)(4) of the Voting Rights Act. More than half (53%) of respondents indicated that NO ONE used written minority language assistance.

The resentments and hostilities fueled by multilingual elections and federal efforts to impose them on states and counties far outweigh any marginal, short-term benefits to those they are intended to help. In Berks County, we are seeing this first hand.

The U.S. has a long history of expecting all Americans, including new immigrants, to vote in English. This concept is at the core of our great "Melting Pot" heritage in the U.S., which has enabled us to forge one nation out of millions of immigrants from all over the world. At a time of record immigration, it is vital for us to return to this important tradition.

Sincerely,



Mark C. Scott

06/12/2006 4:07PM

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The Seattle Times

October 8, 2002, Tuesday Fourth Edition

**SECTION:** ROP ZONE; Local News; Pg. B1

**LENGTH:** 625 words

**HEADLINE:** Bilingual vote turnout low  
Only 24 Chinese ballots returned in primary

**BYLINE:** Warren Cornwall; Seattle Times Eastside bureau

**BODY:**

King County election officials printed 3,600 ballots in Chinese for the Sept. 17 primary, the first time a language other than English was available on ballots countywide.

They got 24 back.

Election officials and Chinese-American advocacy groups are analyzing results of the first foray into countywide **bilingual** elections, and wondering what the turnout bodes for future elections.

But none expressed disappointment at returns that just cracked two digits.

"I'm not surprised yet. But if we continue to have this low level of participation in November, then my viewpoint might change," said King County Elections Superintendent Julie Anne Kempf.

It's too soon to know if the returns understate how widely the materials were read, Kempf said. Some of the 100 people who requested Chinese absentee ballots may have used them as guides to fill in English ballots, Kempf said.

It's also unknown how many read the 15,000 voter pamphlets printed in Chinese.

Kempf said she didn't know how much it cost to translate or print the Chinese materials because she hadn't gotten the bills yet.

Election watchers cited a host of possible reasons for sparse return of the **Chinese ballots**: little advance notice the ballots were available; an election with few major issues at stake; and difficulty reaching people who may ignore politics because of language barriers.

The **Chinese ballots** came after the U.S. Department of Justice in late July ordered the county to accommodate Chinese-speaking voters. That order was triggered when the 2000 census showed 10,535 Chinese-American citizens of voting age in King County who had trouble speaking English.

"That's not bad compared to the short time frame," said Susanna Chung, president of the Greater Seattle chapter of the Organization of Chinese Americans, when told of the turnout.

Bilingual vote turnout low Only 24 Chinese ballots returned in primary Th

Chung's group and others tried to spread word of the ballots with articles in Chinese-language newspapers, announcements to civic organizations, and word of mouth.

King County included a notice in Chinese on the third page of the voters pamphlet, telling people they could get a ballot and voters pamphlet in Chinese.

One person went into a polling place and used a **Chinese ballot**, Kempf said. The other 23 were absentee ballots.

Chung is uncertain whether the low turnout means people didn't know about the **Chinese ballots**, or people who have trouble speaking English are less likely to register to vote.

Some civil-rights groups have welcomed the measures for making it easier for citizens to vote. Others have criticized the ballots, saying they encourage the use of languages other than English in government.

"It's going to add an unnecessary tax burden," said Valerie Rheinstein, spokeswoman for U.S.English, a Washington, D.C.-based nonprofit that advocates making English the official language of government. Chung counters that the **Chinese ballots** are much like requirements to help voters who are blind or have other disabilities.

"Anything we can do to help them exercise their rights should be done," she said.

Three Eastern Washington counties Adams, Franklin and Yakima must start offering ballots in Spanish, under a similar federal order triggered by the federal Voting Rights Act.

King County officials, meanwhile, will watch to see if a bigger election, and additional time to spread the news, translates into more use of the ballots this fall. An additional 150 people have asked for a **Chinese ballot** or voter pamphlet since the primary.

But Chung cautioned it may take more time, and more work by her group and others to either alert people to the ballot's existence, or get people registered.

Warren Cornwall: 206-464-2311 or wcornwall@seattletimes.com.

**LOAD-DATE:** July 22, 2003

Ivan Seldenberg  
Chairman & CEO



140 West Street  
New York, NY 10007  
ivan@verizon.com

July 11, 2006

The Honorable J. Dennis Hastert  
Speaker of the House  
232 Capitol Building  
Washington, DC 20515-6501

The Honorable John Boehner  
Majority Leader of the House  
107 Capitol Building  
Washington, DC 20515-6501

The Honorable Bill Frist  
Majority Leader of the Senate  
230 Capitol Building  
Washington, DC 20510-7010

The Honorable Nancy Pelosi  
Democratic Leader of the House  
204 Capitol Building  
Washington, DC 20515-6537

The Honorable Harry Reid  
Democratic Leader of the Senate  
221 Capitol Building  
Washington, DC 20510-7020

Dear Leaders:

Verizon congratulates each of you on your extraordinary leadership in advancing the Reauthorization of the Voting Rights Act. I urge you to move promptly to pass this bi-partisan, important legislation which guarantees every American the right to vote. This legislation is vital to the continuation of our free and open democracy.

As you know, the Voting Rights Act of 1965 is hailed as one of the most important pieces of Civil Rights legislation in the history of our country. By guaranteeing that no person shall be denied the right to vote because of race or color, the Act has broadened the participation of African-American, Hispanic and language-minority citizens in the democratic process and helped increase the numbers of elected minority representatives across all regions of the United States.

As a communications company, Verizon thrives on the robust, rich diversity of our communities. Our networks are the platforms for personal, commercial and social connectivity, and our investments stimulate entrepreneurial growth and innovation across all our markets. What makes the information economy such a powerful growth engine for America is the freedom of opportunity and expression afforded by this country's open, democratic institutions – the cornerstone of which is the right to vote.

Verizon stands with committed members of the Congress, civil rights leaders, business and community leaders, and the majority of Americans in supporting swift reauthorization of the Voting Rights Act (H.R. 9 – "The Fannie Lou Hamer, Rosa Parks and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006)."

Sincerely,

A handwritten signature in black ink that reads "Ivan Seldenberg". The signature is written in a cursive style with a long, sweeping tail on the final letter.

**MALDEF**

Mexican American Legal Defense and Educational Fund

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**Written Testimony of Mr. John Trasviña,**  
**Interim President and General Counsel, MALDEF**  
**Re: The Continuing Need for Section 203 of the Voting Rights Act**

**United States Senate Committee on the Judiciary**  
**June 13, 2006**

Chairman Specter, Senator Leahy, and Members of the Committee: Thank you for your leadership regarding the continuing need for Section 203 of the Voting Rights Act and for the opportunity to testify before you today. I am John Trasviña, interim President and General Counsel of the Mexican American Legal Defense and Educational Fund (MALDEF).

I am pleased to be back before this Committee to testify about the critical matter of language assistance in elections. One of my proudest moments from my period of service as Senator Paul Simon's General Counsel on the Constitution Subcommittee was working with Senator Hatch and many members of your staff on the 1992 Voting Rights Act language amendments. When this Committee displays bipartisanship on language assistance as it did in 1992, you make a powerful statement to the American people and the world about the sanctity with which we hold the right to vote in the United States of America.

Combating discrimination in U.S. elections is the right thing to do. Voting was once an exclusive privilege reserved for white, property-owning males, but it is now available to all eligible United States citizens regardless of race, gender, wealth, or national origin. Forty years ago, Congress passed the Voting Rights Act to provide for minority access to the polls, and it has helped to make our shared democratic principles a reality. It is now our responsibility to renew the Act's critical provisions because the nation's citizens still require their protections.

On May 10, 2006 the U.S. House of Representatives Committee on the Judiciary affirmed the continuing need for protections against unlawful discrimination in voting by approving by a vote of 33-1 the Voting Rights Amendments and Reauthorization Act of 2006, H.R. 9. The House and Senate bills to reauthorize the protections of the Voting Rights Act enjoy broad bipartisan support in each chamber because you and other congressional leaders recognize that combating discrimination in elections is among the most important responsibilities of our government.

*The Origins of Section 203*

Protections against language discrimination in voting were included in the original Voting Rights Act of 1965, which prohibited the enforcement of English-language

literacy tests for voters. Congress enacted these protections to protect the rights of Puerto Rican U.S. citizens who were educated in American flag schools in Puerto Rico where instruction took place in Spanish.

Section 203 was included during the 1975 reauthorization of the Voting Rights Act because Spanish-speaking Latino citizens in the Southwest and elsewhere, as well as members of certain other language minority groups, were still being subjected to laws and practices that effectively denied them the right to vote, much as similar laws and practices denied the right to vote to African Americans living in the South. Among the many discriminatory laws and election practices preventing Latino citizens from voting were poll taxes, the widespread refusal by election officials to register eligible Latino voters, and the frequent omission of registered Latino voters from voting lists. Because of discriminatory election practices, only 34.9% of eligible Latino citizens were registered to vote in 1974, compared with 63.5% of whites. Only 22.9% of Latino citizens actually voted in the 1974 congressional elections, compared with 46.3% of whites.

When Congress first reauthorized the Voting Rights Act in 1975, after thorough debate and review of a substantial record it extended the Act's protections to better address the discriminatory impact in elections of *de jure* segregation and unconstitutional discrimination in public schools that rendered many U.S. citizens unable to vote effectively in English-only elections without language assistance. After hearing testimony about the denial of equal educational opportunities by state and local governments that had left many Latinos, Asian Americans, and American Indians functionally illiterate in English, Congress found it "necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices." Section 203, which has provided for language assistance in the election process in areas with low rates of both English proficiency and literacy among covered ethnic minority groups, was the congressional remedy devised to counter the effects of language-based discrimination upon U.S. citizens' right to vote.

#### *The Continuing Need for Section 203*

Unconstitutional discrimination in elections and education has created persistent discriminatory conditions which continue to require the congressional remedy of Section 203. Many of the U.S. citizens subject to intentional discrimination in public education systems, which lasted well into the 1970s in Texas and other states, continue to require language assistance in order to cast a meaningful, informed vote. While they may speak conversational English well, these U.S. citizens may not be fully proficient in written English because they were intentionally denied the academic instruction necessary to vote effectively in English-only elections that employ complicated language and terminology. Although the full English fluency of all U.S. residents remains the goal of our public education system, we have not yet attained this goal such that language

assistance in voting is no longer needed.<sup>1</sup> In the State of Texas alone, the U.S. Census found in 2002 that there were 818,185 Latino voting-age citizens – nearly one out of every four Latino voting-age citizens in the state – not yet fully proficient in English. These citizens continue to suffer from inadequate access to English as a Second Language programs that would allow them to become fully proficient in English as adults.<sup>2</sup>

The record supporting the current reauthorization of the Voting Rights Act demonstrates significant ongoing discrimination on the basis of language and race in U.S. elections. While there has been an increase in Latino voter registration and turnout rates since 1972, a large disparity between Latino and Anglo registration and voting patterns remains. MALDEF has developed a report for the record that documents ongoing discrimination in voting against Latino and other minority voters in the State of Texas; other elements of the record show ongoing discrimination in elections against language minority voters in other jurisdictions covered by Section 203.

MALDEF's report on voting discrimination in Texas demonstrates the persistence and breadth of discrimination in voting and documents the continued need for legislative efforts to protect minority citizens' voting rights. Since 1982, more successful Section 5 enforcement actions have been brought in Texas, 29, than in any other state. Over the past 25 years, the Department of Justice has issued Section 5 objections to voting changes in Texas involving a wide variety of discriminatory election rules, procedures, and methods of election, including:

- Bilingual procedures that violate Section 203 of the Voting Rights Act.
- Discriminatory redistricting practices to deny minorities an equal opportunity to elect their chosen candidates.
- Discriminatory use of numbered posts and staggered terms.
- Discriminatory imposition of majority vote and/or runoff requirements.
- Polling place or election date changes that deny minorities equal voting opportunities.
- Discriminatory absentee voting practices.
- Discriminatory annexations or deannexations.

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<sup>1</sup> MALDEF has documented ongoing educational disparities in the State of Texas as part of its report on the Voting Rights Act in Texas, to be submitted for the record. Ongoing educational disparities in other states are documented in other reports that have been made a part of the record underlying reauthorization.

<sup>2</sup> MALDEF and the National Association of Latino Elected and Appointed Officials (NALEO) have prepared a report for inclusion in the record that documents the inadequate availability in Section 203 jurisdictions of the English as a Second Language educational services required to become fully proficient in English as an adult.

- Dissolution of districts, reductions in the number of offices, or revocation of voting rules when minority candidates of choice are about to be elected to office.

These Section 5 objections, detailed further in the MALDEF Texas state report, range in time from October 1982, immediately following the Voting Rights Act's last full reauthorization, to an objection in May of 2006 to the discriminatory reduction of polling places in the North Harris Montgomery Community College District.

The number and breadth of Section 5 objections made by the DOJ in Texas since 1982 illustrates the continuing nature of voting discrimination against Latino citizens in elections and the variety of practices still used exclude minority voters from the political process.<sup>3</sup> In total, the DOJ has issued 201 Section 5 objections to proposed electoral changes in Texas since the State was covered in 1976. Of those, 52 percent, 107, occurred *after* the 1982 reauthorization of Section 5. Ten of the post-1982 objections were interposed in response to statewide voting changes. Discriminatory election practices in Texas affect a very large number of minority voters. Since 1982, the DOJ has prevented the implementation of discriminatory electoral changes in nearly 30 percent, 72,<sup>4</sup> of Texas's 254 counties, where 71.8 percent of the State's non-white voting age population resides.

The City of Seguin, Texas, provides a notable example of ongoing discrimination against language minorities in elections and how jurisdictions have employed a variety of tactics to dilute minority voting strength. In 1978, Latino plaintiffs sued the City for failing to redistrict when the previous districts had become malapportioned. While Seguin's population was 55% minority, there had never been more than two minority candidates elected to the 8-member city council. A federal court enjoined the 1978 election and the following year adopted a new redistricting plan proposed by the city.

The city failed to redistrict after the 1980 and 1990 Census. By 1993, 60% of Seguin's population was minority but only 3 of 9 city council members were Latino. Latino plaintiffs sued again and won a settlement from the city in 1994 that created 8 single-member districts, five of which had a majority of minority voters. Following the 2000 Census, Seguin redistricted again but spread the city's Latino population across its electoral districts in order to preserve the incumbency of an Anglo member of the city council. When the Department of Justice refused to grant Section 5 preclearance to the city's redistricting plan, Seguin corrected the violation but then closed its candidate filing period so that the Anglo incumbent would run for office unopposed. Latino plaintiffs sued once again and secured an injunction under Section 5 of the Voting Rights Act. The parties eventually settled after negotiating a new date for the election.

Discrimination against minority voters is not a thing of the past; many acts of discrimination against Latino voters occurred during the 2004 election. For example, an

<sup>3</sup> See U.S. Dep't of Justice, *Section 5 Objections Texas*, [http://www.usdoj.gov/crt/voting/sec\\_5/tx\\_obj2.htm](http://www.usdoj.gov/crt/voting/sec_5/tx_obj2.htm) (last visited June 6, 2006).

<sup>4</sup> See *id.* (Noting that 72 of Texas' 254 counties had proposed electoral changes interposed by the DOJ).

elderly Latina voter in San Antonio, Texas was told by the election judge at her polling place that she was not on the voter registration list and could not vote with a provisional ballot, despite the recently enacted Help America Vote Act, which provides for provisional ballots in such situations. She and her family had been voting at the same location for over 20 years. The election judge refused to unlock a box containing provisional ballots until a MALDEF attorney arrived and negotiated on behalf of the Latina voter. Had MALDEF not acted, it is very likely that this Latina voter would have been disfranchised.

Spanish-speaking Latinos continue to suffer language-based discrimination and marginalization in other critical election processes, further demonstrating the continued need for the protections of Section 203. In 2003, the Chairman of Texas House Redistricting Committee stated that he did not intend to hold redistricting hearings in the Rio Grande Valley in South Texas, where many U.S. citizens are limited English proficient Spanish-speakers, because only two members of the Redistricting Committee spoke Spanish. Chairman Crabb stated that the members of the Committee who did not speak Spanish “would have a very difficult time if we were out in an area other than Austin or other English speaking areas to be able to have committee hearings to be able to converse with the people that did not speak English.”<sup>5</sup> Many citizens living in areas of Texas with high concentrations of limited English proficient citizens would have been excluded from participating in local Redistricting Committee hearings had Latino advocates not interceded on their behalf. Section 203 is needed to protect the right of members of covered language minority groups to receive full access to all critical elements of the election processes.

The Voting Rights Act has contributed to increased political representation for Latinos, African-Americans, and Asian Americans in Texas. In 1973, there were 565 Latino elected officials in the state. By 1984, the number had grown to 1,427. By January 2005, the number had increased to 2,137 Latino elected officials in Texas, nearly four times the number in 1973. The growth of Latino elected officials elected to Congress and to the state legislature has been particularly significant. Between 1984 and 2005, the number of Latino Members of Congress doubled from 3 to 6, the number of state Senators nearly doubled from 4 to 7, and the number of state Representatives increased from 21 to 29. Despite these gains, Latinos and continue to be significantly underrepresented at every level of federal, state, and local government.

#### *The Constitutional Basis of Section 203*

Section 203 is a proper exercise of Congress’s authority to enforce the Fourteenth and Fifteenth Amendments, which grant Congress the power to enforce equal protection of the laws and non-discrimination in voting through appropriate remedial legislation. The Supreme Court has repeatedly found that Congress may adopt strong remedial and preventative measures to respond to the widespread and persisting deprivation of constitutional rights resulting from a history of racial discrimination.

<sup>5</sup> See *Session v. Perry*, 298 F.Supp.2d 451 (E.D. Tex. 2004), Jackson Exhibit #122 (Official correspondence written to/from Department of Justice regarding preclearance of Plan 1374C).

In 1966, the Supreme Court first upheld the constitutionality of the Voting Rights Act, finding that “Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting.”<sup>6</sup> In a separate decision issued that same year, the Supreme Court upheld the Voting Rights Act’s ban on State laws requiring English-language literacy tests for voters, which discriminated against Spanish-speaking citizens in violation of the Equal Protection Clause of the Fourteenth Amendment.<sup>7</sup>

Any remedies enacted by Congress under its Fourteenth Amendment authority must be “congruent and proportional” to remedy a specific constitutional injury under *City of Boerne v. Flores*, a 1997 Supreme Court decision.<sup>8</sup> *City of Boerne*, it should be noted, specifically cites the Voting Rights Act as an example of a properly congruent and proportional congressional remedy. *City of Boerne* announced that the Court would apply a three-part test to determine congruence and proportionality: Congress must 1) identify unconstitutional discrimination, 2) develop a record that justifies a congressional remedy, and 3) implement only those remedies that are proportional to the constitutional injuries.<sup>9</sup>

Section 203 is intended, as I have previously noted, to remedy language-based discrimination in voting. The statutory language of Section 203 explicitly states that it is targeted at remedying identified discrimination against language minorities in U.S. elections, and its legislative history confirms this.

As required under the second prong of the *City of Boerne* test, Congress currently has before it a substantial record that documents significant present discrimination against language minority citizens living in Section 203 covered jurisdictions. Based on this evidence, the Voting Rights Act reauthorization bills contain findings that support the continuing need for language assistance in voting among the covered populations. Congress has thus satisfied the “congruence” requirement of *City of Boerne*.

Section 203 is also proportional to the constitutional harm that it is designed to redress, as required under the final element of *City of Boerne*’s three-part test. A significant body of Supreme Court precedent has upheld provisions of the Voting Rights Act as proper exercises of Congress’s authority to remedy discrimination in voting. Further, the current congressional record clearly demonstrates that discrimination in elections is longstanding, pervasive, and continuing, while the remedy of language assistance in elections does not unduly burden state and local election officials. Section 203 has, the record shows, efficiently and effectively increased language minority voter registration and turnout, at little or no cost to covered jurisdictions. Because the discrimination at issue is pervasive and egregious and Section 203 has proven to be an effective remedy to this discrimination, the language assistance that Section 203 requires is “proportional” under the standard announced in *City of Boerne*.

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<sup>6</sup> *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

<sup>7</sup> *Katzenbach v. Morgan*, 384 U.S. 641 (1966).

<sup>8</sup> *City of Boerne v. Flores*, 521 U.S. 507 (1997).

<sup>9</sup> *Id.*; see also *Nevada Dept. of Human Resources v. Hibbs*, 538 U.S. 721 (2003).

Section 203 is an appropriate exercise of Congress's authority under the Fourteenth and Fifteenth Amendments because it is no broader than necessary to redress the constitutional injuries found. The Section 203 coverage formula requires both a heavy concentration of language minority citizens and a lower-than-average literacy rate among the covered population. Congress has found that these conditions reflect persistent discrimination on the basis of language. Section 203, is, therefore, narrowly tailored because its coverage formula targets those areas where discrimination on the basis of language has occurred and is most likely to recur, and Section 203 is no more intrusive than necessary to remedy the constitutional injury.

Because language assistance required under Section 203 is congruent and proportional to the discrimination that it addresses and it is no broader than necessary to redress this discrimination, it is a proper exercise of Congress's constitutional authority under the Fourteenth and Fifteenth Amendments.

*Dispelling Persistent Myths Surrounding Section 203*

Many Section 203 opponents argue that because immigrants must speak English to become naturalized citizens, language assistance in voting is not needed. Complicated ballot provisions demand a higher level of English language proficiency than do the naturalization requirements, however. Even native speakers of English often find the legalistic language of many ballot provisions difficult to interpret. Further, English language naturalization requirements do not apply to native-born citizens, many of whom, as noted above, suffer from limited English proficiency as a result of discriminatory education systems.

Section 203 is not costly to implement. I have studied implementation of the Voting Rights Act in San Francisco since 1978, first for Mayor Moscone, then when Mayor Dianne Feinstein appointed me to the Citizens Advisory Committee on Elections, and later as a member of the Elections Commission. In San Francisco, implementation of language assistance in three languages averaged less than three percent of all election costs, just 16 ten-thousandths of one percent of the city budget. A recent Arizona State University study found that Section 203 presents no additional costs to most jurisdictions and costs very little in those jurisdictions which do incur additional costs. Those jurisdictions that do incur additional costs often do so because they are not implementing the requirements of Section 203 as efficiently as do their counterparts in other jurisdictions. This study has been made part of the record supporting the current reauthorization of the Voting Rights Act.

Nor does Section 203, as some of its opponents have suggested, facilitate voter fraud. In the many thousands of pages of congressional record developed to support reauthorization, there is no evidence of non-citizens fraudulently registering to vote because of the existence of language assistance in the election process. Opponents of Section 203 would certainly have submitted evidence of widespread fraud caused by Section 203, but have not done so.

Section 203 removes barriers between the electoral process and U.S. citizens. National voter turnout is low enough without discouraging citizens with complex language. It is easier and more cost-effective than ever to provide language assistance in registration and at the polls. The VRA ensures that receiving the ballot in the language they best understand is not the privilege of solely English-speaking citizens. And, let me add, the necessity to read and write English to get ahead everyday is not diminished by getting a bilingual ballot on Election Day. The vast majority of language minority citizens in the U.S. have attained some degree of English proficiency, and most wish to improve their language skills further so that they can participate more fully in the U.S. economy and culture. As a matter of sound public policy and as a constitutional remedy to discrimination in voting, we should facilitate these citizens' participation in American political systems, and we should provide language assistance in voting to those who are unable to participate fully without it.

Conclusion

The Voting Rights Act is the single most effective piece of civil rights legislation in our nation's history. The substantial record developed to support the Act's renewal clearly shows that its critical legal protections are still very necessary today. Section 203 is an integral component of the Voting Rights Act's remedies against unconstitutional discrimination in elections. Section 203 is also a congruent and proportional remedy that addresses an identified and significant constitutional injury and therefore a proper exercise of Congress's authority under the Fourteenth and Fifteenth Amendments to remedy discrimination.

Although my testimony today has been focused upon Section 203, I will also note in closing that Latino citizens are equally concerned with the renewal and restoration of Section 5 of the Act. Almost as many Latinos as African Americans live in Section 5 jurisdictions, so the protections of Section 5 continue to be essential for these Latino citizens.

Thank you for your leadership in introducing the Voting Rights Act Reauthorization and Amendments Act of 2006. I urge you to enact the Senate bill as introduced.



May 10, 2006

**Please Cosponsor the Voting Rights Act  
Reauthorization and Amendments Act of 2006**

Dear Senator:

On behalf of the Mexican American Legal Defense and Educational Fund (MALDEF), I am writing to vigorously support and urge you to cosponsor S. 2703, the Voting Rights Act Reauthorization and Amendments Act of 2006.

Throughout our Nation's history, opening the doors of the polling place to people who have been previously excluded has been the right thing to do. What started as a privilege reserved for white, property-owning males has become a right of citizenship for all men and women, without regard to wealth, race, or national origin. Forty years ago, Dr. Martin Luther King and freedom activists inspired Congress and President Johnson to enact the Voting Rights Act. Since then, the Voting Rights Act has made our democratic principles a reality.

Certain prohibitions in the Voting Rights Act are permanent law. Others, such as Sections 5 and 203 of the Act, must be periodically reexamined and renewed by Congress. Section 5 focuses extra attention upon election law changes in some states to prevent discriminatory changes from being implemented. Section 203 makes elections more understandable to citizens and removes unnecessary barriers to citizen participation.

The House hearings highlighted that while progress has been made under the VRA, much work remains to be done. The House record, over 8,000 pages in length, clearly demonstrates that significant discrimination in voting is still pervasive in jurisdictions covered by the expiring provisions of the Act.

S. 2703 addresses this compelling record by renewing the VRA's temporary provisions for 25 years. The bill reauthorizes and restores Section 5 to reflect its original congressional intent. Section 203 is being renewed to continue to provide language minority citizens with equal access to a meaningful voting process. The bill also keeps the federal observer provisions in place and authorizes recovery of expert witness fees in lawsuits brought to enforce the VRA.

I urge you to support this critical civil rights legislation by cosponsoring S. 2703. To cosponsor S. 2703, please contact: Dimple Gupta, Chief Counsel for the Constitution in Senator Specter's office, at (202) 224-5225, [Dimple\\_Gupta@judiciary-rep.senate.gov](mailto:Dimple_Gupta@judiciary-rep.senate.gov); Kristine Lucius, Senior Counsel in Senator Leahy's office, at (202) 224-7703,

[Kristine Lucius@judiciary-dem.senate.gov](mailto:Kristine_Lucius@judiciary-dem.senate.gov); Charlotte Burrows, Counsel in Senator Kennedy's office at 202-224-4031, [charlotte\\_burrows@judiciary-dem.senate.gov](mailto:charlotte_burrows@judiciary-dem.senate.gov); or, Gaurav Laroia, Counsel in Senator Kennedy's office, at (202) 224-7878, [Gaurav Laroia@judiciary-dem.senate.gov](mailto:Gaurav_Laroia@judiciary-dem.senate.gov). If you or your staff has any further questions, please contact Peter Zamora, MALDEF Legislative Attorney, at 202-293-2828.

Sincerely,

A handwritten signature in black ink that reads "John Trasviña". The signature is written in a cursive style with a large, sweeping initial "J".

John Trasviña  
Interim President and General Counsel  
Mexican American Legal Defense and Educational Fund

06-12-2006 15:58

PAGE2



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MEMBER: NASD/SIPC

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 A REGISTERED INVESTMENT ADVISOR

Office of Supervisory Jurisdiction  
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 Suite One  
 Knoxville, TN 37932  
 865-777-4677

June 12, 2006

The Honorable Arlen Specter  
 Chairman, Senate Committee on the Judiciary  
 711 Hart Senate Office Building  
 Washington, D.C. 20510

Dear Chairman Specter and Ranking Member Leahy:

My name is Jan Tyler. I was twice elected as a City and County of Denver Election Commissioner in 1995 and 1999. As a person with many years of experience administering elections, I urge the Committee to oppose reauthorization of Sec. 203 and 4(f)(4) of the Voting Rights Act.

In addition to my experience in Colorado, I was recognized in 2001 as a Certified Elections Registration Administrator. My career as an election administrator has always been an avocation, which I have continued as a volunteer election observer in Montenegro, Serbia, Ukraine, and most recently last fall, a two month stay in Kazakhstan.

As the Committee considers whether to reauthorize Secs. 203 and 4(f)(4), I believe it is essential to respect the professional objectivity of the election administrator.

***My Experience with the VRA***

Justice Department officials first contacted the Denver Election Commission in 2002 to inform us that Denver County had been added to the list of jurisdictions covered under Sec. 203.

We were told the Commission had to implement an extensive program to print ballots in Spanish, distribute voting materials in Spanish, and design outreach programs in Spanish.

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Jan Tyler Letter

This seemed fundamentally un-American to me. It is a requirement of naturalization for new citizens to speak, read, and write basic English.

My own grandfather, a Polish immigrant, naturalized on August 29, 1918. I completely empathize with the immigrant – before my parents changed my name, I was born Jan Zawistowski. This was my identity, and I was proud to be born his first grandchild on August 29, 1950, the same day my grandfather's naturalization took place many years before. But my grandfather would have been appalled if the government decided to print his American ballots in Polish, even if 10,000 of his closest Polish friends did live in Atlanta.

Although I am certain the intentions behind the bilingual voting assistance requirements of the VRA were good, its effect has been to discourage new immigrants from assimilating and learning English.

These provisions have also imposed significant costs on covered jurisdictions, including Denver County. I estimated at the time that Spanish assistance could add up to \$80,000 to the more than \$500,000 it costs to conduct an election in Denver County. The cost estimates were accurate and about \$80,000 has been spent every year since 2002 to comply.

Just this weekend it was revealed that the Denver Election Commission lost the voter records of 150,000 Denver voters (about 40%) (Julie Poppen, "Voters Urged to File Fraud Alerts After Records Loss", *Rocky Mountain News*, June 12, 2006). The \$80,000 this orphan city agency is forced to spend on compliance with the VRA could have been much better spent securing the Denver Election Commission or even providing professional education for staff members. Most election offices suffer the same untenable choices – comply with VRA or train employees.

#### ***Federal Law Attempts to Manipulate Voter Turnout***

Neutrality is the foundation of any election administrator's job. It is sacred. There is never a circumstance that justifies an administrator attempting to increase voter turnout. Increasing voter turnout is the responsibility of the political parties, initiative sponsors and candidates. The reason for this is obvious -- it is impossible to be fair to all while attempting to accommodate a few. The foreign-language election requirements of the VRA violate

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Jan Tyler Letter

this principle by singling out minority language speakers for special privileges in order to increase voter turnout in these groups.

***No Judicial Review***

The VRA commands that there be no judicial review of coverage determinations under Sec. 203, which are made by the U.S. Census.

This is not good government. Coverage determinations should be subject to scrutiny by the courts.

One of the most significant problems with the way the Census makes coverage determinations today has to do with way the Bureau defines limited English proficiency (LEP).

Specifically, Sec. 203 states: "the term 'limited-English proficient' means unable to speak or understand English adequately enough to participate in the electoral process."

The Census Bureau is interpreting this definition of LEP to include persons who self-identify themselves as speaking English "not at all", "not well", or "well." Those who identify themselves as speaking English "well" should not be counted as "limited English proficient" for the purpose of making coverage determinations under Sec. 203.

The Census Bureau's overly broad definition of LEP has resulted in many counties being covered under Sec. 203 that should not be.

I doubt that the truly limited English proficient population of Denver County meets the 10,000 or 5% threshold required to trigger coverage under the law. But since the Bureau's coverage determinations, including the definition of LEP used to make such determinations, "shall not be subject to review in any court" there is no remedy for Denver County or other covered jurisdictions.

I also encountered problems with the DOJ on the enforcement side of the Sec. 203 requirements.

Given my duty as an Election Commissioner to uphold the law, I decided to encourage full compliance. But when I asked DOJ officials for written and customized instructions for complying, I was told "We do not tell you specifically

Page four  
Jan Tyler Letter

what to do." Although there are some general, written guidelines, we were told that "voter complaints" would be used by DOJ officials to judge whether we were complying with the law. As anyone with any election administration experience knows, this is a poor way to judge compliance. There are many complaints even after the most well run election.

One DOJ official went so far as to tell me "we'll know you've complied when we see it."

#### ***Surname Analysis***

The DOJ uses a form of ethnic profiling called "surname analysis" to identify locations for bilingual polling districts in covered jurisdictions. The Justice Department also compels covered jurisdictions to conduct voter outreach efforts (e.g. mass mailings) targeting limited English proficient voters based on analysis of the surnames of voters living in covered jurisdictions.

This is a highly inaccurate way to target I.F.P. voters. Many people with Hispanic or Asian surnames speak English "very well." Many voters who marry and take on Hispanic, Asian, or surnames of other covered language minority groups, do not need bilingual ballots.

Surname analysis is also insulting to immigrants who have naturalized and learned English in order to vote. This is why some jurisdictions get furious responses from both Spanish and, of course, English speakers who are outraged that they have been singled out just because of a Spanish sounding surname.

The DOJ should be barred from using surname analysis. It should also be prohibited from requiring covered jurisdictions to use surname analysis for the purpose of implementing Sec. 203. Instead, Census data should be used to target only those voters who identify themselves as speaking English "not at all" or "not well."

#### ***Conclusion***

Members of the Committee, I care about how we administer our elections. There is a difference, and will always be a difference, between the perspective of an Election Administration professional, whether elected or serving as a career appointee, and those who are political activists.

I have yet to hear this distinction made, and with the exception of Chris Norby from California, I have not even observed a professional's opinion

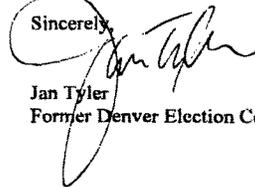
**Page five**  
**Jan Tyler Letter**

stated for the record.

**As an Election Administrator, I urge you to decline to renew Section 203 and Section 4(f)(4) of the Voting Rights Act.**

**I respectfully request that this letter be submitted for the Record.**

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Tyler", written over the word "Sincerely,".

**Jan Tyler**  
**Former Denver Election Commissioner**




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 INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA - UAW
 

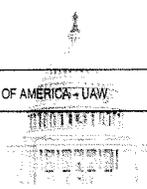
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RON GETTELFINGER, President

ELIZABETH BUNN, Secretary-Treasurer

## VICE PRESIDENTS

GERALD D. BANTON • NATE GOODEN • BOB KING • CAL RAPSON • RICHARD SHOEMAKER



IN REPLY REFER TO  
1757 N STREET, N.W.  
WASHINGTON, D.C. 20036  
TELEPHONE: (202) 828-8500  
FAX (202) 293-3457

May 4, 2006

Dear Representative / Senator:

The UAW strongly supports the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 (H.R. 9; S. 2703). The Voting Rights Act (VRA) is considered the most effective civil rights law in American history. Congress is clearly justified under Section 2 of the 15<sup>th</sup> Amendment in using all remedies at its disposal to preserve and protect the most fundamental constitutional right of Americans, the right to vote. Accordingly, the UAW urges you to cosponsor and support the speedy enactment of this important civil rights legislation.

Congress enacted the VRA in 1965 in direct response to our nation's sad history of discrimination in voting. The VRA has been renewed five times by bipartisan majorities in the U.S. House and Senate, and signed into law by both Republican and Democratic presidents. In the 40 years since its initial passage, the VRA has empowered racial, ethnic and language minority citizens by eliminating discriminatory voting practices and desegregating legislative bodies at all levels of government.

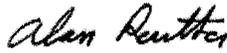
Nevertheless, oversight hearings have revealed that a second generation of discrimination has emerged that serves to abridge or deny minorities equal voting rights. Jurisdictions continue to attempt to implement election law procedures, such as at-large-elections, annexations, poll-place changes, and redistricting, with the purpose and or the effect of denying minorities equal access to the voting process. Likewise, the oversight hearings demonstrated that citizens who are non-native English speakers and in need of language assistance in communities across America are frequently denied access to the assistance mandated by the VRA.

H.R. 9; S. 2703 responds to this evidence of discrimination by renewing the VRA's temporary provisions for 25 years. In addition, this bill reauthorizes and restores Section 5 of the VRA to the original Congressional intent that has been undermined by the Supreme Court's decisions in Reno v. Bossier Parish II and Georgia v. Ashcroft. The Bossier fix prohibits implementation of any voting change motivated by a discriminatory purpose. The Georgia fix clarifies that Section 5 is intended to protect the ability of minority citizens to elect their candidates of choice.

This legislation also renews Section 203 of the VRA to continue to provide language minority citizens with equal access to voting without language barriers, using coverage determinations based on the more accurate American Community Survey Census data. Furthermore, it keeps the federal observer provisions in place and authorizes recovery of expert witness fees in lawsuits brought to enforce the VRA.

The right to vote is the foundation of our democracy and the Voting Rights Act provides the legal basis to protect that right. For this reason, the UAW strongly urges you to support timely Congressional action to renew and restore this vital law. The UAW urges you to cosponsor and support prompt enactment of the Fannie Lou Hamer, Rosa Parks, Coretta Scott King Voting Rights Act Reauthorization and Amendment Act of 2006 (H.R. 9; S. 2703). Thank you for you considering our views on this critically important legislation.

Sincerely,

A handwritten signature in black ink that reads "Alan Reuther". The signature is written in a cursive, slightly slanted style.

Alan Reuther  
Legislative Director

AR:lb  
opeiu494  
L8067

**Civil Rights Commission Finds DOJ Voting Rights Objections Have Declined Dramatically**

5/8/2006 2:42:00 PM

Contact: Sock-Foon Macdougall of The U.S. Commission on Civil Rights, 202-376-7700

WASHINGTON, May 8 /U.S. Newswire/ -- The U.S. Commission on Civil Rights today approved its watershed new report, "Voting Rights Enforcement and Reauthorization: The Department of Justice's Record of Enforcing the Temporary Voting Rights Act Provisions." As Congress determines whether to reauthorize the temporary provisions of the venerable Voting Rights Act of 1965, the Commission concludes that the Justice Department enforcement record demonstrates that the percentage of objectionable proposed voting changes has declined so steadily and dramatically as to have become vanishingly small.

