

Testimony of

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Hearing on the Voting Rights Act:
Continuing Need for Section 203's Provisions
for Limited English Proficient Voters
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Good afternoon, Mr. Chairman and Members of the Committee. My name is Margaret Fung, and I am the executive director of the Asian American Legal Defense and Education Fund (AALDEF). Thank you for the invitation to testify today on the topic of minority language assistance under section 203 of the Voting Rights Act. We are glad to have the opportunity to express our support for S. 2703, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.

AALDEF is a 32-year old New York-based national organization that promotes and protects the civil rights of Asian Americans through litigation, legal advocacy and community education. Our programs focus in the areas of immigrant rights, economic justice for workers, hate violence and police misconduct, language access to services, youth rights and educational equity, and voting rights and civic participation.

Since 1988, AALDEF has monitored elections and conducted multilingual exit polls to document barriers to voting faced by Asian Americans. In 1994, AALDEF led the campaign to secure the first fully translated Chinese-language ballots in New York. In November 2004, we conducted the nation's largest multilingual exit poll of 11,000 Asian American voters in eight states-New York, New Jersey, Massachusetts, Pennsylvania, Virginia, Rhode Island, Michigan and Illinois-to assess the needs of Asian American voters with limited English proficiency and to document voter problems.

AALDEF has litigated cases to defend the voting rights of Asian Americans. Last February, we filed a lawsuit on behalf of Asian American organizations and individual voters against the New York City Board of Elections for violations of section 203 of the Voting Rights Act. *Chinatown Voter Education Alliance v. Ravitz*, Civ. No. 06-CV-913 (S.D.N.Y. Feb. 6, 2006). We are currently seeking to intervene in the Justice

Department's lawsuit against the New York State Board of Elections for non-compliance with the federal Help America Vote Act, *U.S. v. New York State Board of Elections*, Civ. No. 06-CV-0263 (N.D.N.Y. Mar. 1, 2006), to ensure that new voting machines in New York will have the capability to present multilingual ballots and voter verifiable paper records under section 203. And in 1997, we represented Asian American voters who intervened in *Diaz v. Silver*, 978 F. Supp. 96 (E.D.N.Y. 1997)(per curiam), aff'd, 522 U.S. 801 (1997), a constitutional challenge to New York's 12th Congressional District, which established that Asian Americans in Manhattan and Brooklyn constitute a "community of interest" that should be kept together within a single legislative district. AALDEF has also submitted section 5 comments to the Justice Department, objecting to voting changes that diluted minority voting strength in New York City's school board elections.

Fourteen years ago, I testified before the House Judiciary Subcommittee on Civil and Constitutional Rights, in support of the Voting Rights Language Assistance Act of 1992 and its inclusion of a numerical trigger for section 203

coverage. In November 2005, I testified again before the House Judiciary Subcommittee on the Constitution about the success of section 203 of the Voting Rights Act in promoting Asian American civic participation.

AALDEF has prepared a new report, Asian Americans and the Voting Rights Act: The Case for Reauthorization, which is attached to this statement. In my testimony today, I will summarize some key findings in our report and would like to request that the full 47-page report and accompanying appendices be included in the official record.

Overcoming a Legacy of Discrimination

Asians in America were barred for over 150 years from becoming naturalized citizens and thus were not eligible to vote. In the 20th century, laws prevented Asian Americans from owning property, testifying against white men in court, marrying Caucasians, and ordered their evacuation into concentration camps. The citizenship restrictions were finally rescinded in 1943 for Chinese Americans, and for other Asian immigrant groups in 1952. As a result, this legacy of discrimination effectively blocked Asian Americans from participating in the political process until the civil rights era of the 1960's. That is why the Voting Rights Act of 1965 has such significance for the Asian American community. It has only been in the last fifty years that most Asian Americans have exercised their right to vote and had a voice in governmental policies affecting their lives. When the language assistance provisions of the Voting Rights Act were enacted in 1975 and then expanded in 1992, section 203 helped to remove other obstacles for Asian American voters not yet fluent in English.

