FANNIE LOU HAMER, ROSA PARKS, AND CORETTA SCOTT KING VOTING RIGHTS ACT REAUTHORIZATION AND AMENDMENTS ACT OF 2006 (PART II)

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

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FANNIE LOU HAMER, ROSA PARKS, AND CORETTA SCOTT KING VOTING RIGHTS ACT REAUTHORIZATION AND AMENDMENTS ACT OF 2006 (PART II)

THURSDAY, MAY 4, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:45 p.m., in Room 2142, Rayburn House Office Building, the Honorable Steve Chabot (Chairman of the Subcommittee) presiding.

Mr. CHABOT. The Committee will come to order. This is the Subcommittee on the Constitution. We welcome everyone here this afternoon. This is the second hearing that this Committee has had today and it's actually the 12th hearing that we have had on the Voting Rights Act since we started this process about 7 months ago.

And as I mentioned, this is the Subcommittee on the Constitution. I'm Steve Chabot, the Chair, and this is the second of two legislative hearings the Committee is holding on H.R. 9, which is the "Voting Rights Act Reauthorization and Amendments Act of 2006."

I would like to thank our witnesses for being here this afternoon. And I gave a longer opening statement this morning; therefore, I will keep my remarks relatively short this afternoon.

This afternoon's hearing will focus specifically on the provisions of H.R. 9 that reauthorize section 203, the bilingual election assistance provisions, for an additional 25 years and makes certain amendments to section 203 to reflect recent changes to the United States Census Bureau's methods of collecting data.

In addition to these provisions we will discuss concerns expressed by many about what is required of jurisdictions covered by section 203, especially as interpreted, administered, and enforced by the Department of Justice.

English has been, and continues to be, the force that unified this country, and speaking English should be a requirement which all citizens of this country meet. However, the record shows that many of our citizens experience barriers to the political process because of language impediments, which our witnesses will discuss further today.

In reauthorizing section 203, the Committee seeks to ensure that all citizens continue to have the opportunity to participate in the political process, including those who are continuing their efforts to

learn English. However, we must also ensure that we provide needed assistance to municipalities so that these obligations do not become overly burdensome.

As I said, we look very much forward to the panel, the very distinguished panel that we have here before us this afternoon.

And at this time I note that Mr. Nadler is coming shortly. I don't know if, Mr. Scott, you wanted to make an opening statement or if you wanted to wait until Mr. Nadler comes or if you would like to speak on your own.

Mr. SCOTT. I would like to speak on my own, if you don't mind.

Mr. CHABOT. The gentleman is recognized for 5 minutes.

Mr. SCOTT. And recognize Mr. Nadler as the Ranking Member when he appears.

Mr. CHABOT. That's fine.

Mr. SCOTT. Thank you, Mr. Chairman. I want to thank you, as we mentioned this morning, for the hard work that you have done on a bipartisan basis with Representative Watt and others. Appreciate the hard work that you have put in to get us to the point where we are now.

Mr. Chairman, in the 40 years since its passage, the Voting Rights Act has guaranteed millions of minority voters a chance to have their voices heard and their votes counted. The number of Black elected officials has increased from just 300 nationwide in 1964, the year before the Voting Rights Act, to more than 9,100 today. Poll taxes, literacy tests, and other discriminatory schemes that once effectively closed the ballot box have been dismantled. The process has also opened the political process for many of the nearly 6,000 Latinos who now hold public office, including more than 250 that serve at the State or Federal level.

Section 203 was added to the Voting Rights Act in 1975 and requires certain jurisdictions to make language assistance available at polling locations for citizens with limited English proficiency. These provisions apply to four language groups: American Indians, Asian Americans, Alaskan natives, and those of Spanish heritage. A community with one of those language groups will qualify for language assistance if more than 5 percent of the Voting Act citizens in the jurisdiction belong to a single language minority and have limited English proficiency, or more than 10,000 voting-age citizens in the jurisdiction belong to a single language minority and have limited English proficiency, and the illiteracy rate among citizens with the language minority is higher than the national average.

Mr. Chairman, it is significant that these thresholds mean that there is a critical mass, possibly sufficient to vote somebody out of office, and therefore there would be an incentive to try to discourage those people from voting. This requirement requires that if you have that kind of critical mass, you have to provide the language assistance.

Mr. Chairman, registration and voting materials for all elections must be provided to the minority group in the minority language as well as in English. Oral translation during all phases of the voting process, from registration to Election Day poll workers, is also required. Jurisdictions are permitted to target the language assistance to specific voting precincts or areas where they are needed.

It is crucial that everyone in our democracy have a right to vote. Yet having a right legally is meaningless if certain groups of people, such as those with limited English proficiency or those who are disabled, are unable to accurately cast their ballot at the polls. Voters may well be informed of the issues and candidates but to make sure their vote is accurately cast, language assistance is necessary in certain jurisdictions with concentrated populations of limited English-proficient voters.

It is important to note, Mr. Chairman, that those who are born in Puerto Rico are American citizens, and yet they may not be fluent in English. And even though most new citizens are required to speak English, they still may not be sufficiently fluent to participate fully in the voting process without much-needed assistance.

Before language assistance provisions were added to the Voting Rights Act, many Spanish-speaking citizens just did not bother to register to vote because they could not read the election material and could not communicate with poll workers. The fact is that language assistance has encouraged these and other citizens of different language minority groups to register and vote and fully participate in the political process, which is healthy for our democracy.

Mr. Chairman, the language assistance is not costly. One of the reasons is that a lot of the compliance doesn't cost anything extra at all. That is because if you have to hire a poll worker anyway, hiring a poll worker who is bilingual doesn't cost you any more than the poll worker you had to hire. And so, therefore, many of the so-called expenses involved are not expenses at all.

The compliance is extremely—the cost of compliance is extremely limited. So section 203, which we're having a hearing on today, is essential to ensuring fairness in our political process and equal opportunity for all Americans and it is imperative that this provision be renewed.

Thank you, Mr. Chairman.

Mr. CHABOT. Thank you very much, Mr. Scott.

The gentleman from Florida is recognized if he would like to make an opening statement.

Mr. FEENEY. That is not necessary, Mr. Chairman, thank you.

Mr. CHABOT. Thank you very much, Mr. Feeney. The gentleman from North Carolina, Mr. Watt, is recognized.

Mr. WATT. Thank you, Mr. Chairman. I'll be brief. I want to ask unanimous consent to submit my entire statement for the record. But I feel like I need to address a couple of things.

Mr. CHABOT. Without objection, so ordered.

Mr. WATT. Number one, this morning one of the witnesses suggested that we had predetermined what would be in this bill before we had any hearings, and somehow contrived the process of what would be in the bill rather than using the hearings as a constructive means of informing us.

And I, of course, denied that. And there is not a clearer example of that than this—than the language provisions. I mean, if I were drawing these language provisions, I think they would be different. And while I stand behind the bill and understand that it is a product of bipartisan agreement, everybody needs to know that.

Second, there is this notion that perhaps this ought to be part of the immigration debate or is connected in some way, and that

when we talk about these language provisions, that it is about Mexicans or members of the Arab community.

I would just point out that, really, the Hispanic community has been probably the least of the language minorities that has been aggressive about this, because in most places they already exceed the threshold that the statute provides for. So it is not something that, if they were advocating solely for themselves, would be as much of an issue. I don't mean to minimize it, but it certainly—people need to understand that in Chicago, voluntary voter assistance is provided in Polish, Russian, Greek, German, Korean, and Serbian. In Boston, in Spanish, Haitian Creole, Cape Verdian Creole, Vietnamese, Portuguese, Chinese and Russian.

So this is not about the kind of typical immigration debate that is going on in another context in our legislative environment here.

I would just conclude by saying that the bill before us today extends the current language assistance provisions of the Voting Rights Act and that is supported by the record, not something that was backed into or dealt with in some arbitrary fashion. It does not discourage or prohibit any State or political subdivision from doing more to open this process to more voices, thereby enhancing our democracy.

I think the bill struck a good balance on this, and while if I were drawing the bill solely by myself I might have done differently, I certainly intend to support the provisions that are in the bill.

And I yield back the balance of my time.

Mr. CHABOT. The gentleman yields back.

And we also have three—before we had one other as well—Members; two of whom are Members of the full Judiciary Committee and not actually Members of this Committee, and two who are not Members of the Judiciary Committee at all. What our practice has been thus far in this is to allow those Members to have 5 minutes which they can choose to use either for an opening statement or questioning the witnesses. Or if they would like to, they can divide it up and take 2 minutes for an opening statement and 3 minutes for questioning. At your discretion, however you would like to do that.

And two of the Members here are representing their various caucuses. One is the distinguished Member, Charlie Gonzalez from Texas, who is the Chairman of the Congressional Hispanic Caucus. And we welcome you here, as always, very good friend of mine, Charlie.

And we also are joined by the very distinguished gentleman from California, Mr. Honda, who is the Chairman of the Asian Pacific American Caucus.

And we also have two Judiciary Members here: Sheila Jackson Lee from Texas and Linda Chavez from California.

Ms. SÁNCHEZ. Sánchez.

Mr. CHABOT. What did I say?

Ms. SÁNCHEZ. Chavez.

Mr. CHABOT. I'm sorry; I apologize. I don't know what I was thinking.

Ms. SÁNCHEZ. Thank you for not calling me Loretta.

Mr. WATT. We think that is the ultimate insult.

Mr. CHABOT. I'm not going to touch that. I didn't say it either. In fact, I didn't even laugh.

Ms. Jackson Lee, do you want to use your time now or do you want to use your time for questioning?

Ms. JACKSON LEE. I will split my time and very briefly say that all eyes are on this Committee and on this Congress, on the reauthorization of the Voting Rights Act, primarily because of the pathway and the opportunity that was given through the original passage in 1965.

I am very eager to hear the testimony of the witnesses and I associate with words that I will be supporting this legislation.

And my only comment I think I came in on Mr. Watt's commentary, so I don't want to suggest that this is what he was saying, but I am interested in the idea that there are many languages in the United States, and I hope that we will have an opportunity prospectively to be assured that everyone who is in the United States has a right to vote. And that the fact that language interpretation or different language is necessary to exercise the right of a citizen, they should not be penalized nor should they be condemned. So I think any attempt to condemn, because language is needed to make sure that your right to vote is exercised, should be eliminated from our discussion and we should move forward.

With that, I yield back.

Mr. CHABOT. Thank you very much. The gentlewoman has 4 minutes remaining for questioning. Thank you.

The gentlewoman from California, Ms. Sánchez, is recognized.

Ms. SÁNCHEZ. Thank you, Mr. Chairman. I am going to reserve my time for questions.

Mr. CHABOT. Duly noted. Mr. Gonzalez.

Mr. GONZALEZ. I also reserve my time for questioning.

Mr. CHABOT. Thank you. Mr. Honda.

Mr. HONDA. Thank you, Mr. Chairman. I will take a few minutes to make comments.

Mr. Chairman, Ranking Member Nadler, and Members of the Subcommittee, I want to thank you for allowing me to make an opening statement at this important hearing on the reauthorization of the Voting Rights Act.

Just 2 days ago H.R. 9, the Voting Rights Act Reauthorization Amendments Act, was introduced to strengthen and renew the Voting Rights Act for another 25 years. I am proud to be an original cosponsor of this historic measure. I would like to personally thank the Members of this Committee for their diligent work in conducting a thorough review of the VRA.

Mr. Chairman, your Committee's extensive hearing record showed that while substantial progress has been made in the area of voting rights over the last 40 years, the provisions of the VRA, including temporary provisions, remain a necessary part of our efforts to protect the rights of every American voter.

Last year I had the honor of being with our distinguished colleague, Congressman John Lewis, and others in Alabama to commemorate the 40th anniversary of Bloody Sunday. On that day on March 7, 1965, on the Edmund Pettis Bridge outside of Selma, Alabama, the Vivil Rights Movement continued its unwavering steps forward. As we all know, civil rights activists, led by Dr. King, took

to the streets in a peaceful protest for voting rights for African Americans. They were met with clubs and violence. This dramatic event helped the Nation understand what was at stake.

What makes the promise of this Nation a reality is the ability to vote. The VRA helps to ensure that everyone who is eligible to vote has that opportunity. This month is Asian Pacific American heritage month and I'm here to underscore the point that the right to vote is keenly felt by the Asian and Pacific islander American community.

Chinese Americans could not vote until Chinese Exclusion Acts of 1882 and 1892 were repealed in 1943. First-generation Japanese Americans could not vote until 1952 because of the racial restrictions contained in the 1790 naturalization law. More recently, language minority citizens were often denied needed assistance at the polls. In the 1975 amendments to the Voting Rights Act, such language assistance became required in certain situations, and I submit to you today that section 203's impact and importance to language minority communities has only grown.

When I was a supervisor in Santa Clara County, California, I led an effort to get sample ballots printed in English and Chinese. And I know firsthand how important this was to the community. Their participation increased by 11 percent. And the Vietnamese ballots, we made them available upon request.

I am looking forward to hearing from our distinguished panel today. I am especially looking forward to important testimony from my good friend, Karen Narasaki, President and Executive Director of the Asian American Justice Center. Karen Narasaki and AAJC have been at the forefront of protecting the rights of Asian Americans. The record of evidence established in her testimony will clearly show the importance of section 203 and other provisions of the Voting Rights Act.

Again I thank the Chair and Ranking Member and Subcommittee Members for allowing me to make this statement today, and I yield back.

Mr. CHABOT. Thank you, Mr. Honda, and you have 2 minutes remaining.

We would now like to—after stating that, without objection, all Members would have 5 legislative days to submit additional materials for the hearing record—we will introduce our distinguished panel this afternoon.

Our first witness will be Ms. Rena Comisac. Ms. Comisac was appointed Deputy Assistant Attorney General for the Civil Rights Division of the U.S. Department of Justice in October of 2005, and Principal Deputy Assistant Attorney General in April of 2006. Prior to joining the Civil Rights Division, Ms. Comisac served as Deputy Chief of Staff for the Criminal Division. From 1998 to 2000 she worked as Assistant U.S. Attorney for the middle district of Georgia, where she prosecuted asset forfeiture in white collar crimes cases.

Ms. Comisac served as a staffer on the U.S. Senate Permanent Subcommittee on Investigations from 1997 to 98 and 2000 to 2001. In addition, she served as staff on the Senate Judiciary Committee from 2001 to 2004. We welcome you here this afternoon, Ms. Comisac.

Our second witness will be the Honorable Chris Norby. Mr. Norby was elected to the Orange County Board of Supervisors in March 2002. He was sworn in as the Supervisor of the Fourth District on January 6, 2003. Prior to his election to the Board of Supervisors, Mr. Norby served on the Fullerton City Council since 1984. He also served 3 years as the Mayor of Fullerton. His 18 years of public service place him among the most senior of Orange County's elected city officials. As a member of the Orange County Board of Supervisors, Mr. Norby works to implement structural reform for local governments. We welcome you here this afternoon, Mr. Norby.

Our third witness is Karen Narasaki. Ms. Narasaki is President and Executive Director of the Asian American Justice Center. AAJC is a nonprofit, nonpartisan civil rights organization whose mission is to advance the human and civil rights of Asian Pacific Americans through advocacy, public policy, public education and litigation.

Ms. Narasaki serves in a number of leadership positions in the civil rights and immigrant rights communities. She is Vice Chair of the Leadership Conference on Civil Rights. She is also the Vice President of the Coalition for Comprehensive Immigrant Reform and the Chairperson of the Rights Working Group. Before joining AAJC, Ms. Narasaki was the Washington, D.C. representative for the Japanese American Citizens League. Prior to that, she was a corporate attorney at Perkins Coie in Seattle, and served as a law clerk to Judge Harry Pregerson on the U.S. Court of Appeals for the Ninth Circuit. We welcome you here, Ms. Narasaki.

And our fourth and final witness is Dr. James Thomas Tucker. Dr. Tucker is a Voting Rights Consultant for the National Association for Latino Elected and Appointed Officials Education Fund, with expertise in redistricting and voting rights law. He is also a former senior trial attorney with the voting section of the Department of Justice. Dr. Tucker's litigation experience at the Justice Department included *Georgia v. Ashcroft*, minority language assistance cases under section 203, and Federal observer coverage, to name a few. He has also published numerous articles on the Voting Rights Act and voting law, including "Minority Language Assistance Practices in Public Elections." we welcome you here this afternoon, Mr. Tucker.

For those of you who may not have testified before a congressional Committee, we have what is called the 5-minute rule. That is the time allotted to each of you to give your testimony. We actually have two timepieces up there where there will be a series of lights. The green light will be on for 4 minutes. The yellow light is a warning to let you know you have 1 minute remaining. And when the red light comes on, we would appreciate it if you would wrap up as close to that as possible. We won't gavel you down immediately, but if you could stay within that we would be appreciative. And we will also restrict ourselves to 5 minutes in questioning you all as well.

It is also the practice of this Committee to swear in all witnesses appearing before it. So if you wouldn't mind, if you could all please stand and raise your right hands.

[Witnesses sworn.]

Mr. CHABOT. All witnesses have indicated in the affirmative. And we will now hear from our first witness.

Ms. Comisac you are recognized for 5 minutes.

TESTIMONY OF RENA COMISAC, PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE

Ms. COMISAC. Thank you, Chairman Chabot.

Mr. CHABOT. And you all need to turn the mike on. You did, but you will need to turn the mike on.

Ms. COMISAC. It is my privilege this afternoon to provide you with an overview of the Justice Department's enforcement of the minority language sections of the Voting Rights Act. Under this Administration, the Justice Department has undertaken the most extensive sections 203 and 4(f)(4) enforcement activities in history.

The initiative began immediately following the Census Bureau's 2002 determinations as to which jurisdictions are covered under section 203. The Civil Rights Division not only mailed formal notice and detailed information on section 203 compliance to each of the 296 covered jurisdictions, but we also initiated face-to-face meetings with State and local election officials and minority community members in the 80 newly covered jurisdictions to explain the law, to answer questions, and to foster the implementation of effective legal compliance programs. That is an effort that has been a continuing one in the Justice Department.

In August 2004, the Assistant Attorney General for the Civil Rights Division mailed letters to the 496 jurisdictions covered by sections 203—or 4(f)(4)—reminding them of their obligations in the November 2004 general elections and offering them guidance on how to achieve compliance. This was the first blanket mailing to the section 4(f)(4) jurisdictions since shortly after their original designations in 1975.

The division's voting section has been systematically requesting voter registration lists and bilingual poll assistance data from all covered jurisdictions. This information is then reviewed to identify polling places with a large number of minority language voters and to ascertain whether the polling places are served by a sufficient number of bilingual poll officials who can provide assistance to voters.

We fully recognize that comparing voter registration lists to the Census Bureau's Spanish surname list, place of birth data, or other data, are imperfect measures of the language need in a precinct. We use such data as a mere starting point in our investigations. We also suggest it as a convenient starting point for local election officials, in trying to determine how and where best to meet the needs of their voters.

The division is also systematically looking at the full range of information provided by covered jurisdictions to voters in English, and determining whether the same information is being made available to each minority language community in an effective manner and whether necessary translated materials are actually provided at the polling places.

These efforts have borne abundant fruit. Since 2001, this Administration has filed more minority language cases under sections 4

and 203 than in the entire previous 26 years in which these provisions have been applicable. The lawsuits filed in 2004 alone provided comprehensive minority language programs to more citizens than all previous sections 203 and 4(f)(4) suits combined.

Among these cases were the first suits ever filed under section 203 to protect Filipino and Vietnamese voters. We recognize, of course, that States and local jurisdictions do not have unlimited budgets. We thus encourage and work with local election officials to identify the most efficient channels of communication to get information effectively to the language minority community at low cost.

Our lawsuits have significantly narrowed gaps in electoral participation. In Yakima County, Washington, for example, Hispanic voter registration went up more than 24 percent in less than 6 months after resolution of the division's section 203 lawsuit. In San Diego County California, Spanish and Filipino registration was up 21 percent, and Vietnamese registration was up more than 37 percent within 6 months of the division's enforcement action.

The division's minority language enforcement efforts likewise have made a tremendous difference in enhancing minority representation in the politically elected ranks. For example, a memorandum of agreement in Harris County, Texas, helped double Vietnamese voter 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 more than 40,000 cast.

Let me say in conclusion, that the Civil Rights Division has made the vigorous enforcement of the Voting Rights Act language minority provisions, one of its primary missions. Our enforcement program shows the continuing need for the minority language provisions of the act, and we support their reauthorization. Thank you.

Mr. CHABOT. Thank you very much.

[The prepared statement of Ms. Comisac follows:]

PREPARED STATEMENT OF RENA J. COMISAC

Statement of
Rena J. Comisac
Principal Deputy Assistant Attorney General
Civil Rights Division
United States Department of Justice

May 4, 2006

Chairman Chabot, Ranking Member Nadler, distinguished members of the Subcommittee:

On behalf of the Department of Justice, I want to thank you for the opportunity to appear before you today. The President and the Attorney General have directed the Justice Department to bring all of its resources to bear in enforcing the Voting Rights Act and preserving the integrity of our voting process. The President also has called upon Congress to renew the Voting Rights Act and his Administration appreciates this opportunity to work with Congress on the reauthorization of this landmark legislation.

It is my privilege this afternoon to provide you with an overview of the Justice Department's enforcement of the minority language sections of the Voting Rights Act. As you know, these provisions are due to expire in August 2007.

The minority language provisions of the Voting Rights Act, which have been in effect since 1975, are found in sections 203 and 4(f)(4) of the Act. These provisions mandate that any covered jurisdiction that "provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" must provide such materials and information "in the language of the applicable minority group as well as in the English language."[1]

The determination of which States or political subdivisions are subject to the dictates of the Voting Rights Act's minority language requirements is based on a formula that uses Census Bureau data regarding ethnicity figures, English proficiency rates, and literacy rates. Section 203, for example, is triggered if, in a particular jurisdiction: (i) more than 5% of the citizen voting age population, or 10,000 citizens of voting age, are members of a single language minority, and (ii) the illiteracy rate of the citizens in the language minority group is higher than the national illiteracy rate.[2] With respect to section 4(f)(4), a jurisdiction is subject to the translation obligations if: (i) less than 50% of the citizen voting age population was either registered to vote, or actually voted, in the November 1972 presidential election, (ii) the

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[1] Section 203(c), 42 U.S.C. 1973aa-1a(c).

[2] Section 203(b)(2)(A), 42 U.S.C. 1973aa-1a(b)(2)(A) .

jurisdiction provided certain specified election materials exclusively in English in November 1972, and (iii) more than 5% of the citizen voting age population in November 1972, as determined by the then-latest available Census Bureau figures, were members of a single language minority.[3] The only language minority groups covered under sections 4(f)(4) and 203 are American Indians, Asian Americans, Alaskan Natives, and citizens of Spanish heritage.[4] Currently, there are a total of 496 jurisdictions that are subject to the requirements of either section 203 or section 4(f)(4).[5]

Under this Administration, the Justice Department's Civil Rights Division has undertaken the most extensive section 203 and section 4(f)(4) enforcement activities in its history. The initiative began immediately following the Census Bureau's July 2002 determinations (using 2000 Census data) as to which jurisdictions were covered under section 203. The Civil Rights Division not only mailed formal notice and detailed information on section 203 compliance to each of the 296 covered section 203 jurisdictions across the United States, but it also initiated face-to-face meetings with State and local election officials and minority community members in the 80 newly covered jurisdictions to explain the law, answer questions, and work to foster the implementation of effective legal compliance programs. That effort has been a continuing one. Division attorneys speak regularly before gatherings of state and local election officials, community and advocacy groups to explain the law, answer questions, and encourage voluntary compliance.

In August 2004, the Assistant Attorney General mailed letters to the 496 jurisdictions covered by sections 203 and/or 4(f)(4) reminding them of their obligations to provide minority language assistance in the November 2004 general election, and offering them guidance on how to achieve compliance. The 2004 mailing to the section 4(f)(4) counties was the first blanket mailing to these political subdivisions since shortly after their original designations as covered jurisdictions in 1975.

In addition, the Division's Voting Section has been systematically requesting voter registration lists and bilingual poll official assignment data from all covered jurisdictions, beginning with the largest in terms of population. This information is then reviewed in order to identify polling places with a large number of minority language voters, and to ascertain whether the polling places are served by a sufficient number of bilingual poll officials who can provide assistance to voters.

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[3] Section 4(f)(3-4), 42 U.S.C. 1973b(f)(3-4). Essentially, section 4(f)(4) applies the 1972 section 5 coverage trigger to language translation obligations.

[4] Section 203(e), 42 U.S.C. 1973aa-1a(e).

[5] There are 296 jurisdictions throughout the United States covered by section 203. There are approximately 298 jurisdictions covered by section 4(f)(4). Some coverage overlaps, most notably in Texas and Arizona, which explains the 496 figure in the text above.