The Commission's study found that objections as a percentage of submitted changes from covered jurisdictions have declined markedly over 40 years to the point that during the last decade, objections have virtually disappeared. In particular, the study examined three legislative periods, 1965-1974, 1975-1982, and 1982-2004, and found that the proportion of objections to submitted changes decreased from 5.5 percent in the first period to 1.2 percent in the second, and to 0.6 percent in the third. Significantly, the ratio of objections to submitted changes was less than 0.1 percent in the period 1995-2004.

"It is significant that the Justice Department's enforcement record has shown sharply diminishing activity over the last forty years during both Democratic and Republican Administrations. The percentage of objections interposed has become vanishingly small over the last decade," said Gerald A. Reynolds, Commission chairman.

The Commission passed the report at its May 4, 2006 meeting by a vote of five to two. Chairman Gerald A. Reynolds, Vice Chair Abigail Thernstrom and Commissioners Jennifer C. Braceras, Peter N. Kirsanow, and Ashley L. Taylor, Jr. voted in favor, while Commissioners Arian D. Melendez and Michael Yaki voted against. The report includes a concurrence by Vice Chair Abigail Thernstrom and a dissent by Commissioners Arian D. Melendez and Michael Yaki.

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The U.S. Commission on Civil Rights is an independent, bipartisan agency charged with monitoring federal civil rights enforcement. Members include Chairman Gerald A. Reynolds, Vice Chairman Abigail Thernstrom, and Commissioners Jennifer C. Braceras, Peter N. Kirsanow, Arian D. Melendez, Ashley L. Taylor, Jr. and Michael Yaki. Kenneth L. Marcus is staff director. Commission meetings are open to the media and general public.

## Immigrant Families

FACTS AND PERSPECTIVES

BRIEF NO. 1

### IMMIGRANT WELL-BEING IN NEW YORK AND LOS ANGELES

#### Central Issues

Despite their strong attachment to the labor force, large numbers of immigrants and their families in New York and Los Angeles have low incomes, lack health insurance, and are food insecure.<sup>1</sup> The most powerful predictor of poverty and hardship is their limited English skills. Legal immigrants arriving after welfare reform's enactment in 1996—who have the most restricted access to public benefits—are poorer than immigrants arriving before the law's enactment.

#### Demographic Context

One in nine U.S. residents and one in four low-wage workers is an immigrant. Most of the children in poor immigrant families are citizens. These families are more likely than their native counterparts to include two parents and at least one full-time worker, counter to the image of a single-parent family led by an unemployed adult that has traditionally been associated with poverty.

#### Policy Context

The 1996 welfare reform act was designed to reduce welfare dependency by promoting work. The law restricted legal immigrants' access to Temporary Assistance for Needy Families (TANF) and related employment services; it also reduced their access to food stamps, Medicaid, and the State Children's Health Insurance Program (SCHIP)—the primary public programs providing food assistance and health insurance to low-income working families. Legal immigrants arriving after welfare reform's enactment are eligible for fewer benefits than are those who arrived before enactment.

In May 2002 Congress partially restored federal food stamp eligibility by expanding coverage for legal immigrant children. As of July 2002 there were proposals before the Congress to further restore Medicaid, TANF, and other benefits to post-enactment immigrants (i.e., those entering after August 1996).

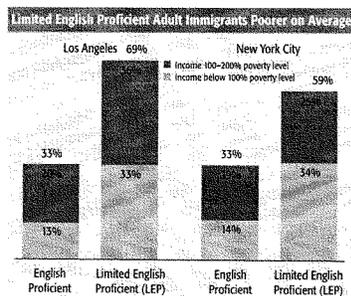
#### Income and Language Skills

As 20 percent of all U.S. immigrants live in New York City and Los Angeles County, their status is key to understanding immi-

grant well-being nationwide. In 1999–2000, 30 percent of immigrant families with children in these two cities were poor; more than half had incomes below 200 percent of the poverty level. In both cities nearly three quarters of low-income immigrant families included at least one working adult, compared to 58 percent of native families in California and 64 percent in New York State.

Legal immigrants in New York and Los Angeles who entered the country after 1996 were poorer than those who arrived earlier, despite new policies requiring their sponsors to demonstrate incomes over 125 percent of the federal poverty level. The share of legal permanent residents entering since August 1996 with incomes below the poverty line was 30 percent in Los Angeles and 40 percent in New York City, compared to 27 and 29 percent for immigrants entering before 1996.

In New York, two-thirds of foreign-born adults could be classified as limited English proficient (LEP).<sup>2</sup> One-quarter lacked a high school diploma. In Los Angeles three-quarters of immigrant adults had limited English skills and one-third lacked a diploma. In both cities low educational attainment and limited English proficiency were closely associated with low earnings, poverty, and hardship.



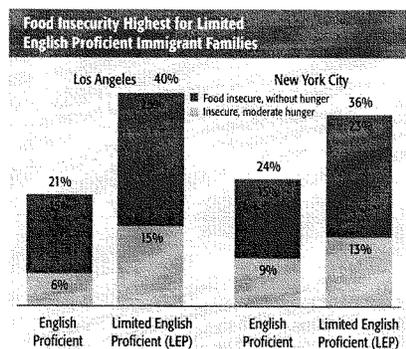
Source: Urban Institute, 2002.

### Food Insecurity and Food Assistance

One-third of all immigrant families in Los Angeles and 31 percent in New York were food insecure in 1999–2000, according to a standard U.S. Department of Agriculture definition. Just over 10 percent experienced food insecurity with moderate hunger. Food insecurity and hunger rates were almost three times as high for immigrant families as for native-born citizen families.

Hardship was more closely associated with limited English proficiency than either legal status or period of arrival to the United States. In Los Angeles the rate of food insecurity was twice as high among families where one or more adults were LEP when compared to more proficient families. In both cities, about half of families with adults who spoke no English at all were food insecure.

Only 20 percent of food insecure immigrant families received food stamps during the year before the survey. Half of families receiving food stamps in 1996–97 were no longer receiving benefits in 1999–2000, while another quarter had their benefits reduced. Food stamp participation was highest among families with adults who did not speak English very well.



Source: Urban Institute, 2002.

### Health Insurance Coverage

In Los Angeles, 40 percent of noncitizen children and 22 percent of citizen children in immigrant families were uninsured, compared to 6 percent of children in California's native citizen families. In New York City, 28 percent of noncitizen children and 8 percent of citizen children in immigrant families were uninsured, versus 6 percent of children in native citizen families in New York State. These findings suggest that health insurance rates for children depend on the citizenship and legal status of both children and their parents. The findings also suggest that the New York State Children's Health Insurance Program had succeeded in enrolling large numbers of children in immigrant families.

Forty-two percent of immigrant adults in Los Angeles and 38 percent in New York City lacked health insurance coverage—rates roughly triple those for native citizens in New York State and California. The primary reason for this gap was that immigrants were less likely to have job-based health insurance coverage. They were, however, as likely as natives to be enrolled in Medicaid.

### Language and Poverty Link

In New York and Los Angeles hardship and the need for benefits are more closely associated with limited English proficiency than with citizenship or legal status. Thus more effective English language instruction is an essential anti-poverty tool for working immigrant families. One strategy that might increase English language acquisition would be to give credit for English instruction under revised TANF work requirements.

### The Data

These findings are based on a survey of 3,447 immigrant families (i.e., those with at least one foreign-born adult) conducted during late 1999 and early 2000 by the Urban Institute and the Survey Research Center of the University of California, Los Angeles. The Los Angeles New York City Immigrant Survey (LANYCIS) describes the living conditions of about 4.8 million people in Los Angeles County and 3.5 million people in New York City. Unlike other household surveys with large samples, LANYCIS includes information on immigration status. It was conducted in five languages, included respondents from over 100 countries, and had a strong response rate of 69 percent.

### Further Details

Capps, Randy, Leighton Ku, and Michael Fix. 2002. "How Are Immigrants Faring After Welfare Reform? Preliminary Evidence from Los Angeles and New York City," final report to U.S. Department of Health and Human Services. Urban Institute, <http://www.urban.org/ViewPub.cfm?PublicationID=7538>.

Fix, Michael, and Jeffrey S. Passel. 2002. "The Scope and Impact of Welfare Reform's Immigration Provisions," *Assessing the New Federalism* Discussion Paper 02–03. Urban Institute, <http://www.urban.org/ViewPub.cfm?PublicationID=7522>.

### Endnotes

1. According to the USDA, a household is food insecure if, at some time during the previous year, it was uncertain of having, or unable to acquire, adequate food sufficient to meet basic needs because of inadequate resources.
2. English proficient respondents either speak English at home or report speaking it "very well." Limited English proficient respondents report speaking English "well," "not well," or "not at all."

### Acknowledgements

The project was supported by the U.S. Departments of Health and Human Services, Agriculture, and Justice, as well as the Ford and Andrew W. Mellon Foundations.

**Phantom Voters May Have Real Impact at Polls**

By John H. Fund

986 words

23 October 2000

[The Wall Street Journal](#)

A38

English

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The audience laughed at the end of the third debate when George W. Bush closed by thanking his supporters and saying "for those of you for my opponent, please vote only once." It was a joke, but one with serious overtones.

Many experts think this election could be as close as the one in 1960, when John F. Kennedy won by less than one vote per precinct. If so, this year's election could include similar allegations of vote **fraud**. "Just as in 1960, the temptation to steal votes in key swing states will be enormous," says political scientist Larry Sabato of the University of Virginia. "Complacency is so great and enforcement so lax that the odds are we'll never know how much **fraud** was committed."

Kennedy supporters used local political bosses in Chicago and Texas to pad vote totals. Vote **fraud** today is more sophisticated but may be just as pervasive. "We have the modern world's sloppiest election systems," says University of Texas political scientist Walter Dean Burnham.

Indeed, voter **fraud** has become a bigger problem since the 1993 federal Motor Voter law required states to allow people to register to vote when they get a driver's license; 47 states don't require any proof of U.S. residence for enrollment. Motor Voter has added some eight million people to the rolls, but the bipartisan polling team of Ed Goeas and Celinda Lake estimates that less than 5% of "motor voters" normally go to the polls. The Justice Department has often blocked states from weeding out people who have died or changed addresses.

That's important because in most states you don't have to show photo identification to vote, making it quite easy for someone to vote in someone else's name. It also makes it easier to manipulate the growing number of absentee ballots. In 1998, more than 40% of ballots cast in Washington, Oregon and Nevada were absentee votes. Another 13 states saw between 20% and 40% of their votes cast absentee.

In 1998, the mayoral election in Miami was thrown out after it was learned "vote brokers" had signed hundreds of phony absentee ballots. That same year, former Democratic Rep. Austin Murphy of Pennsylvania was convicted of absentee voter **fraud**. "In this area there's a pattern of nursing-home administrators frequently forging ballots under residents' names," says Sean Cavanagh, a Democratic county supervisor who uncovered the scandal. He believes law enforcement turns a blind eye to voter **fraud** in many other places.

A number of hotly contested races this year could hinge on voter **fraud**. Rep. James Rogan (R., Calif.), a House impeachment manager, says that in this year's primary his sister-in-law accidentally discovered someone had cast an absentee ballot in her name. "The system is ripe for abuse," says Mr. Rogan, a former municipal judge.

Mr. Rogan's biggest complaint is that California and many other states don't require voters to show any identification at the polls. This continues at a time when you have to show photo ID to cash a check, board an airplane or even get a library card. Those under age 27 now have to show ID to buy cigarettes, but not to vote. Four attempts to pass a photo ID requirement in California have died in the legislature.

Some politicians try to make the current system even more susceptible to **fraud**. Vice President Gore's office took the lead in convincing the Immigration and Naturalization Service to waive "stupid rules" on background checks so that hundreds of thousands of people awaiting citizenship would be "processed in time" for the 1996 election. It was later learned that 75,000 new citizens had arrest records when they applied. A spot check of 100 random new citizens by the House Judiciary Committee found that 20% of the sample had been arrested for serious crimes after they were given citizenship.

What can be done about voter **fraud**? This year, Virginia will require voters to show ID or sign a sworn statement of their identity. The Voting Integrity Project, a national watchdog group, is helping local governments clean up their voter rolls. Mike Rogers, a former Federal Bureau of Investigation agent who is running for Congress in Michigan, says one precinct in his district has had a 109% voter turnout; he plans to employ off-duty policemen to check up on polling places.

But anyone who combats vote **fraud** comes in for abuse. The Justice Department has become expert at raising cries of "voter intimidation" at any attempt to monitor polling places. Last week Justice dispatched investigators to Fort Worth, Texas, merely because a political activist there distributed leaflets alleging Democrats were casting absentee ballots on behalf of shut-in voters. When the Miami Herald won a Pulitzer Prize for its reporting on the **fraud** in that city's mayoral election, the Pulitzer jury noted it had been subject to "a public campaign accusing the paper of ethnic bias and attempted intimidation." Local officials who've tried to purge voter rolls of felons and noncitizens have been hit with nuisance lawsuits alleging civil-rights abuse.

Nonsense. A generation ago, the existence of insidious poll taxes and other forms of voter intimidation represented a real threat to local democracy. But those problems have receded, only to be replaced by old-fashioned ballot rigging. This year saw teams of election observers in Peru, Zimbabwe and Yugoslavia, countries where **fraud** has been rampant. Perhaps it's time for some election observers in our own backyard. Surely the right to vote includes an equal right not to have that ballot diluted by phantom or manipulated voters, especially when the stakes are nothing less than the presidency.

## Wall Street Journal

### Incumbent Rights Act

Why Congress loves racial gerrymanders.

*Monday, June 12, 2006 12:01 a.m. EDT*

We're not in the business of making predictions. But you can be fairly certain that the coming debate over updating the Voting Rights Act will sidestep what's really at stake, which isn't the right to vote but rather the power of politicians to pick their voters through gerrymandering.

Unless Republican backbones miraculously stiffen, expect the expiring penalty provisions of the Voting Rights Act to be renewed this year for another quarter-century, and expect it to happen with huge bipartisan majorities pretending that this draconian infringement of federalist principles is still necessary in 2006.

Partly this is because it's an election year and the issue lends itself to demagoguery. The Voting Rights Act was crafted by Congress in 1965 to address black disenfranchisement in the Jim Crow South, and the circumstances that made federal intervention appropriate 40 years ago still occupy the memories of many Americans today.

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Congress could reassure Americans that the most important provisions of the Voting Rights Act--the bans on poll taxes and literacy tests and grandfather clauses--are permanently enshrined in law and thus not in need of renewal. But the political reality is that an embattled GOP Congress has no interest in allowing Democrats to use opposition to something called the Voting Rights Act against Republican candidates in November.

There's another, even more cynical, reason so many in Congress favor renewal, and it has to do with the Section 5, or "preclearance," provision of the law. Under Section 5, Deep South states and a few others must get permission from the federal government before making any changes to their voting practices. By any measure today, from voter registration and participation rates to the success of minority candidates, the intervention has served the nation well. But having accomplished its goals, this provision of the Voting Rights Act is now being abused by political incumbents.

Section 5 requirements stipulate that new redistricting plans can never reduce the number of minority voting districts. And the politicians have used this as an excuse to create Congressional districts that have nothing to do with geographic integrity and only serve their party's election prospects. When Republicans are re-drawing the Congressional maps, they heavily concentrate minority voters into safe Democratic districts, which has the effect of creating even more safe Republican districts.

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When Democrats are in control, they also try to divvy up these minority voting areas, albeit somewhat differently. Their goal is to maintain enough of a core black population in certain seats to satisfy the Section 5 requirement. But Democrats also want to spread enough other black voters around predominantly white neighborhoods in hopes that white liberals can also continue to get elected.

Thus has a law intended to protect minority voting rights been transformed into a tool for creating safe Congressional seats--and all the problems that come with entrenched political incumbents who are primarily concerned with the demands of their special interest patrons.

Renewal legislation was voted out of the House Judiciary Committee last month, 33-1, with Republican Steve King of Iowa as the lone, brave holdout. House Judiciary Chairman James Sensenbrenner is currently leaning on his Senate counterpart, Arlen Specter, to do the same. Everyone, including the White House, wants this off the table as soon as possible.

Some Republicans are taking comfort in the belief that the Section 5 provision may be unconstitutional at the end of the day. And it's certainly true that the Supreme Court hinted as much in decisions like *Shaw v. Reno* (1993), which held that a "reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who have little in common with another but the color of their skins, bears an uncomfortable resemblance to political apartheid."

Ten years later, in *Georgia v. Ashcroft*, the High Court said, "the Voting Rights Act, as properly interpreted, should encourage the transition to a society where race no longer matters." The reauthorization would do the opposite. If Congress and the President are counting on the Supreme Court--which now has a Texas redistricting case before it--to spare them from the job of clarifying this matter, they should recall that such a strategy didn't work out so well in the case of McCain-Feingold's campaign finance reform.

**REVIEW & OUTLOOK****'A White Individual'**

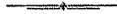
How the Voting Rights Act promotes racial polarization.

*Tuesday, June 20, 2006 12:01 a.m.*

With Congress poised to extend, for another quarter-century, certain "temporary" provisions of the 1965 Voting Rights Act, it's worth pondering some of the political mischief taking place these days in the name of "voting rights."

Take New York's 11th Congressional District, a safe Democratic seat covering several neighborhoods in Brooklyn. The seat is currently occupied by Major Owens, a black Democrat who has held it since 1983 and is retiring this year. One of the four candidates to replace him is David Yassky, a white Democrat who represents some of the same Brooklyn neighborhoods as a city councilman.

Mr. Owens has one of Congress's most liberal voting records, and there's nothing in the background of Mr. Yassky, a protégé of New York Senator Chuck Schumer, that suggests he would vote much differently. Even so, Mr. Owens and the three other candidates, all of whom are black, are on a mission to force Mr. Yassky out of the race. In the case of Mr. Owens, this has partly to do with the fact that his son is among those running in the September 12 Democratic primary. But Mr. Owens, the other black candidates and local black officials have stressed that their overriding concern is the color of Mr. Yassky's skin. And they're using the Voting Right Act to justify old-fashioned race-baiting.



New York's 11th District is a product of racial gerrymandering linked to passage of the Voting Rights Act. When Congress passed the law 40 years ago to address black disenfranchisement primarily in the Deep South, some provisions were made permanent and others temporary. Gone forever were poll taxes and grandfather clauses, but Section 5 provisions of the law dealing with "preclearance," or federal oversight of local election practices, were meant to be short-term.

Study after study shows that preclearance is no longer necessary. Black voter registration and participation rates, along with the growth of minority officeholders--often elected with white "cross-over" votes--demonstrate that blacks are no longer disenfranchised. Yet Congress continues to reauthorize these Section 5 provisions because they allow both Republicans and Democrats to keep drawing racially gerrymandered districts in the name of protecting voting rights.

"A law passed to protect minority voters--to ensure free and fair access to the polls--has become much like every other affirmative action policy," says Edward Blum, a visiting fellow at the American Enterprise Institute and the author of a forthcoming book on the unintended consequences of the Voting Rights Act. "It has become, literally, a racial set-aside. The law is being used to justify actual racial proportionality."

It's bad enough that such gerrymandering has all but eviscerated inter-party competition for seats in Congress, creating so many "safe" Republican and Democratic strongholds that the outcome of most races is a foregone conclusion. But another pernicious byproduct of

gerrymandering is the racial polarization and hyper-partisanship that we see in places like New York's 11th District. These so-called "majority-minority" gerrymanders tend to nurture political division and extremism by reducing incentives for candidates to make appeals to anyone other than their racial or ethnic voting base.

Representative Owens has labeled Mr. Yassky a "colonizer." Al Sharpton, ever the statesman, has called the candidate, who is Jewish, "greedy." And the New York Sun reported last week that Albert Vann, a city councilman who opposes Mr. Yassky's candidacy, sent an email to black elected officials nationwide announcing that "we are in peril of losing a 'Voting Rights' district . . . as a result of the well financed candidacy of Council Member David Yassky, a white individual."



Ironically, such rhetoric is one reason so few minorities are able to seek and win higher office. Once you're appealing to people on completely racial grounds in order to win a House seat, you have a hard time making the broader appeals necessary to win statewide.

But don't expect any of this to matter as Congress ramrods through another extension of the provisions that feed these bad outcomes. A House vote is due any day, and the Senate is expected to follow sometime prior to the July 4 recess. Congress has never let balkanization of the electorate get in the way of protecting its own political hide, especially when it can claim to be siding with the "voting rights" angels.

# WAL-MART

WAL-MART STORES, INC.  
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*LEE SCOTT*  
President & CEO

July 10, 2006

Dear Member of Congress:

On behalf of Wal-Mart Stores, Inc. and our 1.3 million associates in the United States, I am writing to urge you to support and vote for H.R. 9, legislation to reauthorize the Voting Rights Act of 1965. This measure should be considered by the full House in the near future.

Wal-Mart is the largest private employer of African-Americans and Hispanics and we, therefore, have a particular interest in this issue. On behalf of them as well as our millions of customers whose lives are touched by this landmark statute, we believe it is important to move forward expeditiously and enact the reauthorization of the Voting Rights Act.

After meeting with Members of the Congressional Black Caucus and others, our company went on the record in support of this legislation. In June 2005, I sent a letter to President George W. Bush urging him to fully support and reauthorize the Voting Rights Act. We have been pleased by the statements that the President has made endorsing the principle that the Voting Rights Act should be reauthorized, and we were further encouraged when the Senate and House leadership announced in May of this year that a bipartisan agreement on reauthorization had been reached and that swift action would follow. Although the measure had become stalled over the last few weeks, we applaud the congressional leadership for its commitment to reauthorization of the Voting Rights Act by bringing this measure to the House floor for a vote.

We appreciate your consideration of our thoughts on this legislation. Again, we respectfully encourage you to vote for H.R. 9, legislation to reauthorize the Voting Rights Act.

Sincerely,



H. Lee Scott  
President and CEO

## Candidacy Fosters A Debate On Race

White Democrat Finds Resistance From Black Voters

By Shailagh Murray  
Washington Post Staff Writer  
Thursday, July 6, 2006; A01

David Yassky has a solid résumé, lots of campaign cash and plenty of ideas for improving the slice of Brooklyn he wants to represent in Congress. In another Democratic stronghold, he might be the runaway favorite.

But in New York's 11th District, Yassky's candidacy has touched off a controversy about race and turned a sleepy primary contest into an emotionally charged debate over minority political representation. The 11th District is one of the dozens of majority-black seats created in the aftermath of the landmark 1965 Voting Rights Act. And Yassky, unlike his three primary opponents, is white.

The City Council member's bid has not been well received by the district's black establishment. Rep. Major R. Owens (D), the retiring 12-term incumbent, labeled Yassky a "colonizer." Local black leaders have staged events to pressure the 42-year-old Brooklyn Democrat out of the race. A Web site was launched. Al Sharpton is calling on prominent white politicians, including Sen. Hillary Rodham Clinton (D-N.Y.), to take a stand against Yassky.

In the past 3 1/2 decades, the number of black-held House seats has increased fourfold, from 10 in 1970 to 40 today, a byproduct of the Voting Rights Act's intent to improve black participation in politics. Black House members hold senior status on committees including the tax-writing Ways and Means, the Judiciary and the Homeland Security committees. And the Congressional Black Caucus is an influential force within the Democratic Party.

But some Democrats have come to recognize the downside of these majority-black districts. For instance, they can spark racially polarized politics, pitting blacks against other minorities and whites, particularly as the districts become more gentrified and ethnically mixed.

In a black district of Memphis, a white candidate who is among 15 Democrats vying for the seat being vacated by Rep. Harold E. Ford Jr. (D-Tenn.) has encountered racial hostility similar to that experienced by Yassky. Stephen I. Cohen, a Tennessee state senator, said in an interview with a Jewish newspaper, the Forward, that he is entitled to the same treatment Ford, who is black, has sought as he campaigns statewide for the Senate. "Don't judge me by my race but by my record," Cohen said.

Elsewhere, the "majority-minority" phenomenon has increased Republican strength by packing the Democrats' most loyal constituency inside fewer districts, allowing surrounding districts to become more white and Republican.

When Virginia's Republican-dominated legislature redrew its congressional boundaries in 2001, blacks were shifted from GOP Rep. J. Randy Forbes's Chesapeake area district to Democratic Rep. Robert C. "Bobby" Scott's majority-black district, which follows the James River from the Norfolk area to suburban Richmond.

In a 2001 special election before redistricting, Forbes narrowly defeated a black state senator, L. Louise Lucas, 52 percent to 48 percent. In 2002, after the boundaries were redrawn, Forbes won his seat with 98 percent of the vote. This year, when Democrats are positioned to possibly take back control of the House, Forbes is running unopposed.

Provisions of the Voting Rights Act, including a section related to legislative districts, are due to expire and are being debated in Congress. Some Southern lawmakers have protested extending special safeguards that apply to their states, but civil rights advocates assert that allowing the provisions to expire would be highly risky in light of recent cases of voting rights violations.

In fact, some want more protections for minority communities. In a February speech, Owens endorsed an idea called "power sharing," which recognizes "the necessity of minority participation in the decision making process," a step beyond the current laws that protect minority rights.

But some Democratic strategists have begun to question whether strict adherence to a 40-year-old model of minority-dominated districts could be hurting the party in the long term. Rep. Rahm Emanuel (Ill.), chairman of the Democratic Congressional Campaign Committee, said that at one time it made sense for the courts and state legislatures to carve out majority-black districts to break racially discriminatory practices, primarily in the South.

Looking at the map of congressional districts today, Emanuel asked: "Are we at the point in the political process where you don't need a 70 percent district, but a 50 to 45 district, with the political capacity to be more competitive in surrounding areas, so that more Democrats can win?"

The rapid transformation of urban areas could force Democratic and civil rights leaders to rethink minority districts, voting rights experts say. A combination of gentrification, immigration, intermarriage and a migrating black middle class "means that race just doesn't have the power that it once did, in these kinds of settings," said Edward Blum, a fellow at the conservative American Enterprise Institute who has written extensively about minority districts.

Just over half of the 40 black House members represent majority-black districts, while three of the four California black members represent larger Hispanic populations, said David A. Bositis, a senior research associate at the Joint Center for Political and Economic Studies, a think tank that focuses on minority issues.

But they are all serving in the Democratic minority. "Remember, the [Voting Rights Act] is about black voters, not black elected officials," Bositis said. "And black voters are not having their interests represented, although there are more black members of Congress."

That is the point Yassky made recently as he greeted voters on a corner of Eastern Parkway at the edge of Brooklyn's predominantly black Crown Heights neighborhood. Some people looked away when he approached, but others paused to shake his hand and express concerns about affordable housing, President Bush and the war in Iraq.

"You talk to voters about what's important," Yassky said. "You run your race. Voters are pretty thoughtful and will listen to the arguments. They want to see someone effective in Congress, and I think I have a really good case to make."

The 11th District was drawn in 1968 as a result of a Voting Rights Act lawsuit and was first occupied by Shirley Chisholm, who gained national prominence as an advocate of women and minority rights, and who ran for president in 1972. She was succeeded by Owens, a former librarian and state senator with liberal views and a penchant for passionate floor speeches, often delivered in rap style.

The district has evolved in recent years into a demographic melange, blending long-standing African American and Caribbean American populations with newer arrivals, including Arab, Asian and Hispanic immigrants and affluent white voters. The four candidates in the race to succeed Owens represent this new demographic reality: Yassky lives in wealthy Brooklyn Heights; City Council Member Yvette D. Clarke is of Caribbean descent; state Sen. Carl Andrews is an African American from Crown Heights; and Owens's son, Chris Owens, is biracial, having a white Jewish mother.

Attending an elementary school graduation last week, Yassky recalled that, not long ago, most of the students there were of Italian heritage.

Then he pointed to the program for this year's ceremony. Among the graduates' surnames were Wu, Ramos, Imran and Zapolsky, with one DeBenedetto and one Salerno.

Perhaps more dramatic has been the change in the district's income levels, which have skyrocketed along with property values. The imbalance is reflected in the candidates' campaign accounts. As of March 31, the end of the most recent campaign reporting period, Yassky had \$750,000 cash on hand, compared with \$450,000 combined for his three competitors.

"It's class, class, class," said Chris Owens, a Harvard and Princeton graduate who has managed his father's campaigns for 12 years. "Class is defining the face of Brooklyn. And as it defines Brooklyn, it will define its political representation."

One feature that has not changed is the district's deeply liberal bent. Regardless of class or color, Yassky and Owens said, voters are overwhelmingly opposed to the war in Iraq and want better schools and better health coverage. Anna Acosta, 21 and black, stopped to chat with Yassky along Eastern Parkway. Acosta said she is looking for a candidate who is willing to aggressively stand up to Republicans.

"It shouldn't be like that," she said of the racially motivated campaign against Yassky. "All that matters is that you're doing your job."

**Ineligible voters may have cast a number of Florida ballots**

*The Washington Times*

*November 29, 2000*

*Author: Audrey Hudson; THE WASHINGTON TIMES*

A sizable number of Florida votes may have been cast by ineligible felons, illegal immigrants and noncitizens, according to election observers.

The Florida Board of Elections sent a list to county election officials throughout the state to purge voter lists of 11,274 felons before this year's election.

That directive was ignored by Palm Beach County Election Supervisor Theresa LePore and at least one other county.

Officials in the county say the state's information was flawed, so they created their own list of suspected felons to purge.

Election officials "did not feel confident in the list and felt the database was corrupt with problems," said a Palm Beach County spokeswoman.

The firm hired to compile the list, Database Technologies, conceded earlier this year that mistakes were made and that thousands of people convicted of misdemeanors were included. It sent a corrected list to county registrars over the summer that identified 57,770 "probable" felons.

Registrars in other counties, including Broward and Miami-Dade, used the state list to purge voter rolls.

An investigation by the Miami Herald and NBC News found that at least 64 felons voted on Nov. 7 in Palm Beach, Broward and Miami-Dade counties.

According to published reports, those felons included murderers, child molesters, drug dealers and thieves.

An organization that advocates tougher immigration restrictions, the Federation for American Immigration Reform, says lax election standards allow illegal immigrants to vote. The Voting Integrity Project points to the "motor-voter" law as the main problem in allowing noncitizens to vote.

The law permits citizens to register to vote when they apply for a driver's license or various other services of state and local government. It was vetoed by President Bush in 1992, but signed a year later by President Clinton.

Noncitizens with green cards are not allowed to vote, but one of the first things they do

after settling in the United States is to acquire a driver's license, said Deborah Phillips, chairman of the Voting Integrity Project.

"They are also filling out a voter registration form without even realizing it, and when they get a card from the government in the mail saying they can vote, they think it is OK," Miss Phillips said.

"Polls are not allowed to inquire about citizenship, and states have no way to weed them off the roll," Miss Phillips said.

The Clinton administration has depended on naturalized immigrants in the past for support.

The Fort Lauderdale Sun-Sentinel reported in 1997 that the administration expedited processing of citizenships in 1996 so new residents could register to vote for president. Those new citizens registered Democratic by a 5-to-1 margin.

The program, Citizenship USA, set a goal of registering 1.2 million immigrants. It was led by Vice President Al Gore.

The Federation for American Immigration Reform wants Congress and the secretaries of state of all 50 states to devise a uniform and secure way of guaranteeing voter eligibility.

"The political machine-style voting activity raises the probability that Miami-Dade County did have a significant number of illegal voters to swing the outcome," said Dan Stein, executive director of FAIR.

"Until now, our awareness of voting by noncitizens has generally been limited to a specific district. In this election, with the results razor-close in thousands of districts, it has most likely affected the entire nation, and perhaps the final results," Mr. Stein said.

"Dead people, confusing ballots and inaccurate vote counts should not determine who our elected officials are. Neither should people who are not eligible to vote. One of the most precious rights of a citizen is that of the vote. It must not be undermined by errors or illegal voting," he said.

According to 1996 statistics from the Immigration and Naturalization Service, the latest available, there are an estimated 350,000 illegal immigrants in Florida.

"I always believe there is room for improvement in urban counties because we are always concerned over any irregularities," said Mary Ellen Miller, chairman of the Miami-Dade Republican Party.

"Illegal voting is always a concern for us, because we have such a large immigrant population," Mrs. Miller said.

"It is easily within the realm of possibility here illegal immigrants voted," Mr. Stein said.  
"It is easier to get a voter registration card than a library card, because of motor-voter."

This would not be the first time votes by illegal immigrants became an issue after Election Day. Former Republican Rep. Robert K. Dornan of California was defeated by Democrat Loretta Sanchez by 984 votes in the 1996 election. State officials found that at least 300 votes were cast illegally by noncitizens.

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**J.C. Watts, Jr.**

June 21, 2006

F. James Sensenbrenner, Jr.  
Chairman  
Judiciary Committee  
U.S. House of Representatives  
2138 Rayburn House Office Building  
Washington, DC 20515

John Conyers, Jr.  
Ranking Member  
Judiciary Committee  
U.S. House of Representatives  
2142 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Sensenbrenner and Ranking Member Conyers,

I write today to express my strong support for a clean reauthorization of the Voting Rights Act. I urge you to oppose both amendments that will be offered to the bill on the floor today. Those amendments would weaken the Voting Rights Act and take it away from its original purpose and intent.

This bill, appropriately named to honor civil rights legends Fannie Lou Hamer, Rosa Parks and Coretta Scott King, is a powerful statement of America's continuing resolve to put racial discrimination on the ash heap of history.

The Voting Rights Act is a national treasure. It is the cornerstone of civil rights legislation. This law has been, historically, the product of broad bipartisan support. You deserve to be commended for once again facilitating broad consensus through hard work, research of the facts, and a spirit of unity.

It is vital that the bipartisan consensus achieved by the Judiciary Committee be preserved as this legislation is considered in the House today. I strongly urge all Members to support the work of the Committee and this carefully crafted, bipartisan bill.

Sincerely,

A handwritten signature in black ink, appearing to read "J.C. Watts, Jr.", written in a cursive style.

J.C. Watts, Jr.

**A Fitting Celebration:  
Adoption of the Voting Rights Act Amendment**

*"Nobody's free until everybody's free."* – **Fannie Lou Hamer**

*"I would like to be known as a person who is concerned about freedom and equality and justice and prosperity for all people."* – **Rosa Parks**

*"Women, if the soul of the nation is to be saved...you must become its soul."* – **Coretta Scott King**

These three remarkable women speak to the most basic aspirations of our nation. In their unparalleled grace and majesty, they embodied the struggle for justice and equality of all people.

Congress appropriately titled the legislation extending key sections of the Voting Rights Act *The Fannie Lou Hamer, Rosa Parks, Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006*. This gesture was more than symbolic. Not only does the measure pay tribute to these three heroines of our nation's struggle for racial justice, it acknowledges the countless unsung heroines of the march to freedom.

The struggle to win the right to vote, like all major campaigns for equal justice, has been paid with sacrifice, toil, and sometimes blood. Many of the foot soldiers have been women. Women historically have been the life-force of all social justice movements—whether the abolition movement of the 19<sup>th</sup> Century, the suffrage movement of the early 20<sup>th</sup> Century, or the current struggle for racial and equal justice being waged today on many fronts by a multi-racial, multi-ethnic force of women who collectively represent the soul and essence of our nation's highest ideals.

Those who join us to demand immediate passage of the Fannie Lou Hamer, Rosa Parks, Coretta Scott King legislation know that equal ballot access and the right to elect representatives of one's choice are inextricably tied to the unfinished promise of equal justice. The Voting Rights Act made the 19<sup>th</sup> Amendment giving women the right to vote a reality for women of color. The VRA has been critical in the increased numbers of Latina, Asian American, Native American, and African American women elected officials. In 1970, five years after the passage of the Act, there were 160 Black women elected officials; in 2001, that number was 3,200—a vast majority of them in Southern states. Giving a voice to the voiceless has always benefited women.

We are calling upon Congress to *act now*. Adoption of the expiring provisions of the Voting Rights Act will exalt substance over symbolism and be the most fitting celebration of the courageous women for which this legislation is titled.

**Signatures attached**

**Signed,****Dr. Dorothy I. Height**

Chair & President Emerita,  
National Council of Negro Women, Inc.;  
Chairperson, Leadership Conference on  
Civil Rights

**Barbara R. Arnwine**

Executive Director  
Lawyers' Committee for Civil Rights  
Under Law

**Jacqueline Berrien**

Associate Director-Counsel  
NAACP Legal Defense & Educational  
Fund, Inc.

**Dr. Mary Frances Berry**

Former Chair  
U.S. Commission on Civil Rights

**Anna Burger**

Secretary/Treasurer  
Service Employees International Union  
(SEIU); Chair, Change to Win Federation

**Nancy Duff Campbell**

Co-President  
National Women's Law Center

**Linda Chavez-Thompson**

Executive Vice President  
AFL-CIO

**Cheryl R. Cooper**

Executive Director  
National Council of Negro Women, Inc.

**Camille O. Cosby****Dr. Thelma Daley**

Director  
Women in the NAACP

**The Right Rev. Jane Holmes Dixon**

Bishop of Washington, Pro Tempore,  
Retired

**Lily Eskelsen**

Secretary/Treasurer  
National Education Association

**Patricia A. Ford**

Special Assistant to the President for  
Civic Affairs  
Metropolitan Washington Council  
AFL-CIO

**Caroline Fredrickson**

Director  
Washington Legislative Office  
American Civil Liberties Union

**Kim Gandy**

President  
National Organization for Women

**Mireille Gbetholancy-Kun**

Founder & Executive Director  
Organization for the Relief of  
Underprivileged Women and Children in  
Africa

**Elisabeth Gehl**

Director of Public Policy  
Business and Professional Women/USA

**Marcia Greenberger**

Co-President  
National Women's Law Center

**Susan Henderson**

Managing Director  
Disability Rights Education & Defense  
Fund

**Candy S. Hill**

Senior Vice President for Social Policy  
Catholic Charities USA

**Signed,****Margaret Huang**

Director, U.S. Program  
Global Rights

**Amy Isaacs**

National Director  
Americans for Democratic Action

**Llenda Jackson-Leslie**

President  
National Women's Political Caucus

**Jackie Johnson**

President & Executive Director  
National Congress of American Indians

**Elaine R. Jones**

President Emerita  
NAACP Legal Defense & Educational  
Fund, Inc.

