

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

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

I. Question from Senator Arlen Specter

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

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

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

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

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

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

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

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

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

II. Questions from Dr. Tom Coburn

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

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

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

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

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

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

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

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

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

⁴ See 28 C.F.R. § 55.17 “Targeting.”

⁵ *Id.*

⁶ *Id.*

III. Questions from Senator Patrick Leahy

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

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

Hostile Behavior and Racist Remarks by Poll Workers

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

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

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

⁸ *Id.*

⁹ *Id.*

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

¹¹ *Id.*

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

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

Improper Demands for Identification

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

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

Inadequate Language Assistance

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

¹³ *Id.*

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

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

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

¹⁷ *Id.* at 18-19.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Impact of Section 203 Lawsuits

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

TO LIFE IN THE UNITED STATES (1998).

²³ *Id.*

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

²⁵ *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³⁰ 8 U.S.C. § 1423 (2006).

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

³² See 8 U.S.C. § 1423 (2006).

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

IV. Questions from Senator Edward M. Kennedy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁴² *Id.*

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

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

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

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

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

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

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

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

⁴⁵ S. REP. NO. 94-295, at 34 (1975).

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

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

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

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

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

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

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

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

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

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

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