We fully recognize that comparing voter registration lists to the Census Bureau's Spanish surname list, place of birth data, or other data are imperfect measures of the language need in a precinct. We use such data as a first cut to simply raise "red flags" for follow-up in our investigations. We also suggest it as a convenient starting point for local election officials in trying to determine how and where best to meet the needs of their voters. We encourage them to further refine their plans from this starting point based on their knowledge of their jurisdiction and on conversations with local minority community members. The registration lists, unlike Census Data, offer local officials information that is current, limited to actual voting citizens, and available in the units the officials themselves use every day – precincts. They are imperfect, but better starter tools than anything else generally available locally.

The Division also is systematically looking at the full range of information provided by covered jurisdictions to voters in English – not just the ballot and election pamphlets themselves, but also newspaper notices required by state law, web site information, and other election materials – and determining whether: (i) the same information is being made available to each minority language community in an effective manner, and (ii) necessary translated materials, such as ballots and signage, are actually provided in polling places.

Not surprisingly, the extraordinary efforts undertaken by the Civil Rights Division in this area have borne abundant fruit. Indeed, since 2001, this Administration has filed more minority language cases under sections 4 and 203 than in the entire previous 26 years in which these provisions have been applicable.[6] Each and every case has been successfully resolved with comprehensive relief for affected voters. And the pace is accelerating, with more cases filed and resolved in 2005 than in any previous year, breaking the previous record set in 2004. The lawsuits filed in 2004 alone provided comprehensive minority language programs to more citizens than all previous sections 203 and 4(f)(4) suits combined.

The enforcement actions include cases in Florida, California, Massachusetts, New York, Pennsylvania, Texas, and Washington. Among these cases were the first suits ever filed under section 203 to protect Filipino and Vietnamese voters.

The Civil Rights Division recognizes, of course, that states and local jurisdictions do not have unlimited budgets, and we have thus designed our enforcement strategy to minimize unnecessary costs for local election officials. Election officials are instead encouraged to identify the most effective and efficient channels of communication that are used by private enterprise, service providers, tribal governments, and others to get information effectively to the language minority community at low cost. In a similar vein, the Division encourages the use of fax and e-mail "information trees," whereby bilingual election notices are sent *at virtually no cost* to a wide array of businesses, unions, social and fraternal organizations, service providers, churches and other organizations with a request that these entities make announcements or

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[6] Fifteen of the 28 minority language cases filed by the Department of Justice since the adoption of sections 203 and 4(f)(4) have been commenced since 2001.

otherwise disseminate the information to their membership's language minority voters. And the Division has incorporated "best practices" from around the country into its advice and negotiations to help jurisdictions recruit sufficient numbers of bilingual poll workers.

The lawsuits discussed above have significantly narrowed gaps in electoral participation. In Yakima County, Washington, for example, Hispanic voter registration went up over 24% in less than six months after resolution of the Division's section 203 lawsuit. In San Diego County, California, Spanish and Filipino registration were up over 21%, and Vietnamese registration was up over 37%, within six months following the Division's enforcement action.

The Division's minority language enforcement efforts likewise have made a tremendous difference in enhancing minority representation in the politically elected ranks. 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 voter 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.

Let me say in conclusion that the Civil Rights Division has made the vigorous enforcement of the Voting Rights Act's language minority requirements one of its primary missions. I think everyone would agree that we have been enormously successful in this task. But our work is never complete. Our enforcement program shows the continuing need for the minority language provisions of the Voting Rights Act, and we support their reauthorization.

At this point, I would be happy to answer any additional questions from the Committee.

Mr. CHABOT. Mr. Norby, you are recognized for 5 minutes.

TESTIMONY OF THE HONORABLE CHRIS NORBY, SUPERVISOR, FOURTH DISTRICT, ORANGE COUNTY BOARD OF SUPERVISORS

Mr. NORBY. Thank you. My name is Chris Norby. I represent the Fourth Supervisional District of Orange County, California, including the cities of Anaheim, Fullerton, Placentia, LaHabra and Buena Park. I will have to catch a 5:40 flight to Long Beach and so I may not be able to stay for the entire hearing, but I do thank you for listening to my testimony and I welcome any questions at any time.

I would also like to enter into the record letters of three other elected officials unable to be here, which I believe you have a copy of—Mark Scott, who is a commissioner from Berks County, Pennsylvania; Jan Tyler, elections officer from Denver, Colorado; and Stephan Chaterenko from Clifton, New Jersey, who have comments similar to mine. I believe you have these as well.

Mr. CHABOT. Without objection, they will be entered into the record.

[The information referred to is printed in the Appendix.]

Mr. NORBY. Our county has made it clear that we support clear, reasonable, Voting Rights Act provisions and that they not be subject to continual changes by Department of Justice agents.

We suggest five specific improvements to the Voting Rights Act:

Number one, accept naturalized voter self-description of their own English ability. Speaking English well or very well should both be considered adequate.

Two, non-English voting materials should only be provided to those who request it.

Three, delete the numerical threshold of 10,000 which is unrealistic in large urban counties, and raise the 5 percent threshold to 10 percent.

Four, English fluency assumptions must never be based on a voter's surname.

And number five, multilingual ballot provisions must not be applied to petitions.

The multilingual ballot sections of the Voting Rights Act, I believe, perpetuate negative stereotypes, are outdated, vague, and violate the spirit of assimilation that holds our country together. According to the current interpretation of the VRA, my county of Orange must provide translations in Spanish, Vietnamese, Chinese and Korean. Yet in the 1995 special election, countywide, only seven-tenths of 1 percent of our voters requested such materials.

The method for determining which voters are non-English speaking is highly suspect. Census forms ask us whether we speak English well, very 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, as 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 the county meet these criterion, non-English ballot requirements take effect.

If these standards are left unchanged after the 2010 census, my county could be required to translate into a plethora of additional languages, including Tagalog, Hindi, Punjabi, Urdu and Farsi, depending on future immigration patterns.

Such confusing rules allow Department of Justice agents to push us far beyond what the law actually requires. Last year, at an expense of over $20,000 from our county general fund, we were required to send about 120,000 outreach letters offering naturalized voters foreign-language ballot materials. We got hundreds of angry responses back from voters at the suggestion they could not speak English based on their heritage. And these cards have been provided to you—samples of these cards.

Department of Justice agents have now given our registrar a list of Spanish, Vietnamese, Korean and Chinese surnames. And based on last names alone, we are told to assume that 25 percent of the voters with these last names are limited English-speaking. And you have these surnames here, this list which was provided to us by the Department of Justice. Most of our voters with Spanish, Vietnamese, Korean and Chinese surnames were born in this country, while many others took these names upon marriage. The rest all took citizenship tests in English, and it is insulting to stereotype people's language ability based on their last names.

I urge a total reexamination of the need for multilingual ballots. If they are kept, again, five simple clarifications would greatly improve the Voting Rights Act, and we have submitted these in writing for your consideration:

One, accept naturalized voters' self-description of their own English ability. Speaking English well should qualify.

Two, non-English voter material should only be provided to those who request them. And we are being told by the Department of Justice it is possible in the future we will have to have all five translations of all languages published in the same voter pamphlet and sent to all voters. This would cost us $20 million per election cycle and produce a sample ballot the size of a phone book, and it would lead to an anti-immigrant backlash. These practices are recruiting Minutemen that ask why they have to be addressed because they are perpetuating negative stereotypes.

English fluency assumptions must never be based on a voter's surname. And multilingual ballot provisions must not apply to petitions. We recently had a suit in the Ninth District Court where our registrar was challenged because the petition in a Santa Ana recall case was not also published in Spanish. That is nowhere in the act. But judges must be told that these provisions do not apply to petitions. That would put a tremendous burden on those who would want to petition their government and change their government. Let the values of the Voting Rights Act reflect the civic value of assimilation, not static schisms. Let voting be a tool for unity, not divisions. Thank you.

Mr. CHABOT. Thank you very much.

[The prepared statement of Mr. Norby follows:]

PREPARED STATEMENT OF CHRIS NORBY

Multilingual Ballot Requirements Need Clarification

Supervisor Chris Norby, County of Orange, California

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.

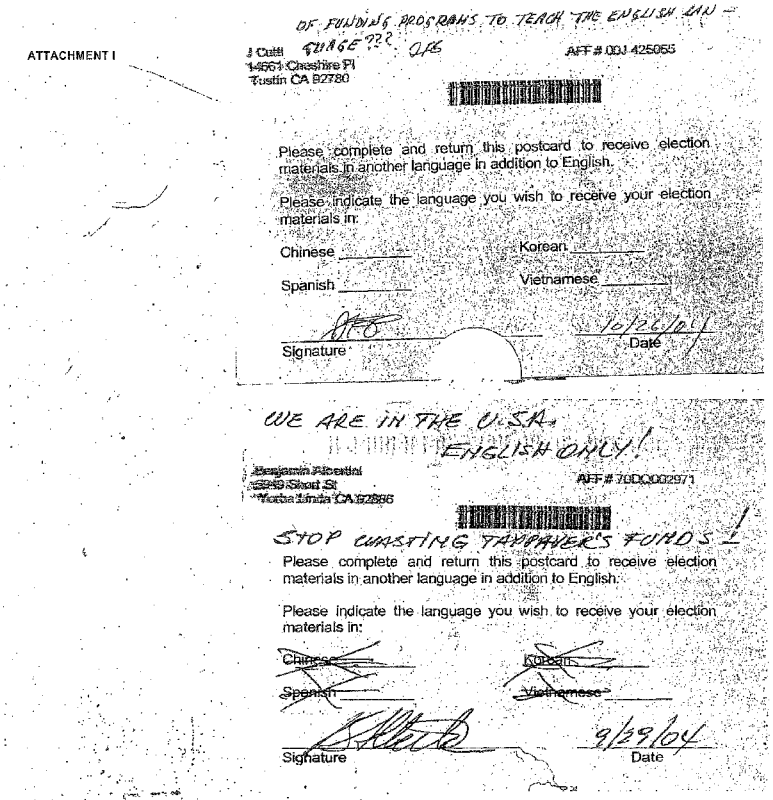
3) Delete the numerical threshold of 10,000 and raise the 5% threshold to 10%.

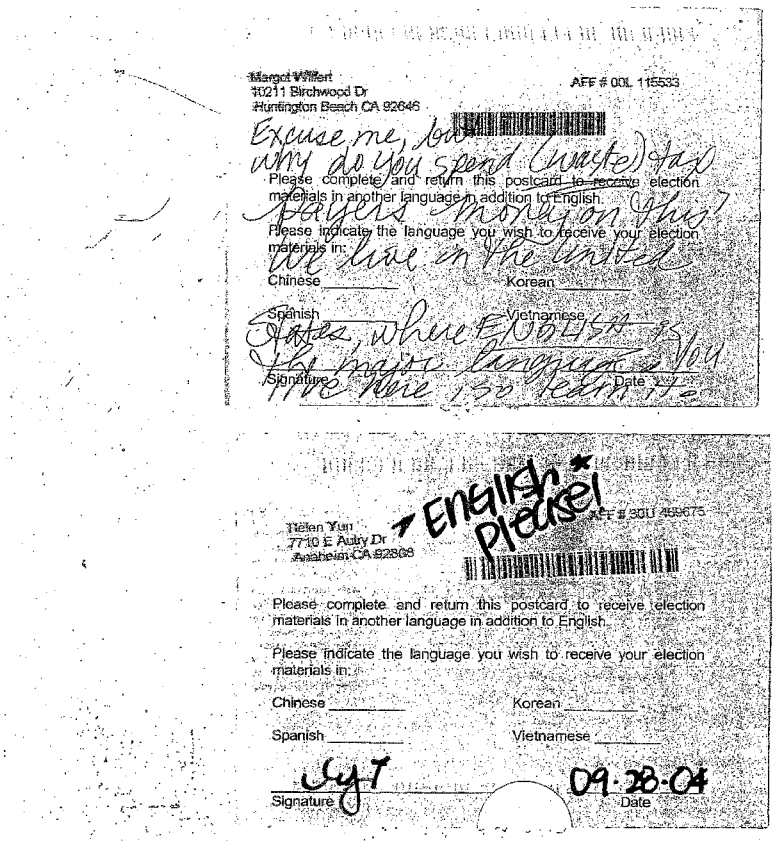
4) English fluency assumptions must never be based on a voter's surname.

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.

ATTACHMENT 1





Margot Willert
10211 Birchwood Dr
Huntington Beach CA 92646

AFF # 00L 115533

Excuse me, but why do you spend (waste) tax payers money on this? We live in the United States, where ENGLISH is the major language & You have more than 1 year to learn it.

Please complete and return this postcard to receive election materials in another language in addition to English.

Please indicate the language you wish to receive your election materials in:

Chinese _____ Korean _____

Spanish _____ Vietnamese _____

Signature _____ Date _____

Helen Yun
7710 E Autry Dr
Anaheim CA 92808

English Please!

AFF # 30U 459675

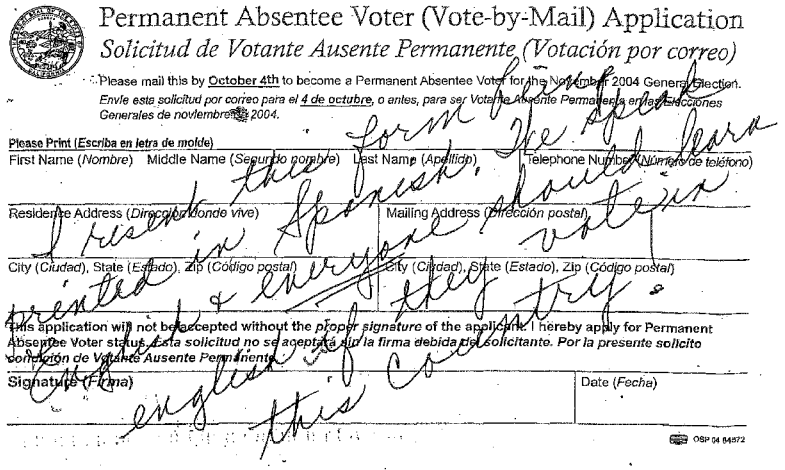
Please complete and return this postcard to receive election materials in another language in addition to English.

Please indicate the language you wish to receive your election materials in:

Chinese _____ Korean _____

Spanish _____ Vietnamese _____

Signature _____ Date 09.28.04



Permanent Absentee Voter (Vote-by-Mail) Application

Solicitud de Votante Ausente Permanente (Votación por correo)

Please mail this by **October 4th** to become a Permanent Absentee Voter for the November 2004 General Election.

*Envíe esta solicitud por correo para el **4 de octubre**, o antes, para ser Votante Ausente Permanente en las Elecciones Generales de noviembre de 2004.*

Please Print (*Escriba en letra de molde*)

First Name (*Nombre*) | Middle Name (*Segundo nombre*) | Last Name (*Apellido*) | Telephone Number (*Número de teléfono*)

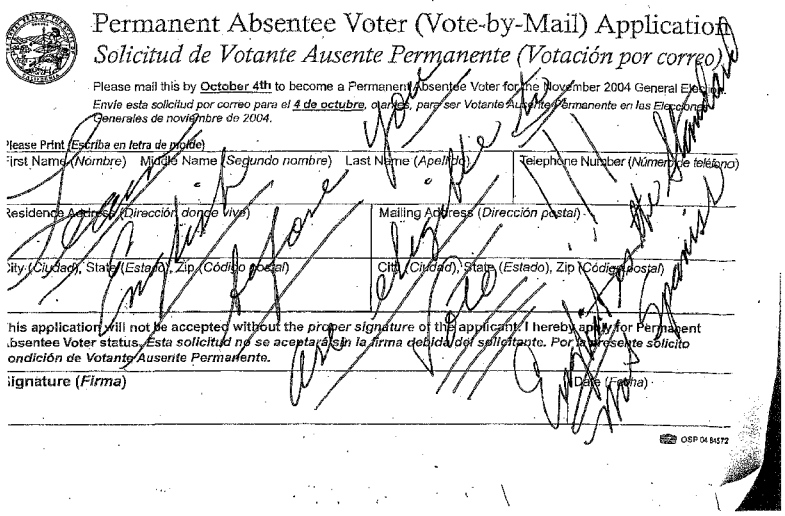
Residence Address (*Dirección donde vive*) | Mailing Address (*Dirección postal*)

City (*Ciudad*), State (*Estado*), Zip (*Código postal*) | City (*Ciudad*), State (*Estado*), Zip (*Código postal*)

This application will not be accepted without the *proper signature* of the applicant. I hereby apply for Permanent Absentee Voter status. *Esta solicitud no se aceptará sin la firma debida del solicitante. Por la presente solicito condición de Votante Ausente Permanente.*

Signature (*Firma*) | Date (*Fecha*)

OSP 04 84572



Permanent Absentee Voter (Vote-by-Mail) Application

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*Envíe esta solicitud por correo para el **4 de octubre**, o antes, para ser Votante Ausente Permanente en las Elecciones Generales de noviembre de 2004.*

Please Print (*Escriba en letra de molde*)

First Name (*Nombre*) | Middle Name (*Segundo nombre*) | Last Name (*Apellido*) | Telephone Number (*Número de teléfono*)

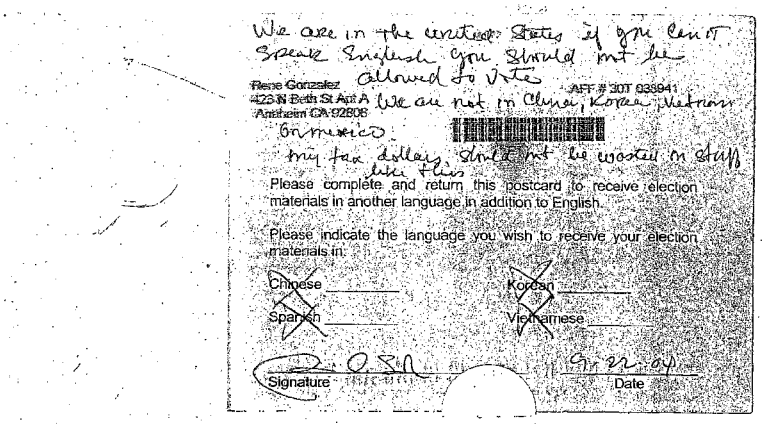
Residence Address (*Dirección donde vive*) | Mailing Address (*Dirección postal*)

City (*Ciudad*), State (*Estado*), Zip (*Código postal*) | City (*Ciudad*), State (*Estado*), Zip (*Código postal*)

This application will not be accepted without the *proper signature* of the applicant. I hereby apply for Permanent Absentee Voter status. *Esta solicitud no se aceptará sin la firma debida del solicitante. Por la presente solicito condición de Votante Ausente Permanente.*

Signature (*Firma*) | Date (*Fecha*)

OSP 04 84572



We are in the United States if you can't speak English you should not be allowed to vote we are not in China, Korea, Vietnam or Mexico. my tax dollars should not be wasted on stuff like this

Rene Gonzalez
423 N Beth St Apt A
Anaheim CA 92806

AFF # 307 933941

Please complete and return this postcard to receive election materials in another language in addition to English.

Please indicate the language you wish to receive your election materials in:

Chinese _____ Korean _____

Spanish X Vietnamese _____

Signature

9-22-04
Date

ATTACHMENT 2

County of Orange **MEMO**

ATTACHMENT II

To: **Chairman Bill Campbell, 3rd District**
Vice-Chairman Chris Norby, 4th District
Supervisor Lou Correa, 1st District
Supervisor James Silva, 2nd District
Supervisor Tom Wilson, 5th District

From: **Neal Kelley, Acting Registrar of Voters**

CC: **Tom Mauk, CEO**
Bill Mahoney, Deputy CEO
Rob Richardson, Assistant to the CEO
Benjamin de Mayo, County Counsel

Re: **Department of Justice Developments and Surname Lists**

As per a request from Vice Chairman Chris Norby I have attached the surname lists we have been using to conduct an analysis of registered voters in the county. The need to conduct this analysis arose out of recent meetings with the Department of Justice. They have expressed a desire to see additional efforts from Orange County at providing language assistance to voters. These discussions are preliminary and they have not provided official direction as of this time.

When meeting with Department of Justice officials they have indicated a possible move towards the use of surnames when identifying voters likely to need assistance with voting (although as stated previously, there has been no official direction at this time). The assumption, according to these Department of Justice enforcement attorneys, is that 25% of registered voters within an identified surname list are "less than English proficient". Therefore, what they have developed as criteria for providing additional poll workers uses the following information (as outlined in consent decrees with other jurisdictions):

Surname[1]	Number of Registered Voters in a Precinct[2]	Bilingual Poll Worker
Spanish surnames	100-249	1
	250-499	2
	500 or more	3
Asian surnames	35-79	1
	80-159	2
	160 or more	3

[1] The Spanish surnames are from the U.S. Census Bureau; the Asian surnames are from the Population Research and Policy Review
[2] With identified surname

The reason they give for the higher threshold in Spanish surnames is due to the large number of registered voters with Spanish surnames that are more likely to not speak English as a second language.

Department of Justice officials will be back in contact with me next month after we have had a chance to compare their analysis to our own assessment. These are still the early phases of discussions, however, I feel it is important that we conduct our own examination to provide you with as much information as possible. We should have our own analysis complete in the near future (which will show a comparison of surname requirements versus our current method of outreach).