Section 203 has opened up the political process for Asian Americans, especially first time voters and new citizens. At the most fundamental level, translated ballots in voting machines have enabled Asian Americans to exercise their right to vote privately and independently inside the polling booth. According to AALDEF's 2004 exit poll of 11,000 Asian American voters, almost one-third of all respondents needed some form of language assistance in order to vote, and the greatest beneficiaries of language assistance (46%) were first-time voters. Of those polled, over 51% of Asian American voters got their news about politics and community issues from the Asian-language media.

Section 203 and the Increase in Asian American Voter Participation

There are over 14 million Asian Americans nationwide. According to the 2000 Census, more than half (53%) acquired citizenship through naturalization. Over 40% of the Asian American population is limited English proficient. (The following groups had the highest rates of limited English proficiency: Korean (59%), Vietnamese (59%), Chinese (52%), Cambodian (41%), Bangladeshi (39%), Thai (36%), Laotian (33%), and Pakistani (26%)). Asian Americans are now a growing segment of the electorate, and this can be attributed in large part to section 203 of the Voting Rights Act. Section 203 covers localities where more than 10,000 or over 5% of the voting age citizens in a political subdivision are members of a single minority language group, have literacy rates below the national average, and do not speak English very well. Currently, language assistance is available to over 672,750 Asian Americans in 16 jurisdictions in 7 states:

Alaska, California, Hawai'i, Illinois, New York, Texas and Washington. The five languages covered include Chinese, Korean, Filipino, Vietnamese, and Japanese. Asian American voter registration grew 58% from 1996 to 2004, as compared to Latino registration (45%), Black registration (15%), and White registration (7%). Asian American voter turnout also grew 71% from 1996 to 2004, with 3 million Asian Americans voting in the 2004 elections. By comparison, Latino turnout grew 57%, Black turnout grew 26%, and White turnout grew 15%. The number of Asian American elected officials in federal, state and local positions has also increased since the passage of section 203 of the Voting Rights Act, from 120 in 1978 to a total of 346 in 2004. In New York City, which has the nation's largest Asian American population, the first Asian American City Councilmember was elected in 2001 and the first Asian American State Assemblyman was elected in 2004, a decade after Queens County was covered under section 203. In Houston, Texas, the first Vietnamese American was elected to the state legislature in 2004, within years after Vietnamese language assistance was required in Harris County under section 203. And in California, the number of Asian Americans elected to the state assembly increased from zero in 1990 to nine in 2005. Eight of these nine legislators were elected in counties covered by section 203.

The Ongoing Need for Language Assistance

Because a large proportion of Asian Americans are new citizens and first-time voters, there is a continuing need for section 203. In our report, we cite results from AALDEF's 2004 exit poll survey of 7,247 Asian American voters in New York City, in which 46% said that they were limited English proficient. Among Chinese American voters, 56% were limited English proficient and 37% needed language assistance to vote. Among Korean American voters, 65%

were limited English proficient and 42% needed language assistance to vote. AALDEF's voter survey in November 2005 revealed that among first-time Asian American voters, 69% were limited English proficient. Sixty-eight percent of first-time voters used an interpreter to vote and 53% used translated materials. Similar rates of usage have existed in previous years in which AALDEF documented the use of language assistance.

Behind the statistics, of course, are the real voters. Asian Americans might not vote as often without translated ballots or interpreters, since they may not fully understand the voting process or do not want to make errors. For example, Shiny Liu, a Chinese American voter from Queens County, New York, is one of the Asian American plaintiffs we represent in our Section 203 lawsuit against the New York City Board of Elections. She described why translated ballots and voting materials are still necessary: The first time I voted was in 2003. I used an interpreter and a ballot that was translated into Chinese. Now, I know how to vote, so I vote alone without any assistance. I have voted on ballots in English before, but I am not comfortable doing so because I am not confident that I properly understand the English. I would rather vote on ballots translated into Chinese because I can be sure of who and what I am voting for.

As Ms. Liu expressed, a ballot can be overly complicated to understand if the voter has limited English skills. Indeed, even a native-born English speaker often can be confused by the complex language of a referendum or the technical instructions for casting a provisional ballot.