**Stephanie Jones**

Executive Director  
Policy Institute  
National Urban League

**Karen McGill Lawson**

Deputy Director for Education &  
Operations  
Leadership Conference on Civil Rights

**Eun Sook Lee**

Executive Director  
National Korean American Service &  
Education Consortium

**Sharon Lettman**

Vice President for External Affairs  
People For the American Way  
Foundation

**Judy Lichtman**

Senior Advisor  
National Partnership for Women &  
Families

**Lisa M. Maatz**

Director of Public Policy & Government  
Relations  
American Association of University  
Women

**Molly Murphy MacGregor**

Executive Director & Co-Founder  
National Women's History Project

**Dr. Julianne Malveaux**

Economist, author and commentator

**Jill Miller**

President & CEO  
Women Work! The National Network for  
Women's Employment

**Peggy Sanchez Mills**

Chief Executive Officer  
YWCA USA

**Hon. Felicia Moore**

President  
National Black Caucus of Local Elected  
Officials

**Gwen Moore**

Chairwoman  
The FuturePAC

**Minyon Moore**

Principal  
Dewey Square Group

**Cecilia Muñoz**

Vice President for Policy  
National Council of La Raza

**Janet Murguía**

President & CEO  
National Council of La Raza

**Karen K. Narasaki**

President & Executive Director  
Asian American Justice Center

**Signed,****Christyne Neff**

International Vice President  
United Food & Commercial Workers  
International Union

**Debra L. Ness**

President  
National Partnership for Women &  
Families

**Roselyn O'Connell**

Immediate Past President  
National Women's Political Caucus

**Terry O'Neill**

Executive Director  
National Council of Women's  
Organizations

**Dianne Piché**

Executive Director  
Citizens' Commission on Civil Rights

**Dr. Louise A. Rice**

National President  
Delta Sigma Theta

**Kathy Rodgers**

President  
Legal Momentum

**Eleanor Smeal**

President  
Feminist Majority

**Marsha Smith**

Executive Committee  
National Education Association

**Shanna Smith**

President & CEO  
National Fair Housing Alliance

**Phyllis Snyder**

President  
National Council of Jewish Women

**Eula Tate**

Legislative Representative  
United Auto Workers

**Susan L. Taylor**

Editorial Director  
*Essence* magazine

**Tawana Tibbs**

First Lady  
NAACP

**June Walker**

National President  
Hadassah, the Women's Zionist  
Organization of America

**Dr. E. Faye Williams, Esq.**

National Chair  
The National Congress of Black Women

**Mary G. Wilson**

President  
League of Women Voters of the United  
States

**Dorothy Wong**

Executive Director  
Organization of Chinese Americans

**Nancy Zirkin**

Deputy Director/Director of Public Policy  
Leadership Conference on Civil Rights

THE SENATE COMMITTEE on the JUDICIARY

Examining the Need for Voting Rights Act Section 203's  
Provisions Regarding Bilingual Election Materials

by Deborah Wright

on behalf of the County of Los Angeles, California  
Registrar-Recorder/County Clerk  
June 13, 2006

Thank you for the invitation to appear before the Committee to offer testimony and to submit written materials with regard to Los Angeles County's comprehensive program that provides much-needed assistance to limited-English proficient (LEP) voters throughout Los Angeles County, California.

Los Angeles (L.A.) County is the largest and most diverse local election jurisdiction in the United States. No other jurisdiction provides assistance in as many languages. In compliance with Section 203 of the Voting Rights Act (VRA), Los Angeles County provides assistance to voters in six languages in addition to English: Chinese, Japanese, Korean, Spanish, Tagalog (Filipino) and Vietnamese. Our extensive multi-lingual (ML) program involves provision of both translated written election materials and oral assistance at up to 5,000 voting precincts on election day.

The costs of L.A. County's ML program are reasonable in light of the challenges the County faces. Only eight States have more registered voters than our nearly four million registered voters. The 2000 Census reported that L.A. County has approximately five million voting age citizens, 12.9 percent of whom (644,505) are LEP in one of the six covered languages: 428,580 Spanish speakers; 95,700 Chinese speakers; 42,390 Korean speakers; 34,985 Tagalog speakers; 30,340 Vietnamese speakers; and 12,510 Japanese speakers. The cost of providing language assistance to these LEP voters, many of whom are unable to read and write in any language, is slightly less than ten percent of the County's annual election expenses. Considering all of these challenges, the percentage of election expenses for language assistance is reasonable and is virtually the same as the percentage of voters who need assistance.

My role with the County's program is to provide direct management oversight of the ML assistance program. In my capacity, I routinely provide data to the Voting Section of the U.S. Department of Justice Voting Rights Division in response to their ongoing inquiries about the program. Los Angeles County has long maintained a cooperative and professional relationship with this agency, recognizing that we share the fundamental aim of ensuring full access to voting for all eligible citizens.

California often presents voters with numerous, complex ballot initiatives and propositions. Such complicated ballots challenge all voters to be prepared and to have the information they need prior to casting their ballots. Often a high level of English proficiency is needed even by native speakers of English to understand these ballot initiatives and to cast an informed ballot. Our experience persuades us that appropriate, targeted language assistance makes it much more likely that informed voter intent is realized. Ballot measures alone highlight the importance of providing translated materials and oral assistance to voters whose native language is not English.

Three key facets comprise the core of L.A. County's comprehensive multilingual (ML) program:

- 1) provision of translated written materials;
- 2) oral assistance at voting locations; and
- 3) collaboration with key community based organizations (CBOs).

**Translated Written Materials**

The extensive array of translated election materials available to ML voters includes, but is not limited to:

- Sample ballot and voter information booklet mailed to each registered voter in advance of every election
- State ballot pamphlet mailed to households of registered voters for applicable elections
- Voter registration forms
- absentee ballot and permanent absentee ballot application forms, envelopes and instructions
- Instructions on how to use the voting system(s)
- Provisional ballot instructions and materials
- Voter education guides and pamphlets containing key election information such as how to register to vote, where to vote, upcoming elections and deadlines and available voting options (i.e. at the neighborhood voting location or via absentee/mail ballot or early voting)

Also, samples of translated polling place signs and numerous additional translated polling place materials are available at the voting precincts on election day.

Additionally, prior to and on election day Limited-English Proficiency (LEP) voters have the opportunity to obtain translated written materials by calling our office via a toll-free line to request materials be mailed to them and/or by accessing our website at [www.lavote.net](http://www.lavote.net) LEP voters may request that translated written material automatically be mailed to them prior to each election. Such requests are entered into the voter database. Our website prominently advises voters of the ML services available and the toll-free number, 800-815-2666, provides oral ML assistance. Among the websites most popular features is the availability, at a click of the mouse, of each voter's specific translated sample ballot for his/her geographic address.

In recent years we have been able to realize cost savings in providing multilingual materials by analyzing the cost components and restricting printing to the exact precincts within the County where written materials are needed. All ballot materials are translated into all required languages – for use on electronic voting equipment during our Early Voting period – but our costs were cut in half when we began printing these materials in a targeted way.

#### Oral Assistance

L.A. County's provision of ML oral assistance far exceeds the specified legal requirements of targeting precincts based on U.S. Census data. We believe that a key variable in voters experiencing a positive election day entails voters entering a polling place where the composition of the precinct's election workers reflects the neighborhood including languages spoken. Therefore, our office developed a comprehensive ML targeting program to recruit and place ML poll workers that is comprised of four components:

- 1) Census data
- 2) Number of Requests on File from voters who have requested that ML materials be mailed to them in advance of each election
- 3) Input from CBOs that a neighborhood is in need of language assistance; and
- 4) Information gathered from poll workers who complete a tally card at every election denoting how many requests they received for ML assistance

For the November 2004 Election, for example, there were 4,835 voting precincts. Overlaying Census data with precinct geography displayed the number of precincts to target for specific language assistance. These numbers reveal, for example, that 170 voting precincts were required to be targeted for Chinese language assistance based on Census data. However, based on the number of Requests on File from voters in 254 additional precincts, the number of actual targeted precincts increased to 424 for recruitment of poll workers who speak Chinese.

Additionally, the total goal of targeted precincts for Chinese was also increased by an additional 27 precincts based on input from CBOs and an additional 61 precincts where past elections ML tally cards indicated more than five voters had requested ML assistance in that language.

This same process is followed for all six VRA-designated languages. Additionally, due to CBO identification of heavy concentration of voters who speak Armenian, Russian and Khmer (Cambodian) in specific neighborhoods, efforts are made to recruit poll workers who speak these languages in order to expand ML services to voters in need. We are not required under Section 203 of the Voting Rights Act to provide oral language assistance in these other languages, but we do so because we want to facilitate the ability of all voters to participate and cast informed ballots. Hiring bilingual poll workers does not incur extra costs, as bilingual poll workers are paid the same stipend as other election day

staff, and of course perform regular duties of a poll worker as well.

As with translated written materials, oral assistance is also available prior to as well as on election day by calling our toll-free number at 800-815-2666.

#### Collaboration with CBOs

The third key component of L.A. County's ML program is our active partnerships with numerous Community Based Organizations. Beginning in 1998 with the institution of the Community Voter Outreach Committee (CVOC), L.A. County has expanded this program to a current list of 104 participating organizations and the list is continually growing.

CBOs including NALEO, MALDEF, APALC and many others collaborate with L.A. County in identifying neighborhoods and voting precincts in need of ML assistance in specific languages. This process is incorporated into the four-part targeting formula to recruit poll workers who speak the languages spoken in the neighborhoods served by the designated voting precincts.

The CBOs have provided assistance in recruiting bilingual pollworkers, distributing and suggesting additional venues for voter education and outreach, and assist in proofreading multilingual materials prior to distribution.

#### Training for Poll Workers and Precinct Coordinators

L.A. County has an extensive program of training for poll workers. Approximately 400 separate, 2-hour training classes are held for poll workers at locations throughout the County prior to each statewide election. Poll workers are mailed a training schedule prior to each election to let them know where and when classes will be held. The training schedule also designates which classes will have language assistance services available in which of the six designated languages.

Precinct coordinators troubleshoot and assist poll workers at 10 to 15 voting precincts on Election Day. Coordinators receive extensive training, including a section on Cultural Awareness that is focused on ML services.

#### Getting the Word Out

How do voters learn about the widespread availability of L.A. County's extensive ML services program?

Every registered voter in L.A. County is mailed a sample ballot and voter information booklet approximately 3-4 weeks prior to every election. This booklet contains a full-page of information on ML services.

LEP voters may request that their names be included on our permanent list of voters who

have a Request on File to receive automatically a translated version of the sample ballot booklet prior to each election in the mail.

An advertising program develops Public Service Announcements shown at no cost on cable TV and radio.

A multi-media advertisement campaign was initiated in advance of the November 2004 Election using Help America Vote Act (HAVA) funds.

Partnership with numerous CBOs has been invaluable in getting the word out.

#### How Do We Measure Success?

A comprehensive, multifaceted program is only as good as the results it achieves. The growth of L.A. County's ML services program is clearly revealed by a number of indices. These include:

The large number of voting precincts that are targeted for recruitment of poll workers who speak the languages that have been identified as needed. For most elections the actual recruitment of ML poll workers achieved better than 90% of the established goal.

The number of voters who have called our office to request that translated written material be mailed to them in advance of each election (that is, the number of Requests on File).

In both pre- and post-election meetings with attorneys from the U.S. Department of Justice (USDOJ), L.A. County's ML services program has been described as very good and comprehensive. Feedback from other jurisdictions Counties covered by Section 203 of the VRA indicates that the USDOJ holds L.A. County's multi-faceted program as a model for other jurisdictions to follow.

Our commitment to the permanence of our extensive, successful ML program is demonstrated by assigning specified staff to this program including a designated ML Coordinator, an Executive Liaison Officer and several additional full and part-time staff.

In conclusion, L.A. County is proud of our proactive, multi-faceted ML program that reaches beyond minimum standards of legal compliance and focuses on a commitment to excellence in serving all voters in our most diverse community.

Testimony  
before the U.S. SENATE COMMITTEE ON THE JUDICIARY,  
SUBCOMMITTEE ON  
THE CONSTITUTION, CIVIL RIGHTS AND PROPERTY RIGHTS  
regarding "The Continuing Need for Federal Examiners and  
Observers to Ensure Electoral Integrity."

Monday, July 10, 2006

QUESTIONS AND ANSWERS

RESPONSE OF CONSTANCE SLAUGHTER-HARVEY TO QUESTIONS  
SUBMITTED BY  
SENATOR PATRICK LEAHY

Hearing on "The Continuing Need for Federal Examiners and Observers"  
Before the Subcommittee on the Constitution, Civil Rights and Property Rights

- 1. In your testimony you discuss the vital role that neutral federal observers play to ensure the "integrity of an election." You emphasized that this is particularly true in cases where black candidates are mounting challenges to long-term white incumbents and where federal observers serve as a "buffer between African-Americans and local election officials, many of whom were, and remain, disproportionately white." Given your first-hand experience as a former state election official in a covered jurisdiction, do you believe that election observers deployed by local governments would be able to achieve the same goals if the federal observer provisions of the Voting Rights Act are eliminated?*

No. Election observers deployed by local governments would be too closely connected to the source of any problems that might exist. The value of the federal observer program lies in the fact that these observers are neutral and objective third-parties with no vested interest or connection to the communities where problems occur. This neutrality provides a tremendous incentive for the observers to fairly document the problems that they encounter. The objectivity also makes it less likely that the observers would ignore problems or unfair practices as they see them. In addition, election observers deployed by local governments are less likely to be sufficiently trained on federal requirements codified within the Voting Rights Act. Federal observers are the only way to ensure that an adequately trained group of objective and neutral individuals

2. *Your testimony included many examples of ways in which minority voters were explicitly denied access to the ballot box -- black voters were required to provide a social security number in order to cast their ballots in Hinds County, a heavy police presence at majority-black precincts intimidated voters in Clarksdale, etc. If a voter is wrongly turned away from the polling booth - even just once - what effect does that have on the likelihood that he will return to vote at the next election? In your experience, how is overall voter turnout affected by such practices in states as Mississippi, which suffers from high levels of poverty, low graduation rates, and documented persistent discrimination? In contrast, you testified about the way that federal observers inspire voter confidence and positively impact turnout levels. Please discuss how this aspect of the Voting Rights Act has positively affected voter turnout.*

Black voters have hopes that our national leaders will protect the rights of all citizens and this expectation is probably greatest when voters turn out to cast their ballots at polling sites on election day. Any credible indication that this expectation will not be guaranteed has a chilling effect on Black voter participation in the political process. It is difficult for minority voters in Mississippi, who also wrestle with high levels of socio-economic discrimination, to return to the polling places if the previous visit was met with hostility and discrimination. From a personal perspective, I know several voters who refused to be subjected to repeated harassment and thus, chose to avoid polling places, altogether, during subsequent elections. Indeed, the presence of law enforcement, the selective use of video cameras, and hostile treatment by local election officials all have the potential to decrease voter participation rates.

Persons who are uncomfortable casting their ballots under these conditions find comfort in knowing that there will be persons at the polling places, such as federal observers and monitors, who are committed to ensuring a fair electoral process. Some of these polling places are located at the end of the world and some black voters still tread troubled waters to cast their ballots. Federal observers/monitors reassure voters, particularly those in isolated and rural communities, that the election process is being

closely watched. Few officials discriminate when they are under the microscope. Knowing that the polling places are covered by observers has meant greater voter participation and this is based upon personal experiences with voters and poll watchers in the Delta region throughout the 1990s. During my time as a state official, I worked to resolve problems that occurred during the 1991 primary and worked with local officials. However, where my efforts did not accomplish desired results, I contacted the Justice Department officials who, in turn, deployed monitors for future elections resulting in substantially greater voter turnout levels in Leflore and Grenada Counties. Our ground forces, including a Grenada Alderman and Greenwood councilperson, reported that the presence of federal observers, indeed, was the key factor that encouraged Black voters to return to the polls.

***3. Critics of reauthorizing the Voting Rights Act argue that significant acts of minority voter intimidation are now rare and just as likely to exist in areas not covered by the expiring provisions of the Voting Rights Act. What is your opinion of that argument? In what ways does the presence of federal observers lead to fewer acts of minority voter intimidation? In your opinion, does this imply that such protections are no longer needed?***

The smallest act of minority voter intimidation deters meaningful participation in the voting process. These acts are not rare and still continue. Given my experience as a former president of the Magnolia Bar Association and my election day work on our task force for the past 2 years, I can assure this Subcommittee that minority voter intimidation, in various forms, continues in Mississippi and throughout other covered states in the South.

Intimidation tactics can be both extremely overt, and equally as subtle. As Thomas Reed, a former Justice Department Attorney recounted, intimidation in

Sunflower, Mississippi took many forms. For instance, local law enforcement officers were stationing themselves at polls, provoking rumors that residents were being arrested for minor offenses, such as traffic violations. As such, some potential voters suspended their political participation, thus diluting the minority vote. Alternatively, the physical presence of armed law enforcement officers, and distrust of poll officials often employed by white incumbents, had the same, if not stronger intimidating effect.

In addition, the deterrence value of the federal observer program should not be underestimated. Observers create a tremendous incentive for local election officials to comply with election laws and to enforce these laws evenly regardless of the race of the voter. So long as voter intimidation persists and is directed at minority voters, there will be a continuing need for the federal observer program. Observers increase the motivation for those working inside the polling places to not impose special requirements on Black voters because these workers know they are being watched. Federal observers, therefore, prevent problems that otherwise are likely to impede access to the ballot box on election day.

***4. You testified that in total, federal observers have monitored elections in Mississippi on more than 250 occasions since 1982. In fact, many of these jurisdictions "have been the subject of multiple observer deployments during that time period. It is worth noting that observers have monitored 19 elections in Sunflower County, 17 elections in Noxubee County and 16 elections in Bolivar County. Multiple observer deployments may provide an indication that a jurisdiction is somewhat hostile to the protections afforded by the Voting Rights Act or illustrate the degree of racial tension and intimidation experienced by voters in an area." Based on your experience, do you believe the repeated need for federal observers since 1982 is evidence of the continuing threat of discrimination in these jurisdictions and the consequent need to renew the expiring provisions of the Voting Rights Act for another 25 years?***

Yes. The repeated need for federal observers in certain jurisdictions since 1982 (as referenced in my earlier testimony) is evidence of the continuing threat of discrimination in covered jurisdictions. So long as this discrimination and threat exist, there is the possibility that problems might emerge that would inhibit minority voters' access of the ballot box. Perpetual federal observer deployment in these districts emphasizes the degree to which the threat of discrimination continues to obstruct voter equality. The last 25 years dictate that voter intimidation is more than a mere potentiality, but rather, an unfortunate reality confronting many Southern residents. Consequently, the pivotal role the Voting Rights Act plays in preventing persistent voter discrimination must be maintained for the next quarter century. The mountain of evidence highlighting the utility of the program far outweighs wildly optimistic notions that voter intimidation and the threat of discrimination are problems of the past.

In his attached July 10, 2006, letter, Lewis Johnson, a current city councilman in Grenada, Mississippi, details the deterrent value the federal observer program holds. As “deterrents from intimidation and harassment at the ballot box,” federal observers confronted hostile white voters videotaping black residents in an attempt to intimidate and dissuade their participation in the political process. Mr. Johnson’s account of recent voter intimidation reflects a problem that extends well beyond the borders of Mississippi. Indeed, in his attached June 30, 2006, letter, City Councilman Phuong Tan Huynh, a Vietnamese resident of Bayou La Batre, Alabama, notes that federal “observers provided a necessary deterrent to those standing in the way of a fair election, and more importantly, instilled confidence in many new citizens . . . .” Federal observers prevented Mr. Huynh’s opponent from making false allegations regarding the citizen status of

eligible Asian-American voters in this small town. The problems in Bayou LaBatre must be viewed in the context of a growing Asian American population that was on the brink of exercising significant political clout. Ultimately, Huynh won a seat on the local council and became the first Asian American to hold political office in the town upsetting the long-standing status quo.

This evidence demonstrates that the federal observer program has served as an invaluable resource throughout covered jurisdictions for the past 25 years. Moreover, the continuing threat of discrimination underscores the enduring need to sustain the program for an additional 25 years.

5. ***Between 1984 and 1989, you served as the Assistant Secretary of State for Elections and Public Lands and as the Assistant Secretary of State for Elections and General Counsel between 1989 and 1996. You indicated that you received complaints from both voters and local officials regarding potential election day problems that prompted numerous requests for federal observer deployment. Please share with the Committee any evidence you can provide about these problems and how they have continued since 1982.***

Election day problems have long been varied in nature, and the last 25 years are no exception. It is helpful to consider the various accounts from various jurisdictions throughout Mississippi to understand the breadth of the problem afflicting my state, and more generally, covered jurisdictions elsewhere in the South.

As former Justice Department attorney Thomas Reed noted, Sunflower residents complained about poll watchers who were encouraged to aggressively challenge Black voters and an elevated law enforcement presence that frightened Black residents and compelled lackluster voter turnout. During an August 1999 primary election in Grenada, white poll watchers arrived at polling locations with cameras and selectively took

pictures of Black voters who needed assistance casting their ballots. Intimidating behavior such as this, absent a federal observer program, has a devastating effect on minority voter participation and corresponding voter confidence levels. The extent and scope of intimidating behavior is fairly wide as I have received reports of video cameras being used to intimidate Black voters in Noxubee and Lowndes Counties on election day, Black voters being required to provide their social security number to cast their ballots in Hinds County, and a Black incumbent's name being excluded from certain ballots during a 1991 Hinds County election as well.

In his attached July 10, 2006, letter, Theron J. Jackson, city councilman in Shreveport, Louisiana, notes that voters in his area "depend on the security and protection federal observers provide." Jackson also notes that the federal observer program plays a unique role in the "fight towards voter equality."

Even local election officials recognize the continuing need and value of the federal observer program. In her attached June 29, 2006, letter, Deputy Clerk Nancy Childes of Coahoma County noted that observers "did not interfere with [her] duties on Election Day" and served an important role in "detering poll workers, campaign volunteers, and others from intimidating voters." Also, in her attached June 28, 2006, letter, Christa R. Medaries, Registrar of Voters for the Ouachita Parish, Louisiana, notes that federal observers help "ensure compliance with the Voting Rights Act" and provides her opinion that "Congress should reauthorize the federal observer program." Without the federal observer program, attempts to restrict minority voting rights would be substantially more successful and detrimental to the goal of voter equality.

Mayor  
Billy F. Collins

City Manager  
Sidney Runnels



City Council  
E. Steve Richardson, DDS  
W.C. Moore  
Lewis Johnson  
Rev. Ernest C. Hargrove, Jr.  
Colonel Mister  
George W. Mullen, Jr.  
Rich Rothwell

July 10, 2006

The Honorable Arlen J. Specter  
Chair, Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Patrick Leahy  
Ranking Minority Member  
Senate Judiciary Committee  
152 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Specter and Senator Leahy:

As an elected official in Grenada for the past 17 years, I am very familiar with the federal observer program and its benefits to our voters. Federal observers perform an invaluable role as both monitors of the electoral process, and as deterrents from intimidation and harassment at the ballot box. My experience with elections in Grenada makes clear that federal observers are still quite useful, and without their help, many questionable, if not illegal acts would pervade the electoral process.

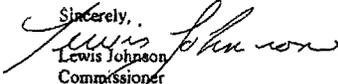
As you know, Mississippi has had a long history of racial discrimination in voting and in other forms. As a result of this legacy, some Black voters may be intimidated or made uncomfortable at the polls because of harassment or intimidating behavior. The impact of this intimidation is particularly strong in a small town such as Grenada. In my lifetime, I have seen this harassment and intimidation take a number of forms. I have had first hand experience with such intimidation. A few years ago, I ran for the office of Mayor in Grenada. On the day of the election, white voters showed up with cameras and selectively took pictures and video footage of Black voters in majority Black precincts. They indicated that they intended to show the footage to the voters' employers. When these troublemakers were confronted by federal observers, they quickly dispersed. Without the federal observer program, the intimidation could have had a much greater impact.

Conversely, elections in which federal observers were not present have been marred by confusion and improper behavior by election officials. Specifically, a group of voters unsuccessfully pushed a bond issue that would have resulted in the closing of a majority Black school and increased funding for majority white schools. The bond issue failed, in large part, because Black voters came out overwhelmingly against it. However, election officials later placed the bond issue on the ballot during a general election and were able to get a sufficient number of voters. Officials accomplished this by offering 2 separate ballots -- one ballot contained the bond question while the other ballot contained

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all of the other contested issues and positions that were up during that general election. Both ballots were made available to white voters while only the general ballot was offered to Black voters. This type of conduct would not have occurred had federal observers been deployed to Grenada during this particular election. --During another election, poll officials selectively applied certain voter assistance rules to the disadvantage of Black voters. After the fact, the Chairman of the Election Commission admitted wrongdoing, which eventually led to the voiding of the results. Again, federal observer presence would have helped that there was oversight to ensure even application of the law.

I understand that Congress is currently deciding whether or not to renew certain provisions concerning Section 5 preclearance and the federal observer program. Let me make plain that both provisions are very necessary and ought to be renewed, because both act as powerful deterrents to potential mischief. Mississippi has made a lot of progress over the years, but I am certain that things are far better today because of the oversight provided by the federal government. The law works and it needs to continue, so that that work may be completed.

Sincerely,  
  
Lewis Johnson  
Commissioner  
City of Grenada, Mississippi

**PHUONG TAN HUYNH**  
 Bayou La Batre City Councilman  
 13945 Childress Avenue  
 Bayou La Batre, Alabama 36509

June 30, 2006

The Honorable Arlen I. Specter  
 Chair, Senate Judiciary Committee  
 224 Dirksen Senate Office Building  
 Washington, DC 20510

The Honorable Patrick Leahy  
 Ranking Minority Member  
 Senate Judiciary Committee  
 152 Dirksen Senate Office Building  
 Washington, DC 20510

Dear Chairman Specter and Senator Leahy:

My name is Phuong Tan Huynh, and I am a member of the Bayou La Batre, Alabama City Council. I arrived in the United States in 1978, and became a naturalized citizen in 1994. I was the first Asian-American member elected to my town's City Council in 2004, an accomplishment made possible because of The Voting Rights Act. More specifically, the federal observer program allowed voters in my town to exercise their democratic rights in the face of intimidation tactics implemented by my opponent and his supporters, primarily through the media. Bayou La Batre is home to a significant number of Vietnamese Americans, many of whom immigrated to the town following the Vietnam War. These citizens are increasingly getting involved and engaged in the local political life.

During the primary election, my adversary's supporters brought challenges accusing many Asian-American voters of being non-citizens or of hiding felony convictions. Many voters were anxious to become engaged in town politics, but hesitant to confront the resistance mounting from these false allegations. Thankfully, federal observers were dispatched to monitor the September 14, 2004, municipal runoff election and prevent race-based challenges. Because of the deployment of federal observers, the election went smoothly. The observers provided a necessary deterrent to those standing in the way of a fair election, and more importantly, instilled confidence in many new citizens in this area. I am certain participation of these voters in recent and upcoming elections stems directly from the positive experience many had with the federal observer program two years ago.

Without federal observers, neither I, nor my constituents, would be where we are today. The federal observer program is extremely valuable and thus, I urge Congress to renew the expiring provisions of the Voting Rights Act, thereby securing a necessary protection for those who continue to need it. Though my successful election indicates progress in many respects, the federal observer program should, and will undoubtedly protect similarly situated minority voters throughout this country for the next 25 years, and therefore, its importance cannot be understated.

Sincerely,



Phuong Tan Huynh  
 City Councilman  
 Bayou La Batre, Alabama

**CHARLES A. OAKES**

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PO BOX 849  
CLARKSDALE, MS 38614  
PHONE(662)624-3014  
FAX(662)624-3075  
coahomacircrlrk@yahoo.com

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June 29, 2006

The Honorable Arlen J. Specter  
Chair, Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Patrick Leahy  
Ranking Minority Member  
Senate Judiciary Committee  
152 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Specter and Senator Leahy:

My name is Nancy Childes and I am the Deputy Clerk in Coahoma County. I have served in this office for 9 years. Throughout my tenure, federal observers have been dispatched once in our county. The observers were very friendly and did not interfere with my duties on Election Day. In many ways, their presence helped keep control of the polling place by deterring poll workers, campaign volunteers, and others from intimidating voters. In addition, they ensured compliance with local election laws. Most importantly, they helped ensure that voters who needed assistance were able to get it. In my opinion, the federal observer program is a good program that Congress should reauthorize under Sections 6-9 of the Voting Rights Act. The federal observers played an important role in safeguarding the rights of voters.

Sincerely,



Nancy Childes  
Deputy Clerk  
Coahoma County



Christa R. Medaries, CERA  
REGISTRAR OF VOTERS  
PARISH OF OUACHITA  
400 ST. JOHN STREET, ROOM 106  
MONROE, LOUISIANA 71201

Telephone (318) 327-1436  
Fax (318) 327-1337

June 28, 2006

The Honorable Arlen J. Specter  
Chair, Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Patrick Leahy  
Ranking Minority Member  
Senate Judiciary Committee  
152 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Specter and Senator Leahy:

My name is Christa Medaries and I am the Registrar of Voters for Ouachita Parish. I have served in this capacity for 4 years and have over 17 years of experience at this office. My experience includes conducting early voting, maintaining voter registration files and providing precinct registers for Election Day activities. I am also responsible for the enforcement of the Louisiana Election Code for my parish. In my opinion, the federal observer program is good because when a voter has a problem they have someone on hand to observe the activity and document it for the U. S. Department of Justice. This ensures compliance with the Voting Rights Act.

Most recently two federal observers were dispatched to observe the New Orleans primaries in my parish for the satellite early voting. The observers were nice people and talked to voters when they felt they needed further documentation. I did not mind them watching as I do what is expected of me according to the Election Code. It is my opinion that Congress should re-authorize the federal observer program under Section 6-9 of the Voting Rights Act.

Sincerely,

*Christa Medaries*

Christa R. Medaries  
Registrar of Voters

July 10, 2006

The Honorable Arlen J. Specter  
Chair, Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Patrick Leahy  
Ranking Minority Member  
Senate Judiciary Committee  
152 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Specter and Senator Leahy:

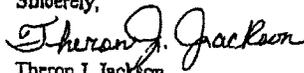
My name is Theron J. Jackson, and I am a City Council member in Shreveport, Louisiana, representing District G. I was elected in October 2002, and have lived in Shreveport since 1991. I attended Louisiana Tech as an undergraduate student, and hold a Masters in Business Administration from Louisiana Baptist University, and certificates from Texas A&M and Harvard University, where I completed programs in executive economic development and executive leadership, respectively.

The Voting Rights Act of 1965 stands as a landmark piece of legislation. Yet despite the progress states have made nationwide with respect to voter discrimination, including that witnessed by my home state of Louisiana and my local district in Shreveport, the Voting Rights Act has far from accomplished its ultimate objective. More specifically, the federal observer program detailed in Sections 6-9 continues to serve an important purpose, and thus, should be reauthorized and implemented for the foreseeable future.

Voters depend on the security and protection federal observers provide. The utility of the program goes well beyond that served by physical interaction with federal officers at polling locations. Voters have long struggled to overcome some of the more subtle obstacles standing in the way of complete enfranchisement. The federal observer program not only deters discriminatory voting behavior, but also encourages previously disenchanted voters to exercise their democratic rights. I have yet to personally receive, or hear accounts of, complaints detailing potential problems federal observers pose. Indeed, the program's success only continues to evolve.

However, moderate degrees of progress are not necessarily indicative of wholesale success. We have witnessed decades of persistent discrimination both before and during the Voting Rights Act era, and I genuinely look forward to the day its purpose proves unnecessary. Unfortunately, that day is not yet upon us. Therefore, it is absolutely imperative the federal observer program sustains its role in the fight towards voter equality. I urge you to endorse this cause by renewing the expiring provisions.

Sincerely,



Theron J. Jackson  
City Councilman  
Shreveport, LA

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**Supplemental Testimony of Dr. James Thomas Tucker**

**Voting Rights Consultant for the National Association of Latino Elected and  
Appointed Officials (NALEO) Educational Fund**

**and**

**Adjunct Professor at the Barrett Honors College at Arizona State University**

**Before the Senate Committee on the Judiciary**

**Subcommittee on the Constitution, Civil Rights and Property Rights**

**Hearing on S. 2703,**

**“The Continuing Need for Federal Examiners and Observers  
to Ensure Electoral Integrity”**

**July 10, 2006**

**Responses to Senator Leahy's Questions:**

1. *The Committee has received testimony about partisan poll monitors. In your experience, are partisan poll monitors interchangeable with Federal Election Observers provided under the Voting Rights Act? How are they different? Would you recommend that the Voting Rights Act address for the first time partisan poll watchers, or should Congress focus on independent, Federal election observers?*

Partisan poll monitors are not interchangeable with federal observers authorized under Sections 6-9 of the Voting Rights Act (VRA). Allowing federal observers to be partisan would be akin to having a player referee the game in which his team is playing. I will explain my point further by describing several critical differences between federal observers and partisan poll monitors.

First, partisan poll monitors are precisely that: partisan. They work for a particular political party, candidate, or organization with a vested interest in the outcome of the election. The manner in which they approach their activities inside and outside polling places is influenced by the partisan objectives that they bring to the table. On the other hand, federal observers are neutral outsiders who have no stake in the election. Except in extremely rare cases, a federal observer is not even deployed to observe elections in the jurisdiction where they reside.<sup>1</sup> Every effort is made to ensure that federal observers maintain their objectivity and are not associated with a particular candidate or election outcome. Instead, federal observers work as an extension of the United States Department of Justice (DOJ) or federal courts supervising implementation and compliance with the VRA.

Second, partisan poll monitors not only are trained to inject themselves into the election process, they are expected and encouraged to do so. Many state laws specifically provide for partisan poll monitors to challenge voters about their qualifications to vote.<sup>2</sup> Partisan poll monitors often take advantage of those laws by aggressively challenging any voter who is not on a pre-printed list of registered voters supporting their party, candidate, or issue. Partisan poll monitors regularly engage poll workers with comments or criticisms about the voters they are allowing to cast ballots and how the poll workers are conducting the election. In sharp contrast, federal observers are specifically trained to refrain from participating in the election process, including providing any feedback to poll workers.

Third, partisan poll monitors routinely make value judgments such as whether, in their opinion, particular voters should be allowed to cast a ballot or whether poll workers are complying with federal, state, or local law. Conversely, federal observers are trained to not make any value

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<sup>1</sup> In some cases involving language minority voters for which there may be a particularly small pool of available federal observers, an exception might be made. However, these exceptions are extremely rare. For example, for Navajo language coverage in Arizona, New Mexico, and Utah, Navajo federal observers are deployed to communities other than those where they reside despite the more limited pool of persons available to serve as observers.

<sup>2</sup> Common bases for challenging voters include failure to register to vote, failing to update voter registration records to reflect changes of address, no longer residing in the jurisdiction, age, citizenship, status as a convicted felon whose civil rights have not been restored, the voter is deceased, or the voter has already cast an absentee ballot or otherwise voted previously.

judgments at all. Federal observers dispassionately document their observations without rendering any conclusions about whether those observations demonstrate compliance with the law. Federal observers scrupulously document their observations in comprehensive reports that allow them to recreate what transpired in the polling place or ballot counting location. I have described these procedures at length in my written testimony.

I will briefly explain why many aspects of Mr. Hearne's eight-point proposal are severely flawed, would undermine DOJ enforcement, and might actually facilitate voter intimidation and discrimination.

Mr. Hearne asserts that observers "should be trained in the requirements of federal election law and the relevant state's election law and procedure." On the surface, Mr. Hearne's suggestion seems alluring. However, it overlooks the fact that federal observers, unlike partisan monitors, are not there to make value judgments. Instead, they are simply there to observe "whether persons who are entitled to vote are being permitted to vote" and "whether votes cast by persons entitled to vote are being properly tabulated."<sup>3</sup> It is not the role of federal observers to evaluate whether election officials are complying with the law.

Mr. Hearne's suggestion that observers "should be free to communicate with the press and others outside of the election facility" is even more problematic. Under the VRA, federal observers are present at polling sites and ballot tabulation centers to perform a law enforcement function. They are extensions of the United States Attorney General or the federal courts in places that are certified under Section 3(a) of the VRA.<sup>4</sup> Authorizing federal observers to communicate with persons outside of DOJ and the Office of Personnel Management would undermine the evidence they are gathering to measure compliance with the VRA and destroy the "highly credible" reports they produce.<sup>5</sup> It would open up the objectivity of their observations to attack from statements taken out of context by the press, or even worse, mischaracterized or misquoted by the press. Federal observers would become distracted by outside influences instead of focusing on documenting what they are observing. It would also make it more likely that voter confidentiality and ballot secrecy would be compromised and in the process render the federal observer program unconstitutional.<sup>6</sup> In short, all of the qualities that make federal observer reports unassailable and the role of the observer constitutional would be eliminated.

For similar reasons, Mr. Hearne's suggestion that federal observers "should have the means to provide a timely objection to election misconduct by communication with senior election officials or law enforcement authorities" must also be rejected. Federal observers do not work

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<sup>3</sup> See 42 U.S.C. § 1973f. Thus, Mr. Hearne's second suggestion, that observers "should be permitted meaningful access to observe and monitor the conduct of the election, including pre-election and post-election certification and tabulating procedures and handling of ballots and voting equipment," is already addressed by Section 8 of the VRA.

<sup>4</sup> See 42 U.S.C. §§ 1973a(a), 1973f.

<sup>5</sup> *James v. Humphreys County Bd. of Election Comm'rs*, 384 F. Supp. 114, 125 (N.D. Miss. 1974).