Respectfully submitted.

korean-namelist.txt

lastname
park
kim
choi
cho
chung
kang
yi
han
pak
hong
song
shin
oh
yoon
hwang
yoo
choe
kwon
ahn
chun
yun
suh
son
an
cha
min
nam
bae
im
chon
rhee
won
yim
kwak
shim
jun
sin
paik
seo
bang
jang
hyun
whang
huh
chae
mun
no
sim
sohn
o

chinese-namelist.txt

lastname
wong
chen
chan
wang
chang
lin
wu
liu
huang
li
ng
yu
cheng
yee
yang
chu
chin
ho
lam
hsu
lau
fong
leung
chow
cheung
tang
lu
sun
ma
zhang
chiu
lai
tam
lo
tsai
liang
woo
chou
hu
chiang
yuen
chao
kwan
tong
shen
kuo
louie
moy
eng
kwong

spanish-namelist.txt

lastname	rank
Abeyta	476
Abrego	534
Abreu	416
Acevedo	112
Acosta	60
Acuna	370
Adame	326
Adorno	549
Agosto	597
Aguayo	409
Aguilar	45
Aguilera	243
Aguirre	104
Alanis	598
Alaniz	267
Alarcon	364
Alba	404
Alcala	424
Alcantar	567
Alcaraz	599
Alejandro	550
Aleman	347
Alfaro	207
Alicea	303
Almanza	387
Almaraz	551
Almonte	614
Alonso	238
Alonzo	264
Altamirano	466
Alva	568
Alvarado	56
Alvarez	27
Amador	281
Amaya	265
Anaya	195
Anguiano	477
Angulo	438
Aparicio	535
Apodaca	273
Aponte	236
Aragon	230
Arana	581
Aranda	285
Arce	288
Archuleta	289
Arellano	190
Arenas	525
Arevalo	321
Arguello	569
Arias	166
Armas	615
Armendariz	447
Armenta	417
Armijo	377
Arredondo	212
Arreola	365
Arriaga	397
Arroyo	132
Arteaga	332
Atencio	496
Avalos	250

Avila 86
Aviles 245
Ayala 65
Baca 157
Badillo 515
Baez 193
Baeza 456
Bahena 616
Balderas 359
Ballesteros 552
Banda 339
Banuelos 378
Barajas 220
Barela 405
Barragan 526
Barraza 381
Barrera 111
Barreto 497
Barrientos 432
Barrios 200
Batista 418
Becerra 226
Beltran 158
Benavides 208
Benavidez 310
Benitez 172
Bermudez 227
Bernal 168
Berrios 299
Betancourt 290
Blanco 163
Bonilla 153
Borrego 398
Botello 516
Bravo 194
Briones 457
Briseno 433
Brito 333
Bueno 316
Burgos 209
Bustamante 274
Bustos 399
Caballero 268
Caban 439
Cabrera 105
Cadena 440
Caldera 582
Calderon 107
Calvillo 617
Camacho 98
Camarillo 425
Campos 84
Canales 260
Candelaria 366
Cano 167
Cantu 102
Caraballo 317
Carbajal 367
Cardenas 106
Cardona 214
Carmona 252
Carranza 269
Carrasco 210

Carrasquillo 570
Carreon 583
Carrera 517
Carrero 618
Carrillo 77
Carrion 340
Carvajal 478
Casanova 419
Casares 600
Casarez 458
Casas 341
Casillas 271
Castaneda 123
Castellanos 261
Castillo 25
Castro 37
Cavazos 228
Cazares 406
Ceballos 498
Cedillo 571
Ceja 410
Centeno 459
Cepeda 467
Cerda 296
Cervantes 99
Cervantez 479
Chacon 213
Chapa 247
Chavarria 306
Chavez 22
Cintron 348
Cisneros 135
Collado 536
Collazo 318
Colon 53
Colunga 434
Concepcion 426
Contreras 71
Cordero 180
Cordova 142
Cornejo 441
Corona 186
Coronado 221
Corral 353
Corrales 601
Correa 159
Cortes 175
Cortez 64
Cotto 468
Covarrubias 518
Crespo 278
Cruz 17
Cuellar 246
Curiel 572
Davila 129
Deanda 584
Dejesus 131
Delacruz 151
Delafuente 585
Delagarza 371
Delao 602
Delapaz 537
Delarosa 164

Delatorre 237
Deleon 81
Delgadillo 427
Delgado 46
Delrio 393
Delvalle 334
Diaz 14
Dominguez 63
Dominquez 448
Duarte 201
Duenas 499
Duran 76
Echevarria 394
Elizondo 379
Enriquez 173
Escalante 349
Escamilla 275
Escobar 139
Escobedo 244
Esparza 169
Espinal 500
Espino 469
Espinosa 143
Espinoza 68
Esquibel 460
Esquivel 231
Estevez 619
Estrada 52
Fajardo 382
Farias 428
Feliciano 205
Fernandez 29
Ferrer 360
Fierro 395
Figueroa 59
Flores 13
Florez 429
Fonseca 335
Franco 116
Frias 461
Fuentes 97
Gaitan 573
Galarza 449
Galindo 179
Gallardo 232
Gallegos 73
Galvan 125
Galvez 307
Gamboa 354
Gamez 302
Gaona 501
Garay 538
Garcia 1
Garibay 527
Garica 620
Garrido 430
Garza 26
Gastelum 586
Gaytan 462
Gil 262
Giron 411
Godinez 388
Godoy 621

Gomez 15
Gonzales 12
Gonzalez 6
Gracia 389
Granado 519
Granados 350
Griego 435
Grijalva 470
Guajardo 308
Guardado 587
Guerra 85
Guerrero 54
Guevara 211
Guillen 311
Gurule 539
Gutierrez 24
Guzman 43
Haro 471
Henriquez 480
Heredia 336
Hernadez 528
Hernandes 520
Hernandez 5
Herrera 33
Hidalgo 282
Hinojosa 229
Holguin 372
Huerta 188
Hurtado 253
Ibarra 114
Iglesias 489
Irizarry 233
Jaime 442
Jaimes 588
Jaquez 553
Jaramillo 171
Jasso 472
Jimenez 35
Jiminez 490
Juarez 78
Jurado 603
Laboy 540
Lara 94
Laureano 604
Leal 176
Lebron 400
Ledesma 300
Leiva 622
Lemus 297
Leon 95
Lerma 322
Leyva 258
Limon 383
Linares 368
Lira 401
Llamas 554
Loera 412
Lomeli 555
Longoria 192
Lopez 4
Lovato 502
Loya 420
Lozada 541

Lozano 122
Lucero 124
Lucio 481
Luevano 491
Lugo 137
Lujan 215
Luna 66
Macias 115
Madera 542
Madrid 185
Madrigal 270
Maestas 304
Magana 248
Malave 521
Maldonado 51
Manzanares 623
Mares 402
Marin 177
Marquez 61
Marrero 178
Marroquin 312
Martinez 2
Mascarenas 589
Mata 138
Mateo 503
Matias 529
Matos 202
Maya 556
Mayorga 605
Medina 30
Medrano 191
Mejia 93
Melendez 109
Melgar 624
Mena 323
Menchaca 482
Mendez 39
Mendoza 32
Menendez 337
Meraz 543
Mercado 103
Merino 557
Mesa 342
Meza 156
Miramontes 606
Miranda 79
Mireles 298
Mojica 343
Molina 67
Mondragon 450
Monroy 544
Montalvo 254
Montanez 286
Montano 203
Montemayor 504
Montenegro 505
Montero 351
Montes 154
Montez 451
Montoya 70
Mora 119
Morales 18
Moreno 31

Mota 483
Moya 279
Munguia 506
Muniz 160
Munoz 40
Murillo 183
Muro 625
Najera 319
Naranjo 473
Narvaez 474
Nava 198
Navarrete 380
Navarro 75
Nazario 545
Negrete 324
Negron 216
Nevarez 369
Nieto 251
Nieves 120
Nino 626
Noriega 344
Nunez 58
Ocampo 355
Ocasio 361
Ochoa 91
Ojeda 255
Olivares 272
Olivarez 305
Olivas 291
Olivera 558
Olivo 475
Olmos 507
Olvera 276
Ontiveros 301
Oquendo 530
Ordonez 421
Orellana 443
Ornelas 283
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Mai
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ATTACHMENT 3

42 USCS § 1973aa-1a

§ 1973aa-1a. Bilingual election requirements

(a) Congressional findings and declaration of policy. The Congress finds that, through the use of various practices and procedures, 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. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution [USCS Constitution, Amendments 14, 15], it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.

(b) Bilingual voting materials requirement.

(1) Generally. Before August 6, 2007, no covered State or political subdivision shall provide voting materials only in the English language.

(2) Covered States and political subdivisions.

(A) Generally. A State or political subdivision is a covered State or political subdivision for the purposes of this subsection if the Director of the Census determines, based on census data, that--

(i) (I) more than ~~5~~ 10 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient;

~~(II) more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient; or~~

(III) in the case of a political subdivision that contains all or any part of an Indian reservation, more than ~~5~~ 10 percent of the American Indian or Alaska Native citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient; and

(ii) the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate.

(B) Exception. The prohibitions of this subsection do not apply in any political subdivision that has less than ~~5~~ 10 percent voting age limited-English proficient citizens of each language minority which comprises over ~~5~~ 10 percent of the statewide limited-English proficient population of voting age citizens, unless the political subdivision is a covered political subdivision independently from its State.

(3) Definitions. As used in this section--

(A) the term "voting materials" means registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots;

(B) the term "limited-English proficient" means unable to speak or understand

English adequately enough to participate in the electoral process as derived from respondents to the most recent United States Census reporting that they speak English "Not well" or "Not at all";

(C) the term "Indian reservation" means any area that is an American Indian or Alaska Native area, as defined by the Census Bureau for the purposes of the 1990 decennial census;

(D) the term "citizens" means citizens of the United States; and

(E) the term "illiteracy" means the failure to complete the 5th primary grade.

(4) Special rule. The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court.

(c) Requirement of voting notices, forms, instructions, assistance, or other materials and ballots in minority language. Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, but not including initiative, referendum or recall petitions, it shall provide them in the language of the applicable minority group as well as in the English language.; except provided, that such materials and information shall not be required to be provided based on surname alone and shall be provided only on request by limited English proficient voters. ~~That w~~Where the language of the applicable minority group is oral or unwritten or in the case of Alaskan natives and American Indians, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

(d) Action for declaratory judgment permitting English-only materials. Any State or political subdivision subject to the prohibition of subsection (b) of this section, which seeks to provide English-only registration or voting materials or information, including ballots, may file an action against the United States in the United States District Court for a declaratory judgment permitting such provision. The court shall grant the requested relief if it determines that the illiteracy rate of the applicable language minority group within the State or political subdivision is equal to or less than the national illiteracy rate.

(e) Definitions. For purposes of this section, the term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

42 USCS § 1973aa-1a

Mr. CHABOT. Ms. Narasaki, you are recognized for 5 minutes.

TESTIMONY OF KAREN NARASAKI, PRESIDENT AND EXECUTIVE DIRECTOR, ASIAN AMERICAN JUSTICE CENTER

Ms. NARASAKI. Thank you, Mr. Chairman. Good afternoon. I am pleased to be here to testify on behalf of the Asian American Justice Center. One of our top priorities has long been the elimination to discriminatory barriers to voting. We have worked in partnership with local Asian American community-based organizations and the Department of Justice to ensure compliance with the Voting Rights Act. And we commend the leadership and the Chairs and Ranking Members of both the House and Senate Judiciary Committees and Subcommittees in working together to ensure that Congress has a full record to review as it considers the reauthorization of this very important piece of legislation.

I'd like to request that my full written statement be formally entered into the hearing record.

Mr. CHABOT. Without objection, so ordered.

Ms. NARASAKI. Thank you. Since the Voting Rights Act has been enacted, Asian Americans have made some gains in electoral representation. About 75 percent of the Asian Americans elected are in jurisdictions either covered by section 2, which is the language assistance provisions of the act, or section 5, which is preclearance covered jurisdictions.

And while progress has been made, Asian Americans still face significant race discrimination at the polls when attempting to exercise their right to vote, including hostile and unwelcoming poll workers, and outright challenges on the right to vote based on their race. AAJC believes that H.R. 9 is critical to helping ensure the health of our democracy.

Here are just a couple of examples of problems from recent elections. In Jackson Heights, Queens, New York during the 2004 elections one poll worker said: You Oriental guys are just taking too long to vote. In fact, we heard many complaints of some poll workers telling people who didn't speak English that well that they had to go back to the back of the line.

In the 2004 primary elections in Bayou LaBatre, Alabama, there was a concerted effort to intimidate Asian American voters made by the supporters of a White incumbent running against a Vietnamese American candidate. These supporters challenged Asian Americans at the polls, charging without any basis other than their race that they were not U.S. citizens or city residents or they had felony convictions.

There is also evidence of the continuation of racially polarized voting. For example, in the 2003 gubernatorial election in Louisiana, Congressman Bobby Jindal was well ahead in the preelection polls prior to the November runoff, but on Election Day he lost. A significant number of those who voted for David Duke, noted for his past leadership of the KKK, swung their support away from the very conservative Asian American, Jindal, to the much less conservative White Democrat, Kathleen Blanco.

We strongly support H.R. 9's provisions that would renew and strengthen the preclearance provisions of section 5 and the award of expert witness fees for the prevailing party in enforcement ac-

tions. We also strongly endorse the renewal of the Federal observer provisions which deter and prevent discrimination at the polling place. Indeed, we ask the Subcommittee to consider strengthening them by amending the act to authorize the Attorney General to send Federal observers to section 203 covered jurisdictions, just as they are able to do with section 5 covered jurisdictions.

We would ask specifically to discuss section 203 today which is very critical, as Congressman Honda noted, to the Asian American community. While new immigrants are required to be able to speak transactional English for citizenship, voting materials are often written at a much more complex level. Voting can be particularly daunting for those whose only language—those of us who actually speak English. In California's 2004 election, there were 16 measures and the voting guide was over 200 pages long.

Moreover, although many language minorities were born in this country or came here at a very young age, many have had trouble speaking English well, often because they received a substandard education. Others have not had adequate access to advanced ESL classes to be able to learn English at the level required for the voting process.

In addition, the United States encourages senior citizens who have been here 20 years and who have been contributing to America, to become citizens by waiving the English literacy requirement when applying for citizenship. Also exempted are Hmong veterans who helped Americans during the Vietnam War and were pledged refuge by the United States.

The formula triggering coverage is a very rigorous one. It does not presume that all minority voters need assistance, but considers educational attainment as well as self-assessed language ability. The Census Bureau asks for English ability in its long-form census questionnaire. And it has determined by testing that respondents for various reasons tend to overestimate their ability to speak English. So only those who respond that they speak English very well are deemed to be truly proficient.

As a result of these strictures, only 16 jurisdictions in seven States are covered for any Asian language. These jurisdictions account for half of the Nation's Asian American population. Section 203 has also proven effective in achieving its objective. Both Asian American voter registration and voter participation has increased significantly in the covered jurisdictions.

In 2004, for example, over 10,000 Vietnamese American voters registered in Orange County, which helped to lead to the election of the first Vietnamese American to the California State legislature. As was noted earlier, 2004 also saw the first Vietnamese American elected to the Texas State legislature after Harris County began fully complying with section 203.

We recommend that the Subcommittee consider strengthening section 203 by lowering the numerical threshold for language assistance coverage from 10,000. The advent of computerized voting makes the provision of language access even easier than when the formula was last set in 1992. For example, lowering the threshold to 7,500 would trigger coverage for at least three more Southeast Asian American communities.

On behalf the AAJC, I would like to thank the Committee for allowing me to testify today.

Mr. CHABOT. Thank you very much.

[The prepared statement of Mr. Narasaki follows:]

PREPARED STATEMENT OF KAREN K. NARASAKI

Statement of
Karen K. Narasaki
President and Executive Director, Asian American Justice Center

Before the
Subcommittee on the Constitution
Committee on the Judiciary
United States House of Representatives

Legislative Hearing on H.R. 9,
"A Bill to Reauthorize and Amend the Voting Rights Act of 1965: Part II"
May 4, 2006

Introductory Statement

Chairman Chabot, Ranking Member Nadler and distinguished members of the Subcommittee. My name is Karen K. Narasaki and I am the President and Executive Director of the Asian American Justice Center, formerly known as the National Asian Pacific American Legal Consortium. We are 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.

We have 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 who have been engaged in working with their communities to ensure compliance with the Voting Rights Act. We also have over 100 community partners serving their communities in 24 states and the District of Columbia.

Together with our Affiliates and our community partners, we have been extensively involved in improving the current level of political and civic engagement among Asian American communities and increasing Asian American access to the voting process. One of our top priorities is the reauthorization of the Voting Rights Act (VRA) because of the incredible impact the VRA has had on the Asian American community in addressing discriminatory barriers to meaningful voter participation.

To that end, I am pleased to appear before you on behalf of AAJC today to provide comments on HR. 9, 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 House Judiciary Committee and Senate Judiciary Committee for renewing key expiring provisions of the VRA. In particular, AAJC appreciates the extensive hearings held by the House Judiciary Subcommittee on the Constitution and the support shown by leadership toward this matter. I would like to request that my written statement be formally entered into the hearing record.

History of the Voting Rights Act and Asian Americans

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." In 1870, Chinese Americans were expressly prohibited from naturalizing as citizens. By 1924, this prohibition was extended to virtually all Asian immigrants (except Filipinos), denying them the right to vote. By 1935, Filipinos were also restricted in their ability to vote.

It wasn't until the last fifty years that the last of these restrictions ended, at long last giving all Asian Americans the right to vote. However, even after all Asian Americans were finally granted the right to vote, they faced another obstacle to voting – language barriers. Citizens not fluent in English were often denied needed assistance at the polls.

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 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 VRA was enacted over 40 years ago, and since the adoption of Section 203 in 1975, Asian Americans have made substantial 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.[1] Studies show a sharp rise in the number of Asian American elected officials in federal, state, and local offices. In 2004 the total number was 346, up from 120 in 1978. Of the 346 total elected officials, 260 serve at the local level, up from 52 in 1978.[2] Approximately 75 Asian American officials serve at the state legislative level. In California, the increase has been particularly dramatic. In 1990, California had no Asian American state legislators; it now has nine. These gains can be directly attributed to the VRA

[1] 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.
[2] 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.
[3] *Id.* at 17.

and particularly to the passage of Section 203. For example, the vast majority of Asian American elected officials, 75%, were elected in jurisdictions covered by Section 203 of the VRA.[3] In the state legislatures, 65% of Asian Americans were elected from jurisdictions covered by the VRA.[4] In city councils, 79% of Asian Americans were elected from VRA–covered jurisdictions.[5] And among those serving on the school boards, 84% of Asian Americans were elected from covered jurisdictions.

In California, 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.[6] 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, 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 election 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.[7]

Despite these tremendous 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 HR. 9 will help ensure the continued success of Asian American voters having their voices heard and help more Asian Americans to vote.

Continuing Discrimination Against Asian American Voters

Although the VRA has done a tremendous amount 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.

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[4] *Id.*
[5] *Id.* at 17–18.
[6] 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).
[7] Article available at http://www.civilrights.org/campaigns/vra/learn_more/detail.cfm?d=195.

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.[8]

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.[9] 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."[10] Mr. Ringhofer primarily targeted Asian and Hispanic voters.[11] In one of the counties in which Mr. Ringhofer initiated his challenge, the county auditor declined to process the challenge and contacted the Department of Justice about the challenge due to its apparent violation of state and federal law.[12]

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 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

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[8] http://www.asianmediawatch.net/jerseyguys/.
[9] *Id.*
[10] *See also* Jim Camden, *Man says votes from illegal immigrants*, March 31, 2005, available at http://www.spokesmanreview.com/local/story.asp?ID=61944.
[11] *Id.*
[12] Letter dated April 5, 2005 from Franklin County Auditor to Martin Ringhofer.

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.[13]

Similarly, in Boulder, Colorado, a poll worker made racist comments to an Asian American voter, told her she was not on the list of registered voters, and then turned her away after she 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.[14]

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.[15]
- In Union County, New Jersey, White challengers were seen going inside the voting booth with minority voters.[16]
- 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."[17]

AAJC commends leadership for 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 HR. 9's renewal for 25 years and restoration of Section 5 of the VRA. We commend leadership for restoring the strength of Section 5 by addressing two Supreme Court decisions that have significantly narrowed Section 5's effectiveness. HR. 9 rejects the Court's holding in *Bossier II* by making clear that a voting rule change motivated by any discriminatory purpose cannot be precleared. HR. 9 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.

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[13] *Election Incident Reporting System: 1 866 Our Vote*, available at https://voteprotect.org/index.php?display=EIRMapNation&tab=ED04.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] 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.

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 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.[18]

As the Asian American community continues to grow and move, Section 5 will become more and more relevant to Asian Americans. Asian Americans are one of the fastest growing populations in America.[19] Large numbers of Asian Americans continue to live in California, New York, and Hawaii.[20] 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.[21] 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.[22]

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 who 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 Department of Justice 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.[23]

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. 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 November runoff showed now–Representative Bobby Jindal, an Indian American

[18] Editorial, *Minority Rights in the Voting Booth*, New York Times, Aug. 19, 1994, *available at* http://select.nytimes.com/search/restricted/article?res=F60910FB3D5DOC7A8DDDA10894DC494D81.
[19] http:www.census.gov/Press–Release/www/releases/archives/race/001839.html.
[20] http:www.advancingequality.org/files/census_handbook.pdf – Summary – p.i.
[21] http:www.advancingequality.org/files/census_handbook.pdf – Table 9 – p. 10.
[22] *Id.*
[23] DeWayne Wickham, *Why renew Voting Rights Act? Ala. town provides answer*, USA Today, Feb. 22, 2006, *available at* http://www.usatoday.com/news/opinion/editorials/2006–02–22–forum–voting–act_x.htm.

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.[24]

- In 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.[25]

- In 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.[26]

- In 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%).[27]

- The City of Westminster, California, is home to the largest Vietnamese community outside of Vietnam. In 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 him, White voters tended to support Joy Neugebauer and eventual winner Frank Fry. In the highly contested 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.[28]

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.[29] 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.[30] 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.[31]

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[24] Richard Skinner and Philip A. Klinkner (2004) "Black, White, Brown and Cajun: The Racial Dynamics of the 2003 Louisiana Gubernatorial Election", Forum: Vol. 2: No. 1, Article 3.
[25] Asian Pacific American Legal Center, November 1998 Southern California Voter Survey Report (1999), available at http://www.apalc.org/Nov_1998_Voter_Survey.pdf.
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] L.A. Times 2004 Exit Poll, *available at* www.pollingreport.com/2004.htm.
[30] Asian Pacific American Legal Center, Data on Asian Pacific Islander Voters From the November 2002 Southern California Voter Survey, Nov. 7, 2002, available at http://www.apalc.org/2002_voter_survey.pdf.
[31] L.A. Times 2004 Exit Poll, available at www.pollingreport.com/2000.htm.

Asian American voters also vote differently than White voters on ballot initiatives that directly impact the Asian American community.[32] For example, 53% of Asian American voters voted against Proposition 187, a 1994 initiative in California to ban illegal 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 leadership for extending the language assistance provision, Section 203 of the VRA, another 25 years in HR. 9. AAJC also commends 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 to be covered are 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.

Section 203 has been critical to the advancement 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. Section 203 remains necessary to remedy the problem of discrimination against Asian Americans at the polls.

Section 203 likewise remains necessary to help language minorities overcome another major barrier: the inability to speak or read English 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. Other language minorities immigrated to this country and have not had adequate opportunities to learn English.

Because the United States encourages people who have been here for a long time and who have been contributing to society to be civically engaged, 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 time, 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. Additionally, during the 1992 reauthorization of Section 203, Congress itself documented that the lack of English as a Second Language (ESL) programs effectively precludes language minorities from learning English. The waiting time for language minorities enrolling in ESL courses often can be more than one year. In Boston, the average waiting time can be as much as two years. In parts of New Jersey, the waiting time is six months to a year. Pennsylvania has reported waiting times as long as a

[32] L.A. Times exit polls.

year.[33] Section 203 is a necessary remedy to overcome the language barrier, which prevents those who do not speak or read English fluently from fully exercising their right to vote.

According to the 2000 Census,[34] 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 over the national averages. For example, 67% Vietnamese Americans over the age of 18 have limited English proficiency. For Laotians, Cambodians and Hmongs over the age of 18, over 60% have limited English proficiency.

Many Section 203 counties likewise have significant Asian American populations with limited English proficiency. For example, in King County, New York, 63% of Asian Americans 18 years and older have limited English proficiency. In several other Section 203 counties, including San Francisco County, Queens County and Kodiak Island Bureau, Alaska, over 50% of Asian Americans 18 years and older have limited English proficiency. The high rates of limited English proficiency among Asian American and other language minority voters make the language assistance provisions of Section 203 a critical protective measure against racial discrimination.

According to Attorney General Alberto Gonzales, Section 203 is a necessary remedy to address these disparities.

> In the past two years, the Civil Rights Division has undertaken the most extensive enforcement of the minority language provisions in the history of the Voting Rights Act…The good news is we have evidence that our 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 our suits was filed. During that same period, Vietnamese registrations increased by 40 percent. And right here in Texas – in Harris County – the turnout among Vietnamese eligible voters doubled following the Justice Department's efforts in that county.[35]

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.

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[33] Center for Adult English Acquisition, available at http://www.cal.org/caela.
[34] 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).
[35] Prepared Remarks of Attorney General Alberto R. Gonzales at the Anniversary of the Voting Rights Act, Lyndon B. Johnson Presidential Library Austin, Texas, Aug. 2, 2005.

Research from Dr. James Tucker, my esteemed co–panelist, confirms the GAO findings. Dr. Tucker's research found, among other things, 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. 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, 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 United States Constitution.[36] 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.[37] 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 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."[38]

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")

[36] *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.").
[37] *City of Boerne v. Flores*, 521 U.S. 507, 519–20 (1997).
[38] 42 U.S.C. § 1973aa–1a(a).

that results in the disenfranchisement of language minorities.[39] 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.[40]

(ii) Second Prong: Congruence

After identifying the discrimination addressed by the legislation, the Court then looks at whether Congress, in enacting the statute, in fact is responding to the stated discrimination or is acting pursuant to some other motivation.[41] 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.[42] If the legislative record has glaring deficiencies, the statute will likely be struck down as unconstitutional.

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 demonstrating, that the purpose of the statute was to address racial discrimination resulting in the disenfranchisement of language minorities.[43] 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."[44] 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.[45] Moreover, the record currently before the House demonstrates that the discrimination Congress intended to redress still exists.

(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."[46] 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

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[39] S. Rep. 94 295, 1975 U.S.C.C.A.N. 774, 791–96 (July 22, 1975) ("1975 Senate Report").
[40] 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. Board 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).
[41] City of Boerne, 521 U.S. at 531.
[42] Garrett, 531 U.S. at 368.
[43] 1975 Senate Report.
[44] H.R. Rep. 102–655, 1992 U.S.C.C.A.N. 766, 766 (July 8, 1992) ("1992 House Report").
[45] S. Rep. 102–315, 1992 WL 163390, at *4–10 (July 2, 1992) ("1992 Senate Report").
[46] Lane, 541 U.S. at 533.

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."[47] Although there are no federal requirements that polling data be kept on the Asian American language minorities, then–recent exit 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.[48] 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.[49]

The congressional record developed thus far already has substantial evidence demonstrating that section 203 is proportional. The evidence in the record is broad–based, but boils down to two fundamental propositions. First, the evidence shows that language assistance has been successful in increasing voter participation and minority representation. Second, the evidence shows that language assistance still is needed because discrimination against Asian Americans continues to occur.

Strengthening Section 203

AAJC recommends that the Subcommittee consider strengthen Section 203 by lowering the numerical threshold for coverage to 7,500 in HR. 9. Lowering the threshold from 10,000 to 7,500 would allow several Asian American language minority populations to benefit from language assistance under Section 203. These populations would likely not be covered after the next coverage determinations are made based on 2010 American Community Survey (ACS) census data – unless the threshold is lowered to 7,500. A lower threshold would result in minimal additional costs.

A lower numerical threshold will also remedy the potential that the ACS, which will replace the decennial 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. The likelihood of an undercount further justifies lowering Section 203's numerical threshold to 7,500.