Byung Soo Park, another plaintiff in AALDEF's lawsuit against the New York City Board of Elections, understands the importance of learning English. Because of his demanding work schedule as a truck driver, Mr. Park has little time to learn English: I became a citizen in October 2001 and registered to vote at the Korean

American Voters' Council office with the help of their staff. Ever since I first registered to vote, I have never missed an election. Every time I vote I need to use the assistance of an interpreter. I want to learn English but I have no time because I am a truck driver and work long hours on the road. Korean Americans should be treated as United States citizens because that is what we are. I want us all to be treated equally.

For Mr. Park and countless other new citizens, economic barriers have hindered their ability to learn English. Nevertheless, they understand the importance of civic participation, and they cherish the right to vote. With renewal of the language assistance provisions of section 203, Asian Americans can continue to have a meaningful voice in our democracy.

Voting Discrimination Against Asian Americans Persists Today

Anti-Asian remarks by elected officials and poll workers, combined with voter harassment, improper identification checks, and the outright refusal to provide language assistance required by the Voting Rights Act, demonstrate that Asian Americans still face hostility at the polls today. For example, here are some recent incidents cited in our report: ? In the 2005 elections in Edison, New Jersey, a Korean American mayoral candidate, Jun Choi, was repeatedly ridiculed by two radio hosts, who mocked Asian American accents and said too many Asians gambled in Atlantic City. The campaign manager of Choi's opponent said, "[Asians] walk in here. They don't know what they're doing, and their countryman is telling them who to vote for." Choi won the mayoral election.

? In 2004 in Queens County, New York, a poll site coordinator said, "I'll talk to [Asian voters] the way they talk to me when I call to order Chinese food," and then said random English phrases in a mock Chinese accent.

? In Kings County, New York, a poll site coordinator asked, "How does one tell the difference between Chinese and Japanese?" and brought her fingers to the side of each eye moving her skin up and down.

? In the 1999 City Council elections in Palisades Park, New Jersey, the White mayor made racial appeals to his constituents, warning that Korean Americans were "attempting to take over our town and change it inside out." In a letter opposing a Korean American city council candidate, the mayor wrote, "Now we are faced with a new problem--one that threatens to wipe out our history and our heritage. . .Our quality of life will be brought to an abrupt and chaotic end."

Unfortunately, as you can see, voting discrimination against Asian Americans, both subtle and overt, is ongoing and persistent. Section 203 and the other temporary provisions of the Voting Rights Act have prevented and remedied such discrimination, and these provisions should be renewed.

Language Assistance Is Integral to our Democracy

A basic tenet of our democracy is that all citizens should be able to elect candidates of their choice and have a voice in governmental decision making. Without section 203,

Asian Americans with limited English skills might not vote as often or might not even register to vote. As George Washington University Law Professor Spencer Overton points out in his new book, *Stealing Democracy: The New Politics of Voter Suppression*, section 203 of the Voting Rights Act has given politicians and parties the incentive to reach out and seek the support of American citizens who have previously been excluded. This improves the quality of our democracy, because it enables all citizens to be informed voters and have a stake in our society.

Language assistance under Section 203 of the Voting Rights Act recognizes the value of citizenship by encouraging greater participation of limited English proficient voters in the political process. AALDEF and many Asian American community groups had hoped that section 203's numerical trigger of 10,000 voting age citizens would be lowered to provide coverage for smaller language minority communities.* Although S. 2703 does not change the numerical trigger in section 203, we support the provision that allows the use of updated Census data and more frequent testing for coverage under section 203.

Conclusion

Section 203 of the Voting Rights Act removes barriers to the fundamental right to vote and helps to promote meaningful civic participation among all segments of our society. We urge Congress to renew section 203, together with the other temporary provisions of the Voting Rights Act, so that we can move closer to a broad and inclusive democracy for all Americans.

*By lowering the numerical trigger from 10,000 to 7,500 voting age citizens of a single language minority, section 203 would increase coverage for 2 additional language groups (Cambodian and Asian Indian) in 17 jurisdictions. Most significantly, a 7,500 trigger would add Chinese coverage in Sacramento County, California; Cambodian in Los Angeles County; Korean in Cook County, Illinois; and Asian Indian in Queens County, New York. Lowering the trigger to 5,000 would cover 8 Asian language groups (the same 5 languages under the current trigger, plus Cambodian, Asian Indian, and Thai) in 21 jurisdictions, including Chinese and Vietnamese in Fairfax County, Virginia, and Chinese in Montgomery County, Maryland.