<sup>6</sup> See *United States v. Executive Committee of Democratic Party of Greene County*, 254 F. Supp. 543, 546-47 (N.D. Ala. 1966); *United States v. Louisiana*, 265 F. Supp. 703, 715 (E.D. La. 1966). In both cases, federal courts specifically upheld the federal observer provisions because of the substantial steps that had been taken to preserve the First Amendment right of voters to cast a secret ballot.

for local election officials or state officials. They work for the Office of Personnel Management as an extension of the United States Attorney General. Vesting discretion in federal observers to report their observations to state or local officials ignores their unique role and would encourage them to engage in value judgments that they are supposed to avoid. Moreover, such an action could impair their ability to observe and receive candid information from voters because they could be perceived as merely an extension of election officials who may be engaging in discriminatory conduct. It also is completely unnecessary. Currently, DOJ attorneys may communicate observations to local election officials in a real-time manner, particularly if there is a possibility of vote denial. By doing so, it keeps federal observers free to perform their sole function: to observe.

Federal observers have the ability to interview election officials and voters as long as they do so in a non-intrusive manner that does not inject them into the election process. For example, when a federal observer documents a voter being denied an opportunity to cast a ballot, the federal observer may question the voter about the reasons that the election official(s) provided for that denial. Similarly, federal observers are permitted under federal law to accompany a voter behind the curtain of the voting booth if the observer first obtains the voter's permission.<sup>7</sup> Federal observers are trained to ask election officials for information contained on the observer report only when those officials are not busy performing their duties. Therefore, current law already addresses Mr. Hearne's fourth concern that election officials "should not interfere with voters lawfully seeking to cast a ballot or with election officials performing their duties."

Mr. Hearne's last three suggestions are currently addressed by the VRA. Observers already have the ability to observe any polling site or tabulation center, including "those polling locations with the greatest likelihood of fraud or of voter intimidation."<sup>8</sup> Observers are already protected by Section 11 of the VRA from "intimidation or threats seeking to prohibit them from participating as an observer."<sup>9</sup> Federal observers are designated as "observers" so "voters do not confuse them with election officials."<sup>10</sup>

Some of the strongest evidence against any proposal to federalize partisan monitors comes from how partisan monitors have functioned in practice. For example, earlier this year, DOJ successfully sued Long County, Georgia for permitting partisan monitors to discriminatorily challenge only Latino voters in an effort to discourage them from voting.<sup>11</sup> In my testimony, I provided another example of similar discriminatory conduct by law enforcement officials and

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<sup>7</sup> See *United States v. Executive Committee of Democratic Party of Greene County*, 254 F. Supp. 543 (N.D. Ala. 1966); *United States v. Louisiana*, 265 F. Supp. 703, 715 (E.D. La. 1966).

<sup>8</sup> See generally 42 U.S.C. § 1973f (authorizing federal observers to enter "any place" where voting and tabulation occurs).

<sup>9</sup> See generally 42 U.S.C. § 1973i(b) (providing that "no person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for exercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e)").

<sup>10</sup> Typically, federal observers wear special identification stickers or badges designated them as such.

<sup>11</sup> See *United States v. Long County, Georgia*, Case No. CV206-040 (S.D. Ga. Feb. 8, 2006).

others serving as partisan challengers in Passaic County, New Jersey.<sup>12</sup> Below, I discuss the racially discriminatory tactics of partisan challengers in the City of Hamtramck, Michigan. It is commonplace for partisan challengers to threaten, intimidate, and discourage minority voters from registering or casting a ballot. Regardless of their party, the presence of partisan monitors is far more likely to lead to VRA violations than to prevent them.

I recommend in the strongest terms that the VRA not address partisan poll watchers for the first time, as Mr. Hearne has suggested in his testimony. Instead, the VRA must continue to ensure the neutrality and impartiality of federal observers free of the partisanship and value judgments implicit in Mr. Hearne's proposal. I agree with Ms. James that the federal observer program needs to be kept "free from political interference."<sup>13</sup> Any suggestion to federalize partisan poll watching would turn the VRA on its head and promote, rather than prevent, voting discrimination.

2. *The Voting Rights Act was enacted to rectify long standing discrimination in voting on the basis of race while other statutes address the concerns raised in testimony by other witnesses about voter fraud. Can you give us some examples of racial discrimination that has led to Federal election observers being sent, or the deterrent effect of such observers?*

The question accurately states that discrimination against racial or language minority voters is the touchstone for federal observer coverage. As I discussed in my written testimony, federal observers cannot be deployed to a jurisdiction until that jurisdiction is certified under either Section 3(a) or Section 6 of the VRA. Under Section 6, which applies to jurisdictions covered by either Section 4(f)(4) or Section 5, the Attorney General may certify the jurisdiction for federal examiners if he or she either has received twenty meritorious written complaints from residents in the jurisdiction alleging voting discrimination or if he or she believes their appointment is necessary to enforce voting rights protected under the Fourteenth and Fifteenth Amendments to the United States Constitution.<sup>14</sup> For all other jurisdictions, certification occurs under Section 3(a), which permits a federal court to certify a jurisdiction for federal examiners "for such period of time ... as the court shall determine is appropriate to enforce the voting guarantees of the fourteenth or fifteenth amendment."<sup>15</sup>

Mr. Yazzie's testimony documents discrimination against American Indians.<sup>16</sup> Ms. Slaughter-Harvey's testimony documents several examples of racial discrimination against African-

<sup>12</sup> See Robert Ratish & Josh Gohlke, *Violence Mars Election*, NORTH JERSEY HERALD & NEWS, Nov. 3, 1999, at A8; Maia Davis, *FBI Probing Election Day Attacks, Reviewing Incidents for Civil Rights Violations*, BERGEN RECORD, Feb. 5, 2000.

<sup>13</sup> Testimony of Ms. Kay Cole James, at p. 3.

<sup>14</sup> See 42 U.S.C. § 1973d.

<sup>15</sup> See 42 U.S.C. § 1973a(a).

<sup>16</sup> I have separately documented evidence of voting discrimination against American Indians, including the basis for federal observer coverage in Apache County, Arizona. See DR. JAMES THOMAS TUCKER & DR. RODOLFO ESPINO ET AL., *VOTING RIGHTS IN ARIZONA 1982-2006*, a Report of RenewtheVRA.org (2006).

American voters in the South.<sup>17</sup> I will focus the balance of my response to this question on racial discrimination against Asian and Latino language minority voters. I will not repeat the extensive discussion of discrimination against Latinos in Passaic County, New Jersey, which I provided in my written testimony.

In November 1999, the City of Hamtramck, Michigan, was the site of racial discrimination against U.S. citizens of Arabic descent after an Arab-American announced his candidacy for mayor. For several decades, Hamtramck had been predominately Polish, but had a growing Arab-American community. A group of non-Arab voters formed an organization called "Citizens for Better Hamtramck" to register individuals to serve as challengers at polling stations for the mayoral election. These individuals challenged the citizenship of voters who "looked" Arab, had dark skin such as Bengali voters, or who had distinctly Arab or Muslim names. In many cases, Arab or Bengali voters were pulled out of voting lines before even submitting their names or any other identifying information. Even when Arab or Bengali voters were able to produce United States passports as proof of citizenship, they were asked to take citizenship oaths. No non-Arab voters were challenged or asked to take an oath. The intimidating and harassing actions of the non-Arab voters resulted in substantially depressed voter participation by members of the Arab and Bengali community. On August 4, 2000, Hamtramck entered into a consent decree with DOJ that designated the City for federal observer coverage to monitor the City's efforts to remedy the discrimination. The State of Michigan also "issued a memorandum to all election clerks in the state instructing them that discriminatory challenges should not be allowed to proceed, and reminding clerks that they have the power to expel challengers who abuse the challenge process."<sup>18</sup> In 2005, the City settled a discrimination suit brought by fifteen of the Arab-American voters by paying them \$150,000 in damages.<sup>19</sup> Federal observers were sent to Hamtramck eight times by the end of 2003.

In November 2000, Osceola County, Florida discriminated against Latino voters in violation of Sections 2 and 208 of the VRA. Poll officials "directed hostile remarks to Spanish-speaking voters to discourage them from voting and to make them feel unwelcome at the polls."<sup>20</sup> Hispanic voters were turned away without being allowed to vote. Election officials failed to "recruit, appoint, train, and maintain an adequate pool of bilingual poll officials capable of providing Hispanic citizens with limited-English proficiency with effective language assistance."<sup>21</sup> When these voters requested assistance from persons of their choice to overcome their English illiteracy, "Osceola County did not permit these individuals to provide assistance to these voters."<sup>22</sup> On July 22, 2002, Osceola County entered into a consent decree to remedy the voting discrimination and agreed to federal observer coverage under Section 3(a) to monitor the

<sup>17</sup> My discussion of racial discrimination against African-American voters in Long County, Georgia is included in response to Senator Leahy's first question.

<sup>18</sup> See <http://www.usdoj.gov/opa/pr/2000/August/456cr.htm>.

<sup>19</sup> See [http://hamtramckstar.com/index.php/2005/05/11/hamtramck\\_settles\\_voter\\_discrimination\\_suit](http://hamtramckstar.com/index.php/2005/05/11/hamtramck_settles_voter_discrimination_suit).

<sup>20</sup> Complaint, *United States v. Osceola County, Florida*, Civil Action No. 6:02-CV-738-ORL-22JGG, at ¶ 7a (M.D. Fla. 2002).

<sup>21</sup> *Ibid.* at ¶ 7c.

<sup>22</sup> *Ibid.* at ¶ 8.

County's compliance. Osceola County's intentionally discriminatory actions towards Latino voters was recently confirmed by a federal judge, who enjoined the County from conducting elections using an at-large method of election County commissioners.<sup>23</sup> In issuing the preliminary injunction, United States District Judge Gregory Presnell made the following finding of intentional discrimination by the County:

The Court ... finds that there is considerable evidence to suggest that defendant's institution and maintenance of an at-large voting system was motivated by a desire to dilute the vote of an emerging Hispanic population. After the '92 election, it was clear, I think, to everyone, particularly to the Osceola County politicians, that there was – had been and would continue to be a significant increase in the Hispanic population, and a realization that the return to at-large voting would have the effect of diluting that constituency.... [T]he Board of County Commissioners immediately began an effort to undermine the '92 vote establishing single-member districts. Included in these efforts was the apparent establishment of some sort of private committee [that did not have any Latino members].<sup>24</sup>

Federal observers have been sent to Osceola County several times to determine whether the County is in compliance with the July 2002 consent decree.

In 2003, a federal court found “there is substantial evidence of hostile and unequal treatment of Hispanic and Spanish-speaking voters by poll officials” in Berks County, Pennsylvania.<sup>25</sup> The court summarized many of these discriminatory practices by poll officials in the City of Reading:

[They] turned away Hispanic voters because they could not understand their names, or refused to “deal” with Hispanic surnames.

[They] made hostile statements about Hispanic voters attempting to exercise their right to vote in the presence of other voters, such as “This is the U.S.A. – Hispanics should not be allowed to have two last names. They should learn to speak the language and we should make them take only one last name,” and “Dumb Spanish-speaking people ... I don't know why they're given the right to vote.”

[They] placed burdens on Hispanic voters that were not imposed on white voters, such as demanding photo identification or a voter registration card from Hispanic voters, even though it is not required under Pennsylvania law.

<sup>23</sup> United States v. Osceola County, Case No. 6:05-cv-1053-Orl-31DAB (M.D. Fla. June 26, 2006).

<sup>24</sup> United States v. Osceola County, Florida, Case No. 6:05-cv-1053-Orl-31DAB, Transcript of Judge's Ruling on Preliminary Injunction Hearing, at pp. 13-14 (M.D. Fla. June 26, 2006). I have appended a copy of the Court's Order and the transcript to my supplemental testimony.

<sup>25</sup> See United States v. Berks County, 277 F. Supp.2d 570, 575 (E.D. Pa. 2003).

[They] required only Hispanic voters to verify their address and told Department staff that they did so because Hispanics “move a lot within the housing project.”

[They] boasted of outright exclusion of Hispanic voters to Voting Section staff during the May 15, 2001 municipal primary election.

Hispanic voters stated that this hostile attitude and rude treatment makes them uncomfortable and intimidated in the polling place, and discourages them from voting.<sup>26</sup>

This intentional discrimination was compounded by the County’s failure to recruit bilingual poll workers despite their ready availability, the County’s discriminatory poll worker application process, the County’s failure to provide any Spanish election materials to Puerto Rican voters, and the County’s denial of assistance to Hispanic voters even when they brought someone with them to render assistance.<sup>27</sup> The federal court certified Berks County for federal observers pursuant to Section 3(a) of the VRA until June 30, 2007 to assess whether the County has remedied this voting discrimination.<sup>28</sup>

I have provided several other examples of voting discrimination against language minorities in a report attached to John Tresviña’s testimony.<sup>29</sup>

3. *What is your view of the changes to the Federal Examiners provision included in Senate bill 2703? How will these changes impact the overall purpose of the Voting Rights Act?*

The changes to the Federal Examiners provision contained in S. 2703 are necessary to update the VRA to contemporary usage. The provision was originally included in the 1965 Act because at that time, eligible minority voting age citizens in the South, primarily African-Americans, were subjected to widespread discriminatory registration procedures. These procedures included literacy tests, “moral character” requirements, denial of voter registration materials, limited registration hours,<sup>30</sup> slow registration processing, voter purges, threats, intimidation, violence, and social pressure against applicants including loss of employment, eviction, and even denial of food and water in a particularly egregious example from Mississippi.<sup>31</sup> Federal Examiners were authorized under the VRA to “examine applicants concerning their qualifications to vote” and to

<sup>26</sup> Ibid., at 575-76.

<sup>27</sup> Ibid., at 575-77.

<sup>28</sup> Ibid., at 585.

<sup>29</sup> See DR. JAMES THOMAS TUCKER, THE CONTINUING NEED FOR AND CONSTITUTIONALITY OF SECTION 203 OF THE VOTING RIGHTS ACT (June 30, 2006).

<sup>30</sup> For example, in many Alabama counties, voter registration sites were only open for a few hours one Monday each month. This led many participants in the Civil Rights Movement to call the day voter registration offices were open “Freedom Mondays.”

<sup>31</sup> I have detailed this discrimination in one of my articles. See James Thomas Tucker, *Affirmative Action and [Mis]representation: Part I – Reclaiming the Civil Rights Vision of the Right to Vote*, 43 HOW. L.J. 343 (2000).

register them if they met the qualifications “prescribed by State law not inconsistent with the Constitution and the laws of the United States.”<sup>32</sup>

The Federal Examiners provision has proven to be extraordinarily successful in achieving its goal of allowing eligible minority citizens to register to vote.<sup>33</sup> Congress previously has documented the dramatic increases in voter registration rates among African-American voters. Although over one hundred thousand voters remain on the list of federally registered voters, no new voters have been added since 1983. The recent additions of other federal statutes, including the National Voter Registration Act (NVRA),<sup>34</sup> the Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA),<sup>35</sup> and the Help American Vote Act (HAVA),<sup>36</sup> have also contributed to the tremendous increase in voter registration. Today, the Federal Examiner provision is only used as a mechanism to certify a jurisdiction as eligible for federal observers, and not for its original purpose of registering voters. Therefore, the provision is no longer needed.

The elimination of the Federal Examiners provision from the VRA recognizes these present realities and contemporizes the Federal observer provisions to current needs and usage. The bill substitutes references to “observers” for references to “examiners.”<sup>37</sup> The bill also uses the existing two certification methods, with some slight modifications, but applies them to federal observers in Section 8 of the Act.<sup>38</sup> The changes proposed by S. 2703 facilitate observer coverage and promote the goals of the VRA by streamlining the certification process and eliminating a Federal Examiner provision that has not been used for twenty-three years.

4. *The Committee has received testimony that significant acts of minority voter intimidation are now rare and just as likely to exist in areas not covered by the expiring provisions of the Voting Rights Act. What is your opinion of that argument? In what ways does the presence of federal observers lead to fewer acts of minority voter intimidation? In your opinion, does this imply that such protections are no longer needed?*

I disagree with that argument. As a preliminary matter, the data that has been cited to support the argument actually refutes it. For example, Senator Coburn made the argument by including the following statement in his fourth question to Debo Adegbile:

For Example: over the past 15 years, Alabama has not had a single court find it guilty of violating the Constitution or violating the very broad protections afforded by Section 2 of the Voting Rights Act. The same cannot be said of Massachusetts; Chicago, Illinois; Wisconsin; Hawaii; Ohio; Hempstead, New

<sup>32</sup> 42 U.S.C. §§ 1973e(a)-(b).

<sup>33</sup> See QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT, 1965-1990 (Chandler Davidson ed., 1994).

<sup>34</sup> 42 U.S.C. §§ 1973gg to 1973gg-10.

<sup>35</sup> 42 U.S.C. §§ 1973ff to 1973ff-6.

<sup>36</sup> 42 U.S.C. §§ 15301 to 15545.

<sup>37</sup> VRARA § 3(d).

<sup>38</sup> VRARA § 3(a).

York; Los Angeles County, California; Arkansas; Colorado; Dade County, Florida; Maryland; Missouri; Montana; or Nebraska – none of which are covered under the Voting Rights Act.

However, Section 203 covers several of the jurisdictions cited by Senator Coburn: Massachusetts has six covered cities; Cook County (Chicago), Illinois is covered; Hawaii is covered; the Town of Hempstead (Nassau County), New York is covered; Los Angeles County is covered; ten counties in Colorado are covered; Dade County, Florida is covered; Montgomery County, Maryland is covered; two counties in Montana are covered; and two counties in Nebraska are covered. These jurisdictions highlight that voting discrimination and intimidation often is present in Section 203 jurisdictions because of their large language minority populations. I described several examples of voter intimidation in my summary of the Passaic County case in my written testimony. Senator Coburn's cases provide compelling evidence supporting reauthorization of Section 203.

Furthermore, several of the jurisdictions cited by Senator Coburn (the Town of Hempstead, Los Angeles County, and Dade County) already benefit from 4(f)(4) coverage in other parts of the state.<sup>39</sup> Additionally, the pocket trigger in Section 3(c) of the VRA has covered jurisdictions in two of the areas mentioned – the State of Arkansas and Cicero, Illinois (like Chicago, also located in Cook County). Although the question implies that this is evidence that the VRA is not being applied to the right places, the evidence cited in Senator Coburn's question proves exactly the opposite: the Section 4(f)(4) and 203 triggers cover the right jurisdictions, and the Section 3(c) pocket trigger brings in any uncovered jurisdictions that should be covered. Even Berks County, Pennsylvania is covered under Section 4(e) for a Puerto Rican population that comprises two-thirds of its Latino population.<sup>40</sup>

Federal observer coverage reduces voting discrimination and acts of intimidation directed at minority voters in several ways. Assignment of federal observers makes people less likely to engage in discrimination because neutral outsiders are watching and documenting their actions. Even when the presence of federal observers does not deter discrimination from happening, the information gathered by observers can be used by DOJ to stop it almost immediately. Often, a phone call from a DOJ attorney to local election officials is sufficient to end the discriminatory conduct; where it is not, DOJ may seek to enjoin the conduct on election day or in the future.<sup>41</sup> A GAO report explained this process:

When Voting Section staff monitor elections and receive allegations of or information about voting irregularities while on site, they make efforts to resolve allegations by contacting local election officials immediately. Further investigation of such irregularities is conducted after an election if the allegation

<sup>39</sup> Specifically, minority voters in those jurisdictions will benefit from statewide voting changes that must be submitted for Section 5 preclearance.

<sup>40</sup> See *United States v. Berks County*, 277 F. Supp.2d 570, 574 (E.D. Pa. 2003).

<sup>41</sup> GENERAL ACCOUNTABILITY OFFICE, DEPARTMENT OF JUSTICE'S ACTIVITIES TO ADDRESS PAST ELECTION-RELATED VOTING IRREGULARITIES 46-47 (Sept. 14, 2004).

was not resolved on election day or if it is deemed otherwise necessary to prevent such problems from arising in the future.<sup>42</sup>

Between 2000 and 2003, DOJ closed at least a dozen meritorious cases relating to election day voting discrimination, with an additional eight pending cases.<sup>43</sup> The twelve meritorious cases were closed for the following reasons: five because the jurisdiction took actions to resolve the issues; four because DOJ provided post-election feedback regarding the discrimination; two because jurisdictions agreed to implement changes for future elections, and one because a state court issued an order addressing the conduct.<sup>44</sup> The eight cases that remained open included six pending fulfillment of consent decrees for violations of federal law and two closed because jurisdictions fulfilled the requirements of consent decrees requiring them to remedy violations of federal law.<sup>45</sup>

Federal observers also document the identity of election officials and others engaging in discriminatory conduct. If the person engaging in discrimination is an election official, a DOJ attorney can communicate that information to local officials to get that person removed from the polling place immediately and for future elections. If the discrimination is a violation of the criminal provisions of the VRA or other federal laws, the evidence gathered by federal observers can be communicated to either the Civil Right's Division's Criminal Section or the Criminal Division's Public Integrity Section to work with local United States Attorneys to prosecute the perpetrator.

As Alfred Yazzie testified, federal observers also play a vital role in preventing voter intimidation by their role in assessing training provided to election officials and poll workers. Poll workers are only as good as the training they receive and their willingness to follow that training. Typically, DOJ employees attend poll worker training sessions, although in some cases such as Mr. Yazzie's, officials from the Office of Personnel Management may also do so. On election day, federal observers often ask poll workers about the training they received and observe the election procedures being used and their impact on minority voters. DOJ can communicate that information to local election officials to improve training and facilitate implementation of non-discriminatory practices. If a poll worker refuses to follow their training, that information can be passed on to allow election officials to refrain from using that poll worker in future elections.

Frequently, federal observers also document evidence of seemingly innocent election day practices that have the effect of disenfranchising minority voters. For instance, Hispanic men and women frequently use more than one surname, using their mother's, father's, or sometimes both. In the Passaic County litigation, federal observers documented numerous instances in which Hispanic voters were denied the right to vote because their name purportedly was not in the voter registration book. In the course of interviewing those voters, federal observers learned

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<sup>42</sup> Ibid., p. 45.

<sup>43</sup> Ibid., p. 48.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

that they had registered under a different surname, which was on the voter registration list. DOJ used this information to recommend to local election officials that they train poll workers to ask any voter whose name did not appear to be in the voter registration list, "Have you registered under another name?" This simple training issue eliminated many instances of vote denial on election day.

Like Section 5, the federal observer provisions have a strong deterrent effect. Although the mere presence of federal observers can lead to fewer acts of minority voter intimidation and discrimination, that result does not imply the protections in Sections 6-9 of the VRA are no longer needed. Instead, it shows that the federal observer program is working. For that reason, the federal observer provisions should be renewed, as amended in the original language of S. 2703, for twenty-five years.

Hearing on "The Continuing Need for Federal Examiners and Observers"  
Before the Subcommittee on the Constitution, Civil Rights and Property  
Rights  
Questions Submitted by Senator Patrick Leahy  
July 14, 2006

Response of Alfred Yazzie

**1. You testified that the deployment of federal observers to polling places in Indian communities increases voter confidence levels. Please discuss the way you have witnessed that increase in voter confidence translate into strong voter turnout at the polls and greater representation and influence for Native American voters in the political process.**

In response to the first question, I think that the deployment of federal observers to polling places in Indian communities increases voter confidence levels by educating voters about the federal requirements that mandate that local officials provide adequate and meaningful language assistance on Election Day. Moreover, the voter knows that he or she will get meaningful assistance due to the presence of federal observers. The voters' knowledge that the federal government has deployed its resources to help ensure that they are able to meaningfully cast a ballot goes a long way towards fostering greater levels of trust (historically, there has been little trust between tribes and the federal government). This same knowledge increases voter empowerment. This empowerment leads voters to inquire more about the electoral process and prompts voters to seek more thorough explanations about ballot information. Indeed, accurate and thorough translation of all information on the ballot is required in order for voters to cast a meaningful ballot.

In short, federal observer deployment helps ensure that local officials provide effective and accurate translation of all election-related materials. When voters are able to comprehend all information contained on the ballot, voters are able to participate in a meaningful way in the voting process. With this language assistance, voters are able to make informed decisions about which candidate to support or proposition they should vote for. Meaningful votes have a favorable impact on the political process. In addition, when the voter fully understands the ballot and its contents and knows that language assistance will be made available, he or she will continue to go to the polls and encourage participation among other voters who may have felt left out of the voting process due to lack of language assistance.

With each election that I have been involved with there has been a steady increase in voter turnout. It is not easy to deduce that this is due to the federal oversight and the monitoring performed by the federal observers. The observers give the voting rights attorneys from the Department of Justice the information needed to enforce the language provisions of the Act and ensure that those covered counties or those under a consent decree change or improve the quality

and structure of their respective training programs. Finally, most federal observer deployments receive significant coverage in the local media and this publicity also helps educate voters about the program while further bolstering voter confidence levels.

***2. You testified that federal oversight of the training sessions for those who provide language assistance improves the overall quality and effectiveness of these programs, by ensuring that the officials spend adequate time on difficult concepts such as language variations, cultural issues, or other unique challenges. Please provide the committee with some specific examples of the types of lessons that federal oversight bring to the training session and the way that input has enabled more Native Americans to vote effectively.***

You have ask me to provide the committee with some specific examples of the types of lessons that federal oversight bring to the training sessions and the way that input has enabled more Native Americans to vote effectively.

Training sessions benefit in various ways from the presence of federal oversight. Training sessions with federal oversight highlight the requirements of federal law, the Voting Rights Act in particular. These trainings tend to emphasize the role that translators play in complying with the federal language requirements and, on occasion, some translators determine that they are not suitable or sufficiently equipped to be an official translator at the polls. Federal oversight also reminds translators that, to some extent, they are allied with the federal government in that that their work serves a federally required function. Federal oversight reminds helps ensure that translators appreciate the challenging task at hand while adopting a sufficiently serious attitude towards their work. My observations stem from my personal communications and interactions with individuals who currently serve or who have previously served as translators in the past.

At these training sessions, translators are informed about the role of the federal observers and their function inside polling places on Election Day. Poll workers have indicated to me that they were told not to talk to the observers or work with them in any capacity. Translators have told me that productive training sessions have helped provide necessary information about the role that observers play.

The training sessions also provide needed information about the role and function of federal observers on election day. Translators are informed that federal observers are present during the election to check on the quality of the training that the county or state has provided. The receipt of this information prior to an election is crucial in how federal observers interact with voters at polling sites. I can recall some elections in which translators told voters not to interact with federal observers, in large part, because there was confusion about the role and purpose that observers played in the process. When this happens,

the effectiveness of the observer program is diminished and does not allow us to compile needed information in order to determine whether the minority language provisions of the Act are being followed. The training sessions held prior to an election go a long way to helping clarify the role of the observer and building a more cooperative relationship between observers, translators and voters. This level of awareness helps heighten voter confidence in the electoral process.

***3. In your experience living on American Indian reservations, your experience monitoring training sessions for language assistance, and your extensive work with the Justice Department to review the quality and accuracy of oral translations provided in three states during the last three presidential elections, have you found Section 203 of the Voting Rights Act leads to more or less voter confusion?***

In my experience, there has historically been some confusion among voters about Section 203 of the Voting Rights Act. Voters and local officials are sometimes confused about what resources the jurisdiction needs to make available in order to comply with the language requirements of the Act. However, much of this confusion has been significantly reduced in recent years because of the federal observer program. For example, many reservations sponsor chapter meetings to help educate voters about the federal observer program and, in turn, about Section 203 of the Voting Rights Act. Many voters feel empowered when they learn that the Department of Justice is committed to ensuring that Indian communities have access to the resources and assistance they need to cast a meaningful ballot. However, many of these discussions are only happening on a local level because of the federal observer program. Overall, Section 203 goes a long way in helping ensure that voters have the tools they need to cast a complete and meaningful ballot and the federal observer program has helped resolve much confusion that may have existed about these special requirements of the Act.

## SUBMISSIONS FOR THE RECORD

**Testimony of Mark F. (Thor) Hearne, II**  
**before the U.S. SENATE COMMITTEE ON THE JUDICIARY,**  
**SUBCOMMITTEE ON**  
**THE CONSTITUTION, CIVIL RIGHTS AND PROPERTY RIGHTS**  
**regarding "The Continuing Need for Federal Examiners and**  
**Observers to Ensure Electoral Integrity."**  
**Monday, July 10, 2006**

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Mr. Chairman, members of this Committee, I appreciate your invitation to address the Committee and applaud its consideration of measures to assure that every eligible citizen enjoys the opportunity to participate in our election process and that all Americans are confident that the outcome of our elections represents the accurate and honest expression of the will of American voters.

My name is Thor Hearne and I am an attorney in private practice in St. Louis, Missouri with the firm Lathrop & Gage.<sup>1</sup> In addition to other experience in election law and related civil rights and constitutional issues, I currently serve as national counsel to the American Center for Voting Rights – Legislative Fund. ACVR-LF is a national, non-partisan, non-profit organization that was founded on the belief that public confidence in our electoral system is the cornerstone of our democracy. ACVR-LF supports election reform that protects the right of all citizens to participate in the election process free of intimidation, discrimination or harassment. ACVR-LF is committed to election reform that will make it "easy to vote but tough to cheat". Specifically, ACVR-LF supports election reforms such as those proposed by the bi-partisan Commission on Federal Election Reform co-chaired by President Carter and former Secretary of State James A. Baker, III (the "Carter-Baker Commission"). I also served as academic advisor to the Carter-Baker Commission.

**The Importance of Restoring Public Confidence In Our Elections**

The Carter-Baker Commission noted that, "The vigor of American democracy rests on the vote of each citizen. Only when citizens can freely and privately exercise their right to vote and have their vote recorded correctly can they hold their leaders accountable. Democracy is endangered when people believe that their votes do not matter or are not counted correctly."<sup>2</sup> I would add that a lack of confidence in the election process decreases citizen participation. Conversely, increased confidence in our elections will increase citizen participation.

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<sup>1</sup> A full copy of my resume has been separately provided to this Committee.

<sup>2</sup> Carter-Baker Report, at p. 1.

Two important principles form the central premise of any fair and honest election. First, every eligible citizen should be able to participate and cast a ballot free from the threat of intimidation or harassment. Second, the public should enjoy confidence that the outcome of the election – especially a close election – accurately reflects the will of the voters with every eligible ballot having been accurately counted. Unfortunately, the Carter-Baker Commission found that, “Americans are losing confidence in the fairness of our elections”. This lack of confidence in our national elections is confirmed by a number of national polls.

### **Three Essential Elements of Fair and Honest Elections**

To restore confidence in our national elections we should adopt election reforms that address three essential points.

#### **(1) CURRENT AND ACCURATE VOTER ROLLS.**

The Carter-Baker Commission noted that, “Effective voter registration and voter identification are bedrocks of a modern election system.”<sup>3</sup> A voter roll should include every eligible citizen that is registered to vote and assure that the voter is accurately registered in the precinct of the voter’s current residence. This is the only means to assure that every voter is provided opportunity to cast a ballot for all national, state and local elections. An inaccurate voter roll is the most likely reason that an eligible voter is denied access to the ballot. Provisional ballots are only an imperfect solution for the eligible voter that is wrongly omitted from a voter roll. A provisional ballot is a “fail-safe” means of voting but in most states only provides opportunity for the provisional voter to cast a partial ballot in state-wide and federal elections and the provisional voter is disenfranchised from voting in most state and local races and issues. The best solution is an accurate state-wide voter roll with opportunity for each voter to cast a full ballot in their proper election precinct.

Inaccurate voter rolls can also provide significant opportunity for vote fraud. Having dogs, the dead, duplications and fictional “voters” on a voter rolls not only undermines public confidence in the outcome of election, it provides opportunity for vote fraud. Inaccurate voter rolls are a real and significant national issue.

During the 2004 Presidential election in Defiance County, Ohio, Chad Staton was paid crack cocaine to fraudulently register Mary Poppins, Dick Tracy, Jive Turkey and almost one hundred other fraudulent and fictional “voters”.<sup>4</sup> When the Senate was debating the Help America Vote Act of 2002 (“HAVA”),<sup>5</sup> Missouri Senator Kit Bond told of Ritzy Meckler – a cocker spaniel – being registered to vote in St. Louis, Missouri. My home state of Missouri is currently being sued by the U.S. Justice Department for having some of the most polluted voter rolls in the nation.<sup>6</sup> In some Missouri counties,

<sup>3</sup> Carter-Baker Report at p. 9.

<sup>4</sup> *State v. Staton*, Defiance County Ohio 04-CR-09070. A copy of the criminal pleadings is available at <http://www.ac4vr.com/reports/072005/exhibitT.pdf>

<sup>5</sup> Pub. L. No. 107-252, 116 Stat. 1666 (2002) codified at 42 U.S.C. 15301 to 15545

<sup>6</sup> *United States v. Carnahan* (W.D. MO). 05-4391-CV-C-WAK

there are more registered voters than there are people and in others the number of registered voters exceeds the voting age population (as determined by the U.S. Census Bureau) by more than 150%. Missouri is not, however, the only state with this problem. In other states there is significant concern about inaccurate voter rolls including the problem of non-citizens, felons and other ineligible voters who are registered to vote and who are illegally casting ballots as well as duplicate voter registrations.

The Carter-Baker Commission noted, “A substantial number of Americans are registered to vote in two different states. According to news reports, Florida has more than 140,000 voters who apparently are registered in four other states (in Georgia, Ohio, New York and North Carolina). This includes almost 64,000 voters from New York City alone who are registered to vote in Florida as well. Voting records of the 2000 elections suggest that more than 2,000 people *voted* in more than one state. Duplicated registrations are also seen elsewhere. As many as 60,000 voters are reportedly registered in both North Carolina and South Carolina.”<sup>7</sup> (emphasis supplied).

The Help America Vote Act and the National Voter Registration Act of 1993 (“NVRA” or “Motor Voter”)<sup>8</sup> have addressed several aspects of this problem. HAVA requires that (as of January 2006) each state have a single state-wide voter roll. NVRA requires that a person registering to vote affirm that they are a U.S. citizen.<sup>9</sup> Unfortunately, a number of states are not yet in compliance with this HAVA requirement of a single, state-wide voter roll and special interest groups are pursuing litigation to undermine the ability of election officials to assure that only U.S. citizens are included on voter rolls.<sup>10</sup>

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<sup>7</sup> Carter-Baker Report at p. 12.

<sup>8</sup> 42 U.S.C. § 1973gg

<sup>9</sup> 42 U.S.C. § 1973gg-3(a)(2)(C)(i)

<sup>10</sup> See, *Washington Association of Churches v. Reed*, U.S. Dist. Ct. WD Wash. CV06-0726 (Suit to compel voter registrations to be added to voter roll even when information on registration form is incomplete or not verified and to enjoin election officials from reviewing and validating voter registration forms. Plaintiffs include participation by Washington Association of Churches, Washington Association of Community Organizations for Reform Now (“ACORN”), Service Employees International Union, 775 (“SEIU”), Washington Citizens Action, Filipino American Political Action Group of Washington and the Brennan Center) *GONZALES V. ARIZONA*, CV 06-1268 PHX ROS (D.C. Ariz., June 19, 2006) (ACLU lead Plaintiff with participation of other organizations. seeks to overturn popularly passed initiative (Proposition 200) adopted by Arizona voters. Proposition 200 requires proof of citizenship before a person is allowed to register to vote.) *Diaz v. Hood* a case originally filed in advance of the 2004 presidential election in Southern District of Florida, (04-22572-CIV-KING) stayed by the 11<sup>th</sup> Circuit Court of Appeals (04-15539) and now refilled. (The Plaintiffs are seeking to compel election officials to add to the voter roll names from voter registration forms lacking an affirmation of U.S. citizenship. The Plaintiffs include American Federation of State, County And Municipal Employees, AFL-CIO; Florida Public Employees, Council 79, AFSCME, AFL-CIO; And Service Employees International Union.)

The importance of efforts to assure that only U.S. citizens are added to voter rolls is detailed by Pat Rogers, director of ACVR-LF, in his testimony before the U.S. House Administration Committee on June 22, 2006, “HEARING ON NON-CITIZEN VOTING”, <http://cha.house.gov/hearings/Testimony.aspx?TID=936>

In addition to making sure that every state is in compliance with HAVA and has a current and accurate state-wide voter roll, we need to hold accountable those who seek to “game our election system” by voter registration fraud. Regrettably, voter registration fraud is a significant problem that has the effect of disenfranchising legitimate voters. Democrat and Republican election officials in Ohio testified in the aftermath of the 2004 Presidential election that their state was “under assault” from various special interest groups outside the state seeking to flood election officials with voter registration forms, many of which were fraudulent.<sup>11</sup> Some organizations submitted voter registration forms in October on the eve of the election that had been filled out as early as April.<sup>12</sup> This had the effect of overwhelming the ability of local election officials processing the registration forms and prevented legitimate voters from being timely registered while at the same time making it difficult for the election officials to review and prevent fraudulent registrations – such as Dick Tracy – from being wrongly included on the voter roll.

Kentucky Secretary of State Trey Grayson found that more than 8,000 people on the Kentucky voter roll were also registered to vote in Tennessee and South Carolina. In Missouri, Secretary of State Robin Carnahan joined with the Nebraska, Iowa and Kansas Secretary’s of State to reach a Memorandum of Understanding to “develop a system to cross-check voter registration information to provide for cleaner and more accurate voter lists”.<sup>13</sup> Several Kansas voters were prosecuted for voting multiple times in the 2000 and 2002 elections.<sup>14</sup>

The Carter-Baker Commission recommended that, “[S]tates be required to establish unified, top-down voter registration systems”<sup>15</sup> and that “States need to effectively maintain and update their voter registration lists. \*\*\* All states should have procedures for maintaining accurate [voter] lists such as electronic matching of death records, drivers licenses, local tax rolls, and felon records. Federal and state courts should provide state election officials with the lists of individuals who declare they are non-citizens when they are summoned for jury duty. In a manner consistent with the National Voter Registration Act, states should make their best efforts to remove inactive voters from the voter registration lists \*\*\* and adopt strong safeguards against incorrect removal of eligible voters.”<sup>16</sup> The Carter-Baker Commission further recommends that the

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<sup>11</sup> U.S. House of Representatives, Committee on House Administration, March 21, 2005, “2004 ELECTION AND THE IMPLEMENTATION OF THE HELP AMERICA VOTE ACT (HAVA)” [http://fiwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.128&filename=20790.pdf&directory=/diskb/wais/data/109\\_house\\_hearings](http://fiwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.128&filename=20790.pdf&directory=/diskb/wais/data/109_house_hearings)

<sup>12</sup> See, above, note 11 especially the testimony of election officials Michael Vu and William Anthony.