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.

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[47] 1992 U.S.C.C.A.N. at 770.
[48] *Id.* at 771.
[49] *Id.* at 772.

Importantly, lowering the threshold to 7,500 would trigger coverage for several Southeast Asian American communities. The current numerical benchmark has largely left out this significant portion of the Asian American community. 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. The Southeast Asian American community largely consists of Americans from Cambodia, Laos and Vietnam. These communities clearly fall within the group of citizens Congress intended to protect and empower under Section 203 of the Voting Rights Act. Their characteristics include high levels of limited English proficiency and low levels of educational attainment, as well as low voter turnout.

For the Southeast Asian American community, educational attainment remains low, especially for the Cambodian, Laotian, and Hmong communities.[50] 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 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 32% of Cambodian households, 35% of Hmong households, and 32% of Laotian households are "linguistically isolated," which means that all members of the household 14 years old and over have at least some difficulty with English, as compared to 4% of households for the total U.S. population. Voters from linguistically isolated households are in particular need of Section 203 assistance because they do not have any family members who can accompany them to the polls and assist them in the voting process.

Three more Southeast Asian American communities would have been covered in the 2002 coverage determinations 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; but 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.

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 to 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.

Observer & Examiner program

AAJC agrees with HR. 9'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. However, AAJC recommends that the Subcommittee consider allowing the Attorney General under the federal observer provisions of the VRA to send federal observers to

[50] 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).

Section 203–covered jurisdictions where the Department of Justice learns of incidents of discrimination or interference with the right to vote in connection with upcoming or recent elections in HR. 9.

As Barry Weinberg, Former Deputy Chief and Acting Chief of the Voting Section at DOJ, testified to at a hearing by this Subcommittee, because violations of the Voting Rights Act continue to happen in polling places throughout the United States, 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 minority language 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.
- 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 to Asian American voters and language assistance, or sometimes outright racist, 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. Because of their special access, the harassment of minority voters and other violations of the Voting Rights Act inside the polling places no longer go unseen and unchecked where federal observers are dispatched.

For language minorities, inside the polling site is precisely where they experience discrimination by poll workers who refuse to assist them, who degrade them, or who use racial slurs when speaking to them or by other voters who challenge their right to vote 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 report these discriminatory and intimidating incidents to DOJ attorneys. As Mr. Weinberg testified, these facts are crucial and irreplaceable in the enforcement of the Voting Rights Act. Without the federal observers' special access, DOJ attorneys are not able to collect evidence of discrimination unless harassed and intimidated voters take the proactive step of contacting the DOJ (assuming they even know they can pursue that course of action) and thus are not able to legally address the discrimination against language minority voters.

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 AG send federal observers to every new covered jurisdiction, rather simply where there has been evidence of voting discrimination. The reality is that this would simply provide the Attorney General more tools to combat voting discrimination.

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 restores Congress' intent of assuring access to the courts by victims of voting discrimination.

Conclusion

On behalf of AAJC, I want to thank the Committee for the opportunity to testify today on HR. 9 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 about the bill with the Committee. In particular, we are pleased to offer our support of HR. 9. I look forward to discussing the importance of the VRA to our nation and the debate around its reauthorization.

Mr. CHABOT. Dr. Tucker, you are recognized for 5 minutes.

TESTIMONY OF JAMES THOMAS TUCKER, VOTING RIGHTS CONSULTANT, NALEO EDUCATIONAL FUND, AND ADJUNCT PROFESSOR, BARRETT HONORS COLLEGE, ARIZONA STATE UNIVERSITY

Mr. TUCKER. Thank you, Mr. Chairman. Mr. Chairman and distinguished Members of this Subcommittee, I want to thank you for your strong bipartisan leadership, and I want to specifically acknowledge two members of NALEO, Mr. Gonzalez of Texas and Ms. Sánchez of California, for the work that you have done on this bill.

I want to express my strongest support for H.R. 9. Section 7 of H.R. 9 provides for a straight reauthorization of sections 4(f)(4) and 203 of the Voting Rights Act until August of 2032. Section 2 of the bill outlines substantial evidence of continued discrimination against language minorities that supports the 25-year reauthorization.

Equally important, the bill reaffirms the findings in section 203 of the Voting Rights Act. There is an extensive record of documented discrimination in voting and education that supports maintaining the protections in sections 4(f)(4) and 203 of the Voting Rights Act for the four covered language groups. Other language groups have not been included because there is no similar record for those groups.

H.R. 9 maintains the existing section 203 coverage formula. It also updates the data used for coverage determinations to reflect changes in how the Census Bureau collects language ability data using the American community survey.

In 1992, Congress acknowledged the substantial record of educational discrimination against the covered language minority groups. Since 1975, at least 24 successful educational discrimination cases have been brought on behalf of English language learners in 15 States, 14 of which are presently covered by section 203; 10 of those cases have been since 1992. Consent decrees or court orders remain in effect for English language learner students Statewide in Arizona and Florida, and in the cities of Boston, Denver, and Seattle.

The December 2005 decision in *Florez v. Arizona* illustrates the impact that unequal educational opportunities have had on the 175,000 English language learner students enrolled in Arizona's public schools. As the Court explained in citing the State $500,000 a day for being in contempt of its prior orders, and I quote: "The court can only imagine how many students have started school since Judge Marquez entered the order in February 2000 declaring these programs were inadequately funded in an arbitrary and capricious manner that violates English language learner students' rights under the Equal Education Opportunity Act. How many students may have stopped school by dropping out or failing because of the foot-dragging by the State?"

Educational discrimination is compounded by the absence of sufficient adult-ESL programs in most of the covered jurisdictions. In Albuquerque, the largest provider reports an average waiting time of about 12 months. In Boston, the average waiting time is 6 to 9 months, but some adults have to wait as much as 2 to 3 years.

As of just a few days ago, there were at least 16,000 adults on ESL waiting lists in Boston. In New York, the need for adult-ESL courses is estimated to be 1 million, but only 41,000 adults were able to enroll in 2005. Most adult-ESL programs no longer keep waiting lists because of the extreme demand, but use lottery systems in which at least 3 out of every 4 adults are turned away.

In Phoenix, the largest adult-ESL provider reports a waiting list of over 1,000 people, with a waiting time of up to 18 months for highest-demand evening classes.

In Rhode Island, over half of all adults on waiting lists have been waiting for 12 months or more. This demonstrates that there is a national problem on ESL.

Limited-English-proficient adults are extremely motivated to learn English and become fully assimilated into American society. The average adult-ESL student is the working poor, holding two jobs, supporting a family and learning English in the few hours available to them in the evenings.

It can take several years for LEP students to even acquire spoken English language and literacy skills equal to a fifth-grade education, which is still functionally illiterate. The need for language assistance on ballot questions is especially important because of the growing number of propositions directly impacting the covered language minority citizens. An average of 13.1 percent of voting-age citizens are limited-English-proficient in the languages triggering coverage, with an average illiteracy rate that is nearly 14 times the national rate.

The barriers posed by educational discrimination, language, and the absence of sufficient ESL classes and high illiteracy result in significantly decreased voter participation. H.R. 9 maintains the existing bailout provision from section 203 coverage for jurisdictions that are able to remedy the illiteracy rate of the applicable language minority groups. As I testified previously, where implemented properly, language assistance accounts for only a small fraction of total election costs, if at all.

For these reasons I recommend that without delay the House pass H.R. 9, without amendment, to ensure the continued protection of the right to vote for all American citizens.

Thank you very much for your attention and I will welcome the opportunity to answer questions you may have.

Mr. CHABOT. Thank you very much.

[The prepared statement of Mr. Tucker follows:]

PREPARED STATEMENT OF DR. JAMES THOMAS TUCKER

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 House Committee on the Judiciary
Subcommittee on the Constitution

Legislative Hearing on H.R. 9,
A Bill to Reauthorize and Amend the Voting Rights Act of 1965: Part II
May 4, 2006

Mr. Chairman and Members of the Subcommittee, thank you for your invitation to testify on H.R. 9, the Fannie Lou Hamer, Rosa Parks, and Corretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 ("VRARA"). I want to commend Chairman Sensenbrenner and Ranking Member Conyers of the Judiciary Committee, and Chairman Chabot, Ranking Member Nadler, and Mr. Watt, Ms. Sanchez, Mr. Lewis, and Mr. Honda for your leadership and support for this legislation. The Voting Rights Act is the crown jewel of American civil rights laws. The importance of renewing and restoring the Act to the original Congressional intent has not been lost on Members from both Parties in the House and the Senate. Just two days ago, we witnessed the historic bicameral and bipartisan drop of H.R. 9. Last week, Chairman Sensenbrenner and Ranking Member Conyers introduced a substantial record of 8,000 pages of testimony documenting extensive discrimination and the continuing need for the expiring provisions of the Voting Rights Act. While progress has been made to eliminate voting discrimination in this country, much work remains left to do. For that reason, I urge the distinguished Members to pass H.R. 9 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. 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 that was accepted into the House record. I presently am working with Peter Zamora, an attorney with the Mexican-American Legal Defense and Education Fund (MALDEF), to document successful educational discrimination cases and English as a Second Language (ESL) waiting times in nearly two dozen cities across the United States. I will discuss some of our findings today.

Although my comments will focus primarily on Sections 4(f)(4) and 203, I want to express my strongest support for the other provisions of H.R. 9. 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 updates the federal observer provisions to reflect the manner in which those provisions have been used since 1982. Finally, H.R. 9 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. The VRARA will ensure that ongoing voting discrimination and the vestiges of past voting discrimination are removed root and branch from our Nation's landscape.

The language assistance provisions of the Voting Rights Act received strong bipartisan support each time Congress previously considered them in 1975, 1982, and 1992, and this reauthorization process has been no different. As Senator Orrin Hatch observed during the 1992 hearings, "[t]he right to vote is one of the most fundamental of human rights. Unless government assures access to the ballot box, citizenship is just an empty promise. Section 203 of the Voting Rights Act, containing bilingual election requirements, is an integral part of our government's assurance that Americans do have such access."[1]

It has long been established that Congress has the authority to remove barriers to political participation by language minority U.S. citizens. In *Katzenbach v. Morgan*,[2] 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."[3] 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."[4]

Katzenbach upheld the language assistance requirements as a valid exercise of congressional enforcement powers under the Fourteenth and Fifteenth Amendments, which the Court recognized give "the same broad powers expressed in the Necessary and Proper Clause."[5]

In 1975, Congress relied upon Section 4(e) as the foundation for Sections 4(f)(4) and 203. Congress noted its constitutional exercise of its enforcement powers by citing *Katzenbach* and the Court's decision in *Meyer v. Nebraska*, a 1923 case in which the Court struck down a prohibition of teaching languages other than English in public schools. As the Supreme Court observed in *Meyer*, "the protection of the Constitution extends to all, to those who speak other languages as well as those born with English on the tongue."[6] Congress agreed with this reasoning in enacting Sections 4(f)(4) and 203.

Section 7 of H.R. 9 provides for a straight reauthorization of Sections 4(f)(4) and 203 of the Voting Rights Act for twenty-five years, until August 6, 2032. The provisions apply to four language groups: Alaska Natives; American Indians; persons of Spanish Heritage; and Asian Americans,[7] as well as the distinct languages and dialects within these language groups.[8] Section 2 of the bill outlines substantial evidence of continued discrimination against language minorities that supports the twenty-five year reauthorization. Equally important, the bill reaffirms the findings in Section 203(a) of the Voting Rights Act, which states:

> The Congress finds that, through the use of various practices and procedures, 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.[9]

There is a substantial record of documented discrimination in voting and education that supports maintaining the protections in Sections 4(f)(4) and 203 of the Voting Rights Act for the four covered language groups. Other language groups have not been included because there is no evidence that they have experienced similar difficulties in voting.[10]

Jurisdictions are selected for coverage through two separate triggering formulas. Under Section 4(f)(4) of the Act, a jurisdiction is covered if three criteria are met as of November 1, 1972: (1) over five percent of voting age citizens were members of a single language group; (2) the jurisdiction used English-only election materials; and (3) less than fifty percent of voting age citizens were registered to vote or fewer than fifty percent voted in the 1972 Presidential election.[11] This trigger covers jurisdictions that have experienced "more serious problems" of voting discrimination against language minority citizens.[12]

Jurisdictions covered under Section 4(f)(4) must provide assistance in the language triggering coverage and are subject to the Act's special provisions, including Section 5 preclearance and federal observer coverage. Section 4(f)(4) coverage applies in three states (Alaska for Alaska Natives, and Arizona and Texas for Spanish Heritage) and nineteen counties or townships in six additional states.[13] Bailout under Section 4(a) of the Voting Rights Act allows jurisdictions that have eliminated voting discrimination to be removed from coverage

under Section 4(f)(4). Covered counties in Colorado, New Mexico, and Oklahoma have bailed out pursuant to Section 4(a) of the Voting Rights Act.[14]

During the oversight hearings, this Committee received substantial evidence documenting voting discrimination and the continuing need for Section 4(f)(4) coverage in the remaining jurisdictions. I will briefly highlight some of those findings in the three states covered statewide.

The need for language assistance in Alaska remains high, but is largely unmet. Residents of nearly 200 Native villages accessible only by plane live in abject poverty, have high unemployment rates, and the lowest levels of education.[15] These Native Alaskans speak twenty different languages, many with unique regional dialects, and they have a high level of limited-English proficiency.[16] Educational disparities continue to be prevalent, including 80.5 percent of Alaska Native graduating seniors who were not proficient in reading comprehension, failure rates on standardized tests that were more than 20 percent higher than non-Native students, and graduation rates that lag more than 15 percent behind the statewide average.[17] There is substantial non-compliance with Section 203, including lack of oral language assistance, no voter outreach, the absence of language assistance by telephone, and the failure to provide materials in the written Iñupiaq and Yup'ik languages.[18] The "largely monolingual elections in Alaska have clearly impacted Alaska Natives' ability to exercise their right to vote."[19] Voter turnout in these isolated Native communities trails statewide turnout by nearly seventeen percent.[20]

Arizona's record since 1982 also demonstrates the continuing need for Section 4(f)(4) coverage. Since that time, the Department of Justice has objected to four statewide redistricting

plans because of their discriminatory impact on language minority citizens, including one in the 1980s, two in the 1990s, and one in 2002.[21] Over 80 percent of all Section 5 objections in Arizona have occurred since 1982.[22] The Department of Justice has interposed objections to discriminatory voting changes in nearly half of Arizona's counties since the last reauthorization.[23] Since 1982, more than 1200 federal observers have been deployed to Apache, Navajo, and Yuma Counties, identifying substantial non-compliance in the availability and quality of language assistance to American Indian and Latino voting-age citizens.[24] In 1989 and 1994, the Department of Justice brought successful cases against the State of Arizona and Apache, Coconino, and Navajo Counties for denying American Indian voters access to the political process.[25] As recently as 2002, the Department of Justice identified significant deficiencies in the availability and quality of language assistance offered to American Indian voters in Apache County. Voter registration and turnout among American Indian and Latino voters continues to climb, and the number of Latino elected officials in Arizona has nearly quadrupled from 85 in 1973 to 373 in January 2005.[26] Nevertheless, the recent documented voting discrimination in Arizona demonstrates that Section 4(f)(4) coverage continues to be needed.

Congress originally targeted the language assistance provisions to protect Spanish-language minorities in Texas, who had experienced a well-documented history of voting discrimination.[27] The record demonstrates that Section 4(f)(4) coverage continues to be necessary to protect voting age citizens in Texas, including 22.4 percent who are Latino, 12.3 percent who are African-American, 2.0 percent who are Asian, and 1.3 percent who are American Indian.[28] Since 1982, the Department of Justice (DOJ) has issued at least 105

objections to proposed electoral changes in Texas (including ten statewide objections), which is the second highest total of Section 5 objections, trailing only Mississippi.[29] Since 1982, more successful Section 5 cases have been brought in Texas than any other state (at least 29), and Texas leads the nation in the number of discriminatory voting changes withdrawn after submission to DOJ (at least 54).[30] Since 1982, Texas also has the second highest number of successful Section 2 cases (at least 274), trailing only Alabama.[31]

Numbers alone do not tell the whole story of how much Section 4(f)(4) coverage has made a difference in Texas. In August 2003, weeks before a September election, Section 5 prevented Bexar County (where San Antonio is located) from eliminating five early polling places that served predominantly Latino neighborhoods, an act that would have left many Latino voters without convenient access to the polls. In 2002, Harris County (where Houston is located) failed to provide language assistance to its Vietnamese voters. After Asian-American organizations and the Department of Justice put pressure on the county to offer language assistance to Vietnamese voters, Harris County saw its first and only Vietnamese-American candidate win a legislative seat. In 2002, Section 5 prevented Seguin, Texas from dismantling a Latino city council district and then from canceling the candidate-filing period to prevent Latino candidates from running in the district and winning a majority of seats. Section 4(f)(4) has had a significant impact on the ability of racial, ethnic, and language minorities to participate in Texas, but recent voting discrimination shows it still has far to go.

Under Section 203 of the Act, a jurisdiction is covered if the Director of the Census determines that two criteria are met. First, the limited-English proficient citizens of voting age in

a single language group: (a) number more than 10,000; (b) comprise more than five percent of all citizens of voting age; or (c) comprise more than five percent of all American Indians of a single language group residing on an Indian reservation. Second, the illiteracy rate of the language minority citizens must exceed the national illiteracy rate.[32] A person is "limited-English proficient" (or LEP) if he or she speaks English "less than very well" and would need assistance to participate in the political process effectively.[33]

H.R. 9 maintains the existing Section 203 coverage formula. It 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, which will "provide long-form type information every year instead of once in ten years."[34] The VRARA 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."[35] 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."[36] 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.[37]

Jurisdictions that are covered under Section 203 of the Act must provide written materials and assistance in the covered language. Generally, written materials do not have to be provided

for historically unwritten Alaska Native or American Indian languages.[38] After the most recent Census Department determinations on July 26, 2002, five states are covered in their entirety (Alaska for Alaska Natives, and Arizona, California, New Mexico, and Texas for Spanish Heritage) and twenty-six states are partially covered in a total of twenty-nine languages.[39] Language assistance must be provided under either Section 4(f)(4) or Section 203 in 505 jurisdictions, which includes all counties or parishes, and those townships or boroughs specifically identified for coverage.[40]

In 1992, when the language assistance provisions were last reauthorized, Congress acknowledged the substantial record of educational discrimination against the covered language minority groups. Congress did so by recognizing two ways in which this discrimination manifested itself: "present barriers to equal educational opportunities" and "the current effect that past educational discrimination has on today's Hispanic adult population."[41] The evidence shows that each of these education barriers continue to be present, resulting in "a deleterious effect on the ability of language minorities to become English proficient and literate."[42]

Estimates vary on the number of English Language Learner (ELL) students enrolled in public schools, ranging from about three million students in 1999-2000[43] to nearly 3.5 million [44] or even four million for the same period.[45] The actual number may be considerably higher because of an undercount of American Indian and Alaska Native students resulting from the Department of Education's definition of "LEP student."[46] Nearly three-quarters of all of these students are native-born U.S. citizens.[47] The top six states with ELL students were California with 1,511,646, Texas with 570,022, Florida with 254,517, New York with 239,097, Illinois with

140,528, and Arizona with 135,248.[48] Each of these six states is covered in whole (California, Texas, and Arizona) or in part by the language assistance provisions of the Voting Rights Act. ELL students enrolled in public schools lag far behind native-English speakers on standardized tests. According to one of the OELA studies, LEP students are twice as likely to fail graduation tests as native-English speakers.[49]

Since the language assistance provisions were enacted in 1975, numerous state and local jurisdictions have been found liable for denying equal educational opportunities to non-English speaking students in the public schools. In the landmark case of *Lau v. Nichols*, the United States Supreme Court held that an English-only curriculum violated Title VI of the Civil Rights Act of 1964 where it deprived Chinese-speaking students in San Francisco of equal educational opportunities.[50] Many of the post-1975 cases have been brought under the authority of *Lau* and its progeny.[51] Other statutory bases for these cases have included the Section 1703(f) of the Equal Educational Opportunity Act (EEOA)[52] and its implementing regulations,[53] the Education for All Handicapped Children Act of 1975, the Bilingual Education Act and Title VII of the Elementary and Secondary Education Act of 1968, Section 504 of the Vocational Rehabilitation Act of 1973, numerous sections of the Individuals with Disabilities Education Act (IDEA), and Title III of the No Child Left Behind Act of 2002 (NCLB), among others.

Unfortunately, the unequal educational opportunities identified in *Lau* remain in much of the United States. Since 1975, at least twenty-four successful educational discrimination cases have been brought on behalf of ELL students in fifteen states, fourteen of which are presently covered in whole or in part by the language assistance provisions.[54] 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. In some cases, such as *United States v. State of Texas*,[55] requests for post-judgment relief for non-compliance with court orders remain pending. Elsewhere, cases brought on behalf of ELL students remain pending, including one in Alaska[56] and one in Illinois,[57] among others. Consent decrees or court orders remain in effect for ELL students statewide in Arizona[58] and Florida,[59] and in the cities of Boston,[60] Denver,[61] and Seattle,[62] each of which is covered by the language assistance provisions. I will briefly discuss some of these decisions and how they impact the ability of covered language minority voters to participate effectively in the political process.

In a 1999 decision, an Alaska Superior Court concluded that Alaska has a dual, arbitrary, unconstitutional, and racially discriminatory system for funding school facilities, which impacted Alaska Native and American Indian English Language Learner (ELL) students enrolled in the public schools.[63]

In *Y.S. v. School District of Philadelphia*,[64] a successful class action was brought on behalf of 6,800 Asian ELL students. Y, one of three named plaintiffs, was a Cambodian refugee enrolled in English-only 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 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. The decree was extended by stipulation in 2001 because of the continuing need for judicial oversight.

In *People Who Care v. Rockford Board of Education School District # 205*,[65] a federal court held that the school district discriminated against Spanish-speaking ELL students by providing unequal educational opportunities. The Court cited substantial evidence of educational discrimination against ELL students gathered by the Office of Civil Rights (OCR) of the United States Department of Education. Among other violations, the school district failed "to adequately identify and assess students who were in need of bilingual services" and segregated ELL students from the rest of the student population.

The December 2005 decision in *Flores v. Arizona* illustrates the impact that unequal educational opportunities have had on 175,000 ELL students enrolled in Arizona's public schools.[66] As the federal court found, the case reflected "a backdrop of state inaction, existing in 1992 when Plaintiffs filed the class action law suit and continuing through the duration of the case."[67] The plaintiffs sued Arizona under *Lau* for failing to provide a program of instruction that would allow the ELL students to become proficient in speaking, understanding, reading, and writing English, while enabling them to master the standard academic curriculum as required of all students. The plaintiffs challenged the State's funding, administration and oversight of the public school system in districts enrolling predominantly low-income minority children because the State allowed these schools to provide less educational benefits and opportunities than those available to students who attend predominantly Anglo-schools.[68]

In January 2000, the federal court issued a declaratory judgment against the State of Arizona following a bench trial. The *Flores* Court found that the State's minimum base level for funding *Lau* programs was arbitrary and capricious and bore no relation to the actual funding needed to ensure that LEP students are achieving mastery of the State's specified "essential skills." The Court identified several *Lau* program deficiencies in support of its judgment:

- Too many students in a classroom.
- Not enough classrooms.
- Not enough qualified teachers, including teachers to teach ELL and bilingual teachers to teach content area studies.
- Not enough teacher aides.
- An inadequate tutoring program, and
- Insufficient teaching materials for both ELL classes and content area courses.

The Court concluded that these "deficiencies are not the result of an inadequate model.... The problem is the state's inadequate funding to support the model."[69] The Court made this finding based on a 1987-88 cost study that showed it cost approximately $450.00 per LEP student – three times what the State actually budgeted – to provide *Lau* program instruction.[70]

In December 2005, over five years after the court granted post-judgment relief and over thirteen years after the action was filed, the federal court cited the State of Arizona for contempt. At that time, the State Legislature's own study commissioned by the National Conference of State Legislatures (NCSL) showed that Arizona needed to spend approximately four and one-half times the $150 per ELL student in 2001, and nearly twice the currently budgeted $360 per ELL student.[71] In rendering its contempt citation, the Court observed, "thousands of children

who have now been impacted by the State's continued inadequate funding of ELL programs had yet to begin school when Plaintiffs filed this case."[72] The Court strongly criticized Arizona's intransigence:

> The Court can only imagine how many students have started school since Judge Marquez entered the Order in February 2000, declaring these programs were inadequately funded in an arbitrary and capricious manner that violates ELL students' rights under the EEOA. How many students may have stopped school, by dropping out or failing because of foot-dragging by the State and its failure to comply with the original Order and compliance directives such as the Order issued on January 28, 2005? Plaintiffs are no longer inclined to depend on the good faith of the Defendants or to have faith that without some extraordinary pressure, the State will ever comply with the mandates of the respective Orders issued by this Court.[73]

The Court ordered that if Arizona did not comply with its earlier decrees within 15 calendar days after the beginning of the 2006 legislative session, it would impose a fine of at least $500,000 per day.[74] On January 24, 2006, Arizona failed to meet the court deadline and had accumulating $20 million in fines though the end of February 2006, which has been channeled directly into ELL school programs.[75]

The discriminatory impact of these unequal educational opportunities are illustrated in low test scores and high dropout rates documented in a 2005 study by Arizona's three public universities. Eighty-three percent of juniors and sophomores who qualify as English learners failed key portions of the AIMS test[76] such as reading and writing. While about half of non-

Hispanic whites have passed all of the AIMS sections, more than three-quarters of Latinos, African-Americans, and American Indians have not. Sixty-five percent of non-Hispanic whites passed the math section, twice the percentage of African-American and Hispanic students. Only about 25 percent of American Indian students have passed the math section. Of the 13,279 students who continue to score in the lowest of four possible categories, 70 percent of those students were minorities. In fifth-grade reading, 70 percent of non-Hispanic white students met or exceeded the AIMS standard, compared with only 42 percent of Hispanic students. In eighth-grade math, 29 percent of non-Hispanic white students met or exceeded the AIMS standard, compared with 10 percent of Hispanic students. Language minorities in Arizona have not fared any better on national tests. According to the 2005 results of the National Assessment of Educational Progress test administered to Arizona's students, "the test results were grim for poor and minority children. More than 60 percent of Arizona's poor, African-American, and Latino kids in the fourth grade scored below grade level in reading, double the percent of White and wealthier kids falling behind."[77]

Educational discrimination is compounded by the absence of sufficient adult ESL programs in most of the covered jurisdictions.[78]

- In Albuquerque, New Mexico, Catholic Charities, the largest adult ESL provider, reports that approximately 1,000 people on their waiting list, with an average waiting time of about 12 months.[79]
- In Boston, the average waiting time is 6-9 months, but some adults have to wait as much as 2-3 years. There is only capacity for about 16,000 adult ESL students among current providers. As of April 24, 2006, there were at least 16,725 adults

on ESL waiting lists in Boston, which is an undercount of the actual number of adults who cannot get into programs.[80]

- In the five-county Denver metro area, adult ESL programs working with the Colorado Department of Education had an enrollment of 4,721 adult ESL learners in FY 2005, or 50% of the total Colorado ESL population. Of the seven programs reporting waiting list data, waiting times ranged from two weeks to two months.[81]
- In Las Vegas, the Community College of Southern Nevada, the largest ESL provider in Nevada, reported that the average waiting time for adult ESL classes is from one to four months.[82]
- In the metropolitan New York City region, the need for adult ESL courses is estimated to be one million, but only 41,347 adults were able to enroll in over one hundred providers in 2005 because of inadequate numbers of classes. Most adult ESL programs no longer keep waiting lists because of the extreme demand, but use lottery systems in which at least three out of every four adults are turned away. In 2001, the Literacy Assistance Center surveyed the few providers that maintained waiting lists, and found that there 12,000 adults on the lists, with an average waiting time of at least six months.[83]
- In Phoenix, Rio Salado Community College, which is the largest adult ESL provider in Arizona, reports a waiting list of over 1,000 people with a waiting time of up to 18 months for the highest-demand evening classes.[84] Comprehensive adult ESL programs, such as the intensive two-year program offered by Unlimited Potential for women, has a three year waiting list.[85]

- In Rhode Island, according to the Office of Adult Education at the Rhode Island Department of Elementary and Secondary Education, in March 2006 its 35 adult ESL service providers reported that 1,760 adults were on a waiting list, or one person for every learner enrolled in a program. Over half of all adults reported to be on waiting lists had been waiting for 12 months or more.[86] Similarly, the International Institute of Rhode Island, which serves about 850-900 adult ESL students each year, reported a waiting list of approximately 750 adults waiting an average of at least 12 months. The waiting time for all Rhode Island adult ESL providers was as much as two years until 2004-2005, when Rhode Island Governor Donald Carcieri increased state funding for adult ESL programs by $1.4 million.[87] Nevertheless, demand continues to increase, adding to the waiting lists.

The ESL waiting list data highlights that LEP adults are extremely motivated to learn English and become fully assimilated into American society. According to ESL providers, the average adult ESL student is "the working poor," holding two jobs, supporting a family, and learning English in the few hours available to them in the evenings. There is "no shortage of motivation" to learn.[88] Instead, the extreme demands for ESL services far exceed the available supply of open classes. One ESL director in Jackson Heights/Queens Borough, New York, explained that her program had to stop using waiting lists about ten years ago. Her program used to be first come/first served at the Queens Public Library, and applicants would sleep out for days in front of the building to get into classes, with near-riots breaking out when people jumped places. Many programs in New York City now use lottery systems every two or three months. It is commonplace for LEP adults to not be selected even after five or six lotteries, causing them to come in with tears to beg and plead with the program director to let them in, only to be told,

"there's no more room, there's no more space." Existing adult ESL programs only begin to "scratch the surface" of responding to this extreme demand.[89]

Even where LEP adults are able to enroll in ESL programs, they cannot learn English overnight. Most ESL providers offer four or five levels of English instruction. It can take several years for LEP students to even acquire spoken English language and literacy skills equal to that of someone with a fifth grade education, which is still functionally illiterate. Native English speakers frequently struggle to understand complex ballot questions. In 1992, Congress documented that the absence of oral language assistance and information in their own language is devastating to political participation on ballot questions by language minority citizens.[90] The need for language assistance on ballot questions is especially important because of the growing number of propositions directly impacting covered language minority citizens.

As Congress found in 1975 and reaffirmed in 1992, today the unequal educational opportunities afforded to covered language minority groups continues to result "in high illiteracy and low voting participation."[91] Among the 403 language groups for which Census data is available in the 367 covered political subdivisions, an average of 13.1 percent of citizens of voting age are LEP in the languages triggering coverage.[92] Among these LEP voting age citizens, the average illiteracy rate is nearly fourteen times the national illiteracy rate.[93] Elderly American Indians and Alaska Natives living on isolated reservations have illiteracy rates approaching 50 percent or more.[94] The barriers posed by educational discrimination, language and the absence of sufficient ESL classes, and high illiteracy result in extremely depressed voter participation. 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 and Asian 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.[95]

H.R. 9 maintains the existing bailout provision from Section 203 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."[96] "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.[97] Unfortunately, as the evidence above demonstrates, covered jurisdictions have fallen far short of eliminating the crushing burden of illiteracy. The extreme need for language assistance in voting in the face of educational neglect and discrimination provides a compelling basis upon which to renew Section 203 for an additional twenty-five years.

Finally, I will close by briefly summarizing some of the cost data I previously provided to this Committee. Where implemented properly, language assistance accounts for only a small fraction of total elections costs, if any at all. In our 2005 study of election officials in the 31 states covered by Section 203, a majority of jurisdictions reported incurring no additional costs for either oral or written language assistance, with most of the remaining jurisdictions incurring additional expenses of less than 1.5 percent for oral language assistance and less than 3 percent for written language assistance.[98] These findings are consistent with two GAO studies in 1984

and 1997.[99] Election officials attribute the lack of additional costs to several factors. Many report hiring bilingual poll workers who are paid the same wages as other poll workers. Jurisdictions with Alaska Native and American Indian voters report that bilingual materials are not provided because the covered languages are unwritten. Several jurisdictions providing bilingual written materials use election officials or community volunteers to translate materials, resulting in no additional costs. In many cases, printing costs do not increase as a result of having bilingual written materials. A number of jurisdictions in New Mexico and Texas report that state laws have language assistance requirements similar to Section 203, resulting in no additional cost for federal compliance.

An overwhelming majority of election officials report that they support the language assistance provisions. Of 254 jurisdictions that responded to the question, 71.3 percent (181 jurisdictions) think that the federal language assistance provisions should remain in effect for public elections.[100] The reason is obvious. There is a substantial need for language assistance to help LEP U.S. citizens overcome language and illiteracy barriers to participate fully and effectively in American political life. For these reasons, I recommend in the strongest terms that without delay, the House pass H.R. 9 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.

Endotes

[1] *Voting Rights Act Language Assistance Amendments of 1992: Hearings on S. 2236 Before the Subcomm. On the Constitution of the Senate Comm. On the Judiciary* [1992 hearings], 102d Cong., 2d Sess., S. HRG. 102-1066, at 134 (1992) (statement of Sen. Hatch).

[2] 384 U.S. 641 (1966).

[3] 42 U.S.C. § 1973b(e)(1).

[4] 384 U.S. at 658.

[5] *Id.* at 650.

[6] 262 U.S. 390, 401 (1923).

[7] *See* 42 U.S.C. §§ 1973l(c)(3), 1973aa-1a(c).

[8] *See* 121 CONG. REC. H4716 (daily ed. June 2, 1975) (statement of Rep. Edwards). When the 1975 amendments were enacted, the Bureau of the Census defined the language minority groups in the following manner:

> [T]he category of Asian American includes persons who indicated their race as Japanese, Chinese, Filipino, or Korean. The category of American Indian includes persons who indicated their race as Indian (American) or who did not indicate a specific race category but reported the name of an Indian tribe. The population designated as Alaska Native includes persons residing in Alaska who identified themselves as Aleut, Eskimo or American Indian. Persons of Spanish heritage are identified as (a) 'persons of Spanish language' in 42 States and the District of Columbia; (b) 'persons of Spanish language' as well as 'persons of Spanish surname' in Arizona, California, Colorado, New Mexico, and Texas; and (c) 'persons of Puerto Rican birth or parentage in New Jersey, New York, and Pennsylvania.'"

S. REP. NO. 94-295 at 24 n.14, *reprinted in* 1975 U.S.C.C.A.N. 790-91 n.14 (quoting Letter from Meyer Zitter, Chief, Population Division, Bureau of the Census, to House Judiciary Committee, Apr. 29, 1975).

[9] 42 U.S.C. § 1973aa-1a(a).

[10] *See* S. REP. NO. 94-295 at 31, *reprinted in* 1975 U.S.C.C.A.N. 797.

[11] *See* 42 U.S.C. § 1973b(b).

[12] S. REP. NO. 94-295 at 31, *reprinted in* 1975 U.S.C.C.A.N. 798; *see also id.* at 9, *reprinted in* 1975 U.S.C.C.A.N. 775 (section 4(f)(4) applies to areas "where severe voting discrimination was documented" against language minorities). Specifically, "the more severe remedies of title II are premised not only on educational disparities" like the less stringent provisions under title III of the 1975 amendments, "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." 121 CONG. REC. H4718 (daily ed. June 2, 1975) (statement of Rep. Edwards).

[13] The nineteen covered jurisdictions include: American Indian coverage in Apache, Coconino, Navajo, and Pinal Counties in Arizona; Spanish Heritage coverage in Kings, Merced, and Yuba Counties in California; Spanish Heritage coverage in Collier, Hardee, Hendry, Hillsborough, and Monroe Counties in Florida; Spanish Heritage Coverage in Clyde and Buena Vista Townships in Michigan; Spanish Heritage coverage in Bronx and King Counties, New York; American Indian coverage in Jackson County, North Carolina; and American Indian coverage in Shannon and Todd Counties, South Dakota. Coverage determinations were published at 40 Fed. Reg. 43746 (Sept. 23, 1975), 40 Fed. Reg. 49422 (Oct. 22, 1975), 41 Fed. Reg. 784 (Jan. 5, 1976) (corrected at 41 Fed. Reg. 1503 (Jan. 8, 1976)), and 41 Fed. Reg. 34329 (Aug. 13, 1976).

[14] *See* 28 C.F.R. § 55.7(a).

[15] Natalie Landreth & Moira Smith, VOTING RIGHTS IN ALASKA 1982-2006, at 3, 8.

[16] Ibid. at 12, 23.

[17] Ibid. at 27-28.

[18] Ibid. at 32-36.

[19] Ibid. at 26.

[20] Ibid. at 25.

[21] DR. JAMES THOMAS TUCKER & DR. RODOLFO ESPINO ET AL., VOTING RIGHTS IN ARIZONA 1982-2006, at 4, 17, 54, 56-57 (2006).

[22] Ibid.

[23] Tucker & Espino et al., at 4, 17, 54-57.

[24] Tucker & Espino et al., at 5, 17, 50-54.

[25] United States v. Arizona, No. CIV.-94-1845, 1994 U.S. Dist. LEXIS 17606 (D. Ariz. 1994); United States v. Arizona, No. CIV-88-1989-PHX-EHC (D. Ariz. 1989) (consent decree amended Sept. 27, 1993).

[26] NATIONAL ASSOCIATION OF LATINO ELECTED AND APPOINTED OFFICIALS (NALEO) EDUCATIONAL FUND, 2005 NATIONAL DIRECTORY OF LATINO ELECTED OFFICIALS.

[27] *See* David H. Hunter, *The 1975 Voting Rights Act and Language Minorities*, 25 CATH. U. L. REV. 250, 254-57 (1976).

[28] Census 2000, STF-3 and STF-4 data.

[29] NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, PROTECTING MINORITY VOTERS: THE VOTING RIGHTS AT WORK 1982-2005, at map 8 (2006) ("NATIONAL COMMISSION REPORT"). The 105 objections affected nearly 30 percent (72) of Texas's counties, where 71.8 percent of the state's non-white voting age population reside. *See id.* at Map 51.

[30] *See* NATIONAL COMMISSION REPORT, at Table 4 and Map 7.

[31] *See* NATIONAL COMMISSION REPORT, at Table 5.

[32] *See* 42 U.S.C. § 1973aa-1a(b)(2).

[33] *See generally* 42 U.S.C. § 1973aa-1a(b)(3)(B) (defining "limited-English proficient" as the inability "to speak or understand English adequately enough to participate in the electoral process"). The 1992 House Report explains the manner in which the Director of Census determines the number of limited-English proficient persons:

> 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.

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

[34] 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. *Ibid.* at 2.

[35] VRARA § 8.

[36] 42 U.S.C. § 1973aa-1a(b)(4).

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

[38] *See* 42 U.S.C. § 1973aa-1a(c).

[39] *See* Voting Rights Act Amendments of 1992, Determinations Under Section 203, 67 Fed. Reg. 48,871 (July 26, 2002) (to be codified at 28 C.F.R. pt. 55) ("2002 Determinations"). Two states that previously were covered in part by Section 203, Iowa and Wisconsin, no longer are covered. *See id.*; 28 C.F.R. pt. 55, App. Section 203 coverage has been extended to political subdivisions of five states not covered previously: Kansas, Maryland, Montana, Nebraska, and Washington. *See* 2002 Determinations, *supra*; 28 C.F.R. pt. 55, App.

[40] *See* Figure C-2 in the Testimony of Dr. James Thomas Tucker (Nov. 9, 2005).

[41] S. REP. NO. 102-315, at 5. The Senate Report also documented the history of educational discrimination against Asian American citizens and American Indian and Alaska Native citizens. *Ibid.* at 5-7.

[42] H.R. REP. NO. 102-655, at 6.

[43] U.S. DEPARTMENT OF EDUCATION, NATIONAL CENTER FOR EDUCATION STATISTICS, ISSUE BRIEF – ENGLISH LANGUAGE LEARNERS IN U.S. PUBLIC SCHOOLS: 1994 AND 2000 (Aug. 2004).

[44] PAUL J. HOPSTOCK & TODD G. STEPHENSON, DESCRIPTIVE STUDY OF SERVICES TO LEP STUDENTS AND LEP STUDENTS WITH DISABILITIES 3 (Aug. 2003) (commissioned by OELA).

[45] 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 3 (Oct. 2002).

[46] HOPSTOCK & STEPHENSON, at 3.

[47] OELA, at 4, 19 (observing that immigrant students comprised 1.1 million of the 4.5 million LEP students enrolled in the United States and its territories and possessions).

[48] Ibid.

[49] HOPSTOCK & STEPHENSON, at 17.

[50] 414 U.S. 563 (1974). Title VI of the Civil Rights Act of 1964 provides that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.

[51] *See* Castaneda v. Pickard, 648 F.2d 989 (5th Cir. 1981); Serna v. Portales Municipal Schools, 499 F.2d 1147 (10th Cir. 1974).

[52] The EEOA provides that "No state shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by - (f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." 20 U.S.C. § 1703(f).

[53] 34 C.F.R. Part 100.

[54] *See* Appendix A for a summary of these cases. These cases likely represent only a small number of the successful education cases brought because so many of the decisions are unpublished. Nevertheless, the cases provide a compelling basis for concluding that present educational discrimination and the effects of past educational discrimination require extension of the language assistance provisions.

[55] 6:71-CV-5281 (E.D. Tex. 2006) (pending motion for further relief for alleged violations of consent decree).

[56] *See* Moore v. State of Alaska, Case No. 3AN-04-9756-CIV (Alaska Superior Ct.) (alleging that "every Alaska child receives an inadequate education because the funding of that education is grossly inadequate").

[57] *See* Leslie v. Board of Education for Illinois School District U-46, 379 F. Supp.2d 952 (N.D. Ill. 2005) (denying motion to dismiss case brought under the EEOA on behalf of LEP Hispanic students and African-American students).

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

[59] League of United Latin American Citizens et al. v. Florida Board of Education, Case No. 90-1913-Civ.-Scott (S.D. Fla. 1990) (consent decree) and Case No. 90-1913-Civ.-Moreno (S.D. Fla. 2003) (amending consent decree).

[60] Bilingual Master Parents Advisory Council v. Boston School Committee, 2002 WL 992541 (Mass. Super. Ct. May 15, 2002).

[61] CHE v. Denver Public Schools, a 1983 case resolved by consent decree after the United States Department of Justice intervened in 1999, 1999 WL 33300905.

[62] Seattle School District et al. v. State of Washington, Case No. 81-2-1713-1 (Thurston Cty. Sup. Ct. 1983) ("Seattle II").

[63] Kasayulie v. State of Alaska, Case No. 3AN-97-3782-CIV (Alaska Superior Ct. 1999).

[64] Case No. 85-6924 (E.D. Pa. 1986) (consent decree continued by stipulation in 2001).

[65] 851 F. Supp. 905 (N.D. Ill. 1994), *aff'd in part and rev'd in part*, 111 F.3d 528 (7th Cir. 1997).

[66] 405 F. Supp.2d 1112 (D. Ariz. 2005).

[67] 160 F. Supp.2d 1043, 1044 (D. Ariz. 2000).

[68] Flores v. State of Arizona, Case No. No. CIV. 92-596-TUC-ACM (D. Ariz.).

[69] Flores v. State of Arizona, 172 F.Supp.2d 1225 (D. Ariz. 2000).

[70] 160 F. Supp.2d 1043, 1044 (D. Ariz. 2000).

[71] National Conference of State Legislatures, "Arizona English Language Learner Cost Study" (Feb. 2005). The NCSL study proposes funding significantly less than what the Arizona State Senate previously found in 2001, when it estimated an annual cost of $170 million (compared to the existing $20 million) was needed to comply with *Flores*, when education costs were lower. A panel of ELL experts from Arizona recommended spending that based on grade level, ranging from annual costs of $1,785 per ELL student in K-2, to $1,447 in grades 3012. The ELL experts proposed the differential in funding levels because they believed that earlier investment would result in greater proficiency and lower costs later on. The panels further found that the ELL programs could be improved by establishing clearer oversight and accountability, placing ELL specialists in schools to work with staff, and providing native language support programs in schools with large ELL populations.

[72] 2005 WL 3455102, at *2.

[73] Ibid.

[74] Ibid.

[75] *See* ACCESS, Project of the Campaign for Educational Equity, Teachers College, Columbia University (visited Mar. 11, 2006), at http://www.schoolfunding.info/news/litigation/2-28-06azellcoststudy.php3.

[76] Arizona uses a standardized test called the "AIMS test," which ranks students in four categories: "exceeds the standard," "meets the standard," "approaches the standard," and "falls far below the standard."

[77] Pat Kossan. "Arizona Students Lag on National Test." Arizona Republic (October 20, 2005).

[78] To date, interviews have been completed with over 120 ESL providers in 23 cities in 16 states. The data provided below comprises the most complete data available from the adult ESL providers in the identified cities.

[79] Telephone interview of Jorge Thomas, Director of ESL services at Catholic Charities (Apr. 24, 2006).

[80] Telephone interview of Kenny Tamarkin, Executive Director of the Massachusetts Coalition for Adult Education (Apr. 24, 2006) (citing data from a database maintained by the Massachusetts Department of Education); Telephone interview of Joanne Arnoud, Director of the Boston Adult Illiteracy Fund (Apr. 18, 2006).

[81] Telephone interview of Jane Miller, Colorado Department of Education (Apr. 21, 2006).

[82] Telephone interview of Dimi Jefferis, Language and Literature Program Coordinator for the Community College of Southern Nevada (Apr. 25, 2006).

[83] Telephone interviews of Elyse Barbell, Executive Director, and Venu Thelakkat, Director of ALIES and Data Analysis, Literacy Assistance Center of New York (Apr. 28, 2006); Telephone interview of Casey Williams, ESL Program Director at the Forest Hills Community House in Jackson Heights/Queens Borough (Apr. 27, 2006).

[84] Telephone interview of Kathy Price, Rio Salado Community College (Apr. 18, 2006).

[85] Telephone interview of Jean Devine, Director of Unlimited Potential (Apr. 28, 2006).

[86] Telephone interview of Elizabeth Jardine, Office of Adult Education at the Rhode Island Department of Elementary and Secondary Education (Apr. 18, 2006).

[87] Telephone interview of Nazneen Rahman, Director of Educational Services at the International Institute of Rhode Island (Apr. 21, 2006).

[88] Ibid.

[89] Telephone interview of Casey Williams, ESL Program Director at the Forest Hills Community House in Jackson Heights/Queens Borough (Apr. 27, 2006).

[90] For example, in the 1988 general election in Sandoval County, New Mexico, although 62.7 percent of all ballots included votes on referendum issues, only 7.4 percent of Native American ballots included votes for those issues. S. REP. NO. 102-315 at 9. Similarly, in the County's 1984 election, only 4 percent of eligible Native American voters cast absentee ballots, compared to 26 percent of eligible white voters. *Id.*

[91] 42 U.S.C. § 1973aa-1a(a).

[92] DR. JAMES THOMAS TUCKER & RODOLFO ESPINO ET AL., MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS: EXECUTIVE SUMMARY 21 (Mar. 2006).

[93] Ibid.

[94] DR. JAMES THOMAS TUCKER & RODOLFO ESPINO ET AL., MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS, appendix C (Mar. 2006); VOTING RIGHTS IN ARIZONA 1982-2006, at 13-14.

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

[96] 42 U.S.C. § 1973aa-1a(d).

[97] 121 CONG. REC. H4719 (daily ed. June 2, 1975) (statement of Rep. Edwards).

[98] MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS, at chapter 6.

[99] S. GEN. ACCT. OFF., BILINGUAL VOTING ASSISTANCE: COSTS OF AND USE DURING THE 1984 GENERAL ELECTION 11-12 (1986) ("1984 GAO Study"); .S. GEN. ACCT. OFF., BILINGUAL VOTING ASSISTANCE: ASSISTANCE PROVIDED AND COSTS 1, 33 (1997).

[100] MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS, at 107, 116-17.

Appendix A

Successful English Language Learner (ELL) Cases, by State.

State	Case Name and Court*	Year	Key Findings
AK	*Kasayulie v. State of Alaska* (Alaska Superior Ct.)	1999	Court granted plaintiffs' motion for partial summary judgment, concluding that Alaska has a dual, arbitrary, unconstitutional, and racially discriminatory system for funding school facilities.
AZ	*Flores v. State of Arizona* (D. Ariz.)	2005	Issued contempt citation fining Arizona a minimum of $500,000 per day until it remedied a continuing six-year failure to comply with federal court order requiring establishment of sufficient funding for ELL programs for Spanish-speaking students. Court suspended standardized test requirement for graduation for ELL students, who were denied equal opportunity to pass because of under-funding of ELL programs.
CA	*Comite De Padres De Familia v. O'Connell* (Cal. 3d Cir.)	2004	Order terminating 1985 ELL consent decree entered into by the State Board of Education. Plaintiffs were a group of Mexican-American organizations who sued the State for failing to comply with state and federal laws mandating instruction in a language understandable to ELL students. The consent decree required the defendants to monitor implementation of bilingual education programs for LEP students, including on-site reviews, compliance reports, and remedying any violations found. In August 2002, the court granted the defendants' motion to terminate the decree, but found that the defendants' showing was "disappointing, and even offensive" and was if they had "reached back into two decades if files, and dusted off their old, hackneyed, and ineffective arguments against a consent decree…" Nevertheless, the court concluded that the defendants "have, at last been dragged kicking and screaming into substantial compliance." In 2004, the court of appeals affirmed the termination order.
CA	*Lau v. Nichols* (N.D. Cal.)	1993	Amendments to 1983 consent decree remedying inadequate ELL programs for Chinese-speaking students identified by the United States Supreme Court in 1974.