<sup>13</sup> See, *Memorandum of Understanding* at [http://www.sos.mo.gov/elections/2005-12-11\\_MO-KS-IA-NE-MemorandumOfUnderstanding.pdf](http://www.sos.mo.gov/elections/2005-12-11_MO-KS-IA-NE-MemorandumOfUnderstanding.pdf)

<sup>14</sup> See, U.S. Department of Justice, Release, August 2, 2005. [http://www.usdoj.gov/criminal/press\\_room/press\\_releases/2005\\_4163\\_AccessNVotingIntegritySymposium080205.pdf](http://www.usdoj.gov/criminal/press_room/press_releases/2005_4163_AccessNVotingIntegritySymposium080205.pdf)

<sup>15</sup> Carter-Baker Report at 11

<sup>16</sup> Carter-Baker Report at 23.

state voter rolls be interoperable to assure that voter rolls “take account of citizens moving from one state to another.”<sup>17</sup>

(2) PROTECTING THE REGISTERED VOTER’S RIGHT TO CAST A BALLOT:

In Albuquerque, New Mexico, Dwight Adkins tried to vote on Election Day in November 2004 but was not allowed to do so because someone had already voted in his place. He voted on a provisional ballot, which he later learned was not counted. Similarly, in Albuquerque, Rosemary McGee attempted to vote on Election Day, finding instead that someone else had signed the voter roster in her place; she voted on a provisional ballot, and her vote was not counted. Another Albuquerque citizen, Glen Stout found that his 13-year old son was illegally registered to vote by a 527 voter registration organization prior to the 2004 general election. In Philadelphia, Donna Hope, a non-citizen immigrant from Barbados who resides in Philadelphia, was told by a representative of the voter registration group “Voting is Power,” the voter mobilization arm of the Muslim American Society that she could register to vote if she has been in the United States at least 7 years. Ms. Hope completed the registration form and was added to the voting rolls. In November of 2004, Ms. Hope did not vote because she was not a citizen, but later found out that according to Philadelphia election officials’ records, someone illegally cast a ballot in her name.

In Michigan, the *Detroit News* in a front page article reported that, “In Michigan, even dead vote: From Holland to Detroit, votes were cast by 132 dead people; Detroit’s voting records are riddled with inaccuracies, casting doubt on elections’ integrity.”<sup>18</sup> The *Detroit News* found that, in Michigan, dead voters were not just on the voter rolls, but actual ballots were being illegally cast in their name.

Even when a fraudulent vote does not directly disenfranchise a voter by preventing them from casting a ballot – as in Dwight Adkins and Rosemary McGee’s case -- it nonetheless disenfranchises a legitimate and lawful voter. The United States Supreme Court made this point when it wrote. “It must be remembered that ‘the right of suffrage can be denied by debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.’” *Bush v. Gore*, 531 U.S. 98 (2000) citing, *Reynolds v. Sims*, 377 U.S. 533 (1964) “In a republican government, like ours, where political power is reposed in representatives of the entire body of the people, chosen at short intervals by popular elections, the temptations to control these elections by violence and by corruption is a constant source of danger . . . . Such has been the history of all republics, and, though ours has been comparatively free from both these evils in the past, no lover of his country can shut his eyes to the fear of future danger from both sources.” *Ex parte Yarbrough* (The *Ku-Klux Cases*), 110 U.S. 651, 666 (1884) “Free and honest elections are the very foundation of our republican form of government. Hence any attempt to defile the sanctity of the ballot cannot be viewed with equanimity.” *United States v. Classic*, 313 U.S. 299 at 329 (1941)

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<sup>17</sup> Carter-Baker Report at 15.

<sup>18</sup> *Detroit News*, February 26, 2006.

HAVA imposed limited voter identification requirements to address mail-in vote fraud by requiring that newly registered voters who have not physically appeared before election officials must identify themselves to election officials using one of the HAVA forms of identification before they may vote by absentee or mail-in ballot. This was a limited (but significant) voter identification requirement intended to address the situation of “Ritzzy the Dog” where a “mail-in” voter registration form placed the name of a fictional voter on the ballot and provided an opportunity for someone to cast a ballot in the name of this fictional voter by casting a ballot by mail, such as an absentee ballot. The limited HAVA ID provisions are expressly stated to be the “Floor” and not the “Ceiling” for a state’s identification requirements.<sup>19</sup> Many states have imposed more demanding voter identification requirements.

Requiring a person to identify themselves with photo identification before casting a ballot enjoys broad public support. The ACVR-LF poll found that eighty-nine percent of Missourians favor a photo ID provision.<sup>20</sup> This included the support of an overwhelming majority of Democrats, Republicans and members of minority communities. Similar support for photo ID is found in other states.<sup>21</sup> Nationally, a Wall Street Journal/NBC poll conducted by Hart and McInturff on April 21-26, 2006 found that more than eighty percent of U.S. citizens support the requirement that a person show a photo ID before they are allowed to cast a ballot.<sup>22</sup>

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<sup>19</sup> Section 303(b) was specifically included in HAVA to address vote fraud and provides minimum requirements for identification of voters who register by mail, including presentation of photographic identification. (See, *Hearing on H.R. 3295 Before the H. Comm. on the Judiciary, 107th Cong. (2001)*, available at 2001 WL 1552086 (F.D.C.H.) (statement of Rep. F. James Sensenbrenner, Jr.) (identifying that vote fraud was a significant motive for the anti-fraud provisions of HAVA); Remarks by President Bush at Signing of H.R. 3295, Help America Vote Act of 2002 (Oct. 29, 2002), 2002 WL 31415995 (White House), at \*2. Section 303(b) of HAVA provides for a non-photo identification alternative of “a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.” The HAVA voter identification standards were expressly stated to be a “floor” and not a “ceiling”. HAVA explicitly provides that it shall not “be construed to prevent a State from establishing election technology and administration requirements that are more strict than” provided in HAVA. The HAVA voter identification standards are exceptionally easy to satisfy. The HAVA voter identification standards are notably weak and provide far less than the standard of identification required in others areas of civic life. See, Publius, *Securing the Integrity of American Elections: The Need for Change*, 9 *Tex. Rev. L. & Pol.* 277, 288-89 (2005) (“Anyone who has ever moved into a new house or apartment and received bank statements and other government documents (all of which would satisfy the HAVA requirement) in the mail intended for the former occupants knows how easy it is to obtain such documents. When combined with the huge rise in identity theft, it is obvious that allowing documents without photographs is not an acceptable security measure for our voter registration and voting process.”).

<sup>20</sup> [http://www.ac4vr.com/states/mo\\_polling\\_release\\_032206.pdf](http://www.ac4vr.com/states/mo_polling_release_032206.pdf)

<sup>21</sup> In Pennsylvania, the American Center for Voting Rights poll conducted by the Winston Group found more than 80% of Pennsylvania voters favored or strongly favored the requirement that a voter present photo ID before casting a ballot. (cite ACVR Web Page) In Washington state a poll conducted in January 2006 by the Evergreen Foundation found that more than 86% of the public supported a photo ID requirement. <http://www.effwa.org/files/pdf/Poll%20results-public.pdf> and Wisconsin public opinion polls found similarly strong support <http://www.wpri.org/Reports/Volume18/Vol18no6.pdf> for a constitutional amendment requiring voters to produce photo ID before casting a ballot.

<sup>22</sup> <http://online.wsj.com/public/resources/documents/poll20060426.pdf>

When the issue of voter photo ID is placed on the ballot, there is strong bipartisan support for the measure. Albuquerque voters, with the support of Hispanic Democrat Mayor Chavez adopted a photo ID requirement for all Albuquerque elections.<sup>23</sup> In Arizona, voters passed a popular state-wide initiative (Proposition 200) that required prospective voters to present proof of citizenship before registering to vote.<sup>24</sup> The Arizona proof of citizenship requirement was recently upheld in an initial decision in the federal court.<sup>25</sup>

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<sup>23</sup> Albuquerque voters supported photo ID by 77-17 percent margin in pre-election poll, as 92 percent of Republicans and 66 percent of Democrats supported measure. (Dan McKay, "Voter Picture ID Has Wide Support," *Albuquerque Journal*, 8/24/05) Polling showed photo ID with overwhelming support "among Republicans and Democrats, anglos and hispanics and across income levels" in Albuquerque. (Dan McKay, "Voter picture ID has wide support," *Albuquerque Journal*, 8/24/05) Albuquerque Mayor Martin Chavez (D): "Integrity of the voting process is essential. I worked closely with Councilors Mayer and Cadigan to put photo ID onto the ballot." (Jim Ludwick, "Critics: Mail-in voters should show ID, too," *Albuquerque Journal*, 9/12/05) Democrat City Councilor Michael Cadigan supported photo ID requirement. (Jim Ludwick, "Voter ID plan OK'd by Council," *Albuquerque Journal*, 6/21/05) Albuquerque "City Clerk Judy Chavez and other election officials said the rule change didn't cause any problems." ("New ID rule passes test," *Albuquerque Journal*, 11/16/05) "[S]hirley Bartel, an Election Clerk at Chelwood Elementary School, said many voters had their IDs out already when approaching the polls. "They said, "It should've been done a long time ago. It makes for a more honest election," Bartel Said." ("New ID rule passes test," *Albuquerque Journal*, 11/16/05) "Hubert Gutierrez, a retiree who voted Tuesday, said producing an ID was no problem. 'I wish they would make it mandatory for everything,' he said." ("New ID rule passes test," *Albuquerque Journal*, 11/16/05) "Incumbent City Councilor Sally Mayer, victorious in District 7, said she was thrilled the photo ID measure she got on the ballot won with 73 percent of the vote. 'This shows it is not a partisan issue,' she said. 'It's going to set a real good precedent.' Mayer said voters seemed to agree that the photo ID requirement was not necessary for mail-in absentee ballots. City Councilor Martin Heinrich said he supported the idea of voter ID and expected it would pass, but he and other critics said it should have had stronger provisions concerning absentee ballots. Only voters at a polling place will be required to show a photo ID." Gran, Susie, *Albuquerque Tribune*, Oct. 5, 2005.

<sup>24</sup> See: *Arizona Daily Star* "Lawsuit off base in challenging voter ID rules" (5/15/06), See also: KOLD News 13 "ID required for voters headed to the polls Tuesday" by Jim Becker (5/15/06)

<sup>25</sup> Proposition 200 was passed overwhelmingly by Arizona voters in 2004. This popular initiative requires those seeking to register to vote in Arizona to provide proof of U.S. citizenship when registering. On May 9<sup>th</sup> ACLU, People for the American Way and other liberal activist organizations filed a federal lawsuit seeking to eliminate the citizenship requirement because, they claimed, it was contrary to the federal National Voter Registration Act ("Motor Voter"). Arizona Secretary of State Jan Brewer vigorously defended right of Arizona voters to pass Proposition 200.

On June 19<sup>th</sup>, Federal District Judge Roslyn O. Silver denied the plaintiff's request for a Temporary Restraining Order finding that the plaintiff's had "no[t] shown that there is a likelihood they will succeed on the merits." Judge Silver wrote: "Determining whether an individual is a United States citizen is of paramount importance when determining his or her eligibility to vote. In fact, the NVRA repeatedly mentions that its purpose is to increase registration of "eligible citizens." Providing proof of citizenship undoubtedly assists Arizona in assessing the eligibility of applicants. Arizona's proof of citizenship requirement does not conflict with the plain language of the NVRA." (internal citation omitted) *GONZALES v. ARIZONA*, CV 06-1268 PHX ROS (D.C. Ariz., June 19, 2006)

In so doing, Judge Silver agreed with the people of Arizona and found that Arizona can continue to require that individuals provide proof of citizenship in order to vote. Ensuring that only legitimate U.S. citizens can register to vote is a commonsense practice. Judge Silver's ruling helps Arizonans to maintain confidence in their state's election process. Voters should have the confidence that legal citizens are the

Voter identification requirements – including photo identification requirements have emerged as a national consensus.<sup>26</sup> More than twenty-four states currently require every voter to provide identification before casting a ballot<sup>27</sup> and seven states – in addition to Missouri – currently require photo identification in order to vote.<sup>28</sup> Election reform legislation requiring photo identification before casting a ballot has been introduced this legislative session in at least four more states<sup>29</sup> and a national voter Photo ID requirement is now pending in the U.S. Senate.<sup>30</sup>

Some critics – notably the ACLU, Brennan Center and League of Women Voters<sup>31</sup> – have mounted a national attack on voter identification or citizenship

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voters deciding the outcome of our elections. Those not legally in the United States should not be casting a ballot and the citizens of Arizona passed a commonsense measure to protect that principle. We are pleased that Judge Silver upheld this basic protection of the election process.”

<sup>26</sup> See also, *Harvard Law Review*, “Developments in the Law”, Vol. 119:1127 February, 2006. and Barone, Michael, “Message to the Secretaries of State: 1679 and 2006”, *U.S. News and World Report, web blog*, February 6, 2006. (From remarks of Michael Barone to meeting of the National Association of Secretaries of State.)

<sup>27</sup> Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Indiana, Kentucky, Louisiana, Missouri, Montana, New Mexico, North Dakota, Ohio, South Carolina, South Dakota, Ohio, Tennessee, Texas, Virginia, Washington

<sup>28</sup> Florida, Georgia, Hawaii, Indiana, Louisiana, South Dakota and Ohio.

<sup>29</sup> Wisconsin, Pennsylvania, New Hampshire and Minnesota. The voter identification requirement was passed by the legislature in Wisconsin, Pennsylvania and New Hampshire but vetoed by the respective state’s Governor and is currently pending in Minnesota. Identification requirements are not unique to election activity. The Federal REAL ID Act of 2005, Pub. L. No. 109-13, div. B, 119 Stat. 231, 302 (to be codified in scattered sections of 8 and 49 U.S.C. 30301) established requirements that states must meet by 2008 for the issuance of photo identification that will be necessary to enter a federal building, board a plane or open a bank account. § 202, 119 Stat. at 312. Indeed, photo identification is such a common feature of our civic life that the author recently was required to provide two forms of identification including one photo ID to rent a “Rug Doctor.”

<sup>30</sup> On May 22nd a national voter photo ID requirement was introduced by Senate Majority Whip Mitch McConnell, as an amendment to the federal comprehensive immigration reform bill. The amendment would make it mandatory for all voters to present photo identification before casting ballots in any federal election after Jan. 1, 2008., amendment to The Comprehensive Immigration Reform Act of 2006 (S.B. 2611). This amendment also provides “all necessary funds” to the states as a federal grant to pay for the cost of free photo identification. “The photo ID issue is being joined with the immigration debate because there is growing anecdotal evidence that voter registration by noncitizens is a problem. All that it takes to register is for someone to fill out a postcard, and I have interviewed people who were still allowed to register without checking the box that indicated they were a citizen. Several California counties report that an increasing number of registered voters called up for jury duty write back saying they are ineligible because they aren’t citizens. The man who in 1994 assassinated Mexican presidential candidate Luis Donaldo Colosio in Tijuana had registered to vote at least twice in the U.S. although he was not a citizen. An investigation by the Immigration and Naturalization Service into alleged fraud in a 1996 Orange County, Calif., congressional race revealed that “4,023 illegal voters possibly cast ballots in the disputed election between Republican Robert Dornan and Democrat Loretta Sanchez” Fund, John, *Wall Street Journal – Opinion Journal* May 21, 2006. <http://www.opinionjournal.com/diary/?id=110008411>

<sup>31</sup> The ACLU and League of Women Voters oppose other (non ID related) election reforms as well. The Pennsylvania Legislature passed the Pennsylvania Voter Accessibility Act (SB 999) with broad bi-partisan support in both the House and Senate. The legislation was signed by Democrat Governor Rendell – former

requirements. To date those attacks have not been successful<sup>32</sup>. The Indiana law provided that a person voting at a poll must first present a form of valid photo identification issued by the state of Indiana or the United States and did not contain some of the exceptions allowed in Missouri.<sup>33</sup> The Indiana Democrat Party, the ACLU and other allied parties challenged the voter identification requirement in federal court *Ind. Dem Party v. Rokita*, 2006 WL 1005037 (S.D.Ind., April, 2006). The opponents of voter identification charged that the measure disenfranchised elderly, minorities and disabled.

The district court found that the Indiana legislature had reason to conclude that the reality of vote fraud at polling locations actually occurred and that a photo identification requirement would reduce opportunity for this fraud and also, as a separate basis for the requirement, increase public confidence in the election process.<sup>34</sup> The evidence did not support these allegations of disenfranchisement. The court found that not a single Indiana voter would be disenfranchised by the identification requirement. The court held that the opponent's arguments against photo ID "resembles the college student 'wet Kleenex' prank of yore in which as entertainment, a soggy wet tissue mass is thrown against the dorm room wall to see if it will stick. In the context of this much more

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chair of the Democrat National Committee. The Pennsylvania Voter Accessibility Act contained protections to assure that military overseas ballots would be counted and, *inter alia*, prohibited polls from being located in private homes, political campaign offices and locations where elderly and handicapped would not have access to a poll or where voters would experience harassment or intimidation. The ACLU and League of Women Voters called on Governor Rendell to veto these election reforms. See, "Pennsylvania passes bill limiting use of homes for polls." *Philadelphia Inquirer*, May 4, 2006.

<sup>32</sup> Voter identification requirements are currently at issue in the following cases. *Gonzalez, et. al v. Arizona* U.S. District Court, District of Arizona, *ACLU v. Albuquerque*, CV 05-1136 U. S. District Court for the District of New Mexico. Filed April, 2006), *League of Women Voters of Georgia, et al. v. Billups*, (405 F. Supp. 2d 1326). The Michigan Supreme Court is considering the constitutionality of the Michigan voter identification requirement in, *IN RE REQUEST FOR ADVISORY OPINION REGARDING SUPREME COURT NO: 130589 CONSTITUTIONALITY OF 2005 PA 71*. During the 2004 election some of the same groups now challenging voter identification requirements also filed unsuccessful legal challenges to voter identification requirements. See, *Colorado Common Cause, et al. v. Donna Davidson*, 2004 WL 2360485 (Colo. Dist. Ct.). See also; *League of Women Voters v. J. Kenneth Blackwell*, 340 F.Supp.2d 823; *Bay County Democratic Party and Michigan Democratic Party v. Terri Lynn Land, Michigan Secretary of State, et al.*, 347 F.Supp.2d 404.

<sup>33</sup> See, *Ind. Code § 3-11-8-25.1., Ind. Code § 3-5-2-40.5., Ind. Code § 3-11-8-25.1(c)*, and *Indiana Democratic Party v. Rokita*, Slip Opinion, at 4.

<sup>34</sup> The district court referred to evidence of vote fraud in states other than Indiana as a legitimate basis for the Indiana to adopt photo identification requirements in Indiana. There is significant evidence of vote fraud in Indiana, current and historic. The court did not premise its ruling upon this evidence of Indiana vote fraud. In 1914 federal authorities prosecuted 114 people for election fraud in Indiana. The mayor of Terra Haute went to federal prison for six years after engineering a scheme where fraudulent voter registrations allowed some individuals to vote as many as 22 times. And, examples of vote fraud in Indiana continue to the present day. In 2004, the Indiana Supreme Court invalidated the 2003 mayoral primary election in East Chicago because of an absentee ballot fraud scheme. In 2005, Secretary of State Rokita testified before the U.S. Congress that he saw evidence indicating a dead person had "voted", or more accurately, that someone had voted in the name of the dead. See. Tracey Campbell, *Deliver the Vote*. p. 147 – 149.

serious matter, we fear Plaintiffs are engaged in a similar exercise-throwing facts against the courthouse wall simply to see what sticks.”<sup>35</sup>

The Democrat Party in Indiana has appealed the *Rokita* decision to the Seventh Circuit.<sup>36</sup> After the district court affirmed the constitutionality of the Indiana voter identification law a state-wide election was held. This election was notable for the absence of any voter experiencing difficulty with Indiana’s new voter identification requirement.<sup>37</sup>

With the close decision in the Mexican presidential election this month, it is worth noting measures that Mexico takes to assure voter confidence in a fair and honest election.

“Mexico spends much more than the U.S. on measures to prevent vote fraud. All voters in Mexico must present voter IDs at the polls, which include not only a photo but also a thumbprint. The IDs themselves are essentially counterfeit-proof, with special holographic images, imbedded security codes, and a magnetic strip with still more security information. As an extra precaution, voters’ fingers are dipped in indelible ink to prevent them from voting multiple times.

Voters cannot register by mail - they have to go in person to their registration office to fill out forms for their voter ID. When a voter card is ready three months later, it is not mailed to the voter as it is in the U.S. Rather, the voter has to make a second trip to a registration office to pick it up. Sunday's election was the first in which absentee ballots were

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<sup>35</sup> Slip Opinion at p. 39.

<sup>36</sup> “Statement by DNC Chairman Howard Dean on Indiana” 5/2/2006 Democratic National Committee Press Release

<sup>37</sup> *The Journal Gazette* in Fort Wayne wrote: “Election Day calm as voters comply with photo ID rule...Despite months of debate culminating in a federal lawsuit, Indiana’s new requirement that voters show photo identification at the polls caused barely a ripple in Tuesday’s primary election. Across Indiana, there were no reports of problems caused by the new requirement, with most areas reporting they did not have to turn away a single voter; those that did turn voters away for lack of identification found it to be a rare exception. ...Voters casting ballots at the Fort Wayne Urban League in the Hanna Creighton neighborhood – with the highest concentration of poor and minorities in the city – did not have to turn away a single voter, workers said. ...In Noble County, precinct officials at three voting locations said that as of midafternoon Tuesday no one who wanted to vote was turned away because they didn’t have proper identification.” Dan Stockman, May 3, 2006.

*The Star Press* in Muncie wrote, “Only one provisional ballot was cast in most of the 10 precincts polled by The Star Press, indicating the photo ID requirement was not a problem. Provisional ballots are cast for voters who cannot show a photo ID.” *The Indy Star* reported, “Tuesday’s primary election came and went with few hitches despite a new state law requiring all voters to show a photo ID. The low-key election dispelled fears that the new ID law, ballot typos and printing errors in Marion County and elsewhere, as well as glitches with some voting machines and the state’s voter-registration database, would result in widespread problems at the polls. ‘All the sky-is-falling-Chicken-Little arguments never came to fruition,’ Indiana Secretary of State Todd Rokita said.” Rick Yencer, May 3, 2006.

available, but only if for voters requested one at least six months before the election.”<sup>38</sup>

The U.S. Department of Justice has (in those jurisdictions requiring pre-clearance under Section 5 of Voting Rights Act 42 U.S.C. § 1973 *et. seq.*) approved voter identification requirements in Virginia, Georgia, Arizona and New Mexico. Georgia was approved twice. The initial Georgia voter identification law was initially enjoined because the district court found that Georgia did not provide sufficient opportunity for voters to obtain the voter ID.<sup>39</sup> Georgia remedied these objections in early 2006 with new provisions to assure access to the required free photo ID.<sup>40</sup>

The requirement that a person provide photo identification before voting (when the required form of identification is available for free and is accessible) is a reasonable constitutionally valid regulation of the constitutionally protected fundamental right to vote and is justified as both a protection against vote fraud and a measure to increase public confidence in the outcome of elections.<sup>41</sup>

The Carter-Baker Commission recommended, “To ensure that persons presenting themselves at the polling place are the ones on the registration list, the Commission recommends that states require voters to use the REAL ID card, which was mandated in a

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<sup>38</sup> John R. Lott Jr. & Maxim C. Lott, “LOOK SOUTH: AMERICANS COULD LEARN FROM MEXICAN ELECTIONS”, National Review On-Line, July 6, 2006, <http://article.nationalreview.com/> Mexico is not alone. Even the impoverished nation of Haiti requires photo voter identification. See, Washington Post, February 6, 2006. “John Lott, a scholar at the American Enterprise Institute, notes that in the three presidential elections Mexico has conducted since the National Election Commission reformed the election laws “68% of eligible citizens have voted, compared to only 59% in the three elections prior to the rule changes.” People are more likely to vote if they believe their ballot will be fairly counted.” *Wall Street Journal*, John Fund, “How to Run a Clean Election, What Mexico can teach the United States” July 10, 2006.

<sup>39</sup> Georgia Legislature passed HB 244 in 2005. HB 244 required voters to show any of six government-issued photo IDs at the polls: a driver’s license, passport, military ID, government employee ID, tribal ID or a valid ID card issued by the state or federal government. Residents who did not have any of the six required IDs had to get a state-issued photo ID (a five-year card cost \$20; 10-year cards, \$35) in order to vote. For those who could not afford them, the fees could be waived with a signed indigency affidavit. Indigent was not defined and the affirmation was under oath so the district court concluded that this ambiguity would present a burden to some truly indigent voters who, in the face of an undefined standard of indigency, would not affirm their indigency. Secondly, the district court held that Georgia did not afford opportunity for access to free voter ID. Fulton County, where Atlanta is located, did not have single location where a free photo identification could be obtained. The District court faulted the Georgia law on essentially these two points. *Common Cause v. Billups*, 406 F.Supp.2d 1326 (N.D. GA., 2005)

<sup>40</sup> Georgia Senate Bill 84. was passed in January 2006 and provided a free voter photo ID card to anyone who requested without the requirement of an affidavit of indigency Senate bill 84 also required that all 159 counties in Georgia maintain a location where the free photo IDs can be obtained. There is currently pending a Georgia state court challenge to the statute arguing that it violates provisions of the Georgia state constitution.

<sup>41</sup> For a general discussion of the constitutionality of voter identification requirements, See also, Publius, *Texas Review of Law and Politics*, Vol. 9, No. 2, Spring 2005. *Harvard Law Review*, “Development in the law”, volume 119:1127, February 2006. For a discussion of the Missouri Voter Protection Act which included a photo identification requirement, see, Thor Hearne, Missouri Voter Protection Act, Real Reform for All Missouri Voters, *St. Louis Lawyer*, June 2006, Bar Association of Metropolitan St. Louis.

law signed by the President in May 2005. The card includes a person's full legal name, date of birth, a signature (captured as a digital image), a photograph, and the person's Social Security number. This card should be modestly adapted for voting purposes to indicate on the front or back whether the individual is a U.S. citizen. States should provide [such photo ID] to non-drivers free of charge. \*\*\* all states should use their best efforts to obtain proof of citizenship before registering voters."<sup>42</sup>

Civil rights leader Andrew Young supported the Carter-Baker Commission recommendation that states require photo identification to vote. One of the reasons that Ambassador Young identified for supporting the request of photo identification was the desire that photo identification be provided free to everyone in society. Requiring photo identification for voting would increase its availability to those that may not have photo identification necessary for other daily activities. Requiring photo identification would increase voter confidence. One of the reasons identified by some minority and low-income voters as why they do not vote is the perception that they will not be permitted to cast a ballot or the ballot they cast will not be counted. Providing a voter free photo identification will increase that voter's confidence that they will be allowed to vote. In a conversation between the author and one of the Democrat members of the Carter-Baker Commission it was said that, "For our base, who may not believe their vote will count, a photo ID will give them greater confidence they will be allowed to cast a ballot when they go to the poll and greater confidence will increase participation. We can say, 'go to the poll, show the election officials this card with your picture on it and it will guarantee you can vote and your vote will count.'"<sup>43</sup>

Availability of free photo identification in today's society is also good policy for reasons totally apart from election reform. Photo identification is required to engage in essentially every activity in modern life.<sup>44</sup> From boarding a commercial aircraft<sup>45</sup>, applying for a job, entering a federal building to checking out a book at the neighborhood library, photo identification is required. Making this identification free and accessible to all members of society – especially the low-income, disabled and minority communities is good public policy.

A related point is that an eligible voter (including disabled and elderly voters) should have the opportunity to cast their ballot in an accessible polling location free of intimidation of harassment. Pennsylvania recently enacted bi-partisan legislation

<sup>42</sup> Carter-Baker Report at 21. The Commission recommended transition rules until 2010 to allow the Voter photo ID card to be phased in and assure that all registered voters have access to a free photo identification.

<sup>43</sup> Conversation between author and Democrat member of Carter-Baker Commission in White House Reception before presentation of Commission report to President Bush. The quoted language is not a direct quote but is a paraphrase of the member's comments.

<sup>44</sup> "Dust-up over Hanaway's voter ID may cause fallout down the road" *St. Louis Post Dispatch* by Jo Mannies (4/12/04). "Carnahan said Friday that she was stunned that Blunt views expired drivers licenses as acceptable IDs. "On its face, it doesn't make a lot of sense to me," she said. "Any valid form of ID needs to be current." \*\*\* "You can't cash a check with an expired license, so you shouldn't be able to vote with one," [Democrat St. Louis County Director of Elections Judy] Taylor said."

<sup>45</sup> See, *GILMORE v. GONZALES*, 435 F.3d 1125 (C.A. 9, (Cal), 2006)

furthering this objective.<sup>46</sup> Historically, many polling places in Pennsylvania, especially in Philadelphia, have been located in private homes and other locations that are not readily accessible to handicapped. These locations have also been the focus of complaints of voter harassment and intimidation. The Republican legislature passed and Democrat Governor Rendell signed the Pennsylvania Voter Accessibility Act. This legislation moves polling places from private homes, political campaign offices and other locations inaccessible to disabled and elderly into public buildings. The Pennsylvania Voter Accessibility Act adopts a number of recommendations of the Carter-Baker Commission including the recommendations concerning polling place accessibility and protection against voter intimidation or harassment. The legislation also requires establishing and posting poll locations twenty days before an election.

The Carter-Baker Commission recommends that states adopt strengthened felony protections against intimidation or harassment of voters. This language has been adopted by recent voting rights legislation in Missouri and Pennsylvania.

### 3. ACCURATELY COUNTING EVERY VOTE.

James Madison observed in Federalist 51 that, “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.” Our Constitution and laws are premised upon this fundamental understanding of human nature and our elections should be likewise.

The candidates and campaigns in any election have a specific partisan objective – winning the election. Election officials also have specific policy and partisan interests. To have a fair and honest election in which the participants – including those conducting the election -- may have a partisan interest in the outcome requires that there be clear, specific and objective standards governing the conduct of the election and accountability to assure the election is conducted in a manner consistent with these standards.

The Carter-Baker Commission notes, “To build confidence in the electoral process, it is important that elections be administered in a neutral and professional manner. \*\*\* Elections are contests for power and, as such, it is natural that politics will influence every part of the contest, including the administration of elections.”<sup>47</sup>

One of the most fundamental steps to avoid this possibility of partisan interest (or the appearance of partisan interest) influencing election officials is to develop clear, definite and unambiguous statutes and rules governing the conduct of elections and to provide a mechanism to hold election officials responsible to follow these standards. This means that rules for conduct of the election and any recount avoid opportunity for

<sup>46</sup> Pennsylvania Voter Accessibility Act – Senate Bill 999, signed by Governor Rendell on May 12, 2006. ACVR-LF worked to support passage of the Pennsylvania Voter Accessibility Act.

<sup>47</sup> Carter-Baker Report at p. 49. The Commission calls for measures to increase professionalism of election officials and to reduce partisan conflicts of interest.

the exercise of discretion by an election official. Clear written uniform standards for what constitutes a “vote” should be established well before any election contest. Uniform standards for locating polling places and allocating election equipment should also be established to avoid opportunity for officials to act in their (real or imagined) partisan interest when managing the conduct of an election.

The voting technology – opti-scan, DRE machine or other equipment for recording votes – should be chosen and tested for accuracy and election officials should be adequately trained in the use of this equipment. Standards for conducting the election in the event of any malfunction should be established before the election. Ballots and voting equipment should be kept in a secure and controlled location and no one other than election officials acting pursuant to their authority should have access to the voting equipment or ballots. Tabulating the ballots should be done in accordance with established procedures and under the supervision of observers.

### **The Important Role Of Observers and Examiners**

These three principles, accurate and accessible voter rolls, reliable voter identification and voter accessibility to the ballot, and the objective impartial administration of elections mean nothing, however, unless election officials diligently, uniformly and fairly enforce these and related election laws and there is a means to assure that these principles are, in fact, followed when elections are conducted. This brings us to the critical subject of this hearing. The continuing need for federal examiners or observers to monitor elections.

As the U.S. Supreme Court noted in the quotes cited above, vote fraud and voter suppression (or intimidation or harassment) are but two sides of the same repugnant coin. Both are an effort to illegally influence the outcome of an election by either preventing an eligible voter from casting a ballot or by preventing the ballot cast by an eligible voter from counting by cancelling it out with one illegally cast.

Supreme Court Justice Louis Brandeis said, “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”<sup>48</sup> Justice Brandeis’ statement in support of the benefits of openness and transparency underlies the Carter-Baker Commission recommendation in favor of permitting independent observers to be present to monitor the conduct of an election.

It has been observed that it is never difficult to persuade the winner of an election that they won; the challenge is to convince the loser that they lost. This is true of not just the losing candidate but also the supporters of the losing candidate. In any election – but especially a close national or state-wide election - it is important for the legitimacy of the winning candidate that the losing candidate (and the losing candidates’ supporters) recognize that, while they may have preferred a different result, the outcome is, nonetheless, an accurate expression of the voters’ choice expressed in a fair and honest election.

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<sup>48</sup> *Other People’s Money, and How the Bankers Use It* (1933)

Even when an election is administered in a fair and honest manner and is free of fraud or voter intimidation, there is a temptation for the losing candidate to suggest that such occurred. This suggestion of fraud or illegality in the conduct of an election undermines the public's confidence in the outcome and the authority of the winning candidate. The best response is to prevent fraud and intimidation from occurring, or, if they do occur, to document them and quickly prosecute any wrongdoing.

An election observer serves two important roles. First, by their presence, an observer deters actual fraud or voter intimidation as well as deterring or refuting false charges of voter fraud or intimidation. Secondly, if election fraud or voter intimidation does occur, the presence of an observer provides the means to assist in documenting and prosecuting these serious election crimes.

However, for an observer to be effective – whether a federal official, an independent observer or a “challenger” from a political party – the observer must have the meaningful opportunity to monitor the election process without interfering with any legitimate voters' right to cast a ballot. The following features define an effective and appropriate election observer program: (1) Observers should be trained in the requirements of federal election law and the relevant state's election law and procedure, (2) Observers should be permitted meaningful access to observe and monitor the conduct of the election including pre-election and post-election certification and tabulating procedures and handling of ballots and voting equipment, (3) Observers should be free to communicate with the press and others outside of the election facility, (4) Observers should not interfere with voters lawfully seeking to cast a ballot or with election officials performing their duties, (5) Observers should have the means to provide a timely objection to election misconduct by communication with senior election officials or law enforcement authorities, including the U.S. Department of Justice and the relevant state's Secretary of State or Attorney General, (6) Observers should have the ability to observe those polling locations with the greatest likelihood of fraud or of voter intimidation, (7) Observers should be protected from intimidation or threats seeking to prohibit them from participating as an observer, and (8) Observers should be designated as such so that voters do not confuse them with election officials.

While the presence of observers is critical to a fair and honest election and to public confidence in the election process, each state has different standards for election observers (often called “challengers”) and each state has established different qualifications necessary for an individual to participate as an observer. In most (but not all) states an observer must be a registered voter in the state or in the specific county or even precinct. Observers must be credentialed before the election and, depending upon the state, the credentials may only allow them to observe at specific polling places. Typically, an observer must be designated by one of the political parties or a candidate. Many of these regulations governing election observers do not meaningfully relate to the legitimate objective of protecting against inappropriate activity by an observer. The Carter-Baker Commission notes, “In too many states, election laws and practices do not

allow independent observers to be present during crucial parts of the process, such as the testing of voting equipment to the transmission of the results.”<sup>49</sup>

Indeed, during the 2004 presidential election both election officials and political campaigns sought to exclude observers from polls. In Florida, Republican observers were called on the eve of the election and threatened with a personal lawsuit if they participated as an observer.<sup>50</sup> In Philadelphia, two attorneys observing the election were pursued in a high-speed car chase by thugs who then physically attacked the car and intimidated the observers.<sup>51</sup> In Ohio, a federal court challenge was filed seeking to prevent any Republican election observers. The trial court issued the requested injunction, but the injunction was overturned by the Sixth Circuit Court of Appeals (affirmed on an emergency writ by the U.S. Supreme Court) and the Ohio election “challenger” statute was upheld and at 2:00 am on Election Day, Republican observers were allowed to participate.<sup>52</sup>

In New Mexico, the local election officials in Dona Ana County and Secretary of State Rebecca Vigil-Giron each sought to count ballots in secret, free from any observation. Both were challenged and observers were, ultimately, allowed to witness the process.<sup>53</sup>

<sup>49</sup> Carter-Baker Report at p. 65.

<sup>50</sup> <http://www.ac4vr.com/reports/072005/exhibitI.pdf>

<sup>51</sup> See, “Reality of Intimidation” Eric Wang, Reported in ACVR-LF report on Vote Fraud and Voter intimidation during the 2004 Presidential election. <http://www.ac4vr.com/reports/072005/exhibitM.pdf>

<sup>52</sup> See, *Summit County Democrat Central Committee v. Blackwell*, 388 F. 3d 547 (6<sup>th</sup> Cir. 2004) cert denied. *Spencer v. Blackwell*, 347 F.Supp.2d 528 (SD OH, 2004)

<sup>53</sup> “Secretary of State Rebecca Vigil-Giron asked the state Supreme Court to overturn lower court ruling that had allowed Republican observers into the polls in Sandoval and Dona Ana counties. She also seeks to overturn a decision by the Bernalillo County Clerk to allow observers there. In her court filing, she contends state law doesn’t provide for challengers to be part of the review process.