State	Case Name and Court*	Year	Key Findings
CO	*CIIE v. Denver Public Schools*	1999	1983 case resolved by consent decree after the United States Department of Justice intervened following a 1997 Office of Civil Rights (OCR) investigation. OCR found that the Denver Public Schools failed to provide necessary language services to 13,000 ELL students. The consent decree requires the district to remedy Title VI violations, to implement an effective program of language services and instruction, and to properly train teachers to instruct ELL students.
CO	*Keys v. School District No. 1* (D. Col.)	1983	Court held that a Denver public school district failed to meet the second *Castañeda* requirement by not adequately implementing a plan for language minority students.
FL	*League of United Latin American Citizens et al. v. Florida Board of Education* (S.D. Fla.)	2003	Amendments to 1990 consent decree remedying the failure to identify ELL students, provide them with equal educational opportunities appropriate to their level of English proficiency, academic achievement, and special needs. Original consent decree modified by providing for education, training, and certification of ESOL instructors upon the plaintiffs' motion to enforce the decree.
ID	*Idaho Migrant Council v. Board of Education* (9th Cir.)	1981	Action brought by non-profit representing Idaho public school students with limited-English proficiency seeking equitable relief for state agency's failure to ensure that local school districts provided instruction addressing their linguistic needs. The Court of Appeals held that the State Board of Education and other defendants were empowered under state law and required by federal law to address the needs of LEP students.
IL	*Gomez v. Illinois State Board of Education* (7th Cir.)	1987	Court held that Spanish-speaking LEP students adequately stated a claim under the EEOA in action to compel state board of education to establish minimum guidelines for identifying and placing LEP children where the plaintiffs alleged that no bilingual instruction was provided.
IL	*People Who Care v. Rockford Board of Education, School District # 205* (N.D. Ill.)	1994	Court held that school district discriminated against Spanish-speaking LEP students by providing unequal educational opportunities, failing "to adequately identify and assess students who were in need of bilingual services," segregating LEP students from the rest of the student population, providing unequal transportation compared to non-LEP students, and the failure to provide adequate special education courses to LEP and non-LEP students. The Court cited substantial evidence of educational discrimination against ELL students gathered by the Office of Civil Rights.

State	Case Name and Court*	Year	Key Findings
MA	*Bilingual Master Parents Advisory Council v. Boston School Committee* (Mass. Super. Ct.)	2002	The School Department materially breached a 1992 *Lau* agreement as to student-teacher ratios, high school clusters, Goal 7 reports, and funding. The Court ordered the Department to remedy the violations of the agreement by July 2002, unless the Department repealed its bilingual education program. If it repealed the program, the Department would be subject to suit by the parent organization.
MA	*Morgan v. Kerrigan* (D. Mass.)	1975	In connection with court-ordered school desegregation plan, Boston school department was required to provide bilingual instruction where 20 or more kindergarten students attending a school were in need of that instruction.
MT	*Heavy Runner v. Bremner* (D. Mont.)	1981	In action brought by limited-English proficient Blackfeet Indian students, the Court held that material fact issues existed on claims brought under the Equal Educational Opportunities Act (EEOA) and Title VI of the Civil Rights Act of 1964, including: the number of LEP students and the degree of impairment; the instructional programs available to the students; future programs designed to remedy language impairment.
NM	*New Mexico Ass'n for Retarded Citizens v. State of New Mexico* (10th Cir.)	1982	In a class action brought against the State of New Mexico and public education providers, the Court found a violation of Section 504 of the Rehabilitation Act involving "language handicapped" students. The Court concluded that "prescribed discrimination occurs when non-English speaking students derive fewer system benefits than their English speaking classmates, even where the education programs serving the students are administered 'evenhandedly.'"
NM	*Serna v. Portales Municipal Schools* (10th Cir.)	1974	Holding that school district's failure to provide English language instruction to Spanish surnamed students and the failure to hire Spanish surnamed school personnel in district comprised of 35 percent Spanish surname pupils violated Title VI of the Civil Rights Act of 1964.
NY	*Aspira of New York, Inc. v. Board of Education of the City of New York* (S.D.N.Y.)	1975	Post-judgment order following 1974 consent decree granting relief to Spanish-speaking ELL students for *Lau* violations. Court held that students to be included in bilingual program were all of those who scored below the 20th percentile on English version of language assessment battery test.

State	Case Name and Court*	Year	Key Findings
NY	*Cintron v. Brentwood Union Free School District* (E.D.N.Y.)	1978	Judgment for Puerto Rican and other Hispanic students in action challenging school program that failed to identify English deficient LEP students, had no training program for bilingual teachers and aids, failed to provide method of transferring students out of ELL program when necessary level of English proficiency was reached, and failed to encourage contact between non-English speaking and English-speaking students.
NY	*Jose P. v. Ambach, United Cerebal Palsy (UCP) v. Board of Education, Dyrcia S. v. Board of Education* (E.D.N.Y.)	1979	Three separate class actions in New York City, including one brought on behalf of Hispanic children, for the school board's failure to properly classify special needs children and provide appropriate education. The consolidated order required the school board to identify all students with disabilities by language, provide bilingual education services to LEP students, engage in outreach to LEP students and their families in their native languages, and to recruit, hire, and train adequate bilingual staff.
NY	*Rios v. Read* (E.D.N.Y.)	1978	Action by Spanish-speaking students of Puerto Rican ancestry. The Court held that the school district violated *Lau* because it did not keep students in ELL program until they attained sufficient proficiency in English to be instructed along with English-speaking students.
NY	*United States v. City of Yonkers*	2000	In a desegregation action brought on behalf of racial, ethnic, and language minority students, the Court found that "vestiges of segregation existed in the Yonkers public schools as of 1997 with respect to academic tracking, disciplinary practices, administration of special education programs, pupil personnel services, and services for LEP students." The Court also concluded that racial disparities in achievement scores were directly attributable to the segregated system.
OH	*Lorain NAACP v. Lorain Board of Education* (N.D. Ohio)	1992	In a desegregation case brought on behalf of African-American and Hispanic students, the 1984 consent decree required "retaining an independent contractor to evaluate Lorain's bilingual programs, eliminating shortcomings discovered in the evaluation process, and adequately maintaining bilingual programs for Hispanic students in compliance with state and federal law" and increasing the number of minority teachers, among other relief. In 1992, the Sixth Circuit affirmed an expansion of the consent decree to require greater expenditures by the state.

State	Case Name and Court*	Year	Key Findings
PA	*Y.S. v. School District of Philadelphia* (E.D. Pa.)	2001	Class action brought on behalf of 6,800 Asian students. Y, one of three named plaintiffs, was a Cambodian refugee enrolled in English-only ESOL 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 LEP Asian students, including assessment and communication in their native language, revisions to ESOL curriculum, recruitment and training of ELL instructors fluent in Asian languages, and all communications with parents in their native languages. The decree was continued by stipulation in 2001.
TX	*Castañeda v. Pickard* (5th Cir.)	1981	In an action brought by Spanish-speaking Mexican-American children and their parents, the Court held that the school district's bilingual education and language remediation programs were inadequate with respect to in-service training of teachers for bilingual classrooms and in measuring progress of students in the programs.
TX	*United States v. State of Texas* (E.D. Tex.)	1981	Following a bench trial, in 1981 the Court found that the state defendants had violated the Equal Protection Clause of the 14th Amendment, Title VI of the Civil Rights Act, and EEOA by having a "grossly inadequate" means to monitor bilingual education for Mexican-American ELL students, resulting in deficient educational opportunities. The parties subsequently entered into a Consent Decree to remedy the violations. In February 2006, the GI Forum and LULAC filed a Motion for Further Relief, alleging widespread violations of the consent decree by the state defendants, which resulted in high drop-out and testing failures by LEP Spanish-speaking students, ninety percent of whom were Native-born.
WA	*Seattle School District et al. v. State of Washington* (Thurston County Superior Ct.)	1983	The Court held that transitional bilingual education, along with other special public school programs, is part of basic education. Therefore, the State of Washington was required to fund the bilingual education program to ensure that all ELL students received services.

* Citations are included at the end of this report.

† A motion to enforce the consent decree is pending.

Alaska:

Kasaynlie v. State of Alaska, Case No. 3AN-97-3782-CIV (Alaska Superior Ct. 1999)

Arizona:

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

Flores v. State of Arizona, 2001 WL 1028369 (D. Ariz. June 25, 2001) (order granting plaintiffs' post-judgment petition for an injunction)

Flores v. State of Arizona, 160 F. Supp.2d 1043 (D. Ariz. 2000) (order granting plaintiffs' post-judgment petition for relief)

Flores v. State of Arizona, 172 F. Supp.2d (D. Ariz. 2000) (findings of fact and conclusions of law holding that state's funding of LEP students violated requirements of EEOA)

Flores v. State of Arizona, 48 F. Supp.2d 937 (D. Ariz. 1999) (denying defendants' motion for summary judgment)

California:

Comite De Padres De Familia v. O'Connell, 2004 WL 179212 (Cal. 3d Cir. 2004)

Lau v. Nichols, C-70-0627-LHB (N.D. Cal. 1983) (consent decree, as amended in 1993)

Lau v. Nichols, 414 U.S. 563 (1974)

Colorado:

CHE v. Denver Public Schools, a 1983 case resolved by consent decree after the United States Department of Justice intervened in 1999, 1999 WL 33300905

Keys v. School District No. 1, 576 F. Supp. 1503 (D. Col. 1983)

Florida:

League of United Latin American Citizens et al. v. Florida Board of Education, Case No. 90-1913-Civ.-Scott (S.D. Fla. 1990) (consent decree) and Case No. 90-1913-Civ.-Moreno (S.D. Fla. 2003) (amending consent decree)

Idaho:

Idaho Migrant Council v. Board of Education, 647 F.2d 69 (9th Cir. 1981)

Illinois:

Gomez v. Illinois State Board of Education, 811 F.2d 1030 (7th Cir. 1987)

Gomez v. Illinois State Board of Education, 117 F.R.D. 394 (N.D. Ill. 1987) (certifying class action)

People Who Care v. Rockford Board of Education, School District # 205, 851 F. Supp. 905 (N.D. Ill. 1994), *aff'd in part and rev'd in part*, 111 F.3d 528 (7th Cir. 1997)

Massachusetts:

Bilingual Master Parents Advisory Council v. Boston School Committee, 2002 WL 992541 (Mass. Super. Ct. May 15, 2002)

Morgan v. Kerrigan, 401 F. Supp. 216 (D. Mass. 1975)

Montana:

Heavy Runner v. Bremner, 522 F. Supp. 162 (D. Mont. 1981)

New Mexico:

New Mexico Ass'n for Retarded Citizens v. State of New Mexico, 678 F.2d 847 (10th Cir. 1982)

Serna v. Portales Municipal Schools, 499 F.2d 1147 (10th Cir. 1974)

New York:

Aspira of New York, Inc. v. Board of Education of the City of New York, 394 F. Supp. 1161 (S.D.N.Y. 1975)

Jose P. v. Ambach 3 EHLR 551:245 (E.D.N.Y. 1979), *aff'd*, 669 F.2d 865 (2d Cir. 1982), *consolidated with United Cerebal Palsy (UCP) v. Board of Education*, Case No. 79-C-560 (E.D.N.Y. 1979) and *Dyrcia S. v. Board of Education*, Case No. 79-C-2562 (E.D.N.Y. 1979)

Rios v. Read, 480 F. Supp. 14 (E.D.N.Y. 1978)

United States v. City of Yonkers, 123 F. Supp.2d 694 (S.D.N.Y. 2000)

Ohio:

Lorain NAACP v. Lorain Board of Education, 768 F. Supp. 1224 (N.D. Ohio 1991), *aff'd*, 979 F.2d 1141 (6th Cir. 1992)

Pennsylvania:

Y.S. v. School District of Philadelphia, Case No. 85-6924 (E.D. Pa. 1986) (consent decree continued by stipulation in 2001)

Texas:

Castañeda v. Pickard, 648 F.2d 989 (5th Cir. 1981)

United States v. State of Texas, 6:71-CV-5281 (E.D. Tex. 2006) (pending motion for further relief for alleged violations of consent decree)

United States v. State of Texas, 680 F.2d 356 (5th Cir. 1982)

United States v. State of Texas, 523 F. Supp. 703 (E.D. Tex. 1981)

United States v. State of Texas, 506 F. Supp. 405 (E.D. Tex. 1981)

Washington:

Seattle School District et al. v. State of Washington, Case No. 81-2-1713-1 (Thurston Cty. Sup. Ct. 1983)

Seattle School District et al. v. State of Washington, 585 P.2d 71 (Wash. 1978)

Mr. CHABOT. As Chair, I'm going to yield to the gentleman from North Carolina, who has a flight to catch, and let him question first. The gentleman from North Carolina is recognized for 5 minutes.

Mr. WATT. I thank the Chairman for yielding to me first, and I want to offer to Mr. Norby, if he wants a ride to the airport I will be happy to give it to him.

Mr. NORBY. Great. Are you going to Long Beach on Jet Blue too?

Mr. WATT. No. Are you going to Dulles?

Mr. NORBY. Yes, I'm going to Dulles.

Mr. WATT. Oh, you are in trouble. You need to leave now. I'm going to National. And my flight is before yours, but you need to leave immediately.

Mr. NORBY. All right. I presume your questions are not for me, then.

Mr. WATT. That's right. But I was going to give you a ride.

My question is actually for the representative from the Justice Department, because if the answers to any of these questions are "yes," please just give us the information about them subsequently so that we can put it into the record. If they are "no," then you can just answer them quickly "no." but if they are "yes," then we need information about them.

Section 11(a) of the Voting Rights Act prohibits any person acting under color of law from failing or refusing to permit any person entitled to vote from voting.

Have there been any documented violations or prosecutions by the Department of Justice for violations of section 11(a) of the Voting Rights Act?

Ms. COMISAC. I do not know the answer to that question. I will provide it to the Committee.

Mr. WATT. Section 11(b) prohibits any person, quote, whether acting under color of law or otherwise, closed quote, from intimidating, threatening, or coercing or attempting to intimidate, et cetera, any person from voting or attempting to vote.

Have there been any documented violations or prosecutions by the Department of Justice for violations of this section?

Ms. COMISAC. Again, I will be glad to provide that information.

Mr. WATT. Third, sections 204 and 205 proscribe certain activity under the Voting Rights Act.

Have there been any documented violations or prosecutions by the Department of Justice for violations of this section—of these two sections of the Voting Rights Act?

Ms. COMISAC. I will be glad to provide that information.

Mr. WATT. Wonderful. Now, in anticipation of receiving this, Dr. Tucker, I think you might be able to tell us what the significance of either "yes" or "no" answer might be, if you have an opinion about that, on these questions.

Mr. TUCKER. Well, I believe what it will show is that those provisions are obviously meant to complement section 203 and section 404. They are not meant to replace the provision, by any stretch of the imagination. And I believe, again, that there are—to the extent that they are undocumented instances in which certain cases may or may not have been brought, I think that it will go far to show whether or not—whether or not section 203 is needed and

whether or not instances in which voters who may need assistance may not only not get it, but there may be instances of specific discrimination or intimidation at the polls that obviously would discourage not only that voter but other voters from the same covered language group from coming to the polls as well.

Mr. WATT. We're just trying to complete the circle here. If you will provide that subsequent to the hearing, it would be great. I said, jokingly, that you should leave, Mr. Norby. I really was not joking. I think we should excuse Mr. Norby, unless somebody has questions immediately, because he is not going to make his plane.

Mr. NORBY. I may not, but I am here representing my county and if there are any questions for me, I would be happy to take them.

Mr. WATT. You didn't have any particular perspective on any of the questions I asked, I take it?

Mr. NORBY. Well, yes, I do have a very strong perspective. I think that this is a law that is creating negative stereotypes, which is putting an undue burden on counties. Twenty million dollars is a lot of money from our general fund if we are required to publish all five languages in the same voter information pamphlet, which DOJ agents have said we are going to have to do. That is going to create an anti-immigrant backlash. Imagine people getting in the mail a phonebook-sized book.

Mr. WATT. I thought we were talking about the questions I just asked. Is this responsive to those questions?

Mr. NORBY. You will have to determine that and if they are not, I will wait for the next one.

Mr. WATT. Thank you. I think I will yield back, and I appreciate the Chairman—and I wish I was going to Dulles. Actually, I don't wish I was going to Dulles. That is a challenge at this time of day. But I would have been happy to give you a ride to National.

Mr. NORBY. I appreciate that. Maybe next time.

Mr. CHABOT. The gentleman yields back. The Chair recognizes himself for 5 minutes for questioning, and I will start with you, Ms. Comisac, if I can.

Could you explain the impetus for the Department's increased enforcement efforts under section 203? And are jurisdictions, at least some, not complying? And what efforts does the Department take to work with jurisdictions before engaging in litigation?

[3:40 p.m.]

Ms. COMISAC. I will be glad to address those questions. Your first question was the impetus for our enforcement efforts; and, Chairman, we take very seriously our obligations to enforce each of the provisions that are part of our responsibility, part of the Civil Rights Division's responsibility, under the Voting Rights Act.

Section 203 is one of the sections, and we are committed to do vigorous enforcement of section 203 as a means by which Congress has made a determination that we should, to the extent practicable, as Congressman Scott put it, meaningful access right to vote for non-English-speaking Americans.

Mr. CHABOT. Can I interrupt you for one moment? Mr. Norby, were you going to leave? Because maybe we could address our questions to you right now. What time is it?

Mr. NORBY. Yes. I need to catch my plane. The flight is at 5:45 from Dulles, and the one after that is in the morning.

Mr. GONZALEZ. Mr. Chairman, I have questions for Mr. Norby.

Mr. CHABOT. Can you stay for another 5 or 10 minutes?

Mr. Norby. I would be happy to.

Mr. CHABOT. We will come back to Ms. Comisac if we can.

I have one question for you. Could you describe how helpful is the Department of Justice in working with covered jurisdiction to determine what assistance is required?

Mr. NORBY. Well, our Registrar of Voters has reported repeatedly, two different registrars, that the attitude is confrontational and arrogant. We have repeatedly told them they are only required to meet the law; and they have told us that the agents say they are free to interpret the law, and we feel they are making interpretations not based on what the law actually says. The law does not allow, for example, an analysis of English fluency based on surnames. This is nowhere in the law, but this is the list the Department of Justice has given us.

And we want to work with the Department of Justice. We are happy to follow the law, but we feel as long as authorized, it must be clear as to what we have to do, and we will do it. But the law cannot be a license to continue ratcheting up licenses that are not within the law.

Mr. CHABOT. Okay. Also could you comment on how costly it is to comply with section 203?

Mr. NORBY. Well, it depends on how far it is going to be pushed. Like I said, a previous DOJ agent had said that they are emphasizing the county should place all languages in the same voter pamphlet all together. We have a total of five. If we do that, it will cost us $20 million per election cycle. The so-called outreach which sent questionnaires to non-native voters cost us about $20,000, and mostly we got a negative response from these voters, feeling insulted. If they wanted the materials, they would have asked for it, and they didn't appreciate us suggesting they didn't speak English well.

The poll worker requirements is hard to judge. It is very, very difficult to try to find them. We are being told a number of precincts in Irvine are going to have to have Chinese-language poll workers.

We can only pay $70 a day for these poll workers. The typical Chinese American voter in Irvine who might speak Mandarin is a professional, highly skilled. Many of them are making $70 an hour and really have no interest in being a poll worker for that amount of money. So it is very difficult to find people like this. Many of them are perfectly fluent in English. Certainly if you are talking about Asian Americans, the educational level of Asian Americans in my county is at least as high, if not higher, than the typical population. So the educational opportunity is there.

So I feel the law is creating stereotypes. It is helping to fuel an anti-immigrant backlash, and it is creating Minutemen.

Mr. CHABOT. Let me stop you there on my questions, and I would like to go down the line. I would like if each Member has questions for Mr. Norby, we could do that now.

Mr. Scott, if you want to yield to one of the others because they are champing at the bit.

Mr. SCOTT. Most of them would be for the others.

Mr. CHABOT. Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Norby. I see you are not as advocate you are in local government.

Mr. NORBY. I am an elected official just like all of you. I am the only one on this panel.

Ms. JACKSON LEE. I sense there is a concern about unfunded mandate.

Mr. NORBY. Definitely.

Ms. JACKSON LEE. With that in mind, I would assume, then, that you would not wish to deny a person that had the right to vote whose only barrier might be language, and they had every right to vote, you are not asking us to deny that person the right to vote.

Mr. NORBY. I am not asking anyone be denied any right to vote.

Ms. JACKSON LEE. So with that in mind, if we are able with the reauthorization of this legislation to address the issue of unfunded mandates, you think it would be appropriate to ensure that everyone who had the right to vote should vote?

Mr. NORBY. Well, the money is only a part of it. Current law does allow any voter to take in any person that they want into the polling place, including any interpreters. It does allow that.

Ms. JACKSON LEE. It allows that, but if the voter chooses to be able to vote in private on their own, and their only barrier may be a language, temporary or otherwise, you are not suggesting we should deny them the right to vote?

Mr. NORBY. I would suggest we take a look again at the citizen requirements which theoretically——

Ms. JACKSON LEE. You are going beyond the parameters of this legislation, which is the question of whether or not a person has the right to vote. I just want to be clarified of where you are going. That may be a debate that we are having, Mr. Chairman, on immigration, but we are talking about the reauthorization of the Voter Rights Act, and we are talking about citizens who have the right to vote. I am trying to understand if you are trying to deny the citizens the right to vote.

Mr. NORBY. I am not trying to deny that at all. I have a large number of Romanians in my city.

Ms. JACKSON LEE. You are okay with citizens voting.

Mr. NORBY. They are not covered by this, and yet many people in many language groups aren't covered by this. So there are people out there now that you might say are being denied that.

Ms. JACKSON LEE. You certainly have validity in acknowledging that there are other groups with a language issue, and, of course, as——

Mr. NORBY. There are.

Ms. JACKSON LEE [continuing]. Progress——

Mr. NORBY [continuing]. Reasonable accommodations.

Ms. JACKSON LEE. I just want to make sure you didn't leave with yourself being on record with wanting to deny a person the right to vote.

Mr. NORBY. Of course not.

Ms. JACKSON LEE. Of course not. Thank you very much.

Mr. CHABOT. The gentlelady has 2 minutes remaining.

The gentlelady from California is recognized.

Ms. SÁNCHEZ. Very briefly for Mr. Norby before you head out on your flight. I wanted to ask you, did you ever consider perhaps passing the citizenship test and having a certain level of English proficiency still might not make voting in English an easy proposition, especially given in California, as we know, a number of valid ballot initiatives that get qualified in each election? The double negatives that appear in the language——

Mr. NORBY. Sometimes triple negatives.

Ms. SÁNCHEZ [continuing]. Are written to be purposefully confusing to those of us who are native English speakers, much less somebody who has learned English at a level that ensures that they can pass their citizenship test, but perhaps might feel more comfortable or more enfranchised being able to vote in a native language that they feel more comfortable in. Have you ever stopped to consider——

Mr. NORBY. Of course. I consider that every day of my life practically, how to serve as many people as we possibly can. I would submit $20 million would be better spent on teaching people in English classes rather than sending out ballot materials to people who haven't requested it.

Ms. SÁNCHEZ. I do not disagree with the point you made. We may need to be funding more ESL classes, but unfortunately we have not seen an increase in funding for that.

Mr. NORBY. I taught ESL myself.

Ms. SÁNCHEZ. I wanted to bring that to your attention because my mother, who is a naturalized citizen, who teaches in an elementary school, who is very fluent in English, on occasion she finds it is easier for her to vote and receive the materials in her native language because the election materials are written in a way so as to confuse. And I just want——

Mr. NORBY. Oh, that is definitely true. And English speakers have a difficult time understanding a lot of California propositions as well.

Our county is not opposed to multilingual ballots. We think the threshold should be reasonable, and we also think that immigrant voters are capable of saying how well they speak English. To say an immigrant claims they speak it well but they really don't, we know better than them, we should take it at face value if they say they speak it well. And we should never infer language fluency based on a list of last names.

Ms. SÁNCHEZ. I think perhaps that is a good starting point, but you are right. Definitely the system probably needs to be fine-tuned.

Mr. NORBY. No law is perfect. I just think it could be fine-tuned.

Mr. CHABOT. The gentleman from Texas is recognized.

Mr. GONZALEZ. Thank you very much, Mr. Chairman.

I guess, Mr. Norby, I am reading something into your statements that I shouldn't be reading. But let me read you something from your own Website of November 2005.