But cynics point out that she filed her petition shortly after the Bernalillo County Clerk told media outlets that observers had discovered instances of voter fraud during the qualification of provisional ballots. Provisional votes are cast by people whose names did not appear on registration rolls but nonetheless were allowed to vote pending verification of their eligibility. In counting the first 5,000 provisional ballots in Bernalillo County, observers turned up 53 instances of individuals voting more than once. They also found four voters who were dead and dozens of felons attempting to vote. In two cases, the same individual tried to vote three times: early, absentee and on Election Day.

Double voting appears to fall into two categories: voters who themselves may have voted multiple times, and those whose votes were essentially stolen. Dwight Atkins of Albuquerque attempted to vote on Election Day, only to discover that someone had already voted early in his name. Rosemary McGee showed up to vote at 3 pm on Election Day. But someone had voted in her place at 7:00am (the imposter actually misspelled her name on the signature roster). Both were shocked to learn that if an imposter votes first, the fraudulent ballot will stand, and the provisional ballot, cast later by the legitimate voter, will be disqualified.” *Wall Street Journal – On-Line - Political Diary*, November 9, 2004.

See, also, *Las Cruces Sun-News* November 6, 2004 account of attempts to secretly count provisional ballots. “When Doña Ana County begins next week to sort provisional ballots, the reason a ballot is rejected should be made public, District Judge Robert E. Robles ruled Friday. The decision came after Republican and Democrat attorneys sought a reversal of an order from the secretary of state to keep such information private. The ruling contradicts and trumps the secretary of state’s procedure, which Doña Ana County Clerk Rita Torres was set to follow.” There was strong public support for open and transparent

The Carter-Baker Commission recommended that, "All legitimate domestic and international election observers should be granted unrestricted access to the election process, provided that they accept election rules, do not interfere with the electoral process, and respect the secrecy of the ballot."<sup>54</sup>

Republican National Committee Chairman, Ed Gillispie, wrote Democrat Party Chairman Terry McAuliffe proposing that each party designate poll watching teams with a representative from each party that would monitor those polling places mutually selected by each party. Chairman McAuliffe did not accept Chairman Gillispie's offer. The DNC did, however, independently place lawyers and election observers in a number of polling places to monitor the election. This suggests a strong appreciation by both major political parties in the importance of having observers able to monitor the election process.

### **Conclusion**

Even though an election is a quintessentially partisan activity, the rules governing the conduct of an election should not be partisan. The Carter-Baker Commission demonstrated that there is a broad area of bi-partisan agreement on substantial and specific issues including the need for voter identification, election observers, current and accurate state-wide voter rolls and many other election reforms.

I am grateful that this Committee is hearing testimony on this very important issue.

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election procedures. The *Albuquerque Journal* editorialized that, "Vigil-Giron said there is nothing in state law requiring the [election] process be open. But, neither is there anything in state law prohibiting a practice that is consistent with the principles of transparency in government and elections. The secretary of state should open up her part of the process." <http://www.abqjournal.com/opinion/2OP10-29.HTM>

<sup>54</sup> Carter-Baker Report at p. 65.

**Testimony of Kay Coles James submitted to the**

United States Senate Judiciary Committee

Subcommittee on the Constitution, Civil Rights, and Property Rights

"The Continuing Need for Federal Examiners and Observers to Ensure Electoral  
Integrity"

July 10, 2006

Washington, DC

Mr. Chairman, Members of the Committee,

Thank you for inviting me to testify before this Committee. This Committee is to be commended for holding these hearings into the many elements of election administration. Today, I would like to share with you information about two aspects of elections with which I have particular knowledge and interest: the federal observers program, and the arguments in favor of voter identification cards.

As I stated in my testimony before the United States House of Representatives Committee on Administration in October 2005, I grew up in Richmond, Virginia at a time when voting was a risky endeavor in some places in the South. This conflict between the American ideal and the painful reality is well documented in U.S. history including the deaths of civil rights advocates and voter registration activists. I heartily acknowledge the great progress made since then; however, I would not rest comfortably if I stated that we, in America, have arrived.

This background has given me, I believe, a particular appreciation for the right to participate as a voter in our local, state, and national elections. While all voters should be certain of the right to participate in elections free from violence and intimidation and to

be certain that their vote is fairly counted, this right is especially appreciated by members of the African American community.

#### **Federal Observers Program**

Mr. Chairman, as you are aware, I was Director of the U.S. Office of Personnel Management from 2001 until 2005. In this capacity I was responsible for the portion of the Voting Rights Act that authorizes the U.S. Office of Personnel Management (OPM) to provide observers to certain political subdivisions (counties) and other political units as determined by the Attorney General. In such subdivisions, observers may enter any place where an election is being held to monitor (1) whether persons who are entitled to vote are being permitted to vote, and (2) whether votes cast are being properly tabulated, if so requested by the Attorney General. The observers then prepare reports that are submitted to the Civil Rights Division of the U.S. Department of Justice (DOJ), which enforces the Voting Rights Act. Voting Rights observations are held for elections throughout the year. OPM provides observers to monitor elections for ethnic and racial discriminatory practices, and for compliance with the language minority provisions of the Act.

In her testimony before the House Committee on the Judiciary Subcommittee on the Constitution in November of last year, OPM Deputy Associate Director for Human Resources Products and Services Nancy Randa presented an explanation of the duties and purpose of observers. She wrote:

Since 1966, we have deployed over 26,000 observers in a total of 22 States. Prior to 1976, we sent observers to only 5 States: Alabama, Georgia, Louisiana, Mississippi, and South Carolina. In the past 10 years, as more jurisdictions have been subject to coverage under the minority language provisions of the Act, we sent the next largest number of observers, after Mississippi, to these States (in this order): Arizona, New Mexico, New Jersey, California, Michigan, Pennsylvania, and New York. Voting Rights observers serve as neutral monitors, who do not intervene if there are violations. They only watch, listen, and record events that occur at particular polling sites on election days.<sup>1</sup>

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<sup>1</sup> Statement of Nancy Randa, Deputy Associate Director for Human Resources Products and Services, Office of Personnel Management, before the House of Representatives Committee on the Judiciary Subcommittee on the Constitution. November 15, 2005. Available online: [opm.gov/news\\_events/congress/testimony/11\\_15\\_2005.asp](http://opm.gov/news_events/congress/testimony/11_15_2005.asp). Accessed July 2006.

I firmly believe that observers are a useful, and in many cases, necessary tool to detect and prevent acts of voter fraud or intimidation which would prevent certain groups from voting. They also are an important tool in preventing disenfranchisement through vote dilution – in which the voting power of some Americans is diluted by those who vote twice, or vote illegally.

However, I also believe that there is room for improvement within the observers program itself. The observers play a fundamental role in upholding the credibility and integrity of American elections. There is one of the noblest forms of public service that exists in our country today.

Because of that, as well as the need to keep the program free from political interference, I argue that the observers program is under the right agency. The Office of Personnel Management was formed with a firm devotion to the ideal of a de-political civil service. Theodore Roosevelt upheld this ideal in his position as U.S. Civil Service Commissioner and later President of the United States, striving for reforms that fought the entrenched spoils system of his day. OPM is an organization that continues to strive for political neutrality in conducting the day-to-day affairs of government. For this reason, the federal observers program is and *ought* to be under the supervision of OPM.

While at OPM, I became very concerned about the organization and management of the federal observers program. Further investigation led me to believe that significant improvements could be made to the program. There are two areas, in particular, in which I believe the observers program could be improved in such a way that would increase its credibility and significance within the national electoral system. First, the federal

observers program deserves a higher priority and visibility within the Office of Personnel Management. Today, the observers program is operated out of Denver (Lakewood) Colorado, under the supervision of the Division for Human Resources Product and Services in the Center for Talent Services. Moving the observers program to Washington would increase its visibility and send a strong message about the importance of observers. Also, I believe that the training provided to observers can be improved. The one-day training program is informal, and could be improved with a thorough and well-managed curriculum. Furthermore, with recent increases in electronic voting, as well as changes in voting laws, it is vital that the training of observers be consistent, rigorous, and up-to-date with new voting technologies.

Second, the selection process for observers should continue to be publicized and free from any remnants of a patronage system. Unfortunately, currently the program is relatively unknown and many Americans have never heard of the program, much less been provided with information on how to become an observer. Anyone who is qualified should be given the opportunity to serve as a federal observer, and improvements to the recruitment system would make it easier for them to do so.

#### **Voter Identification Cards**

The second area that I have been asked to address is in the area of voter identification cards. I was a member of the Commission on Federal Election Reform chaired by former President Jimmy Carter and former Secretary of State James Baker. This Commission met on several occasions over nine months in 2005, and worked to produce what I believe is a very fine report outlining specific recommendations for state and federal election reform. This report is available and I commend it to the members of this Committee. As a member of the Carter-Baker Commission testifying before this

Committee, I have included a copy of the report with my prepared remarks and submit it for the record.

The U.S. Supreme Court has said, "Free and honest elections are the very foundation of our republican form of government. Hence any attempt to defile the sanctity of the ballot cannot be viewed with equanimity. And it must be remembered that the right of suffrage can be denied by debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

The Carter-Baker Commission made two recommendations that address these concerns. Specifically, the Commission recommended that states require voters to present a government-issued photo ID in order to vote. This recommendation is intended to assure voters that the only ballots cast were those cast by lawful voters who cast only one ballot.

To assure that the requirement of providing identification does not prevent any eligible voter from participating in an election we called upon states to provide the necessary photo ID free of charge to all voters and to make the ID accessible to all. The requirement of photo ID combined with accurate and current state-wide voter rolls will prevent most opportunities for vote fraud and will increase voters' confidence in the outcome of the election.

Some have mistakenly suggested that requiring voters to use a photo ID will be a poll tax. It is nothing of the sort. The vast majority of citizens already have a form of the required photo ID. Others should be able to easily obtain the ID. States should take steps to assure the opportunity of all voters to obtain an ID.

My colleague on the Commission, former Democrat Congressman Lee Hamilton, has noted that this recommendation of Photo ID will increase the confidence of voters, especially minorities and low income voters, to participate in the election with confidence and that they will be allowed to vote. In our post 9-11 society where ID is required to enter a federal building, to cash a check or board a plane it is good public policy to provide photo ID free to low income and minority persons. It is also good public policy to safeguard our election with the requirement of photo ID.

A comprehensive report prepared by the American Center for Voting Rights documented the unacceptable number of incidents of violence and intimidation directed at voters and volunteers seeking to prevent them from participating in the election as well as examples of vote fraud that disenfranchised those who legally cast a ballot.

Mr. Chairman, I encourage you to consider the recommendations of the Carter-Baker Commission and specifically the common sense recommendation of requiring voters to present a photo ID and working to assure that all voters have ability to obtain an ID without cost. Thank you for the opportunity to testify today. I would be happy to answer any questions.

**Testimony of Constance Slaughter-Harvey**

**Former State Election Official, Lawyer, and Long-term Resident of Forest, Miss.**

**Before the Senate Committee on the Judiciary**

**Subcommittee on the Constitution, Civil Rights and Property Rights**

**“The Continuing Need for Federal Examiners and Observers to Ensure  
Electoral Integrity”**

**Hearing on S. 2703  
Federal Observer Provisions**

**July 10, 2006**

**Introduction**

My perspective regarding the value and continuing significance of the federal observer program is shaped by personal and professional experiences with the electoral process in the State of Mississippi. I graduated from Tougaloo College in Tougaloo, Mississippi in 1967, and was the first African-American female to receive a law degree from the University of Mississippi School of Law in January 1970. In addition, I completed an intensive three-month program at Harvard University and received a criminal law certification from Northwestern University. Finally, I attended the Institute of Politics at Millsaps College in Mississippi and graduated from this program in the early 1970s.

I have extensive experience in the field of voting rights and general civil rights litigation. Following my graduation from law school, I served as a staff attorney with the Lawyers' Committee for Civil Rights under Law between 1970 and 1972. I also worked with lawyers Frank Parker, Carroll Rhodes and Ellis Turnage to file various redistricting lawsuits around the state. In 1976, I became the first African-American to serve as a judge in the State of Mississippi when I received a Special Chancellor appointment in a child custody matter in Scott County. I have also held a number of leadership roles in the non-profit legal sector including the Southern Legal Rights Association and East Mississippi Legal Services. In 1980, I became Executive Director of the Governor's Office of Human Development under the William Winter administration. Between 1984 and 1989, I served as the Assistant Secretary of State for Elections and Public Lands, and between 1989 and 1996 served as the Assistant Secretary of State for Elections and General Counsel. In this capacity, I worked closely with the U.S. Department of Justice,

and with local officials and voters around the state on issues connected to voting and elections.

In 1996, I returned to private practice in Forest, Mississippi and continue this practice today. I have also held a number of concurrent roles including serving as the President of “Elections, Inc.,” a think tank that focuses on voting and election-related issues, and as President of the National Association of State Election Directors. In addition, I have also served as a long-time Adjunct Professor of Pre-Law at Tougaloo College.

#### **Past Discrimination Giving Rise to the Federal Observer Provisions**

Throughout the course of history in Mississippi, local officials have gone to great lengths to restrict minority voters’ access to the ballot box and dilute African-American voting strength. Tactics used by officials have included changing the method of election, cracking and packing Black constituencies, adopting discriminatory polling place changes, intimidation, and harassment. This history surrounding official obstruction of Black voting rights in Mississippi and other Southern states provided the central evidence that Congress considered when adopting the Voting Rights Act in 1965. Nonetheless, following the passage of the Act in 1965, an all-white legislature in the State of Mississippi passed a series of bills aimed at undermining the goals of the Act. Some of these laws changed the method of election for many offices while other laws converted single-member districts to at-large systems. In addition, district lines were drawn to fragment cohesive African-American population centers. After adopting these laws, the state chose not to submit any of these voting changes for preclearance as required under

the Voting Rights Act. This defiance led to the Court's ruling in *Allen v. State Board of Elections*,<sup>1</sup> compelling the state to comply with the preclearance mandates of the Act. In addition, in *Perkins v. Matthews*,<sup>2</sup> the Court made clear that changing polling place locations and altering boundary lines through annexation were also subject to preclearance under the Voting Rights Act.

Moreover, the battle over dual registration shows how Mississippi, even in its more recent history, has continued to defy the protections codified within the Voting Rights Act. Indeed, for nearly a century, up until 1988, Mississippi had a dual registration requirement that obligated voters to register separately for state and municipal elections. Eventually, a federal district court found that the original version of this dual registration requirement, enacted in 1890, had been "adopted for a racially discriminatory purpose" and that a revised version of the dual registration requirement, adopted in 1984, violated Section 2 of the Voting Rights Act. In particular, the court noted that the requirement "result[ed] in a denial or abridgement of the right of black citizens in Mississippi to vote and participate in the electoral process."<sup>3</sup>

Significantly, the *PUSH* court also found that in Mississippi "[b]lacks ... continue to face disproportionate economic and educational levels resulting from past discrimination which inhibits their political participation," and that "administrative barriers," such as dual registration, were "harder to overcome for persons of lower socioeconomic status and persons of lower educational attainment, a group that is

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<sup>1</sup> 393 U.S. 544 (1969).

<sup>2</sup> 400 U.S. 379 (1971) (finding that each of the challenged changes falls within 5 as a "standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964," and requires preclearance before they can be put into effect).

<sup>3</sup> *Operation PUSH v. Allain*, 674 F. Supp. 1245, 1252 (N.D. Miss. 1987), *aff'd sub nom.* *Operation PUSH v. Mabus*, 932 F.2d 400, 413 (5th Cir. 1991). Ironically, our office was one of the named defendants in the suit.

disproportionately black."<sup>4</sup> The court also found that the registration rate among black citizens lagged some 25 percentage points behind the registration rate of white citizens (54 percent for blacks in comparison to 79 percent for whites).<sup>5</sup> Finally, the *PUSH* court also found that in Mississippi "the widespread variations among counties in voter registration practices ... may result in the unequal treatment of similarly situated persons" and that "[u]nfettered discretion in voting registration procedures unnecessarily restricts access to the political process."<sup>6</sup> As jurisdictions throughout Mississippi have come to grips with the court's ruling in *PUSH*, federal observers have played an important role in providing oversight to help ensure that jurisdictions throughout the state do not continue to deny minority voters access to the ballot box.

Resistance on multiple levels to court rulings such as *PUSH* and to the preclearance requirements of the Voting Rights Act have resulted in litigation and enforcement actions to ensure compliance with the Act.<sup>7</sup> The *PUSH* ruling and ensuing battles that followed, all occurring after the 1982 renewal, speaks volumes about continued voting discrimination in the State of Mississippi.

When the Act was passed in 1965, there was not a single black elected official beyond the all-black Delta town of Mound Bayou. Today, Mississippi has elected more African-American local and state legislators, judges, and other officials than any other state. Despite this progress, today Mississippi remains one of the poorest states in the country and its 36 percent Black population constitutes the largest proportion of all states. Although it is important to recognize the advancements that have been made within

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<sup>4</sup> Id. at 1255-56.

<sup>5</sup> Id. at 1253-55

<sup>6</sup> Id. at 1267.

<sup>7</sup> Brenda Wright, Mississippi Hearings of the National Commission on the Voting Rights Act (October 29, 2005).

Mississippi with respect to minority voting rights, there are still recent examples of continued voting discrimination. This discrimination impedes the ability of Black voters to cast an equal and meaningful ballot. The impact of this discrimination is demonstrated by the fact that no African-American candidate has won statewide office since Reconstruction.<sup>8</sup> It is also illustrated by the use of racial appeals in election campaigns, and the significant number of objections interposed by the Department of Justice to retrogressive voting changes. Indeed, the Jackson-Clarion Ledger recently highlighted the persisting nature of discrimination in Mississippi in a May 21, 2006, editorial.<sup>9</sup>

#### **Ongoing Voting Discrimination in the State of Mississippi**

The legacy of past and present voting discrimination in covered jurisdictions helps illustrate the continuing need for the federal observer provisions of the Voting Rights Act. So long as voting discrimination persists, there remains the potential for harassment, intimidation and other obstructionist tactics to emerge during the course of an election. The federal observer provisions serve as a safeguard against these problems by providing an effective oversight mechanism to protect minority voters' access to the ballot box.

To illustrate the connection between ongoing voting discrimination and the electoral process, it is useful to look at levels of racially polarized voting within covered

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<sup>8</sup> Despite several state-wide campaigns by overly qualified African-American candidates (such as Gary Anderson, Henry Kirskey, Barbara Blackmon, etc.), Mississippi has yet to elect any Black officials on a state-wide basis.

<sup>9</sup> See Editorial, The Jackson Clarion-Ledger, Voting Rights Act Should be Continued (May 21, 2006) (noting the “[s]tate has made tremendous progress in race relations and has a record of which it can boast, including having the highest number of black elected officials in the country. But it also has some issues, of fact and history, including the fact that no black candidate has won a statewide office since the beginning of the 20<sup>th</sup> century.”)

jurisdictions. In my view, voting has been and remains significantly racially polarized in the State of Mississippi. Although the Voting Rights Act has helped increase the numbers of African-Americans serving in local and state governments, many of those who have been successful represent majority Black districts. Levels of persistent racial polarization are reflected in a number of recent court decisions. For example, in *Jordan v. Winter*, a case challenging the redistricting plan for the state's congressional districts, a three-judge district court concluded that "blacks consistently lose elections in Mississippi because the majority of voters choose their preferred candidates on the basis of race."<sup>10</sup> In *Martin v. Allain*, a statewide challenge to the election of state trial court judges from multi-member districts, the federal district court noted that "racial polarization exists throughout the State of Mississippi." The court also noted that these patterns were particularly severe in inter-racial contests noting that "blacks overwhelmingly tend to vote for blacks and whites almost unanimously vote for whites in most black versus white elections."<sup>11</sup> Racial polarization has also been confirmed in a number of decisions involving challenges to local redistricting.<sup>12</sup>

I believe that current levels of voting discrimination are connected to the legacy of racial discrimination in the State of Mississippi. This discrimination provides the context that led to Congress' enactment of the federal observer provisions of the Act.

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<sup>10</sup> 604 F. Supp. 807, 812-813 (N.D. Miss. 1984) (three-judge court), aff'd 469 U.S. 1002 (1984).

<sup>11</sup> *Martin*, 658 F. Supp. At 1193.

<sup>12</sup> See generally, *Houston v. Lafayette County*, 20 F. Supp. 2d 996 (N.D. Miss. 1998); *Teague v. Attala County*, 92 F. 3d 283 (5th Cir. 1996), *cert. denied*, 522 U.S. 807 (1997); *Clark v. Calhoun County*, 88 F. 3d 1393 (5th Cir. 1996); *Ewing v. Monroe County*, 740 F. Supp. 417 (N.D. Miss. 1990); *Gunn v. Chickasaw County*, 705 F. Supp. 315 (N.D. Miss. 1989); *Jordan v. City of Greenwood*, 599 F. Supp. 397 (N.D. Miss. 1984).

This discrimination also provides sufficient evidence of the continuing need for the expiring federal observer provisions.

**Purpose of and Authority for the Federal Observer Program**

Since the Act was passed in 1965, the Civil Rights Division of the U.S. Department of Justice has coordinated a program to deploy federal observers to monitor local, state and federal elections. The federal observer program allows federal observers to enter polling places to monitor, report, and document their observations about the election process. Authority for deploying federal observers is codified within Section 8 of the Voting Rights Act. Generally, election observers are deployed to those jurisdictions where (1) either the Department of Justice's independent investigation revealed a possibility of intimidation or harassment of minority voters, or other significant problems that might bar minority voter access; or (2) where a significant number of aggrieved citizens in certified jurisdictions file viable complaints with the Department of Justice regarding the potential for serious Election Day problems.

The federal observer provisions of the Act were specifically designed to ensure that newly enfranchised African-American citizens would be able to vote free from discrimination, intimidation, or harassment. The observer provisions have helped protect the integrity of the electoral process by ensuring that there is an effective means of providing oversight where potential problems are likely to emerge.

The Attorney General's authority to certify jurisdictions for federal observers is limited to certain "covered" jurisdictions, many of which are in the State of Mississippi. However, jurisdictions can be newly designated as eligible for federal observer coverage

by order of a federal court. Courts can designate jurisdictions for this coverage if a meritorious lawsuit has been brought by the Department of Justice or by private citizens showing violations of the voting guarantees of the Fourteenth or Fifteenth Amendments. This feature of Section 8 of the Act helps ensure that the designated list of jurisdictions eligible for federal observer coverage is appropriately revised and amended over the course of time. Indeed, many jurisdictions that are designated for observer coverage today became so following recent litigation alleging various forms of voting discrimination.<sup>13</sup>

#### **The Role of Federal Observers in Mississippi**

Federal observers have played a unique and extensive role monitoring local, state and federal elections throughout the State of Mississippi. Since 1982, federal observers have been deployed to 48 of the state's 82 counties.<sup>14</sup> In total, federal observers have monitored elections in Mississippi on more than 250 occasions since the 1982 renewal — the highest number of deployments of all covered states.<sup>15</sup> Indeed, Mississippi accounts

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<sup>13</sup> See e.g., *United States v. Berks County, Pennsylvania*, 277 F.Supp.2d 570 (E.D.Pa. 2003) (court found evidence that minority voters in Reading have enjoyed less opportunity than other voters to participate in the political process in past elections and that these harms would likely occur in future elections if Defendants follow their past policies and practices, *citing* *Berks County*, 250 F.Supp.2d at 541. In order to enforce the voting guarantees of the Fourteenth and Fifteenth amendments to the United States Constitution, the court authorized the Director of the Office of Personnel Management to appoint Federal examiners in accordance with section 42 U.S.C. § 1793d to serve through June 30, 2007, in the City of Reading, County of Berks, Pennsylvania. During the service of the examiner, the Director of the Office of Personnel Management, at the request of the Attorney General, may assign one or more persons, who may be officers of the United States, to enter and observe election and ballot tabulation procedures pursuant to Section 8 of the Voting Rights Act, 42 U.S.C. § 1973f; and Department of Justice personnel, including attorneys and staff members, shall be permitted into the polling places for the purpose of coordinating the work of the federal observers.)

<sup>14</sup> See *The Voting Rights Act and Mississippi 1965-2006*, Robert McDuff, at 16 (2006)

<sup>15</sup> See National Commission on the Voting Rights Act, *Protecting Minority Voters: The Voting Rights Act, 1982-2005*, at 59-61 (2005).

for 40 percent of all federal observer deployment efforts since 1982. Moreover, many of these jurisdictions have been the subject of multiple observer deployments during that time period. It is worth noting that observers have monitored 19 elections in Sunflower County, 17 elections in Noxubee County and 16 elections in Bolivar County. Multiple observer deployments may provide an indication that a jurisdiction is somewhat hostile to the protections afforded by the Voting Rights Act or illustrate the degree of racial tension and intimidation experienced by voters in an area.

During my twelve years (1984-1996) as Assistant Secretary of State for Elections, my staff and I coordinated Election Day activities and worked with election officials on the municipal, county, state, and federal levels. During my tenure, I established procedures for conducting professional, open, and honest elections throughout the state. I helped implement an annual training program for local election administrators and organized voter registration conferences throughout the state. Our administration also took the federal observer provisions of the Act seriously and sought to avail ourselves of the protections afforded by the Act when appropriate. To this end, I developed Election Day complaint forms that could be used by voters or officials to document specific voting-related complaints. Our office not only received complaints from voters, but also from local and state officials. These complaints varied in range and scope. Some reported that officials selectively refused to provide voters with assistance they needed to cast their ballots while others reported illegal purges and outright denial of a ballot to a qualified voter. Often, when these problems occurred, voters were not provided any explanation or justification for the denial.

When our office received complaints regarding potential problems likely to emerge during an election, we contacted local officials and attempted to resolve the problems. In addition, we also worked closely with officials at the U.S. Department of Justice and, when appropriate, formally requested that federal observers be deployed to a particular area. Our efforts helped open dialogue between federal and local officials to try and identify ways to resolve problems prior to Election Day. Often, officials from the federal government would apprise local officials about the requirements of the Voting Rights Act and secured commitments from these officials that elections would be conducted accordingly.

However, when information reported by local leaders, officials, and voters suggested that a particular election was hotly contested and racially heated, our office would formally request that observers be deployed to address any potential intimidation or other impermissible activity likely to emerge on Election Day. In our office, we sometimes called federal observers “federal protectors” because we believed that they helped ensure the integrity of an election. Our requests to the Department of Justice were often substantiated with particularized information including detailed descriptions of the allegations and a list of community contacts in the area.<sup>16</sup> My staff and I worked closely with the United States Justice Department officials and appreciated that the federal government would lend its resources to provide oversight during elections in our state.

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<sup>16</sup> For example, in recent years, the Magnolia Bar Association (the state’s African-American Bar Association) has trained attorneys and paralegals to monitor local elections especially in areas where there is a history of voter harassment and intimidation. This is a special project of the Magnolia Bar Association which became necessary with the increase of sophisticated forms of voter intimidation and harassment at the polling places. The presence of groups such as the Magnolia Bar Associations helps ensure that voter’s complaints on the ground get delivered to federal officials who are positioned to call for observer deployment.

Barry Weinberg and John Tanner were among those officials with whom I had a good working relationship.

In my experience, federal observers have served as a buffer between African-Americans and local election officials, many of whom were, and remain, disproportionately white. The mere suggestion that local voters might call on the Department of Justice to deploy federal observers has served as an effective tool to ensure that local election officials comply with the election code, and provide equal and fair access to all eligible voters. When local officials are placed on notice that their actions, as well as the conduct of the election itself, are being monitored, there have been noticeable and significant improvements in the quality of the electoral process.

In addition, the federal observer program has helped increase and strengthen confidence levels among those Black voters and community leaders who go to great lengths to file complaints about the problems that are likely to emerge during the course of an election. When observers are deployed, Black citizens have confidence that these complaints have been taken seriously and that the mandates set forth in the Reconstruction Amendments of the U. S. Constitution will be carried out.

#### **Election-Day Problems: Reports from the Field**

##### **Sunflower, Mississippi**

Since the 1982 renewal, federal observers have been deployed on numerous occasions to Sunflower, Mississippi.<sup>17</sup> Former DOJ attorney Thomas Reed coordinated

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<sup>17</sup> See The Voting Rights Act and Mississippi 1965-2006, at 15 (2006) (noting that the repeated placement of federal observers in a particular area is some indication of the potential for discrimination in that area and the need for oversight and monitoring to ensure fairness at the polling place.)

and supervised many of these deployments.<sup>18</sup> The decision to send observers to the region are based, in part, on evidence of persisting voting discrimination in the region and on credible and consistent reports received from voters. In one instance, observers were sent to monitor elections because of reports indicating that local law enforcement officers were intimidating minority voters by stationing themselves at polls in prior elections. In particular, Sunflower residents alleged that law enforcement officers were arresting voters at the polls for traffic violations and other minor offenses. Others alleged that the sheriff and local deputies were aggressively searching for individuals with outstanding warrants at polling sites. Federal observers were deployed, in part, to monitor for unwarranted police presence at polling sites and to help restore voter confidence in the electoral process.

On another occasion, observers were deployed to monitor a racially heated interracial mayoral contest. In particular, a viable African-American candidate was challenging the white incumbent. The white incumbent was known to espouse “reactionary ideas” with respect to African-Americans and was not a candidate of choice within the minority community.<sup>19</sup> Beyond her political views, voters complained that the incumbent was using her misguided interpretation of state election law and her strong local ties to both serve as a poll watcher inside polling places and to encourage poll watchers to aggressively challenge Black voters. Federal observers closely monitored activity during the course of the election and were able to document evidence that suggested poll watchers were selectively challenging minority voters and, more often than not, mounting groundless challenges. Poll watchers challenged the registration

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<sup>18</sup> Interview with Thomas Reed, Former DOJ Attorney (July 7, 2006).

<sup>19</sup> *Id.*

status of minority voters and alleged that voters eligible to vote in county elections were ineligible to vote in city elections. Although the observers could not interfere with the process, their presence often helped discourage particularly aggressive poll watchers and helped elevate confidence levels among affected minority voters.

Federal observer coverage in Sunflower also helped identify systemic deficiencies such as improperly or poorly trained poll workers. Indeed, observers identified a number of instances in which workers inappropriately applied provisions of the election code to the disadvantage of the voter. Often, the DOJ supervising attorney was able to meet with local officials during the course of an election to discuss the problems identified by observers and help correct these problems prior to any subsequent election. However, without the information documented and provided by observers, such negotiations would have proven difficult. Indeed, the experience in Sunflower, Mississippi illustrates the deterrent value of the observer program and the continuing need for federal oversight to ensure that minority voters are able to access polling sites and cast their ballots.

**Clarksdale, Mississippi**

The experience in Clarksdale, Mississippi illustrates the value of the federal observer program in providing necessary oversight to help prevent mischief that might occur otherwise.<sup>20</sup> Black voters in Clarksdale have raised concerns about a number of practices that warrant oversight of its electoral process, including a purge in the last several years that removed a disproportionate number of eligible Black voters from the rolls. During a recent election, poll workers at a majority African-American precinct failed to offer affidavits to voters without proper identification. However, the presence of

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<sup>20</sup> Interview with Reubin Smith, Registered Voter and Volunteer Poll Watcher in Clarksdale, Mississippi (July 7, 2006).

federal observers helped correct the problem to ensure that all eligible voters were ultimately able to cast their ballots. Black voters in Clarksdale have indicated that the federal observer program has helped increase voter confidence in the face of otherwise intimidating and impermissible activity.<sup>21</sup> For instance, during a recent election, federal observers documented heavy police presence at majority Black precincts and no such presence at majority white precincts. Ultimately, this intimidating behavior did not depress minority voter turnout because many were aware that federal observers were closely monitoring the process and ensuring voter access.

**Philadelphia, Mississippi**

Nine counties in Mississippi are required to make their election-related materials available in the Choctaw language. Federal observer deployment has helped bring greater levels of encouragement among many of these voters who require effective language assistance to cast their ballots. Indeed, these bilingual observers have served as "eyes and ears" over the process – ensuring that local officials carry out a smooth language assistance program.<sup>22</sup> In many of these communities, Choctaw voters have extended great appreciation to federal observers as this oversight had a measurable impact on voter confidence and turnout levels.

**Greenwood, Mississippi**

Corrupt election-day activity still exists in Mississippi, especially in the Delta region of the state, where increasing numbers of viable Black candidates are mounting challenges to long-term white incumbents. These contests often are very racially heated raising the specter for Election Day impropriety and tactics aimed at discouraging Black

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<sup>21</sup> Interview with Buster Moton, City Commissioner in Clarksdale, Mississippi (July 7, 2006).

<sup>22</sup> Interview with Ana Henderson, Former DOJ Attorney (July 6, 2006).

voter turnout. One recent case involves the mayoral contest in Greenwood, Mississippi. A legal challenge to this election is now pending before the Mississippi Supreme Court. In May 2006, former Black councilwoman, Sheriel Perkins, challenged long-standing incumbent Harry White. Although election night results indicated that Perkins was the winner, White was ultimately declared the winner after a series of problems were identified with affidavit, curbside and absentee ballots. Perkins brought a challenge to the election that is currently pending before the Supreme Court. Indeed, federal observer presence would have helped protect the integrity of this election and instill voter confidence in the outcome.

**Tunica, Mississippi**

During a 1991 primary election in Tunica County, Mississippi, voters reported various complaints that led to a formal request for federal observer deployment during the general election. Among the numerous complaints received, some included concerns about potential tampering with absentee ballots, candidates' names omitted from ballots and intimidating poll watchers who prevented concerned voters from investigating these potential improprieties. This election also illustrates the value of the federal observer program, as monitors could have provided sufficient documentation of these problems to help in efforts to seek post-electoral relief.

**Grenada, Mississippi**

Federal observers have been deployed on a number of occasions to Grenada, Mississippi, and have played a significant role in helping to quell racial tensions preceding elections, and, by working with DOJ attorneys, helping resolve problems as

they occur during an election.<sup>23</sup> During a recent August 1999 primary election in Grenada, white poll watchers showed up at polling sites with cameras that were used only to take pictures of Black voters who needed assistance casting their ballots. This selective behavior proved intimidating to Black voters. Here, no formal follow-up steps needed to be taken by the Department of Justice or other officials because as soon as these individuals found out that there were federal observers monitoring the election, they left the polling site. Indeed, this example illustrates the deterrent effect and value of the federal observer program.

In the absence of federal observers, there were also problems in Grenada that have gone unaddressed. For example, during a recent election, there was a racially heated bond issue on the ballot that, if successful, would have led to the closing of a predominantly Black school and greater funding for white schools.<sup>24</sup> The bond required more than 65 percent support from voters to pass. Because Blacks voted overwhelmingly against it, the bond failed. Subsequently, officials placed the bond issue on the ballot during the general election. This time, the bond issue passed because officials produced two separate ballots – one ballot containing the bond issue and a second ballot containing all other remaining contests on the ballot. Because many Blacks did not know about the bond referendum and because the separate bond ballot was not offered to Black voters, the referendum passed. Had federal observers been present, this problem would have likely been avoided.

#### **General Complaints**

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<sup>23</sup> Interview with Kristen Clarke-Avery, Former DOJ Attorney (July 2006).

<sup>24</sup> Interview with Lewis Johnson, Councilmember of Grenada, Mississippi (July 2006).

In addition to the accounts provided above, I also recall receiving a range of complaints from voters about intimidating behavior at the polls including:

- Use of video cameras to intimidate Black voters in Noxubee and Lowndes Counties, Mississippi
- Black voters required to provide social security number in order to cast their ballots in Hinds County, Mississippi
- Election Official refusing to pick up and count absentee ballots from local post office in Warren County, Mississippi
- A Black incumbent's name excluded from ballots during a 1991 Hinds County election
- Voting machine problems, misalignment of ballots, and absentee balloting problems during a hotly contested election in Coahoma County
- White men wearing dark sunglasses and beige trench coats intimidating Black voters by demanding that Black voters provide their names and addresses and documenting this information in notebooks

**Testimony from the National Commission Hearing**

John Walker testified about the role that federal observers play in the State of Mississippi.<sup>25</sup> Walker noted that the observer role is key given varying interpretations of state and federal election law among different layers of government. In particular, he observed that the Voting Rights Act and threat of litigation “are the levees that keep the repression from raining back and running back into Mississippi.” On a practical level, he also noted that “ the interpretation you get from the Secretary of State depends on who's

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<sup>25</sup> John Walker, Mississippi Hearings of the National Commission on the Voting Rights Act (October 29, 2005).

giving the interpretation. One person in that office will give one interpretation, and another one will give a different one.” Walker believes that this, in part, is why the federal observer’s role is crucial, but noted that “it’s important that the people that they send to be federal observers are people who are supportive of the objectives of the Voting Rights Act, who are interested in seeing it [followed].”

Brenda Wright, the managing attorney and director of the nationwide litigation program for the National Voting Rights Institute in Boston, Massachusetts, testified that Section 5’s continuing success in curtailing legislation and practices which disenfranchise minority voters is inextricably linked to the importance and strengthening of the federal examiner and observer systems.<sup>26</sup> Wright noted that “most jurisdictions believe only certain things need to be submitted [for preclearance], such as redistricting plans” and noted that “there are a lot of voting changes that have not been submitted.” The observer program provides one vehicle that can be used to “catch” those non-compliant jurisdictions in order to ensure compliance with the preclearance provisions of the Act.

#### **The Deterrent Value of the Federal Observer Program**

Some who oppose renewal of the federal observer provisions of the Act note that the reports of potential problems likely to emerge on Election Day are often more egregious than the activity actually observed. For this reason, some opponents suggest that voters tend to overstate or embellish the problems that occur in covered jurisdictions. I believe that this argument is without merit. In my experience, federal observer deployment in the Deep South, particularly in the State of Mississippi, has yielded stark

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<sup>26</sup> Brenda Wright, Mississippi Hearings of the National Commission on the Voting Rights Act (October 29, 2005).

evidence of racial intimidation and harassment. Moreover, for those elections in which the problems observed are not particularly severe, the deterrence value of the federal observer program should not be underestimated. Indeed, federal observers create a tremendous incentive for local election officials to comply with the election code and enforce the code evenly regardless of the race of the voter. In addition, observers also increase the motivation for those working inside polling places to not impose special requirements or burdens on Black voters seeking to cast their ballots because those workers know they are being watched. In this regard, the federal observer program prevents problems that otherwise are likely to impede access to the ballot box on Election Day.

Notwithstanding the deterrence value of the observer program, significant problems remain. Without federal observers, there would be no vehicle in place to effectively document the problems that do occur. Some of these problems may necessitate litigation or other action following an election. Moreover, observers accurately document the problems that voters have on Election Day, providing the Department of Justice with an important tool to help identify those jurisdictions that may be non-compliant with the provisions of the Act. To that end, the observer program facilitates DOJ enforcement efforts under the Act.

#### **The Experience in Other Parts of the South**

Evidence of persisting discrimination with respect to ballot box access is certainly not limited to Mississippi. Indeed, there have been a number of consent decrees that have been entered since the 1982 renewal that make clear the continuing need for the federal

observer provisions throughout the Deep South. The federal observer program has helped enhance the quality of the government's enforcement efforts in that it provides a mechanism to measure whether jurisdictions are complying with the requirements and obligations that have been placed upon them. In many instances, the reports prepared and compiled by federal observers are critical in establishing a pattern of violations that require additional action by the Department of Justice.

Some jurisdictions in the South fail to appoint African-American voters to poll worker positions that sometimes lead to Election Day problems. For example, in *U.S. v. Conecuh County, Alabama*,<sup>27</sup> (S.D. Ala. Jan. 16, 1984), the court entered a decree requiring that local political party executive committees, the entity responsible for nominating poll workers, "engage in affirmative recruitment efforts aimed at ensuring that the pool of persons from which nominations are made fully reflects the availability of all qualified persons in Conecuh County who are interested in serving as election officials, without regard to their race or color." The jurisdiction was required to "seek out and propose for nomination black citizens, send notices to minority group organizations advising them that the party intends to nominate persons to serve as election officials and encourage them to have interested persons notify the chairperson of the respective political party executive committee of their willingness to serve as election officials."

In 1993, a consent decree was entered in *U.S. v. Johnson County, Georgia*,<sup>28</sup> (S.D. Ga. filed Sept. 14, 1993), addressing the jurisdiction's failure to recruit and hire election officials that reflected the diversity of the county. Census figures indicated that the total population in Johnson County was 34 percent black at the time the decree was entered.

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<sup>27</sup> No. 83-1201, slip op. at 3-4.

<sup>28</sup> No. 393-45, slip op. at 2-3.

However, only 14 percent of poll officials in the county were black and the vast majority of polling sites had no Black officials. The consent decree required that local officials take a number of steps to recruit Black poll workers including media publicity, and developing and publicizing a policy with respect to conducting elections free of racial discrimination. Officials were also required to revise their training protocol so that poll workers would be instructed on how to perform their duties in a racially nondiscriminatory manner.

Despite the specific requirements set forth in these consent decrees, federal observers were deployed to both regions and documented problems with respect to the conduct and administration of the election. For example, observer deployment to Johnson County showed that African-American citizens were still not being appointed to poll worker positions in sufficient numbers. Additional investigation yielded evidence that the supervisor of elections was resistant to the terms of the consent decree. Relying on evidence yielded from federal observers, officials from the Department of Justice worked closely with local officials to resolve these problems and implement an effective recruitment mechanism.

### **Conclusion**

Congress has the authority to renew the expiring federal observer provisions of the Voting Rights Act. The extensive record that has been compiled provides evidence of continuing discrimination in covered jurisdictions. So long as such discrimination exists, there is the possibility that problems might emerge that would inhibit minority voters' access to the ballot box. The federal observer program has helped provide an effective

means of oversight in this regard to help ensure that all voters will be able to freely cast their ballot and have those ballots counted.

Although the Voting Rights Act does not permit federal observers to interfere with the conduct of the election, the Department of Justice retains the authority to stop discriminatory action as it occurs and has effectively used this authority in the State of Mississippi. Moreover, the mere presence of neutral third-party observers inside polling places has the prophylactic effect of deterring impermissible and illegal conduct among hostile voters and local officials on Election Day.

**Testimony of Dr. James Thomas Tucker**

**Voting Rights Consultant for the National Association of Latino Elected and  
Appointed Officials (NALEO) Educational Fund**

**and**

**Adjunct Professor at the Barrett Honors College at Arizona State University**

**Before the Senate Committee on the Judiciary**

**Subcommittee on the Constitution, Civil Rights and Property Rights**

**Hearing on S. 2703,**

**“The Continuing Need for Federal Examiners and Observers  
to Ensure Electoral Integrity”**

**July 10, 2006**

**Introduction**

Mr. Chairman and Members of the Committee, thank you for your invitation to testify on S. 2703, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 ("VRARA"). There has been strong bipartisan support for this legislation to renew the crown jewel of American civil rights laws. While there has been much progress to eliminate voting discrimination in this country, much work remains left to do. For that reason, I urge the distinguished Members to pass S. 2703 without amendment and ensure that millions of American citizens continue to have equal access to their fundamental right to vote.

I am a voting rights consultant to the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund and an Adjunct Professor at the Barrett Honors College at Arizona State University. I hold a Doctor of the Science of Laws (or S.J.D.) degree from the University of Pennsylvania. I previously worked as a senior trial attorney in the Justice Department's Voting Section, in which a substantial amount of my work focused on Section 203 enforcement and federal observer coverage, including the Passaic County case I will discuss. I teamed with Dr. Rodolfo Espino, a Professor in ASU's Department of Political Science who holds a Ph.D. in Political Science from the University of Wisconsin-Madison, to co-direct a nationwide study of minority language assistance practices in public elections submitted into the Senate record.<sup>1</sup> I also co-directed with Dr. Espino a study resulting in the report on the continuing need for the Voting Rights Act ("VRA") in Arizona.<sup>2</sup> In addition, I have authored other reports that have been separately entered into the record, including a report on successful

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<sup>1</sup> DR. JAMES THOMAS TUCKER & DR. RODOLFO ESPINO AT AL., MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS (2006).

<sup>2</sup> DR. JAMES THOMAS TUCKER & DR. RODOLFO ESPINO AT AL., VOTING RIGHTS IN ARIZONA 1982-2006, a Report of RenewtheVRA.org (2006).

education discrimination cases in Section 203 covered jurisdictions<sup>3</sup> a report on English as a Second Language (ESL) waiting times in nearly two dozen cities in sixteen states covered by Section 203,<sup>4</sup> and a report on why Section 203 coverage continues to be needed.<sup>5</sup> I have included portions of a forthcoming article on the impact of the language assistance and federal observer provisions in my testimony.

Although my comments will focus primarily on the federal observer provisions and how they relate to Sections 4(f)(4), 5 and 203, I want to express my strongest support for the other provisions of S. 2703. The bill restores Section 5 to the original Congressional intent by correcting misconstructions by the United States Supreme Court in *Reno v. Bossier Parish II* and *Georgia v. Ashcroft*. The VRARA makes it clear that Section 5 prohibits intentionally discriminatory voting practices and voting changes that prevent minority voters from electing their chosen candidates. The bill also provides a straight reauthorization of Section 203 for twenty-five years, based upon a well-documented need for language assistance among limited-English proficient citizens who suffer from high illiteracy rates resulting from educational discrimination. Finally, S. 2703 strengthens the Voting Rights Act by providing for recovery of reasonable expert witness fees in litigation to enforce the Act. Section 5 and the private attorneys' general provision of the Voting Rights Act have played a critical role in making the guarantees of the Fourteenth and Fifteenth Amendments a reality for all Americans. Reauthorizing the VRARA will enhance opportunities for all American citizens to have an equal opportunity to participate in the political process.

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<sup>3</sup> DR. JAMES THOMAS TUCKER, NALEO EDUCATIONAL FUND, UNEQUAL EDUCATIONAL OPPORTUNITIES FOR ENGLISH LANGUAGE LEARNERS IN SECTION 203 COVERED JURISDICTIONS (2006).

<sup>4</sup> DR. JAMES THOMAS TUCKER, NALEO EDUCATIONAL FUND, WAITING TIMES FOR ADULT ESL CLASSES AND THE IMPACT ON ENGLISH LEARNERS (2006).

<sup>5</sup> DR. JAMES THOMAS TUCKER, NALEO EDUCATIONAL FUND, THE CONTINUING NEED FOR AND CONSTITUTIONALITY OF SECTION 203 OF THE VOTING RIGHTS ACT (2006).

My discussion of the federal observer provisions will focus on several issues. First, I will briefly describe what federal observers do and how jurisdictions are selected for observer coverage. Next, I will turn to the existing statutory framework for certifying jurisdictions for observer coverage under the VRA. I will continue by describing the changes that have been proposed for that framework and explain why those changes are necessary. I will then discuss the constitutional authority of Congress to enact the observer provisions. After that, I will discuss how federal observer coverage complements the other provisions of the VRA by facilitating compliance and enforcement activities. I will conclude by detailing observer coverage in two jurisdictions to demonstrate the impact coverage has on identifying and remedying voting discrimination.

#### **Role and Function of Federal Observers**

The role of federal observers is very straight-forward: they are non-lawyer employees of the United States Office of Personnel Management (OPM) authorized to observe “whether persons who are entitled to vote are being permitted to vote” and “whether votes cast by persons entitled to vote are being properly tabulated.”<sup>6</sup> They are “trained by OPM and the Justice Department to watch, listen, and take careful notes of everything that happens inside the polling place during an election, and are also trained not to interfere with the election in any way.”<sup>7</sup> In jurisdictions with significant numbers of language minorities, bilingual observers are preferable because they are able to not only observe the manner in which language minority voters are

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<sup>6</sup> See 42 U.S.C. § 1973f.

<sup>7</sup> U.S. Dep’t of Just., Civ. Rts. Div., Voting Sec., *Frequently Asked Questions* (last modified Feb. 25, 2002) <[http://www.usdoj.gov/crt/voting/examine/activ\\_exam.htm](http://www.usdoj.gov/crt/voting/examine/activ_exam.htm)>; see also U.S. OFFICE OF PERSONNEL MGT., MINORITY LANGUAGE CAPTAIN/CO-CAPTAIN MANUAL, app. E (Mar. 1998) (summarizing the training federal observers receive concerning their election-day responsibilities).

treated, but also can assess the quality of any written language materials and oral language assistance offered to voters in their native language.<sup>8</sup> When a voter requires assistance to cast a ballot, the observer may accompany that voter behind the curtain of the voting booth if the observer first obtains the voter's permission.<sup>9</sup>

Federal observers are not sent to every certified jurisdiction for every election. Instead, they typically are only dispatched to certified jurisdictions in which it has "been determined that there is 'a substantial prospect of election day problems.'"<sup>10</sup> **The role of federal observers should be viewed in terms of the acronym "PEP": Prevent, Enforce, and Progress.**

Federal observers "Prevent" vote denial in several respects. According to the 1975 Senate Report, "the role of Federal observers can be critical in that they provide a calming and objective presence which can serve to deter any abuse which might occur. Federal observers can also still serve to prevent or diminish the intimidation frequently experienced by minority voters at the polls."<sup>11</sup> Often, the mere assignment of federal observers to an election makes people less likely to engage in discrimination because neutral outsiders are watching and documenting their actions. Like Section 5 preclearance, federal observers can stop discrimination before it happens. This element of protection is critical to furthering the underlying purposes of the Voting Rights Act. Observers discourage problems on the side of both voters and election officials – they help prevent voter discrimination while making officials more likely to properly comply with the law, thereby facilitating the smooth conduct of elections.

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<sup>8</sup> See generally COMPTROLLER GENERAL OF THE UNITED STATES, VOTING RIGHTS ACT: ENFORCEMENT NEEDS STRENGTHENING 24-25 (Feb. 1978) ("COMPTROLLER REPORT") (summarizing complaints received from minority contacts about the absence of minorities serving as federal observers).

<sup>9</sup> See *United States v. Executive Committee of Democratic Party of Greene County*, 254 F. Supp. 543 (N.D. Ala. 1966); *United States v. Louisiana*, 265 F. Supp. 703, 715 (E.D. La. 1966).

<sup>10</sup> UNITED STATES COMMISSION ON CIVIL RIGHTS, A CITIZEN'S GUIDE TO UNDERSTANDING THE VOTING RIGHTS ACT 12 (Oct. 1984) ("CITIZEN'S GUIDE").

<sup>11</sup> S. REP. NO. 94-295 at 21, reprinted in 1975 U.S.C.C.A.N. 787.

In addition to their prophylactic effect, federal observers also help “Enforce” compliance with the Voting Rights Act. Observers themselves do not engage in civil enforcement. Instead, they serve as the eyes and ears of the Justice Department and federal courts. Federal observers are a key component of efforts to enforce the Voting Rights Act and the Fourteenth and Fifteenth Amendments because they prepare reports that can be used in subsequent litigation and the observers can testify as witnesses.<sup>12</sup> Observers also conduct their jobs in a neutral and non-partisan manner thus ensuring the integrity of the accounts provided in their reports. Since the reports are prepared contemporaneously to the observed actions by impartial observers, the reports provide evidence that is generally unassailable in court proceedings. Effective enforcement of the Act and the guarantees of the Fourteenth and Fifteenth Amendments would not be possible without federal observers.

Observers also measure “Progress” that jurisdictions are making in curing voting rights violations. Federal observers are often sent to monitor a jurisdiction’s compliance with the constitutional and statutory protections of the right to vote, as well as court orders enforcing those protections. Systemic violations and deeply ingrained discriminatory practices do not disappear over night. Often, federal observers need to be present in jurisdictions for several years to measure what incremental progress, if any, is being made. Once the progress is sufficient to demonstrate substantial compliance with all requirements protecting the right to vote, reports from federal observers facilitate determinations by federal courts or the Department of Justice to terminate coverage.

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<sup>12</sup> See generally 42 U.S.C. § 1973f (providing that persons assigned as observers “shall report to an examiner ... to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 3(a), to the court”); see also S. REP. NO. 94-295 at 21, reprinted in 1975 U.S.C.C.A.N. 787 (noting that “observer reports have served as important records relating to the conduct of particular elections in subsequent voting rights litigation”); accord *Frequently Asked Questions* (observers “prepare reports that may be filed in court, and they can serve as witnesses in court if the need arises”).

### **History of Federal Observer Deployment**

Since 1965, approximately 30,000 federal observers have monitored elections in certified jurisdictions. The number of observers has gone up dramatically in recent years as part of the Justice Department's increased enforcement activities in jurisdictions covered by the language assistance provisions of the VRA. According to the Justice Department, in 2004 "a record 1,463 federal observers and 533 Department personnel were sent to monitor 163 elections in 105 jurisdictions in 29 states."<sup>13</sup> In 2005, an off-election year, the Department deployed 640 federal observers and 191 Department personnel to monitor 47 elections in 36 jurisdictions in 14 states.<sup>14</sup> As recently as June 6, 2006, the Justice Department sent federal observers to eighteen counties in five states, primarily to monitor compliance with federal court orders in language assistance cases.<sup>15</sup> In recent years, much of the observer coverage has been for violations of the language assistance provisions of the Voting Rights Act.

### **Relevant Statutory Provisions**

The federal observer and examiner provisions are codified as Sections 3, 6-9, and 13 of the VRA. Sections 3, 7, and 13 are permanent provisions not up for renewal. Under the current statutory framework, a jurisdiction must first be certified for federal examiners before federal observers may be dispatched to cover its elections. Certification occurs through two different mechanisms. If a jurisdiction is covered by either Section 4(f)(4) or Section 5, then certification occurs under Section 6. That Section provides that the Attorney General may certify the jurisdiction for federal examiners if he or she either has received twenty meritorious written complaints from residents in the jurisdiction alleging voting discrimination or if he or she

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<sup>13</sup> United States Department of Justice press release at [http://www.usdoj.gov/opa/pr/2006/06\\_crt\\_347.html](http://www.usdoj.gov/opa/pr/2006/06_crt_347.html) (June 5, 2006).

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

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

believes their appointment is necessary to enforce voting rights protected under the Fourteenth and Fifteenth Amendments to the United States Constitution.<sup>16</sup> Nearly all of the more recent certifications have been based upon the Attorney General's determination that certification is necessary to cure a constitutional violation.

If a jurisdiction is not covered by Sections 4(f)(4) or 5, then certification occurs under Section 3(a). That Section permits a federal court to certify a jurisdiction for federal examiners "for such period of time ... as the court shall determine is appropriate to enforce the voting guarantees of the fourteenth or fifteenth amendment."<sup>17</sup> Federal courts are authorized to certify a jurisdiction for coverage as part of any "interlocutory order"<sup>18</sup> or "as part of any final judgment," as long as "the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred" in the jurisdiction being covered.<sup>19</sup> Like the "pocket trigger" for Section 5 coverage,<sup>20</sup> this pocket trigger for examiner coverage allows private parties, as well as the Attorney General, to request certification of a jurisdiction not otherwise subject to the VRA's special provisions (including the observer provisions).<sup>21</sup>

Certified jurisdictions may petition for termination of federal examiner coverage. Currently, Section 13 provides that a jurisdiction certified under Section 6 may petition the

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<sup>16</sup> See 42 U.S.C. § 1973d.

<sup>17</sup> See 42 U.S.C. § 1973a(a).

<sup>18</sup> An interlocutory order encompasses any preliminary relief awarded before a full hearing on the merits.

<sup>19</sup> See 42 U.S.C. § 1973a(a). Appointment of examiners do not have to be authorized if the violations of the right to vote: "(1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future." *Id.*

<sup>20</sup> The "pocket trigger" for Section 5 coverage allows a court to require that a jurisdiction not subject to Section 5 to submit future voting changes to the Attorney General for an "appropriate time" until violations of the fourteenth and fifteenth amendments have been eliminated. See 42 U.S.C. § 1973a(c). The Section 5 pocket trigger has been applied to the States of Arkansas and New Mexico; Buffalo County, South Dakota; Escambia County, Florida, and Cicero, Illinois.

<sup>21</sup> See 42 U.S.C. § 1973a(a).

Attorney General to request the Director of the Census to take a census or survey of voter participation. The Attorney General may terminate the certification if: (1) the Director of the Census determines more than 50% of the nonwhite persons of voting age are registered to vote; (2) all persons listed by an examiner have been placed on the voter registration lists; and (3) there is no longer reasonable cause to believe that persons will be denied the right to vote on account of race or color or on the basis of their language.<sup>22</sup> In the alternative, a certified jurisdiction may file a declaratory judgment action seeking termination in the District Court of the District of Columbia.<sup>23</sup> A jurisdiction certified under Section 3(a) may petition the court that issued the order to terminate certification.<sup>24</sup>

#### **Federal Examiners**

Currently, there are a total of 165 political subdivisions of sixteen states that are certified for federal examiners. A total of 148 counties or parishes in nine states are certified by the Attorney General under Section 6 of the VRA: twenty-two in Alabama, three in Arizona, twenty-nine in Georgia, twelve in Louisiana, fifty in Mississippi, three in New York, one in North Carolina, eleven in South Carolina, and seventeen in Texas. A total of seventeen political subdivisions in nine states are certified by federal courts under Section 3(a) of the VRA for designated periods of time specified in the courts' orders: three counties and three cities in California; St. Landry Parish in Louisiana; Boston, Massachusetts; two counties in New Mexico; two counties and one school district in New York; Berks County, Pennsylvania; Buffalo County, South Dakota; Ector County, Texas; and Yakima County, Washington. All of the 3(a) certified

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<sup>22</sup> See 42 U.S.C. § 1973k.

<sup>23</sup> See 42 U.S.C. § 1973k.

<sup>24</sup> See 42 U.S.C. § 1973a(a).

jurisdictions except for Landry Parish, Louisiana are certified as a result of court orders remedying voting discrimination against language minority citizens.<sup>25</sup>

Under the existing framework in the original 1965 Act, federal examiners are authorized to examine voter registration applicants concerning their qualifications for voting, to create lists of eligible voters to forward to the local registrar, and to issue voter registration certificates to eligible voters.<sup>26</sup> Although federal examiners initially accounted for a large percentage of black voters registered in the South after passage of the Voting Rights Act in 1965, they “have been used sparingly in recent years.”<sup>27</sup> As of December 31, 2005, there were only 112,078 federally-registered voters remaining in five southern states: Alabama (50,566), Georgia (2,253), Louisiana (12,289), Mississippi (42,388), and South Carolina (4,582).<sup>28</sup> According to OPM, federal examiners have not registered any new voters since 1983. Instead, the federal examiner provisions have only been used to certify jurisdictions so they will be eligible for federal observers. Therefore, the federal examiner provisions are no longer needed.

#### **Administrative Process Leading up to the Deployment of Federal Observers**

Once a jurisdiction is certified for federal examiners, it is eligible to be designated by the Attorney General for federal observers. The Department of Justice has not issued regulations governing how certified jurisdictions are selected for coverage by federal observers.<sup>29</sup> However, the Department has informally stated that the following procedure typically is used: Department employees initially conduct telephone surveys of covered jurisdictions with significant minority

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<sup>25</sup> U.S. Dep’t of Just., Civ. Rts. Div., Voting Sec., *Federal Examiners and Federal Observers* (last modified Feb. 28, 2006) <[http://www.usdoj.gov/crt/voting/examine/activ\\_exam.htm](http://www.usdoj.gov/crt/voting/examine/activ_exam.htm)>.

<sup>26</sup> See 42 U.S.C. § 1973e.

<sup>27</sup> S. REP. NO. 94-295 at 20, *reprinted in* 1975 U.S.C.C.A.N. 786.

<sup>28</sup> U.S. Dep’t of Just., Civ. Rts. Div., Voting Sec., *Federal Examiners and Federal Observers* (last modified Feb. 28, 2006) <[http://www.usdoj.gov/crt/voting/examine/activ\\_exam.htm](http://www.usdoj.gov/crt/voting/examine/activ_exam.htm)>.

<sup>29</sup> CITIZEN’S GUIDE at 12.

populations to determine whether any minority candidates are running; a second telephone survey then is conducted of minority contacts in jurisdictions in which there are minority candidates or where there is information suggesting there may be election day problems; if there is sufficient evidence of potential problems, a Department attorney is dispatched to the jurisdiction to conduct an investigation and recommends whether observers should be dispatched; and the decision then is made whether to send observers.<sup>30</sup> I describe this process in more detail below.

It is not always possible to send federal observers to areas where coverage may be needed. According to the Justice Department, “Sometimes the Department learns of election-related problems that may appear to warrant the assignment of federal observers but there is insufficient time to either arrange for the assignment to or to develop the factual predicate necessary for the certification of the political subdivision.”<sup>31</sup> Some jurisdictions may not be eligible for certification because they are not covered by Section 5 or under a court order pursuant to Section 3. Where this occurs, the Department may assign attorneys to monitor elections either in person or by telephone.<sup>32</sup>

#### **Proposed Changes to the Federal Examiner and Observer Provisions**

The VRARA makes several changes to the existing framework of the federal examiner and observer provisions to update the certification process to contemporary needs and usage. Section 3(c) of the VRARA appropriately repeals the federal examiner provisions in Sections 6, 7, and 9 in their entirety because these provisions have outlived their utility. Section 3(d) of the VRARA substitutes references to “observers” for references to “examiners” in the remaining

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<sup>30</sup> CITIZEN’S GUIDE at 12; COMPTROLLER REPORT at 22-23.

<sup>31</sup> U.S. Dep’t of Just., Civ. Rts. Div., Voting Sec., *Federal Examiners and Federal Observers* (last modified Feb. 28, 2006) <[http://www.usdoj.gov/crt/voting/examine/activ\\_exam.htm](http://www.usdoj.gov/crt/voting/examine/activ_exam.htm)>.

<sup>32</sup> *See id.*

Sections of the Act. Section 3(a) of the VRARA uses the existing two certification methods, with some slight modifications, but applies them to federal observers in Section 8 of the Act.<sup>33</sup> Section 3(d) of the VRARA updates the process for terminating certifications by the Attorney General based solely upon evidence that “there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color.” A federal court will continue to retain the authority to terminate certifications made under the pocket trigger for observer coverage. The VRARA’s changes to the federal examiner and observer provisions will facilitate the ability of the Attorney General and private citizens to ensure that observer coverage is available in jurisdictions where it is needed.

#### **Constitutionality of the Federal Observer Provisions**

The federal observer provisions, as currently codified in the VRA and as modified by the VRARA, fall squarely within Congress’s powers under the Enforcement Clauses of the Fourteenth and Fifteenth Amendments.<sup>34</sup> In *South Carolina v. Katzenbach*, the United States Supreme Court declined to rule on the constitutionality of the federal observer provisions in Section 8 of the VRA, noting that judicial review would have to wait for subsequent litigation.<sup>35</sup> It did not take long for federal courts to accept *Katzenbach*’s invitation.

Shortly following that decision, three Alabama counties challenged Section 8 as an unconstitutional exercise of federal power.<sup>36</sup> The counties had prohibited federal observers from

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<sup>33</sup> For one of the certification methods, the VRARA substitutes a requirement of “written meritorious complaints” from “residents, elected officials, or civic participation organizations” in place of the current requirement of 20 such complaints from “residents” of the jurisdiction. The other method of certification under Section 6 is identical, except for the substitution of “observer” for “examiner.”

<sup>34</sup> U.S. CONST. amend. XIV, § 5; U.S. CONST. amend. XV, § 2.

<sup>35</sup> 383 U.S. 301, 316 (1966).

<sup>36</sup> *United States v. Executive Committee of Democratic Party of Greene County*, 254 F. Supp. 543 (N.D. Ala. 1966). Marengo County, one of the three counties challenging Section 8, had a lengthy history of discriminating against Black voters, detailed in *Clark v. Marengo County*, 469 F. Supp. 1150, 1172-74 (S.D. Ala. 1979).

entering polling places because they claimed that the federal observer provisions were contrary to state law protecting the right of voters to cast a secret ballot.<sup>37</sup> The federal court rejected the counties' argument. The court explained:

The purpose of federal observers, as stated by one of the sponsors of that portion of the act, is "to observe and report back any corrupt practices which prevent persons certified as eligible voters from casting a ballot and having their votes counted." In this context, the function of a federal observer appears to be a constitutional exercise of Congress's authority to enforce the Fifteenth Amendment within the standards set by *State of South Carolina v. Katzenbach*.<sup>38</sup>

The court acknowledged that Alabama had an important state interest in preserving the secrecy of the ballot, but balanced that against the substantial federal interest in using observer coverage to ensure compliance with the Fifteenth Amendment. The court reasoned that the state's concern was adequately addressed if a voter consented to having a federal observer present while casting a ballot.<sup>39</sup> Therefore, the court concluded that the "Supremacy Clause of the United States Constitution requires that this procedure of Alabama law give way to enforcement of the Voting Rights Act of 1965."<sup>40</sup>

Other federal courts agree with this reasoning. In *United States v. Louisiana*, the court enjoined the state and local defendants from interfering with federal observers in the performance of their duties under Sections 8 and 14 of the VRA.<sup>41</sup> The court explained,

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<sup>37</sup> *Greene County*, 254 F. Supp. at 544, 546.

<sup>38</sup> *Id.* at 546.

<sup>39</sup> *Id.* at 546-47.

<sup>40</sup> *Id.* at 547.

<sup>41</sup> 265 F. Supp. 703, 713 (E.D. La. 1966).

“Contrary to the understanding of some persons, the federal observers observe; they do not render assistance to illiterates.”<sup>42</sup> Upon the consent of the voter, observers were even permitted to go into the voting booth with the voter to observe the process.<sup>43</sup> Ballot secrecy would be maintained by placing the observer “under the same duty to preserve the secrecy of the ballot” as election officials authorized to render assistance to illiterate voters.<sup>44</sup> Equally important, the *Louisiana* court held that federal courts have no authority to enjoin the use of federal observers in properly certified jurisdictions.<sup>45</sup> Instead, Section 8 expressly provides that “the appointment of observers is a matter of executive discretion and is not subject to judicial review.”<sup>46</sup>

The federal observer provisions of the VRA complement, but do not trump, the other provisions in the Act, such as Section 5. For example, where federal observers document the implementation of unprecleared voting changes, the failure of the Justice Department to object does not waive the preclearance requirement. The jurisdiction still must obtain preclearance.<sup>47</sup> The presence of federal observers in a covered Section 5 jurisdiction in some circumstances may be evidence of the ongoing need for coverage because of continuing voting problems in that jurisdiction.<sup>48</sup>

#### **Role of Federal Observers in Ensuring Compliance with the VRA**

Federal observer coverage plays a critical role in ensuring that jurisdictions comply with the VRA and the Fourteenth and Fifteenth Amendments. It allows the Justice Department and

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<sup>42</sup> *Id.* at 715.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> As discussed above, Sections 3 and 13 of the VRA, as amended by the VRARA, provide for judicial review of the process of certifying and terminating observer coverage.

<sup>46</sup> *United States v. Louisiana*, 265 F. Supp. at 715.

<sup>47</sup> See *Moore v. Leflore County Bd. of Election Comm'rs*, 351 F. Supp. 848, 851 (N.D. Miss. 1971).

<sup>48</sup> See 42 U.S.C. § 1973b(a)(1)(C) (providing that one of the criteria for bailout requires evidence that no federal examiners have been assigned to a covered jurisdiction for a period of at least ten years).

federal courts to observe discrimination that might otherwise go undetected on election day. Federal observers are able to monitor every aspect of the election process, from the time the voter enters the polling place to the moment that he or she casts her ballot, and even thereafter when the ballots are tabulated. In the process, federal observers can document voter treatment by election officials and others both outside and inside polling places; the availability of voting materials and assistance (particularly for language minority, first time, elderly, illiterate, and handicapped voters); and the extent to which all voters have an equal opportunity to participate in the electoral process.

The Justice Department tailors federal observer coverage on a case-by-case basis by making calculated determinations about the problems and issues that exist within a particular jurisdiction. Whenever feasible, Department attorneys meet with local election officials to establish lines of communication and describe the role that the federal observers play during the course of the election. Federal observers do not interfere with the local conduct of the election and are prohibited from offering assessments to election officials or others present in the polls. Rather, observers merely observe and document activity inside the polling place, and communicate this information to a DOJ attorney. Where necessary, Justice Department attorneys will share information about voting discrimination identified by federal observers to election officials, especially if there is a possibility that a voter may be denied the right to cast a ballot. In large part, local election officials frequently welcome federal observers. However, observers remain an enforcement arm of the Justice Department and are not there to interfere with or perform the work of local election officials.

**Mapping out a Particularized Deployment Plan for a Federal Observer Exercise**

Federal observer exercises require substantial planning. The planning begins early on, when Department of Justice attorneys and other employees begin documenting evidence that justifies the selection of jurisdictions for coverage. Often, this documentation includes summarizing written complaints from voters or community groups of suspected election day problems. Department attorneys call local contacts to determine whether there is evidence of racial tensions, racial appeals, or efforts to directly or indirectly suppress the voting rights of racial or ethnic minority citizens. Local press accounts often provide evidence of tense conditions. The presence of racially heated white/black or Anglo/Latino races is also a significant factor that is considered. Similarly, elections in which minority voters are in a position to elect candidates of choice for the first time or possibly to gain a majority of seats on an elected body are a strong basis for sending observers.

After the preliminary investigation is completed, the Department may then send an attorney to the jurisdiction to gather supplemental information and assess the situation on the ground. Based upon meetings with local officials and other evidence gathered, the Chief of the Voting Section may forward a written recommendation requesting deployment of federal observers to the Attorney General or his or her designee, who makes the final decision. The entire investigation and recommendation process typically takes at least three weeks, although expedited authorizations can be secured if circumstances dictate. Typically, an investigation is not conducted for jurisdictions being monitored under a federal court order because the evidence already supports continued observer coverage.

**The Federal Observer Report and Training**

When a jurisdiction is approved for federal observer coverage, the responsible Department attorney works with OPM to develop the form report and plan the exercise. Federal observer reports require documenting information for each covered voting precinct including: the opening and closing times for the polling place; how many poll workers are present at opening and closing; any problems opening or closing the polling place or with poll worker staffing; voters waiting in line at opening or closing; signage and publicity showing the location of the polling place; the number, race, ethnicity, language abilities, position, and training of each poll worker; how the polling place is configured; where all of the poll workers and voting materials are located; polling place accessibility, particularly for handicapped and elderly voters; voter assistance compliance under both Sections 203 and 208 of the Act; and compliance with provisions of the Help America Vote Act (HAVA). In jurisdictions required to provide language assistance, observers also document whether all written materials are provided in the covered language (unless it is an unwritten language), the availability of language assistance, and whether that assistance is available at every stage of the election process. The report also allows observers to report how voters are treated inside and outside of the polling place, whether they are offered provisional ballots if their names are not on the voter registration list, and the availability of voting instructions and assistance using the voting machine or casting a paper ballot. Observers are provided with special forms to complete in the report if a voter is turned away without being allowed to vote, without receiving assistance, or any other action taken against the voter. Reports are written in objective terms so the observer merely documents what he or she sees, without drawing any conclusions of whether those observations are discriminatory or violations of any constitutional or statutory protections. In places where

federal observer coverage has been conducted previously, the report is typically updated to reflect any changes in local election laws or expected election day activities from the previous coverage.

Federal observer training includes going over the observer's role, reviewing the report, role-playing to demonstrate proper and improper methods of observation, and driving through the jurisdiction to familiarize each observer team with their polling place location(s). Observers are instructed to request a voter's permission before accompanying them into the voting booth, including the least intrusive way of making that request. Although many OPM employees have participated in observer coverage for several years, they are required to complete the daylong training like all of the other observers to ensure uniformity and consistency during the exercise.

Usually, two observers are paired together as a team. If the observers are in a jurisdiction to document language assistance compliance, efforts will be made to ensure that at least one of the observers is fluent and can read and write in the language they are there to observe. Bilingual observers are important for several reasons. They can observe and document the language abilities of poll workers, usually by engaging the poll workers in a short conversation when voters are not present. In addition, they are able to observe communications between poll workers and voters in the covered language. Observers do not make any judgments on the quality of language assistance that is offered, but merely document their observations. Occasionally, OPM must hire contract employees if it does not have sufficient employees proficient in the covered languages for an observer exercise, particularly for American Indian languages. Observers are selected because of their communication skills, attention to detail, and writing abilities.

A Department attorney and OPM captain establish a command center to receive reports from co-captains and observer teams as activities develop in the field. Election coverage usually commences at least one hour before the polls open and ends after all of the polls close. Sometimes, federal observers will be present during the counting and final tabulation of ballots, including absentee and provisional ballots and any other ballots or voter challenges addressed during the canvassing process.

Immediately after coverage of the polling places and/or ballot-counting ends, observers work with Department attorneys and OPM managers to finalize their reports while the information is still fresh in their minds. In most cases, the original versions of the reports are maintained either by OPM or the Department of Justice. Copies of the reports are usually submitted to a supervising federal court under seal to protect voter identity. Occasionally, redacted versions of observer reports are provided to local election officials; more frequently, the Department of Justice provides local elections officials with a summary of information gathered by the observers.

**Assessing the Value of the Federal Observer Program: Humphreys County, Mississippi and Passaic County, New Jersey**

I will briefly provide two examples of how federal observer coverage allows courts to determine whether voting discrimination has occurred and how it should be remedied. First, observer coverage is not one-sided. Reports from observer coverage may vindicate a jurisdiction by documenting the absence of voting discrimination. For example, observer reports aided a federal court in determining that election irregularities in Humphreys County, Mississippi, were insufficient to warrant setting aside the election results.<sup>49</sup> The court described the important evidentiary role that the reports played in weighing contradictory evidence:

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<sup>49</sup> James v. Humphreys County Bd. of Election Comm'rs, 384 F. Supp. 114 (N.D. Miss. 1974).

It is impossible for the court to satisfactorily resolve many irreconcilable evidentiary disputes without resort to the federal observers' reports. These reports ... were compiled by disinterested persons almost immediately following the election; they were submitted in the regular course of official duty and are regarded as highly credible.<sup>50</sup>

Contrary to what the plaintiffs alleged, federal observers documented that ballots "were rejected without overtones of racial discrimination" because unclear ballots for both white and black candidates were disregarded.<sup>51</sup> The court reasoned, "Any contrary conclusion, which contradicts the basic findings of the federal observers, is without credible support and must be rejected as inconsistent with the plainly established facts."<sup>52</sup> Therefore, the court held that "white officials, while rendering assistance at the polls, did not mislead, intimidate or coerce black assisted voters contrary to their wishes."<sup>53</sup>

On the other hand, federal observers also provide an important tool to identify and stop voting discrimination where it occurs. In the Justice Department's Passaic County litigation, federal observer coverage was critical to correcting widespread, systemic voting discrimination against language minority voters.<sup>54</sup> I have described that litigation at length in my forthcoming article,<sup>55</sup> but will briefly summarize the role of observers here. According to the 2000 Census, Passaic County has a growing Hispanic population, including 24,270 limited-English proficient

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<sup>50</sup> *Id.* at 125.

<sup>51</sup> *Id.* at 122.

<sup>52</sup> *Id.* at 125.

<sup>53</sup> *Id.* at 129.

<sup>54</sup> For another example, see *United States v. Berks County*, 277 F. Supp. 2d 570 (E.D. Pa. 2003) (preliminary relief) and 250 F. Supp.2d 525 (E.D. Pa. 2003) (findings of fact and conclusions of law).

<sup>55</sup> Dr. James Thomas Tucker, *Enfranchising Language Minorities: The Bilingual Election Provisions of the Voting Rights Act* (2006).

(LEP) Spanish-speaking voting age citizens with an illiteracy rate nearly six and a half times the national average.<sup>56</sup> Five communities in Passaic County have large percentages of LEP Hispanic voting age citizens, including Passaic City, where Latinos are the largest single group in the city in numbers, but were largely excluded from elections.