In fact, the vast majority of immigrants do vote in English. Of the 1.5 million Orange County voters, only 10,506 requested non-

English ballots in the last election. That is 0.7 percent of the total voting population, or just 7 out of every 1,000 voters.

It seems to me that you are dismissing the progress and effect and accomplishment of section 203, and you are minimizing and dismissing and discounting the importance of these voters.

We don't know how many voted out there and so on and took advantage. Some were assisted and such, but I guess it could make a difference.

Four years ago in San Antonio, State Representative Mike Villarreal owes his very existence and political career in public service to a margin of two votes. Two months ago my friend Judge Casin lost his reelection by seven votes; and I don't think I have to remind you that in Florida 2000, the President of the United States was elected by 537 votes or so.

Think in terms of the impact. Now, maybe there are better ways of doing it, but I really do challenge you to think through what you are espousing here, and reaching out to that population that can be the margin of victory for a Republican or a Democrat, from State representative to President of the United States.

You also have a attached to your testimony all of these cards you got back from those voters. Now, if you read these carefully, what they are representing to me here is if you don't speak English, you should not vote.

Now, that hearkens back to a time we had literacy tests. We don't need to go back to literacy tests. That is what these comments indicate to me if you really read their full import.

My question to you is: Do you place a price tag on reaching out to those communities, empowering them, having them come to the polling place and vote, and making a more informed choice; and if you do, what is the price?

Mr. NORBY. Well, a price tag is placed on everything, especially in county government, because we have to cover in taxing everything that we spend. The Federal Government might be a little bit different in that regard, and the question is, what is the best use of spending the money?

You have said that these 10,000 people who voted in non-English materials make the price worth it, and I am not necessarily disputing that because we are not for necessarily repealing this, but making them reasonable. On the other hand, if in the future we do add Tagalog, Hindi, Punjabi, Urdu, Farsi, Arabic and a whole host of additional languages, we might have a few thousand more people voting as well. Would that be worth it? Where does it stop?

Like I say, I have a large Romanian population in my city of Fullerton. Romanian is specifically excluded because European languages other than Spanish are excluded from this. So large numbers of Russian immigrants are actually discriminated against because Russian is not considered a qualifying language since it is not an Asian or non-Spanish European language.

So the law is already drawing a line to which languages qualify and which people don't qualify. The question of where should the line be drawn—and I am saying it should be drawn more clearer than it is so I, as an elected official, know where it is, so the Department of Justice agents can't say, well, that is the law, but we want you to do more than the law actually requires.

I want clarity even if I disagree with what that clarity is. The clarity currently isn't there. It has to be there, especially with petitions, because if we require that all initiatives, all recall petitions be written in these five languages, then it is going to jeopardize the rights of citizens to petition their own government because they will have to be dismissed, and judges are starting to do that. So the VR has to do at least that.

Mr. GONZALEZ. Thresholds haven't been increased even though there are some of us who thought they ought to be reduced; they haven't been decreased to meet the guidelines in the applicability of this law. So you seem to be arguing maybe we ought to have a lower threshold so that other groups might qualify. I may not disagree with you on that.

It is not where does it end. The question is, where does it begin? And I think you bring out a good point. But I really read much into your testimony and the materials that you have provided, and I am just simply asking look at the advantages. Have a positive attitude at what this accomplishes. We can do it better, be more creative, imaginative, and not have unfunded mandates from this end of the equation; but from your end, I think you can be creative, imaginative, and cost-efficient to a point where it is worth the investment. This is one country where we are all in this together, contrary to everything that is going on.

Mr. NORBY. I have 600,000 constituents, many of whom are foreign born, and, like you, I have to be as creative as I can.

Mr. CHABOT. Thank you very much for coming and testifying today.

Mr. NORBY. Thank you.

Mr. CHABOT. The gentleman has 5 seconds left. So—thank you, Ms. Comisac. I think we were with you on your questions. Do you need me to repeat them, or do you recall what the questions were?

Ms. COMISAC. No. I think I recall what the questions are.

Mr. CHABOT. I recognize myself for the 3 minutes that I have left.

Ms. COMISAC. One of the questions you asked us about was about our efforts to work with jurisdictions, and I would like to take up that questions now because I would like Mr. Norby's comments that I would like an opportunity to address. I think they may answer your questions as well.

I am very distressed to hear his characterization of his interaction with the Justice Department, because our first efforts at enforcement of section 203 of the minority language provisions of the VRA, our first efforts are to work with jurisdictions. We find this to be a really productive method of achieving compliance. We hold one-on-one meetings with election officials. We ensure that they have points of contact in the Division's voting section. I mean, we have conducted outreach by speaking to the National Association of County Officials; the National Association of County Recorders, Clerks and Registrars; National Association of Secretaries of State; the National Association of State Elections Directors. We conduct a tremendous amount of outreach to make them aware of what their requirements are, what their obligations are to answer their questions. And we want to achieve, Congressman Gonzalez, that creativity and imagination that you spoke about.

We do not believe that there is a one-size-fits-all solution to compliance with section 203. We want to work with covered jurisdictions so that the local election officials who know their districts the best, who know their jurisdictions the best, have the flexibility to devise solutions that will achieve that compliance.

We enforce low-cost compliance. We have encouraged use of information trees, for example; of using faxes and e-mails; of communicating through business organizations, unions, social and fraternal organizations, churches that have contacts in the minority language communities. We have discouraged, for example, jurisdictions from placing minority language notices in English-language newspapers so that they can better target their efforts.

The first step in our enforcement efforts truly is to try to work with the jurisdictions. Having said that, if we find that a jurisdiction is not meeting their obligations, we will investigate; and if our investigation indicates that they have not met their obligations, we will bring enforcement actions, as we have done. I mentioned some examples of successful enforcement actions in my statement.

Mr. CHABOT. Not to interrupt you there, but my time is running out, and I wanted to get a question in to Ms. Narasaki if I can.

Ms. Narasaki, if Congress allows section 203 to expire, what will be the impact on the language minority citizens?

Ms. NARASAKI. We believe it will be a very huge impact. As I noted for the Asian American community, three-fourths of the elected officials who are Asian American come from the jurisdictions that are covered by section 203. We have seen enormous increases in voter registration and voter turnout in all of the newly covered jurisdictions that got covered after the 2002 census. So while some jurisdictions do voluntarily provide some coverage, it is a minority of jurisdictions, and what Councilmember Norby was asking for with a 10 percent threshold was basically to not cover Orange County because Orange County has about 9 percent who would qualify.

And also, I am sorry that he left because we have different numbers than he does. According to the Orange County Registrar of Voters, as of December 2005, they had 72,436 voters who had requested materials in other languages. That is 4.8 percent of the registered voters there, and we know that the usage is much higher because a lot of people don't need the written materials, but use the oral system at the polls; and we know that because our affiliate in Los Angeles does exit polling and has done for the last decade in L.A. And Orange County, and according to them, in 2004, about two-thirds—no, 46 percent of Chinese, Korean and Vietnamese voters did request assistance. So you could see the impact on the ability of Asian Americans to vote.

Mr. CHABOT. Thank you very much. My time has expired.

The gentleman from Virginia Mr. Scott is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Chairman, I think it is significant Dr. Tucker mentioned all of the waiting lists for bilingual education—for English education. If you want to fund more English education, you do that through the political process; and if you can't vote, obviously you can't reduce those waiting lines. So I think what we are talking about here

is extremely important not only as it affects voting, but as it affects public policy.

Let me ask Ms. Comisac, based on your experience, is it a fact that section 203 has, in fact, increased participation amongst citizens who have limited English proficiency?

Ms. COMISAC. I think there is no question that as a result of our enforcement efforts, we have seen significant increases among—in participation in the electoral process and in election among the political ranks in limited English-proficient voters.

Mr. SCOTT. And if you had a desire to reduce participation amongst that group, would repeal of section 203 be helpful in reducing the participation?

Ms. COMISAC. Well, I certainly am of the opinion that our enforcement efforts have shown that we have made steady gains as a result of 203 enforcement, gains that I don't think would have been accomplished absent our enforcement efforts of section 203.

Mr. SCOTT. Dr. Tucker, I have a report that apparently your organization released on the expenses involved in complying with section 203.

Mr. TUCKER. Yes.

Mr. SCOTT. Can you give us a little background information on how extensive it is to actually comply?

Mr. TUCKER. The costs are minimal, if there are any costs at all.

I guess I should, first of all, begin by saying that the report was of every jurisdiction that was covered, down to cities of 50,000 or more, and we had a response rate of better than 50 percent. We had responses from 29 of the 31 States that are covered by section 203, and this was all self-reported data. What they indicated—what the election officials indicated was that a majority of jurisdictions incur no additional costs for either written language materials or oral language assistance.

Mr. SCOTT. And is that because when they hire a poll worker, they would just, for the same amount of money they are paying a poll worker, pick somebody that is bilingual?

Mr. TUCKER. Absolutely. And the jurisdictions that are not doing that are the ones that are incurring costs for—the costs themselves are quite low where they do have costs. On average they reported costs of 3 percent for written language materials and 1.5 percent for oral language assistants, and these costs could obviously be diminished even further by doing as the Deputy Assistant Attorney General suggested and adequately targeting the materials in oral language assistants to those places that actually need it.

Mr. SCOTT. Thank you.

Ms. Narasaki, the threshold of 10,000, of 5 percent, is at an extremely high threshold. It actually could—in many areas, and I think you mentioned one—be the swing vote in a particular district. Does that give those that may not be popular in that segment of their district an incentive to try to depress the vote?

Ms. NARASAKI. Absolutely. One of the things that we see with the changing demographics is there are a threshold of once you get to so many minorities in a community, there starts to be some pushback and some potential friction. So it is really important——

We actually—as you know, Congressman Scott, the original threshold was 5 percent, and what happened was with large cities

like L.A. County, to be 5 percent of L.A. County meant you had to have 500,000 people, which was clearly more than many—than a lot of jurisdictions people actually voting. So 10,000 was picked at a reasonable level, looking at what the cost affecting this would be.

Mr. SCOTT. In many jurisdictions it may be enough to swing an election.

Ms. NARASAKI. Exactly. And in terms of Orange County, under Mr. Norby's own testimony, it cost $600,000 in the last election, which is 10 percent, $6 million overall costs, for Orange County. Well, almost 10 percent of his county is eligible. So it is a reasonable trade-off because those are all taxpayers as well. That is what we looked at in looking at thresholds.

Mr. SCOTT. Thank you.

And finally, Ms. Comisac, can you send observers to enforce just section 203?

Ms. COMISAC. I am not certain, but I will certainly find out if that is the case.

Mr. SCOTT. I think Ms. Narasaki's testimony suggested there may be a little glitch where you can send them into a section 5-covered jurisdiction. While they are there, they can observe section 203 violations, but there may not be specific authorization to send an observer just for section 203.

If you could look at that to make sure we don't have a little gap in the coverage, and if we do have a gap in the coverage, we would want to make sure that we could send observers in specifically to observe 203 violations.

Ms. COMISAC. I will be glad to get back to the Committee on that.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. CHABOT. The gentleman's time has expired.

The gentle lady from Texas has 2 minutes.

Ms. JACKSON LEE. Thank you very much.

Let me ask Ms. Comisac, I was trying to read through your testimony, and thank you. Has the Justice Department taken a position on the reauthorization of the Voting Rights Act?

Ms. COMISAC. Well, certainly——

Ms. JACKSON LEE. The Administration, excuse me.

Ms. COMISAC. Certainly the Department and the Administration in general supports reauthorization of the Voting Rights Act, and we certainly support reauthorization of the minority language provisions of the act. Clearly H.R. 9 was introduced on Tuesday, and we are still examining the provisions of that bill.

Ms. JACKSON LEE. So you are doing your due diligence?

Ms. COMISAC. That is correct.

Ms. JACKSON LEE. You are doing your due diligence. I would hope that inasmuch as this is a tool that the Justice Department has used now for more than two decades—and I think Administrations have come and gone, Republicans and Democrats, and they have found it to be an effective tool. Many times we may have agreed or disagreed with its interpretation that it is an effective tool. I would hope that you would engage with Congress in this instance, since we are not adversarial, as you do your due diligence.

Can you keep this Committee advised as you do your due diligence so that we are aware of hopefully your approval or your concerns?

Ms. COMISAC. We will be glad to work with the Committee.

Ms. JACKSON LEE. Let me ask both Ms. Narasaki and Dr. Tucker. We have heard comments being made about other language groups. Help us quickly—again, for the record, if we use other language groups to suggest we shouldn't have it, the devastating impact, but then because of your expertise, how we might work perspectively in acknowledging the concern of the need for other language groups. Dr. Tucker.

Mr. TUCKER. Okay. First of all, it is clearly intended—I—this is something that has come up before during prior reauthorization.

Ms. JACKSON LEE. It is important for the record, yes.

Mr. TUCKER. What has happened, there is a discussion of trying to have section 203 applied to all language groups throughout the United States. It is problematic in two respects. First of all, it raises constitutional issues. Section 203 is very narrowly tailored and congruent and proportional to the need, and the need has been focused specifically on the pattern and history of discrimination both in voting and education as to the four groups that are covered.

It also raises some enforcement problems. The Department of Justice doesn't have unlimited resources, and neither do the private organizations that bring the lawsuits under the private attorneys general provision. Section 2 of the Voting Rights Act is available for those sections that are not covered and for those languages that are not covered; and, in fact, there have been successful cases brought, including one in Hamtramck, Michigan, for Arabic-speaking populations under section 2.

Mr. CHABOT. The gentlelady's time has expired.

The gentlelady from California Ms. Sánchez is recognized for 3 minutes.

Ms. SÁNCHEZ. Really quickly, I am going to ask these questions of Dr. Tucker and Ms. Narasaki.

Do you think it is a reasonable starting point—starting point to survey those who have ethnic last names and/or you have information about them being foreign-born as a starting-off point in order to survey for whether or not they need assistance with voting materials?

And number two, in what ways can language assistance be offered in a cost-effective manner? Because apparently Mr. Norby's biggest concern was unfunded mandates and how expensive they are for the counties.

I think, Ms. Narasaki, you touched on that a little bit and said it was proportional; but I want to give you a little bit of time to expand on that. I was a little confused by Mr. Norby's testimony, and I wish he were still here, because on the one hand, he argued that we should raise the trigger from 5 percent to 10 percent and eliminate the 10,000 numerical trigger. And then he seemed to contradict himself and say that we should lower it because there are other language minorities that are not being offered this assistance.

I want to know from both of you, what do you think the world would look like if we eliminated the 10,000 numeric triggers and raised the 5 percent trigger to 10 percent, as Mr. Norby suggested?

Ms. NARASAKI. Well, I can start out with the cost issue. I think, as the testimony has shown, there actually is a lot of flexibility in

the regulations that the Department of Justice has in terms of how they comply, and we very much advise local jurisdictions to work closely with the local community-based organizations who could help them identify where the neighborhoods who—for whom the outreach is necessary, what are the ethnic papers you could get the information out on, what are the cost-effective radio outreach that you can do? So there are many ways that you can cut costs if you work closely with the communities that are involved.

We have been told by the Department of Justice that they, in fact, are not asking Orange County to have a telephone book of, you know, five languages and voting. We would actually advise against that because it makes it unusable for everyone. It doesn't make sense to translate something into something nobody is going to use.

So we think actually there is a lot of room to work with people both on the cost and how you can best comply. The challenge with the surname is, as you know, the census data, in terms of individual answers, is private. So you cannot go to the census and say, tell us who said they are limited English-proficient, under fifth grade. You can't do that.

So as the Department of Justice said, they recognize that it is an imperfect way to go about it, but right now it is one of the better ways to try to, at least as a starting point, figure out where you might go.

And I think part of the backlash in terms of the responses that they got is, if you saw the postcard, I would have put a little more explanation in there to people who received it.

Mr. CHABOT. The gentlelady's time has expired. The gentleman from——

Ms. SÁNCHEZ. If I could beg the Chairman's indulgence to allow Dr. Tucker to perhaps answer one or two questions.

Mr. CHABOT. If you could make it relatively brief, we would appreciate it.

Mr. TUCKER. And I will just build on what Ms. Narasaki said. First of all, there are a number of ways you can reduce the cost. First of all, the HAVA funding that has been provided to the State and local jurisdictions has allowed the States to purchase new voting equipment where there is absolutely no cost. Many of these new machines, they are electronic. They have oral language instructions that can be programmed into the computer at no additional cost. Private organizations and outreach can be done. And to bring those organizations into the process to cut down the cost of translation and, quite frankly, some of the complaints that Mr.— or Commissioner Norby complained about regarding the outreach materials, that is what the jurisdiction should be doing. You should be doing outreach to the covered communities.

With respect to the elimination of the 10,000-person trigger and the impact, it would have a devastating impact. There was a substantial record of this that was introduced in 1992, and what it would do is it would do a wholesale elimination of covered language groups in southern California, northern California, particularly Asians, a large number of Latinos, particularly in and around the Cook County, Chicago area. There was a substantial evidence of discrimination against those groups, and, in fact, since the last re-

authorization, successful section 2 cases have been brought in those jurisdictions including in the town of Cicero, Illinois. There was a section 2 case involving backlash against the growing Latino vote.

So the bottom line with it is the elimination of the 10,000 trigger would have a devastating impact, and it would make the section 203 far less effective than it is today.

Ms. SÁNCHEZ. Thank you.

Mr. CHABOT. Thank you very much.

The gentleman from Texas is recognized.

Mr. GONZALEZ. Thank you, Mr. Chairman; thank you, Members of the Committee; and thanks to the witnesses.

Mr. CHABOT. Thank you very much, Mr. Gonzalez. We appreciate your attendance today, and our final questioner will be the gentleman from Maryland Mr. Van Hollen. You are recognized for 5 minutes.

Mr. VAN HOLLEN. Thank you very much, Mr. Chairman. I want to thank you and Mr. Nadler again for hosting this hearing, and I just have one question, because I know there has been a lot of testimony, and that is for Ms. Comisac.

Does the Justice Department intend to present its views on this piece of legislation, number one? And if so, when do you expect the Committee would have the benefit of those views?

Ms. COMISAC. Congressman, we are currently in the process of analyzing H.R. 9, which was introduced on Tuesday, and we will strive to complete our analysis as soon as possible.

Mr. VAN HOLLEN. All right. Well, thank you.

Ms. COMISAC. Thank you.

Mr. CHABOT. Is that it?

Mr. VAN HOLLEN. It would be helpful to have it. That is it.

Mr. CHABOT. I want to thank the gentleman. I want to thank all the panel up here, and I want to especially thank our witnesses here this afternoon for coming.

This is a very important issue, and each of the witnesses has done a great job illuminating these issues. And I might note for the panel up here, given the unique nature of this issue, we have made an exception to the Committee rules regarding the attendance and participation of non-Committee Members. This was done in a spirit, obviously, of bipartisanship, and it shouldn't necessarily be considered precedent for future hearings, but there is nothing——

Ms. JACKSON LEE. It isn't?

Mr. CHABOT. Bipartisanship should always be a precedent. But in any event, we very much appreciate the participation of everyone here. I believe this is the last hearing we are going to have.

Ms. JACKSON LEE. Yes. Would the gentleman yield?

We have been calling this H.R. 9, and I just welcome the opportunity to recite that it is also called the Fannie Lou Hamer, Rosa Parks and Coretta Scott King Act, and I think it is an appropriate statement for all of us no matter which side of the aisle and no matter where we live in America.

Mr. CHABOT. I appreciate the gentlelady having brought that up. Having attended Rosa Parks' funeral, as well as many of our colleagues, it was a very moving event, and I am very pleased you brought that up. Thank you.

Again, I think this is the last hearing on the Voting Rights Act, although this is the 12th; and it may be around for a couple more weeks before it is actually voted on on the floor. So I wouldn't say for sure it is the last hearing. Yeah, they are saying it is the last hearing. I have heard that before. They said that at number nine, but it has been an extremely good experience for all of us, and we want to thank, again, the witness panel for being here.

If there is no further business to come before the Committee, we are adjourned. Thank you.

[Whereupon, at 4:10 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND MEMBER, SUBCOMMITTEE ON THE CONSTITUTION

Legislative Hearing: Section 203: Bilingual Election Assistance
Statement of Congressman John Conyers, Jr.
May 4, 2006 (2: 00 pm)

When Congress passed the Section 203 of the Voting Rights Act in 1975, we recognized that through the use of various practices and procedures, citizens of language minorities (American Indians, Asian Americans, Alaskan Natives, and Spanish-heritage citizens) had been effectively excluded from participation in the electoral process. We then determined that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it was necessary to eliminate such discrimination by prohibiting discriminatory voting practices, and by prescribing other remedial devices.

The legal requirements of Section 203 are straightforward: all election information that is available in English must also be available in the minority language so that all citizens will have an effective opportunity to register, learn the details of the elections, and cast a free and effective ballot. Sections 203, in combination with Section 4(f)(4) of the Voting Rights Act, have been tremendously successful in opening the franchise to citizens who are not native English language speakers.

Some witnesses have challenged the constitutionality of Section 203 and even questioned the need for the provision. While I approach the process with an open mind, let me say at the outset, I fully support bilingual election assistance. In a growing multi-cultural society it only makes sense that we support and require the assistance necessary to allow every citizen to cast an effective ballot.

I believe that it is dangerous to assume that past historical discrimination faced by language minorities has suddenly faded away with the passing of the millennium. If anything, the growth of our immigrant population has exacerbated existing patterns of discrimination. I believe that our hearing record thus far demonstrates that fact. We have seen everything from patterns of hate violence to the rise of English-only movements which have not quite shaken their links to the past prejudices.

As we move forward, I hope that our witnesses will address the continuing challenges faced by language minorities in gaining equal access to the ballot box, with a particular focus on litigation and patterns of discrimination to further support the need and constitutionality of this provision. Equally important, I hope that the Justice Department will highlight the record of compliance by jurisdictions and the fact that the provision is not burdensome. At the end of this process, this Committee wants no question as to the need and viability of Section 203.

PREPARED STATEMENT OF THE HONORABLE MELVIN L. WATT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA, AND MEMBER, SUBCOMMITTEE ON THE CONSTITUTION

Ten years after passage of the Voting Rights Act, Congress in 1975 recognized the link between high rates of limited English proficiency within certain language minorities and the denial by State and local governments of equal educational opportunities for language minority citizens resulting in low voter participation rates. Since that time, Congress has reviewed the operation of the language assistance provisions of the Voting Rights Act and the increased participation of language minorities covered by the Act in the electoral process.

Most recently in 1992, and again this term, Congress received evidence that the denial of equal educational opportunities to language minority citizens covered by the Voting Rights Act persists. Section 5 enforcement actions and objections also provide ample evidence of present day discrimination against citizens with limited English proficiency. Where language assistance is provided, however, the record reflects measurable progress towards full participation in the political process by affected citizens from the relevant language minority communities. This is a good thing.

Just as in prior reauthorizations of Section 203—and I quote from the 1982 Senate report—"The testimony [we received this Congress] refuted allegations that bilingual elections are 'excessively costly'; that they discourage non-English speaking citizens from learning English; that they threaten the ideal of the American 'melting pot'; and that they foster 'cultural separatism.'" These arguments have all been made before. They are as unpersuasive now as they were then. Increasing the opportunity for all Americans to play their role in our democracy makes us stronger, not weaker. It unites, not divides us. Society is enriched by the diversity of voices and views that are heard at the ballot box.

Earlier today we heard rank speculation that the arduous process of assembling a record to determine the content of the bill we now have before us was, in effect, a sham—a process designed to reach a pre-ordained conclusion. Nothing can be further from the truth. The truth of the matter is, specifically with respect to the language assistance provisions, for example, while I stand behind the bill we have introduced, I am disappointed that we did not lower the population threshold that would have provided even more citizens from language minority groups the opportunity to obtain voting assistance in the language with which they are most comfortable. I believe, however, that the record before us, at a minimum, supports the conclusion reflected in H.R. 9 that the continuation of the current requirements is necessary and appropriate to enable hard working, tax paying, American citizens with limited English proficiency to participate equally and on the same terms as fluent English speakers in the body politic.

This bill is no panacea. But nothing in this bill or the Constitution prevents State and local jurisdictions from enacting and implementing innovative, inclusionary practices to foster broader civic involvement by its residents. Indeed, some jurisdictions have done so—voluntarily expanding the franchise to concentrations of language minorities within their boundaries by providing voting materials and ballots in those languages. For example, in Chicago voluntary voter assistance is provided in Polish, Russian, Greek, German, Korean and Serbian. In Boston, the city has pledged to provide language assistance in Spanish, Haitian Creole, Cape Verdean Creole, Vietnamese, Portugese, Chinese, and Russian.

The bill before us today extends the current language assistance provisions of the Voting Rights Act and is supported by the record. It does not discourage or prohibit any State or political subdivision from doing more to open its processes to more voices thereby enhancing our democracy.