Depressed registration and turnout rates among Latinos in Passaic County were the direct result of widespread official and unofficial discrimination. As early as 1986, state courts held the County liable for discriminatory voter purges, voter challenges, and failure to hire Spanish-speaking poll workers in heavily Hispanic election precincts in violation of state law.<sup>57</sup> Hispanic voters and candidates were threatened and subjected to ethnic slurs.<sup>58</sup> Law enforcement officials were placed in the polls to discourage Hispanics from voting.<sup>59</sup> Some Hispanic persons were denied opportunities to register voters.<sup>60</sup> County officials failed to timely process voter registration applications submitted by Hispanics.<sup>61</sup> Despite the large number of Spanish-speaking voters, the County did not have any Spanish-speaking election officials to assist voters

<sup>56</sup> See DR. JAMES THOMAS TUCKER & DR. RODOLFO ESPINO AT AL., MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS table C (2006) (summarizing July 2002 Census determinations for Section 203 coverage).

<sup>57</sup> In re the Election for the Office of Council of the City of Paterson, County of Passaic, Docket No. 58 (Special Proceedings) (N.J. Super. Ct. Law Div., Passaic County, Aug. 11, 1986). Under New Jersey law, the county elections board must ensure that at least two bilingual board workers (or poll workers) of Hispanic origin fluent in Spanish are present in each designated Spanish Election District, which are those voting precincts "in which the primary language of 10% or more of the registered voters is Spanish." N.J. Stat. § 19:6-1 (1974).

<sup>58</sup> See Elizabeth Moore, *Security Increased at Polls for Passaic Elections*, NEWARK STAR-LEDGER, May 2, 1993, available at 1993 WL 3462565.

<sup>59</sup> See Maia Davis, *U.S. Probing Passaic Election Tactics, Voter Intimidation Alleged in Paterson*, THE RECORD, Dec. 4, 1998, at A1.

<sup>60</sup> See generally Meeting Minutes of the Passaic City Council, Journal 3, at 603 (Jan. 6, 1977) (denying a Hispanic citizen permission to set up tables in the business section of Passaic City to register voters).

<sup>61</sup> See David Voreacos, *5,000 Voter Records Pulled From Books, State Order to Restore Names Ignored*, BERGEN RECORD, May 8, 1996, at A1; David Voreacos, *Elections Chief Draws More Fire, Accused of Making Racial Comments*, BERGEN RECORD, JULY 2, 1996, at N1. The National Voter Registration Act ("NVRA") requires a jurisdiction to send notices to voters about the disposition of their registration status before being allowed to change their registration status or purge them. See 42 U.S.C. §§ 1973gg-6(a), 1973gg-6(d).

or persons attempting to register.<sup>62</sup> Election information was not advertised in Spanish-language newspapers or media.<sup>63</sup> Often, Hispanic voters spent hours trying to locate their polling places.<sup>64</sup> These problems were exacerbated further by the refusal of many poll workers to permit limited-English proficient Hispanic voters to receive voting assistance from the person of their choice.<sup>65</sup> The presence of these structural barriers to Spanish-speaking voters frequently caused them to be turned away from the polls without voting and discouraged others from making any attempt to vote.<sup>66</sup>

In April 1999, the Justice Department notified the State of New Jersey, Passaic County, and Passaic City that it was prepared to sue them for knowingly discriminating against Hispanic voting-age citizens, in violation of the VRA and the United States Constitution.<sup>67</sup> In June 1999, the United States filed a complaint and consent decree in federal court, alleging that the three jurisdictions violated the voting rights of Hispanic voting-age citizens who were unable to speak or understand English well enough to participate in the electoral process.<sup>68</sup> On July 12, 1999, a

<sup>62</sup> See generally Dan Kraut, *Hispanics Poll Access Being Monitored; Observers Fan Out in Passaic, Paterson*, BERGEN RECORD, June 8, 1999, at L1 (noting that all the phones in the election office were answered in English, and although there was a Spanish speaker available, “some callers may have given up before being transferred”). Voters contacting the elections office on election day typically do so because they have forgotten where they are supposed to vote or want to know the polling hours. *Id.*

<sup>63</sup> See Elizabeth Moore, *Passaic to Hire More Latino Poll Workers, City Recruits Spanish Speakers in Response to Justice Department Report of Voter Discrimination*, NEWARK STAR-LEDGER, Apr. 15, 1999, at 27; Gerardo Fernandez Dep., at 88:3-89:5, United States v. Passaic City, New Jersey, No. 00-521 (JWB) (D.N.J. Dec. 8, 2000) (on file with author).

<sup>64</sup> See Gerardo Fernandez Dep., at 63:12-69:4, United States v. Passaic City, New Jersey, No. 00-521 (JWB) (D.N.J. Dec. 8, 2000) (on file with author).

<sup>65</sup> See, e.g., Elizabeth Moore, *Passaic to Hire More Latino Poll Workers, City Recruits Spanish Speakers in Response to Justice Department Report of Voter Discrimination*, NEWARK STAR-LEDGER, Apr. 15, 1999, at 27; Fernandez Dep. at 118:20-119:2; Hare Dep. at 174:23-176:25; Santiago Dep. at 97:24-98:19.

<sup>66</sup> See *Passaic Near Settlement of Hispanic Vote-Bias Issue at L1*; Dan Kraut, *Latino Voters Promised More Access, Passaic County Respond to U.S. Stance*, BERGEN RECORD, Apr. 15, 1999, at L1.

<sup>67</sup> See Letter from Bill Lann Lee, Acting Assistant Attorney General of the Civil Rights Division, to counsel for the State of New Jersey, Passaic County, and Passaic City (Apr. 8, 1999) (on file with author).

<sup>68</sup> See Complaint, United States v. Passaic City, N.J. et al., and Passaic County, N.J., et al., No. 99-2544 (NHP) (D.N.J. June 2, 1999).

three-judge panel entered the Consent Decree that provided for comprehensive relief, including designation of federal observers through the end of 2003 pursuant to Section 3(a) of the VRA.<sup>69</sup>

Over the next four years, federal observers played a crucial role in bringing Passaic County into compliance with Section 203. Over 430 federal observers were used in about eighteen elections starting in June 1999 and ending in November 2003.

The extent of the voting discrimination was both severe and ingrained, and was further complicated by hostile election officials and members of the County Board of Elections whose members either contributed to the discrimination or were unwilling or unable to stop it.<sup>70</sup> For example, in November 1999, 25 of the 33 voting machines in the predominately Hispanic community of Passaic City were inoperative for several hours after the polls opened, which was worsened by the lack of Spanish language assistance for filling out emergency ballots.<sup>71</sup> Incidents of intimidation of Hispanic voters and poll workers by County sheriff's officers violating state statutes restricting law enforcement activities at the polls were reported in Paterson.<sup>72</sup> For example, observers encountered a man wearing a law enforcement shirt while serving as a challenger at one polling site and noted that seven plainclothes officers spent two

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<sup>69</sup> See Consent Decree, *United States v. Passaic City, N.J. et al., and Passaic County, N.J., et al.*, No. 99-2544 (NHP) (D.N.J. July 12, 1999) (hereinafter "Passaic Consent Decree"). All actions brought to enforce Section 203 of the Voting Rights Act must be brought before a three-judge federal court. See 42 U.S.C. § 1973aa-2; 28 U.S.C. § 2284.

<sup>70</sup> See Dan Kraut, *Judge Told of Chaotic Election Board Meetings*, BERGEN RECORD, Mar. 13, 2001; Donna Knipp, *Elections Official Tells of Being "Terrorized"*, NORTH JERSEY HERALD & NEWS, Mar. 13, 2001.

<sup>71</sup> See Robert Ratisch & Josh Gohlke, *Violence Mars Election*, NORTH JERSEY HERALD & NEWS, Nov. 3, 1999, at A1, A8; Tina Fiorellino Dep., at 285:7-286:14, *United States v. Passaic City, New Jersey*, No. 00-521 (JWB) (D.N.J. Dec. 14, 2000) (on file with author); Victor Santiago Dep., at 450:13-451:4, *United States v. Passaic City, New Jersey*, No. 00-521 (JWB) (D.N.J. Oct. 5, 2000) (on file with author). The County later determined that there was nothing mechanically wrong with the machines, and that it appeared they had been tampered with. See Rich Calder, *FBI to Eye Tampering in Election*, NORTH JERSEY HERALD & NEWS, Feb. 11, 2000, at A1.

<sup>72</sup> Under New Jersey law, it is a fourth degree crime for either a full or part-time law enforcement officer serving as a poll worker or challenger to wear a police officer's uniform or to carry an exposed weapon. N.J. Stat. § 19:6-15.1. Furthermore, law enforcement officers assigned to polling places in their official capacity are prohibited from serving as poll workers or challengers. N.J. Stat. § 19:6-16.

hours at another polling site challenging only the Democratic poll workers.<sup>73</sup> At one polling site in Clifton, two armed sheriff's officers beat and injured a Democratic campaign worker as he was taking campaign signs from his car.<sup>74</sup> Election officials in Clifton also were hostile to efforts to assist Latino voters, including an April 2000 incident in which non-Hispanic poll workers screamed at two high school students acting as Spanish language translators and forced them to leave the site.<sup>75</sup>

In June 2000, the United States filed an application for an order to show cause why the defendants should not be cited for contempt as a result of numerous violations of the Consent Decree documented by federal observers and the County's own elections records.<sup>76</sup> In July 2000, the parties resolved the United States' contempt application by agreeing to have the three-judge federal Court appoint an independent elections monitor for Passaic County's elections. The appointment marked the first time that the federal government took over a jurisdiction's elections process for failing to comply with Section 203 of the VRA.<sup>77</sup> The monitor's initial

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<sup>73</sup> See Robert Ratish & Josh Gohlke, *Violence Mars Election*, NORTH JERSEY HERALD & NEWS, Nov. 3, 1999, at A8. In addition, a Democratic campaign worker in Paterson alleged that two men pushed him and threatened him in front of a city polling place. See Maia Davis, *FBI Probing Election Day Attacks, Reviewing Incidents for Civil Rights Violations*, BERGEN RECORD, Feb. 5, 2000.

<sup>74</sup> See Robert Ratish & Josh Gohlke, *Violence Mars Election*, NORTH JERSEY HERALD & NEWS, Nov. 3, 1999, at A1; Mitchel Maddux, *Democrats Vow to Pursue Case in Assault*, NORTH JERSEY HERALD & NEWS, Nov. 4, 1999, at A1.

<sup>75</sup> See Ernie Garcia, *Abuse of Interpreters is Alleged at Clifton Board Election, Incident Reported at School 12*, NORTH JERSEY HERALD & NEWS, Apr. 20, 2000, at A1, A4.

<sup>76</sup> See United States' Application for an Order to Show Cause and Order for Expedited Discovery, *United States v. Passaic City, N.J. et al., and Passaic County, N.J., et al.*, No. 99-2544 (NHP) (D.N.J. June 26, 2000). The application cited numerous violations of the Consent Decree, including: (1) untimely and inadequate efforts to recruit and train Hispanic and bilingual poll workers; (2) untimely and inadequate acts to retain and train qualified translators to fill bilingual poll worker vacancies; (3) failure to provide all election day materials and signs in Spanish; (4) disparate treatment of Hispanic voters in the registration and voting process; (5) ineffective recruitment and training by the bilingual coordinators; and (6) failure to timely and fully provide the United States with required election records and descriptions of efforts to recruit bilingual poll workers. See *id.*

<sup>77</sup> See Steve Strunsky, *Spanish Voted Here: Effort in Passaic to Get Hispanic Representation*, N.Y. TIMES, Oct. 29, 2000.

term was until December 31, 2000, which subsequently was extended on various occasions until May 31, 2002.<sup>78</sup>

Federal observers provided the federal court and federal monitor with evidence of continued discrimination. For example, during the November 2000 general election, about 100 poll workers failed to show up to their designated polling places, at the same time that allegations were circulating that they had been paid two hundred dollars – double their daily pay – to stay away.<sup>79</sup> At least four poll workers were dismissed for inappropriate behavior, including one elderly poll worker at a site in Passaic who made a derogatory remark about Puerto Ricans and a poll worker in Paterson who refused to cooperate with federal observers.<sup>80</sup> Federal observers also reported that many of the poll workers “were simply inexperienced and inadequately trained,” had problems opening and closing voting machines, were confused about procedures for using provisional and emergency ballots, and did not understand “the kind of help they should be providing to those voters needing language assistance.”<sup>81</sup>

Several problems persisted during the four elections held in Passaic County in 2001. In the April school board elections, some poll workers in Passaic City and North Haledon told

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<sup>78</sup> See Order Appointing an Independent Elections Monitor in Passaic County, *United States v. Passaic City, N.J. et al., and Passaic County, N.J., et al.*, No. 99-2544 (NHP) (D.N.J. Sept. 6, 2000) (three-judge panel) (ordering the monitor’s initial appointment to be effective until December 31, 2000); Order Temporarily Extending the Term of the Independent Elections Monitor in Passaic County, *United States v. Passaic City, N.J. et al., and Passaic County, N.J., et al.*, No. 99-2544 (NHP) (D.N.J. Apr. 16, 2001) (extending the monitor’s term until July 31, 2001); Order Extending Term of the Independent Elections Monitor, *United States v. Passaic City, N.J. et al., and Passaic County, N.J., et al.*, No. 99-2544 (NHP) (D.N.J. Aug. 29, 2001) (three-judge panel) (extending the monitor’s term until December 31, 2001); Order Extending Term of the Independent Elections Monitor, *United States v. Passaic City, N.J. et al., and Passaic County, N.J., et al.*, No. 99-2544 (NHP) (D.N.J. Mar. 12, 2002) (three-judge panel) (extending the monitor’s term until May 31, 2002).

<sup>79</sup> See Dan Kraut, Monsy Alvarado, & Jennifer V. Hughes, *Latinos Access to Polls “Better,” Passaic Monitor Calls Effort Partial Success*, BERGEN RECORD, Nov. 8, 2000, at L1.

<sup>80</sup> *Id.* New Jersey law permits the removal of poll workers for cause, which includes “an illegal act,” such as discriminatory treatment of voters. See N.J. Stat. § 19:6-2. See also 42 U.S.C. § 1973 (the general non-discrimination provision of the Voting Rights Act).

<sup>81</sup> See Third Report of the Election Monitor, at 8-9, *United States v. Passaic City, N.J. et al., and Passaic County, N.J., et al.*, No. 99-2544 (NHP) (D.N.J. Jan. 24, 2001).

Hispanic voters they “should all go back to Mexico” and “should learn English.”<sup>82</sup> In the June primary election, a Passaic City police officer made derogatory remarks to an Indian poll worker and detained a Hispanic federal observer, as the County continued to have inadequate numbers of bilingual poll workers.<sup>83</sup> In the November general election, threatening post cards were sent to Hispanic and African-American voters in Passaic City in an apparent effort to intimidate them and keep them away from the polls.<sup>84</sup> In Passaic City and Paterson, minority voters received phone calls that also tried to discourage them from turning out to vote.<sup>85</sup>

The federal elections monitor was able to use this information to propose a number of changes to break Passaic County’s dependency on the monitor and federal and state observers to comply with statutory bilingual election mandates.<sup>86</sup> He suggested that the County hire a full-time election office administrator and implement written office procedures to hold elections personnel accountable for violations of the Consent Decree.<sup>87</sup> Furthermore, he recommended that the County use specially trained “master board workers” to supervise operations at their designated voting precincts to ensure that they were in compliance with federal and state law on election day.<sup>88</sup> In addition, he proposed completely overhauling the County’s poll worker

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<sup>82</sup> John Chadwick, *Election Monitor Notes Passaic Strides, Says Board is Working More Collegially*, BERGEN RECORD, Apr. 28, 2001, at A4.

<sup>83</sup> See Josh Gohlke, *Cop Accused of Slurs at Passaic Polls, Allegedly Detained Federal Observer Too*, BERGEN RECORD, June 27, 2001, at L3; See Sixth Report of the Election Monitor (“Sixth Report”), *United States v. Passaic City, N.J. et al., and Passaic County, N.J., et al.*, No. 99-2544 (NHP) (D.N.J. July 30, 2001), at 6-8.

<sup>84</sup> See Editorial, *Ugly Politics*, BERGEN Record, Nov. 6, 2001, at L14; *Passaic Voters Cautioned to Disregard Mailers*, NEWARK STAR-LEDGER, Nov. 5, 2001, at 21; Barbara Williams, *Threatening Postal Cards Denounced*, BERGEN RECORD, Nov. 5, 2001, at A3. The postcards were printed in English and Spanish and purported to be sent by election officials to warn of the presence of “armed law enforcement officers’ at the polls and fines and prison for anyone violating voting laws.” *Id.*

<sup>85</sup> See Josh Gohlke, *Polling System Called Much Improved; But Intimidation of Voters Still Occurs*, BERGEN RECORD, Dec. 4, 2001, at L1.

<sup>86</sup> See Third Report of the Election Monitor, *United States v. Passaic City, N.J. et al., and Passaic County, N.J., et al.*, No. 99-2544 (NHP) (D.N.J. Jan. 24, 2001).

<sup>87</sup> *Id.* at 5-7.

<sup>88</sup> *Id.* at 9-10.

instruction program by hiring professional instructors to provide effective training regarding federal and state requirements and the proper election-day procedures.<sup>89</sup> He also encouraged elections officials to increase poll worker compensation to combat the recurring problem of “no show” poll workers that exacerbated the lack of sufficient language assistance at the polls.<sup>90</sup> Finally, he urged the County to purchase new voting machines that could accommodate bilingual ballots and thereby reduce the potential for Spanish-speaking voters to be disenfranchised because of mechanical problems with the existing fifty-year old machines.<sup>91</sup> On September 21, 2001, the federal court entered an order implementing the monitor’s recommendations.<sup>92</sup> After he signed the order, Judge Politan issued a stinging rebuke for Passaic County’s elections officials, who were present at the hearing, noting in the wake of the September 11<sup>th</sup> terrorist attacks, “We may be going to war because of the right to vote. I’ll appoint 10 monitors if I have to” in order to bring Passaic County into compliance with federal law.<sup>93</sup>

In the end, federal observers made a substantial difference in Passaic County. Although voting discrimination has not been completely eradicated from the County’s elections, it is now in substantial compliance with the VRA and constitutional requirements. As language materials and assistance increasingly became available at the polls for limited-English proficient Spanish-speaking voters, Hispanic voters started turning out in record numbers.<sup>94</sup> In November 2000,

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<sup>89</sup> *Id.* at 11-13.

<sup>90</sup> *See id.* at 7-9, 11.

<sup>91</sup> *See id.* at 13-15; Josh Gohlke, *County Junks 150 Old Voting Machines, “Good Riddance,” Election Monitor Says*, BERGEN RECORD, July 18, 2001, at L1.

<sup>92</sup> *See* Supplemental Consent Order Implementing Passaic County Elections Monitor Recommendations, *United States v. Passaic City, N.J. et al., and Passaic County, N.J., et al.*, No. 99-2544 (NHP) (D.N.J. Sept. 21, 2001).

<sup>93</sup> Josh Gohlke, *Judge Talks Tough to Passaic Officials; Lays Down the Law on Election Duties*, BERGEN RECORD, Sept. 22, 2001, at A19.

<sup>94</sup> *See* Elizabeth Moore, *Passaic Sees Increase in Hispanics at the Polls*, NEWARK STAR-LEDGER, Jan. 17, 2001, at 21; Ernie Garcia, *Economic, Political Clout Growing for Dominicans*, NORTH JERSEY HERALD-NEWS, May 7, 2000.

Passaic County voters elected the first Hispanic member of the County Board of Freeholders.<sup>95</sup> In May 2001, Passaic City voters elected the city's first Hispanic mayor.<sup>96</sup> The federal government's "extraordinary oversight of county elections" made all of this possible.<sup>97</sup>

### **Conclusion**

In closing, the federal observer provisions have played an important part of the VRA's statutory framework for protecting the fundamental right to vote. I recommend in the strongest terms that without delay, the Senate pass S. 2703 without amendment, to ensure the continued protection of the right to vote for all Americans. Thank you very much for your attention. I will welcome the opportunity to answer any questions you may have.

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<sup>95</sup> See Elizabeth Moore, *First Hispanic is Sworn in as Passaic Freeholder*, NEWARK STAR-LEDGER, Jan. 5, 2001, at 52; Elizabeth Moore, *Freeholder Wins in Passaic Linked to Voter Backlash*, NEWARK STAR-LEDGER, Nov. 9, 2000, at 31.

<sup>96</sup> See Josh Gohlke, *Passaic Elects Latino Mayor. Rivera Wins by a Wide Margin*, BERGEN RECORD, May 9, 2001, at A1.

<sup>97</sup> Josh Gohlke, *Election Monitor Keeps Job for Now; County Officials Win Concession*, BERGEN RECORD, Mar. 13, 2002, at L1.

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**Testimony of Alfred Yazzie**

**Navajo Language Consultant for the United States Department of Justice  
and Certified Navajo Interpreter**

**Before the Senate Committee on the Judiciary**

**Subcommittee on the Constitution, Civil Rights and Property Rights**

**“The Continuing Need for Federal Examiners and Observers to Ensure  
Electoral Integrity”**

**Hearing on S. 2703,**

**Federal Observer Provisions**

**July 10, 2006**

**Introduction**

I am grateful for the invitation to provide testimony on S. 2703, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 (“VRARA”). My testimony is focused specifically on those expiring provisions of the Voting Rights Act that deal with the federal observer program, Sections 6-9, which have helped provide American Indians, and other citizens, a more meaningful level of access to the political process. Indeed, many American Indians require language assistance to cast their ballots. Without the federal observer program, there would be no vehicle in place to objectively measure the quality or deficiencies in language assistance programs instituted in certain jurisdictions that are covered under Section 203 of the Act. Moreover, the federal observer program has had a significant impact on registration and turnout rates among those American Indians in areas with high limited English proficiency (LEP) and illiteracy rates that are far beyond the national average. I urge Chairman Arlen J. Specter and other Members of this Committee to pass S. 2703 to help ensure that millions of American citizens on reservations and elsewhere in this country are able to cast a meaningful ballot.

**Background**

My testimony today is informed by my experience living on and working with American Indian reservations in the Southwest. I was born on a Navajo reservation in Keams Canyon, Arizona, but raised north of Pinon, Arizona. I presently reside in Tempe (Maricopa County), Arizona, and have lived there for the last ten years. I received my undergraduate degree in secondary education at Arizona State University. I have also completed work towards a dissertation on Navajo language programs for high school

students through Arizona State University. I hold Masters Degrees in Education Counseling and Counseling. I also served as a Faculty Associate at Arizona State University where I taught courses on the Navajo language, as well as a course on the history and culture of the Navajo people for the last ten years. My publications include two books reviews in the *Journal of American Indian Education*.

I provide language assistance during official proceedings in the United States Federal District Courts, the Maricopa County Superior Court, as well as in local courts in the Cities of Phoenix, Mesa, and Scottsdale, and in Pima and Pinal Counties. I have served in this capacity for the last decade. I am certified by the States of Arizona and New Mexico and endorsed by the federal government as a professional interpreter of the Navajo language.

In addition, I have worked extensively with the Department of Justice, Civil Rights Division, Voting Section. I have provided consultation under a contract with the DOJ to review the efficacy of language assistance programs made available to American Indian voters. In this capacity, I have reviewed the quality and accuracy of oral translations provided for voting materials produced by Arizona, Utah and New Mexico during the past three presidential elections. Finally, I also have worked closely with the Department of Justice during numerous elections monitored by federal observers.

In addition, I have also served as a member of the Ethics and Rules Committee for the Navajo Nation. This Committee is charged with the responsibility of reviewing and reorganizing government policy of the Navajo Nation. One of the changes that resulted from my work on the Committee led to significant legislative and executive reforms. Other civic activities include my membership on the Board of the Phoenix Indian Center,

a position I held for four years, before leaving a year ago. The goal of the Center is to help those Indians who have recently transitioned from reservations to cities in the Southwest by helping them secure educational and employment opportunities, among other things.

**The Federal Examiner Provision of the Act**

Section 6 of the Voting Rights Act relates specifically to Federal examiners. Federal examiners are those officials designated to particular political subdivisions to whom complaints of voting discrimination can be made. The Federal examiner provisions represent Congress' response to discriminatory voter registration practices that existed throughout the South at the time the Act was originally passed in 1965. Examiners are charged with the responsibility of processing those voters seeking to be registered and making a list of those applicants who meet state eligibility requirements. Examiners then provide the names of these voters, commonly referred to as "federally registered voters", to local county registrars who are required to put those names on the county's voter registration rolls. In addition, federal examiners are available during each of the jurisdiction's elections to field complaints from any federally registered voter who encountered a problem casting their ballot. It is my understanding that S. 2703 will not renew Section 6 of the Act. I believe that this decision is sound as there have been no new "federally registered voters" added in any jurisdiction throughout the country since 1983.

**Federal Observer Program**

The federal observer provisions of the Act allow for the monitoring of certain federal, state and local elections. The provisions allow observers to enter polling places

to monitor activity inside the polls and to document their observations in a formal report. The observer provisions were originally designed to ensure that all voters were able to cast their ballots free from discrimination, intimidation or harassment. However, the 1975 Amendments to the Voting Rights Act extended these protections for language minority groups including Alaska Natives, American Indians, Asian Americans, and Hispanics. In addition, the Act also permits jurisdictions to be certified for federal observer coverage by order of a federal court. These orders can be issued in any jurisdiction in which the Department of Justice or an aggrieved citizen has initiated litigation, under any statute to enforce the voting guarantees of the Fourteenth or Fifteenth Amendments, and where the court has found a violation of either of these constitutional provisions.

The observer program is coordinated through the efforts of the Office of Personnel Management (OPM). Federal observers generally work closely with attorneys from the Justice Department's Civil Rights Division who provide substantial assistance to OPM with the training and briefing aspects of the program. Each particular deployment of federal observers is designed to address the relevant issues and specific problems within a jurisdiction. Federal observers are trained and instructed to carefully monitor activity inside the polling place and create reports that memorialize that activity. Observers are also trained to conduct their activities in a neutral and objective manner, without interfering with the conduct of the election or the work of local election officials.

Over the last decade, the federal observer program has helped reveal significant deficiencies and problems with respect to compliance with the language minority requirements codified within Section 203 of the Act. The federal observer program helps

provide evidence of the scope of these problems and often prompts the Justice Department to take additional investigatory steps. For example, the problems identified through the federal observer program may lead to meetings between Justice Department personnel and county officials aimed at informally bringing the jurisdiction into compliance with the language requirements of the Act. However, the Justice Department may also take more formal steps including further investigation, referring the matter to State authorities, or filing litigation to enforce the protections of the Voting Rights Act.

**The Continuing Need for the Federal Observer Program to Help Ensure Effective Language Assistance for American Indian Voters**

***Evidence of Persisting Voting Discrimination***

The ongoing evidence of voting discrimination against American Indian voters, particularly in the southwest, highlights the continuing need for the federal observer provisions and the other expiring provisions of the Voting Rights Act. As of 2000, no American Indians were elected from majority non-Indian districts. This reality strongly suggests that voting discrimination against American Indians persists throughout the United States. Indeed, in a recent challenge to the legislative redistricting plan for the State of South Dakota, the court found that there was “substantial evidence, both statistical and lay, demonstrat[ing] that voting in South Dakota is racially polarized among whites and Indians.”

As a result of *United States v. State of Arizona* (D. Ariz. May 22, 1989) (amended Sept. 27, 1993) (No. 88-1989-PHX EHC), the State of Arizona, and Apache and Navajo Counties have been under a federal consent decree, originally entered in 1989 and amended in 1993, that addresses the State’s failure to provide adequate language

assistance and equal voting opportunities to American Indian voters. This suit involved a range of discriminatory conduct that, in part, included allegations that officials failed to disseminate election information in Navajo and failed to provide for a sufficient number of adequately trained bilingual persons to serve as translators for Navajo voters needing assistance at the polls on Election Day. As a result of this suit, federal observers continue to monitor and document compliance issues in Apache and Navajo Counties.

In New Mexico, there has been more federal observer coverage for language assistance than in any other state. New Mexico has also been the location of the second highest number of successful Section 203 cases, trailing only California. Federal observers have played a key role in New Mexico by helping identify those jurisdictions that have failed to implement effective language assistance programs.

In my experience as a contractor on behalf of the federal government, as a federal observer, and as a provider of language assistance, I have noticed that the observer program has two major effects in those regions with large populations of Indian voters. First, in my capacity as a Contractor for the Justice Department, my review and assessment of the training process has the residual effect of improving the quality of training made available to those who provide language assistance. Second, the program helps improve the availability and quality of assistance actually rendered on Election Day. In doing so, the federal observer program is critical in protecting the fundamental right to vote of American Indians.

*Impact on Quality of Language Assistance Training*

In order to comply with the language requirements of the Act, local, county and state officials in jurisdictions covered under Section 203 recruit individuals to provide language assistance at the polls. Those who are recruited are often required to attend training sessions that focus on providing effective language assistance to limited or non-English speaking voters at the polls. For those providing assistance to Navajo voters and other American Indians, such assistance can generally only be made available orally as many native languages are not formally documentable. In my experience, when a DOJ consultant is sent to monitor these sessions, the overall quality and effectiveness of these training sessions is substantially better. Indeed, any federal oversight of these training sessions helps ensure that those officials conducting the training spend adequate time on difficult concepts such as language variations between Navajo groups, cultural issues or other unique challenges associated with oral translations from English to Navajo. When federal oversight does not occur, the quality of these trainings is often insufficient and superficial, leaving individuals ill-prepared to provide meaningful language assistance at the polls. Many of those who have attended these trainings have confirmed a noticeable difference resulting from some form of federal oversight. Indeed, many of these individuals have reported that the most useful training sessions that they have participated in were those for which I was present.

The need for quality training to those providing language assistance is perhaps best illustrated by the complexities associated with oral translations between English and Navajo. Although these complexities are not insurmountable, it is important that training sessions adequately address these challenges. Navajo is a historically unwritten

Athabaskan language that is primarily spoken in the southwestern United States. Although Navajo was historically unwritten until the 1940s, war necessitated that it become a written language.<sup>1</sup> Although it is now, in part, a documentable language, it remains predominately an oral language. Many tribal groups throughout the United States are now in the process of documenting their language or have already developed their written language. However, such efforts are relatively new, with the exception of the Cherokee language which was one of the first written native American Languages. Contrary to some claims, the Justice Department has not prompted tribal groups to create written languages and such efforts to document these languages are fairly recent and new. For the most part, Section 203 requires that language assistance for tribal groups be made available orally.

More individuals speak Navajo than any other American Indian or First Nation language north of the US-Mexico border. Today, over half of Navajos still speak the Navajo language at home and many parents teach the Navajo language to their children as a first language. Although some younger Navajos have started to shift to the English language, the vast majority of Navajos still use the native language of their tribe as their primary language. Navajo is a "verb-heavy" language, meaning there are many verbs but relatively few nouns. Further, there are no words that correspond to what are called adjectives in English. Moreover, there are certain dialectical variations between Navajo groups. These variations are attributable, in large part, to outside influences and the lack of formal language maintenance brought on by immigration between reservations.

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<sup>1</sup> See *e.g.*, Navajo Code Talkers.

***Enhancing Voter Participation Rates***

In my experience, I have noticed an increase in voter confidence levels when federal observers are deployed to polling places in Indian communities. This confidence is particularly heightened when chapter meetings are held on reservations prior to an election to provide voters with an overview of the federal observer process. I have attended a number of these meetings along with attorneys from the Department of Justice. Many voters feel empowered to have a vehicle through which to directly report Election Day problems at their polling place. The observer program also makes many Indian voters aware that the federal government is seriously interested in and concerned that quality language assistance is made available to those who need it. Among other things, there is a pervasive belief among Indian voters that without observers there would be no language assistance services provided at their polling sites. All too often, their fears are well founded, as the litigation I discussed earlier illustrates.

**Problems that Occur in the Absence of Federal Observers**

Several problems are encountered in elections where federal observers are not present. Often election officials fail to comply or neglect to completely follow legal requirements. For example, where federal observers are not present, I have personally noted that officials fail to post proper signs inside polling sites; incorrectly translate election-related materials; rush voters who are casting ballots; and fail to make assistance available to those disabled or elderly voters who require it. In addition, I have also taken note of a number of elections in which voters were forced to seek or obtain their own language assistance where none was made available by the jurisdiction. Often, voters were unable to cast their ballots because they could not identify someone who could

provide an effective oral translation of the English ballot. It is critical that covered jurisdictions provide effective oral language assistance to American Indian voters particularly in those areas with high LEP and illiteracy rates, and large numbers of elderly voters.

I have also witnessed a number of elections in which language assistance was inadequate, incorrect or incomplete. Poor quality language assistance does not enable voters to effectively cast their ballots. For example, I have witnessed a number of instances in which the person designated to provide assistance failed to translate from English to Navajo the candidate's partisan affiliation, or the office that the candidate is running for. Although all other information on the ballot may be appropriately translated, exclusion of this relevant information does not give the voter the opportunity to cast a meaningful ballot. I estimate that approximately 50 percent of Navajo voters who require language assistance in order to vote would not understand the English words for party designations and political offices.

There is an absolute need for ballots to be completely and accurately interpreted orally for voters. While some Navajo Indians living in covered jurisdictions are proficient in English, many more are limited English proficient (LEP) and thus, cannot fully participate in and understand the election process if language assistance is not provided. Indeed, LEP and illiteracy rates among Navajo Indians are fairly high within the covered jurisdictions. For example, there is a 36.11 LEP rate and 25.37 illiteracy rate among Indians on the Navajo Nation Reservation and Off-Reservation Trust Land in Apache County, Arizona. Also, there is a 43.16 LEP rate and 32.46 illiteracy rate among Indians on the Navajo Nation Reservation in Navajo County, Arizona. Additional rates

among other Navajo Indians in New Mexico, Arizona and Utah are provided in the chart below<sup>2</sup>:

**Navajo Limited English Proficiency and Illiteracy Rates By County**

|                               | <b>Percent LEP (P)</b> | <b>Indian Reservation (RP or RW)</b>                     | <b>Percent LEP (P)</b> | <b>Illiteracy Rate</b> |
|-------------------------------|------------------------|----------------------------------------------------------|------------------------|------------------------|
| Apache County, Arizona        | Navajo                 | Navajo Nation Reservation and Off-Reservation Trust Land | 36.11                  | 25.37                  |
| Coconino County, Arizona      | Navajo                 | Navajo Nation Reservation and Off-Reservation Trust Land | 35.41                  | 29.75                  |
| Navajo County, Arizona        | Navajo                 | Navajo Nation Reservation and Off-Reservation Trust Land | 43.16                  | 32.46                  |
| Bernalillo County, New Mexico | Navajo                 | Navajo Nation Reservation and Off-Reservation Trust Land | 31.55                  | 26.42                  |
| Cibola County, New Mexico     | Navajo                 | Navajo Nation Reservation and Off-Reservation Trust Land | 38.43                  | 29.03                  |
| McKinley County, New Mexico   | Navajo                 | Navajo Nation Reservation and Off-Reservation Trust Land | 34.35                  | 27.41                  |
| San Juan County, New Mexico   | Navajo                 | Navajo Nation Reservation and Off-Reservation Trust Land | 32.13                  | 27.98                  |
| Sandoval County, New Mexico   | Navajo                 | Navajo Nation Reservation and Off-Reservation Trust Land | 50.64                  | 35.22                  |
| Socorro County, New Mexico    | Navajo                 | Navajo Nation Reservation and Off-Reservation Trust Land | 62.84                  | 13.04                  |
| San Juan County, Utah         | Navajo                 | Navajo Nation Reservation and Off-Reservation Trust Land | 42.24                  | 26.82                  |

In addition, while English proficiency rates may be higher among the younger generations of Navajo, voter turnout levels tend to be higher among the elderly generation of Navajo. Indeed, the elderly segment of the population is least likely to be proficient in English and will therefore benefit the most from receiving effective language assistance. If oral translators were not provided many elderly voters would

<sup>2</sup> Dr. James Thomas Tucker. The Continuing Need for and Constitutionality of Section 203 and the Voting Rights Act, June 30, 2006.

most likely be unable to vote, as they would not be able to provide their own assistance. In the Indian community it is common for the younger generation to leave the elderly behind on the reservation while they leave to go to more urban areas in search of jobs. In the absence of language assistance, the elderly would be left to struggle to identify individuals sufficiently proficient in English and Navajo to help them cast their ballots on Election Day. The federal observer program provides an effective tool to police those covered jurisdictions to ensure that they make effective language assistance available to those in need.

**Incentive Value of Observer Program**

Federal observers create a tremendous incentive for local election officials to provide adequate training of election workers who will be available for language assistance at the polls. In addition, observers also increase the motivation for those working inside polling places on Election Day to provide effective language assistance to voters casting their ballots because they know they are being watched. In this regard, the federal observer program helps discourage problems that otherwise are likely to impede Indian voter participation in the political process.

Moreover, without federal observers, there would be no vehicle in place to measure the progress that jurisdictions make in instituting improvements to their language assistance programs. By accurately documenting the problems that voters have on Election Day, observers provide the Department of Justice with an important tool to help identify those jurisdictions that may be non-compliant with the provisions of the Act. To that end, the observer program helps facilitate DOJ enforcement efforts under the Act.

**Conclusion: The Democratic Value of Effective Oral Language Assistance**

If ballots were provided in English only without oral language assistance to American Indian voters, I think that we would witness undemocratic and undesirable results. Moreover, that would return things back to the way they were before Section 203. There would be a decrease in turnout and participation rates among Indian voters who simply would not be able to effectively cast their ballots. In turn, this could breed apathy and lead to many Indian voters becoming disengaged from the political process. In my experience, Indian voters on reservations are equally interested in participating in both tribal and non-tribal governments. On the reservations, tribal governments take effective steps to ensure that all voters are able to participate in the electoral process. It is my hope that we will continue to see local and state election officials in the southwest take the appropriate steps to provide equally effective language assistance to those who may be of limited proficiency in English but nonetheless, maintain the desire to participate actively and meaningfully in the political life of our country. Moreover, it is my hope that this Congress will renew the federal observer provisions of the Voting Rights Act which provide an effective vehicle to measure whether jurisdictions have implemented quality language assistance programs and ultimately make effective language assistance available to voters who require such help in order to cast a meaningful ballot.