PREPARED STATEMENT OF THE HONORABLE LINDA T. SÁNCHEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

On behalf of the Congressional Hispanic Caucus, I thank Chairman Sensenbrenner, Ranking Member Conyers, Subcommittee Chairman Chabot and Ranking Member Nadler for their leadership and commitment to reauthorizing the Voting Rights Act.

I also want to thank Congressman Watt, for being the voice and conscience of the Tri-Caucus during the drafting of this landmark reauthorization bill.

The "Voting Rights Act Reauthorization and Amendments Act" is a bill proudly supported by Democrats and Republicans in both the House and Senate. H.R. 9 is a shining example of quality, bipartisan legislation that respects American ideals.

By passing H.R. 9, our Committee will honor the sacrifices of the great civil rights champions and namesakes of this bill: Fannie Lou Hamer, Rosa Parks, and Coretta Scott King.

Over the last several months, H.R. 9's provisions have been carefully and effectively crafted to stomp out voting discrimination and remove the barriers to full participation in the electoral process.

The bipartisan support for this bill is proof that we all agree that voting is a fundamental right that gives every American citizen the power to participate, influence, and collectively shape our democratic government.

That power should not be denied to *any citizen*, regardless of the color of their skin, or the language they speak.

Sadly, the record established during the reauthorization hearings last fall proved that discrimination against racial and language minority citizens still exists.

That is why I believe that passing H.R. 9, including reauthorizing Section 203, is essential to safeguarding the voting rights of every American citizen.

I sincerely hope that this bill is marked up today without partisan or ideological amendments added to it.

Every Member of this body should join in support for this bill "as is," and resist pressures to weaken its protections or strip any of its provisions in order to score short-term political points.

Again, I thank the Chairmen and Ranking Members of both the Full Committee and Subcommittee for their leadership on this issue. And, I strongly urge all of my colleagues to support a clean Voting Rights Reauthorization bill.

I yield back.

RESPONSE TO POST-HEARING QUESTIONS FROM RENA COMISAC, PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 3, 2006

The Honorable Steve Chabot
129 Cannon House Office Building
Washington, D.C. 20515

Dear Chairman Chabot:

On May 4, 2006, the United States House of Representatives Committee on the Judiciary, Subcommittee on the Constitution, held a hearing entitled "Hearing on H.R. 9: A Bill to Reauthorize and Amend the Voting Rights Act of 1965, Part II." Rena Comisac, Principal Deputy Assistant Attorney General of the Civil Rights Division, testified at this hearing in support of reauthorization of the language minority provisions of the Voting Rights Act. A corrected copy of her transcribed testimony is enclosed.

At the hearing, two Members of the Subcommittee asked Mrs. Comisac several questions requiring additional research. Congressman Watt asked whether there have been any documented violations or prosecutions by the Department for violations of Sections 11(a), 11(b), 204, or 205 of the Voting Rights Act. While the Civil Rights Division has no record of any prosecutions under Sections 11(a) or 205, the Division has brought three actions under Section 11(b):

United States v. Harvey (E.D. La. 1966)
United States v. North Carolina Republican Party (E.D.N.C. filed Feb. 26, 1992)
United States v. Brown (S.D. Miss. filed Feb. 17, 2005)

Section 204 authorizes the Attorney General to seek injunctive relief for violations of Sections 201, 202, or 203 of the Act. Thus, all of the cases the Department has filed under Sections 202 and 203 would fall into this category:

Section 202
United States v. County of Santa Clara (N.D. Cal. filed Nov. 4, 1980)
United States v. State of New York (N.D.N.Y. filed Nov. 1, 1988)

Section 203

United States v. City and County of San Francisco (N.D. Cal. filed Oct. 27, 1978)
United States v. San Juan County (D.N.M. filed June 21, 1979)
United States v. San Juan County (D. Utah filed Nov. 22, 1983)
United States v. McKinley County (D.N.M. filed Jan. 9, 1986)
United States v. State of New Mexico and Sandoval County (D.N.M. filed Dec. 5, 1988)
United States v. Metropolitan Dade County (S.D. Fla. filed Mar. 11, 1993)
United States v. Cibola County (D.N.M. filed Sept. 27, 1993)
United States v. Socorro County (D.N.M. filed Oct. 22, 1993)
United States v. Alameda County (N.D. Cal. filed Apr. 13, 1995)
United States v. Bernalillo County (D.N.M. filed Feb. 6, 1998)
United States v. City of Lawrence (D. Mass. filed Nov. 5, 1998)
United States v. Passaic City and Passaic County (D.N.J. filed June 2, 1999)
United States v. Orange County (M.D. Fla. filed June 28, 2002)
United States v. Brentwood Union Free School District (E.D.N.Y. filed June 4, 2003)
United States v. San Benito County (N.D. Cal. filed May 26, 2004)
United States v. San Diego County (S.D. Cal. filed June 23, 2004)
United States v. Suffolk County (E.D.N.Y. filed June 29, 2004)
United States v. Yakima County (E.D. Wash. filed July 6, 2004)
United States v. Ventura County (C.D. Cal. filed Aug. 4, 2004)
United States v. Westchester County (S.D.N.Y. filed Jan. 19, 2005)
United States v. City of Azusa (C.D. Cal. filed July 14, 2005)
United States v. City of Paramount (C.D. Cal. filed July 14, 2005)
United States v. City of Rosemead (C.D. Cal. filed July 14, 2005)
United States v. City of Boston (D. Mass. filed July 29, 2005)
United States v. Ector County (W.D. Tex. filed Aug. 23, 2005)
United States v. Hale County (N.D. Tex. filed Feb. 27, 2006)
United States v. Cochise County (D. Ariz. filed June 16, 2006)
United States v. Brazos County (S.D. Tex. filed June 28, 2006)

In addition, Congressman Scott asked whether the Attorney General has the authority to designate jurisdictions for federal observers to monitor for Section 203 compliance. The Attorney General currently has the authority under Section 6 of the Voting Rights Act to certify jurisdictions covered under Section 4 of the Act as eligible for the assignment of federal examiners, given appropriate facts, and, under Section 8, the Attorney General may request the assignment of federal observers to any jurisdiction so certified. Under Section 6, to authorize the appointment of federal examiners, the Attorney General must certify with respect to an eligible jurisdiction that (1) he has received meritorious complaints in writing from twenty or more residents of the jurisdiction alleging that they have been denied the right to vote under color of law on account of race, color, or membership in a language minority group (defined as persons of Spanish origin, Asian Americans, American Indians, or Alaskan Natives), or (2) "in his judgment

(considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within [the jurisdiction] appears to him to be reasonably attributable to violations of the fourteenth or fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within [the jurisdiction] to comply with the fourteenth or fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fourteenth or fifteenth amendment."

Jurisdictions eligible for federal examiner certification by the Attorney General include all of those covered under Section 203 in the states of Alaska, Arizona, Louisiana, Michigan, Mississippi, and Texas, as well as three counties in California, four counties in Florida, three counties in New York, and two counties in South Dakota. Currently, there are twenty-six Section 203 covered jurisdictions which are certified by the Attorney General for federal examiners (three in Arizona, six in Mississippi, three in New York and fourteen in Texas).

The Attorney General cannot on his own authority designate jurisdictions for federal examiners or observers in the remaining counties currently covered under Section 203 but not covered by Section 4. The Attorney General can, however, obtain a federal court order designating a county for federal examiners pursuant to Section 3 of the Act, and has done so as part of relief in lawsuits under Section 203, among other statutes. At present there are fifteen Section 203 covered jurisdictions eligible for the assignment of federal observers based on court order designations. Federal observers have monitored eight elections in six such jurisdictions so far in 2006. In addition, the Department can and does send its own personnel to monitor compliance with Section 203. So far in 2006, Department personnel have monitored elections in sixteen Section 203 covered jurisdictions.

We hope the Subcommittee finds this information helpful. Please do not hesitate to contact us if we can be of further assistance in this or any other matter.

Sincerely,

William E. Moschella

William E. Moschella
Assistant Attorney General

LETTER FROM LOREN LEMAN, LIEUTENANT GOVERNOR OF ALASKA, IN RESPONSE TO TESTIMONY BY THE LEADERSHIP CONFERENCE, AND A REPORT BY NATIVE AMERICAN RIGHTS FUND ATTORNEY NATALIE LANDRETH, AND LAW STUDENT MOIRA SMITH, PRESENTED BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION

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Lieutenant Governor Loren Leman

April 17, 2006

The Honorable Steve Chabot, Chairman
Committee on the Judiciary
Subcommittee on the Constitution
U.S. House of Representatives
129 Cannon House Office Bldg
Washington, DC 20515

Dear Chairman Chabot:

As the Chief Election Official for the State of Alaska, and its first Statewide elected official of Alaska Native descent, I provide this written statement in response to testimony by the Leadership Conference and a report by Native American Rights Fund attorney Natalie Landreth and law student Moira Smith heard recently in the U.S. House Judiciary Subcommittee on the Constitution.

At issue for Alaska is the false assertion and, since the publication of the Landreth/Smith "report," confusion about Alaska's compliance with the federal Voting Rights Act of 1965. Let me assure you, we are in compliance. Happily so.

The NARF report contains many inaccuracies and false assumptions. I will not take 56 pages to rebut them all, but will point out some of the obvious ones. I note that the authors themselves found it difficult to compile their comments as they use overlapping jurisdictions of information (such as boundaries of the four regions of the Division of Elections that differ from the boundaries of regional Native corporations) - making comparisons of statistics fairly impossible.

Beginning with the assertion that Alaska holds English-only elections – that is false. The Division of Elections provides written materials in Tagalog for those precincts with a high population of Filipinos and oral assistance to voters in areas where the Native language has been traditionally unwritten. The Division's language assistance program has been precleared by the Department of Justice.

The report is inaccurate in its statement that inconsistent language assistance is provided to Alaska Natives. It is the Division's policy to hire a poll worker who is fluent in the local language in each polling place. When an individual who speaks this language cannot be identified to physically work in the polls, another qualified person within the community is identified to be available should there be the need for language assistance. In the specific communities the report references on page 32 regarding survey results of

language assistance, the Division confirms that there were indeed either poll workers who speak the language or someone else identified in the community to provide language assistance. The report writers may have based their assertion that, "Alaska Natives resort to self-help" on the Division-sponsored use of volunteers to provide Native language assistance. If so, the report's authors appear to be confused. Our Native language volunteers work with the Division to provide voluntary translation services to their fellow Alaskans.

As I am personally acquainted with several of the Alaska Native elders quoted in this report, I contacted one – Sidney Huntington. He had a hard time hearing on the phone without his hearing aid or a person present to assist him and so communication was difficult. In an attempt to communicate with him through family, I called for his son Roger at his home and reached his wife Carole (Sidney's daughter-in-law). When I told her the reason for my call, she responded, "I run the elections (in Galena) and I've never seen this (lack of translators) as a problem." She discussed how elections work in Galena. The elderly can get transportation and come in to the polling station with a friend who helps them understand the language and what's on the ballot. The poll watchers allow the voter and his/her helper to discuss the ballot in a side area without interruption from (well-wishing) friends.

She went on to say that no one in Galena speaks only the Athabascan [Koyukon] language, everyone is at least bilingual. She also told me that the Louden Tribal Council will announce in the community when it is available to take people to vote on election day and will pick up voters in a van and provide language assistance, if necessary. In my opinion, this is exactly how we should be providing voting assistance across Alaska.

The report suggests that the Division contact the Alaska Native Language Center. The Division of Elections has contacted this Center at the University of Alaska on several occasions. Its director Lawrence Kaplan has advised the Division that many of the specialized words used in conducting an election are difficult to translate and "the translations might be hard to understand because the particular vocabulary is not established (ballot, voting machines, polls, etc)." He confirmed that the Division's policy of providing Native language speakers at polling places for oral translation would be of more assistance to voters than, say, translating the Division's website. The Division identifies translators for this purpose through previous contacts and through election worker recruitment forms which help identify those who speak another language.

The Voting Rights Act (Sec. 1973aa-1a (c) provides that,

> "where the language of the applicable minority group is oral or unwritten or in the case of Alaskan natives and American Indians, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting."

Based on the advice of the Alaska Native Language Center, the Division has complied with this section of the Act, and has done so with the Department of Justice's approval. The absence of any complaints in the last 15 years demonstrates that our program is working.

The suggestion that the Division of Elections is inaccurate in its interpretation of this portion of law is also not true. Instead, other information in the NARF report supports the Division. The report states,

> "Senator Gravel recognized the extent to which Alaska Native languages were spoken in Alaska…he argued that 'language is not a barrier for [Alaska Natives] recognizing what is in their interest in voting' and he questioned Alaska's ability to comply with a bilingual voting assistance requirement because 'there are some Native languages which are not written languages'.

The report also refers to a letter from Alaska's U.S. Senator Ted Stevens to Senator Tunney, Chairman of the Judiciary Subcommittee on the Constitution. In this letter Senator Stevens wrote that,

> "writing systems for only a few of these languages have ever been developed, and those only recently. In some of the languages, there is no word for "vote" and "ballot." Inclusion of Alaska under this legislation would be extremely burdensome. By Alaskan statute, assistance is provided to any voter with either a language or a physical disability. Plain and simple, Alaska does not discriminate against Alaska Natives in voting."

Thus, the legislative record supports the Division of Elections interpretation of Sec. 203.

As to the report's assertion that there are no polling places in 24 Native villages, let me explain. In Alaska 150 communities are identified as Permanent Absentee Voting (PAV) locations. However, each of these has an absentee voting official to assist with voting. When establishing a PAV location, the Division embarks on a stringent process – including public comment, regulation review by the Department of Law, notification sent to minority groups, and preclearance of these regulations by the DOJ.

In my capacity as Lieutenant Governor, I also communicate with legislators from affected areas as well, so they can be prepared to canvass their constituents about whether this method of voting is the best for their voters in that community. Voters in a PAV community are sent a letter with an absentee ballot application for each election conducted by the State of Alaska. This program has actually resulted in an increase in voter participation in these communities.

The report also says that in 2000 and 2004, polling places were changed just one month before the election and not "precleared" until November 29. Polling place changes are sometimes inevitable. Anyone familiar with elections knows that a polling place can be

suddenly unavailable due to a fire, a heating system not working, construction, or any other such circumstance. Finding another polling place in these circumstances happens at the last minute and cannot be precleared by DOJ before Election Day. This is not specific to Alaska, nor is it specific to Alaska Natives.

Additionally, the report claims that no federal observers have been deployed to Alaska. This also is not true. In 2004, federal observers from the Department of Justice were onsite in Kodiak. They wanted to see how the State complies with the Voting Rights Act regarding the use of Tagalog in that election. There were no irregularities noted, except that some voters reported to the State that they were intimidated by the federal observers.

I assure you that I am committed to serving all Alaskans fairly—and this is also true of the Director and all the employees in our Division of Elections. If necessary, I am willing to provide further comment about Alaska as you review compliance with the Voting Rights Act.

Sincerely,

Loren Leman
Lieutenant Governor

cc: Honorable Jerrold Nadler, Subcommittee Ranking Member
Honorable F. James Sensenbrenner, Jr., Chairman, U.S. House Judiciary Committee
Honorable John Conyers, Jr., U.S. House Judiciary Committee Ranking Member
Honorable Don Young, U.S. House of Representatives
Honorable Ted Stevens, U.S. Senate
Honorable Lisa Murkowski, U.S. Senate
Governor Frank Murkowski, Alaska

LETTER IN SUPPORT OF REAUTHORIZATION FROM LARRY NAAKE, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF COUNTIES (NACO)

May 4, 2006

Honorable F. James Sensenbrenner, Jr.
Chairman, Judiciary Committee
United States House of Representatives
2449 Rayburn House Office Building
Washington, DC 20515

Honorable John Conyers, Jr.
Ranking Member, Judiciary Committee
United States House of Representatives
2426 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner and Ranking Member Conyers:

I am writing on behalf of the National Association of Counties (NACo) to support reauthorization of provisions of the Voting Rights Act that are scheduled to expire on August 6, 2007. I am also writing to bring to your attention the need for increased federal resources to assist counties in complying with Section 203.

Section 203 requires counties to translate voting materials and provide assistance in certain languages spoken by a significant number of voters within a county. However, inadequate allocation of federal resources severely hampers the effectiveness and ability of counties to serve the needs of voters who are limited English-proficient. In particular, I write to seek your assistance with the following:

1) **Funding for activities of the Census Bureau.** The Census Bureau is required by law to compile the list of counties and other jurisdictions required to provide language assistance under Section 203. In the past, the Census Bureau has not received dedicated funding for activities in support of Section 203 and, as a result, does not report data in more detail than specifically required under the Voting Rights Act. This means that while race and other data relevant to redistricting are reported by census tract, block group, and Voting District, language data is only reported by jurisdiction. As a result, the Justice Department has urged counties to use correlative data such as the last names of registered voters to allocate bilingual poll workers and other resources within the county. With sufficient funding, the Census Bureau would be in a position to provide many counties with a better source of demographic information for targeting language assistance efforts within the county.

   Updating coverage determinations under Section 203 will test the resources of the Census Bureau in their transition to the American Community Survey. Beginning in 2010, the American Community Survey, rather than decennial long form, will be the source of information such as English proficiency, citizenship and educational attainment used to determine which counties are covered under Section 203. Five years' worth of sampling data from the American Community Survey collected between 2006 and 2010 are necessary to compile this information. NACo urges full funding for the American Community Survey in the strongest possible terms, particularly given that the collection of data for group quarters has already been delayed by a year due to insufficient funding. In this context, it is even more important that the Census Bureau receive sufficient funding for the American Community Survey and activities under Section 203. Further, Congress should provide for advance testing to ensure reliability of the data upon its release in 2012.

2) **Funding for efforts to promote English-language fluency.** Many limited-English proficient voters would prefer to mark their ballot in English. However, lack of availability of English as a second language classes is a major barrier to the fluency required to understand the choices on a ballot. There is great demand not only among recent immigrants but also naturalized citizens who do not speak English with a high degree of proficiency or who are native-born speakers of a language other than English. In fact, demand greatly exceeds the supply of ESL classes and there are long waiting lists and shortages of ESL instructors in many counties. The federal government should do more to promote opportunities for those who wish to become more fluent in the language spoken by the majority of citizens of our nation.

Reauthorization of the Voting Rights Act will protect the right of every eligible citizen to vote without discrimination and is a key legislative priority for the National Association of Counties in the 109th Congress. We urge you to consider the requests outlined above and look forward to working with you to secure new and improved tools for counties to partner with the federal government in protecting the franchise and promoting minority voter participation.

If you have any questions on NACo's position on reauthorization of the Voting Rights Act or related issues, please contact Alysoun McLaughlin, Associate Legislative Director, at 202-942-4254 or amclaughlin@naco.org.

Sincerely,

Larry E. Naake

Larry Naake
Executive Director

LETTER IN OPPOSITION TO REAUTHORIZATION FROM MARK C. SCOTT, ESQUIRE, COMMISSIONER, OFFICE OF THE COMMISSIONERS OF BERKS COUNTY, PENNSYLVANIA

Office of the Commissioners of Berks County

Mark C. Scott, Esq., Commissioner

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April 21, 2006

Representative James Sensenbrenner, Chairman
House Committee on the Judiciary
2449 Rayburn Building
Washington, D. C. 20515

Dear Chairman Sensenbrenner,

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,

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

cc: Committee Members
Pennsylvania Congressional Delegation

LETTER IN OPPOSITION TO REAUTHORIZATION FROM STEVE TATARENKO, COUNCILMAN, CLIFTON, NEW JERSEY

NEW JERSEY

STEFAN TATARENKO
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Via Fax to (202) 225-7682

April, 2006

Representative James Sensenbrenner, Chairman
House Committee on the Judiciary
2134 RHOB
Washington, D.C. 20515

Dear Chairman Sensenbrenner:

I understand your committee is considering reauthorizing the multilingual voting provisions of the Voting Rights Act (VRA).

As an elected official in a city that has experienced the arrogant and unresponsive manner in which the U.S. Department of Justice (DOJ) enforces those multilingual voting provisions, I urge you to make major overhauls or better still, allow them to expire altogether. I also want to bring your attention to the fact that in enforcing its interpretation of the multilingual voting requirements, DOJ officials are engaging in "surname analysis" of voter registration roles, something that I and others view as very close to ethnic profiling, a practice that has no place in a diverse democracy like ours.

The City of Clifton is located in Passaic County, New Jersey. In 1999 to settle a DOJ lawsuit charging the County with VRA violations, Passaic County entered into a consent decree that allowed DOJ to supervise the county's compliance with the Act.

In March 2000 DOJ officials informed the City that by using a technique called "surname analysis" of voter registration roles DOJ had determined that the City had to add 7 additional bilingual Spanish voting districts to its preexisting 26, raising the number of bilingual districts to 33 out of a total of 53.

The City subsequently protested to DOJ saying we saw little evidence of the need to increase the number of such bilingual voting districts pointing out that it was very burdensome and costly to the City to implement these. The City had previously asked DOJ for copies of the voter lists and information on which DOJ based its "surname analysis." But DOJ officials refused repeated requests to produce the information directing us to County and State officials. After exhausting all available avenues to obtain the data, the City filed a Freedom of Information Request March 12, 2003.

The requested information was finally received by the City of Clifton on October, 27, 2004. The information revealed that DOJ had used a construct of Spanish surnames taken from the 1980 Census to conduct their analysis. By this time, however, the issue was moot and the City chose not to waste further resources reviewing the DOJ methodology.

Mr. Chairman, the City of Clifton's experience with DOJ's enforcement of multilingual ballot requirements of the VRA points up the need for the following changes / remedies to the law.

- DOJ's use of "surname analysis" of voter registration rolls is deeply offensive and should be banned as a technique for the classification of American citizens into ethnic groups in which they may not wish to be classified. DOJ has access to more accurate Census long-form data, which should be used instead.

- DOJ should be required to fully disclose all pertinent data and information to any county or sub-county jurisdiction such as a municipality facing it implementation of multilingual voting requirements with sufficient time to review and challenge the information in advance of having to implement any DOJ directive, order, or request.

- All such DOJ determinations and decisions should be reviewable in court.

While these changes are urgently needed, and would be a big help to cities like Clifton, I would also like to register my objection to the multilingual voting requirements of the VRA themselves.

These requirements under Sec. 203 and 4(f)(4) are redundant and unnecessary. Immigrants are required to learn English in order to naturalize. And cities and counties should not be burdened with the difficult and costly process of providing bilingual ballots, voting materials, bilingual poll workers, etc. in the event immigrants fail to meet their responsibilities to do so.

As interpreted and applied by DOJ the law already specifies that any voter can bring an interpreter into the voting booth with them if they cannot understand a ballot written in English. That puts the responsibility for the inability to speak our national language on the individual voter where it belongs and not on local taxpayers.

As a naturalized American citizen who speaks four languages, I appreciate the benefits of multilingualism more than most. But more than ever before in our history, today we need to reinforce the concept of a common language and full assimilation to our American "Melting Pot." That means conducting official government business including our elections in a single language – our common language as Americans – the English language.

Sincerely,

Steve Tatarenko
City Councilman, Clifton, NJ 07013
25 FRIAR LANE

PREPARED STATEMENT OF JAN TYLER, FORMER DENVER ELECTION COMMISSIONER, DENVER, COLORADO

STATEMENT OF

JAN TYLER

FORMER DENVER ELECTION COMMISSIONER

FOR THE

HOUSE COMMITTEE ON THE JUDICIARY

"LEGISLATIVE HEARING ON H.R. 9, A BILL TO REAUTHORIZE AND AMEND THE VOTING RIGHTS ACT OF 1965: PART II"

HEARING ON

Thursday, May 4, 2006

This statement is to convey my opposition to the renewal of Section 203 and Section 4(f)(4), the language provisions of the Voting Rights Act of 1965, as amended.

Introduction

My name is Jan Tyler. I was elected twice as a City and County of Denver Election Commissioner in 1995 and 1999. The Commission was established in 1904 with the Denver City Charter and is comprised of two elected Commissioners and the Clerk and Recorder, who is appointed by the Mayor.

I was certified as a Certified Elections Registration Administrator in 2001 through a professional organization, The Election Center, which is affiliated with Auburn University. I renewed my certification in 2004. 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.

For the purposes of understanding opposition to the renewal of the VRA, 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.

This seemed fundamentally un-American to me. At the time I was a member of the National Society of Daughters of the American Revolution, and I was familiar with the NSDAR's involvement in the naturalization ceremonies for new citizens.

I thought new citizens were supposed to speak English as a requirement of citizenship.

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.

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 due 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 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 LEP voters. Many people with Hispanic or Asian surnames speak English "very well." Women whose native

language is English, but 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.

As an Election Administrator, I urge you to decline to renew Section 203 and Section 4(f)(4) of the Voting Rights Act.

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