



MALDEF

Mexican American Legal Defense and Educational Fund

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Before the Senate Committee on the Judiciary

Hearing on S. 2703,

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

June 13, 2006

RESPONSES TO SENATOR LEAHY

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

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

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

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

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

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

² Id. at 32, 35, 38.

³ Id. at 21.

⁴ Id. at 32-33, 36, 38-39, 42.

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

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

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

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

⁵ S. REP. NO. 94-295 at 28.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁶ LANDRETH & SMITH, at 25-26.

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

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

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

²⁰ See PERALES ET AL., Section IV.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁷ 42 U.S.C. § 1973aa-1a(b)(3)(E).

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

²⁹ *Id.* at 4-5.

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

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

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

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

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

³⁰ Id. at 4.

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

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

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

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

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

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

³¹ See 42 U.S.C. § 1973aa-1a(b).

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

³³ 42 U.S.C. § 1973aa-1a(d).

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

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

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

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

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

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

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

³⁶ VRARA § 8.

³⁷ 42 U.S.C. § 1973aa-1a(b)(4).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁴⁶ 384 U.S. 641, 658 (1966).

⁴⁷ MINORITY LANGUAGE ASSISTANCE PRACTICES at 24.

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

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

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

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

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

⁵⁰ 28 C.F.R. § 55.17.

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

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

⁵³ *See* 28 C.F.R. § 55.20(c).

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

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

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

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

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

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

⁵⁶ 28 C.F.R. § 55.20(c).

⁵⁷ *See* Statement of Deborah Wright.

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

⁵⁹ 1984 GAO REPORT at 20.

⁶⁰ *Id.*

⁶¹ *See Id.*

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

RESPONSES TO SENATOR KENNEDY

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

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

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

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

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

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

⁶³ See 42 U.S.C. § 1973aa-1a(b).

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

⁶⁵ 42 U.S.C. § 1973aa-1a(d).

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

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

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

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

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

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

⁶⁸ VRARA § 8.

⁶⁹ 42 U.S.C. § 1973aa-1a(b)(4).

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

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

⁷² *Id.* at 32, 35, 38.

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

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

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

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

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

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

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

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

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

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

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

⁷⁸ Testimony of Margaret Fung of AALDEF.

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

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

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

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

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

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

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

⁸¹ Id.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁸⁵ MINORITY LANGUAGE ASSISTANCE PRACTICES EXECUTIVE SUMMARY at 23.

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

⁸⁷ 277 F. Supp. 2d at 581.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁸⁹ 384 U.S. 641 (1966).

⁹⁰ 42 U.S.C. § 1973b(e)(1).

⁹¹ 384 U.S. at 658.

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

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

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

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

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

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

⁹³ Id. at 32, 35, 38.

⁹⁴ Id. at 21.

⁹⁵ Id. at 32-33, 36, 38-39, 42.

⁹⁶ S. REP. NO. 94-295 at 28.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁰⁷ LANDRETH & SMITH, at 25-26.

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

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

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

by Sex, Race and Hispanic Origin: November 2004.

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

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

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

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

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

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

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

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

¹¹⁴ 42 U.S.C. § 1973aa-1a(b)(3)(E).

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

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

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

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

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

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

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

¹¹⁶ Id. at 4-5.

¹¹⁷ Id. at 4.

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

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

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

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

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

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

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

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¹¹⁹ 8 U.S.C. § 1423 (2006).

¹²⁰ 8 C.F.R. § 312.1(c)(1).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It is critical that Congress reauthorize of the temporary provisions of the VRA, without any weakening provisions, to ensure that minority voters' voices will be heard, and to guard against proliferation of the kind of discrimination witnessed in such places as Long County.

RESPONSES TO SENATOR COBURN

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

The language of S. 2703, the “Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006”, which provides a straight reauthorization of Sections 4(f)(4) and 203, should not be amended as the question suggests.

As an initial matter, the question is based upon the erroneous premise that “low use” means there is no need for language assistance. All too often, “low use” occurs because a jurisdiction is not complying with Section 203. Strong evidence of the impact of non-compliance comes from the Department of Justice’s successful enforcement actions. After the Department has brought Section 203 litigation, voter registration and turnout among covered language minority voters dramatically increases. During these hearings, the Department has reported that within one year of its litigation, in Yakima County, Washington, “Hispanic voter registration is up over 24 percent since the Division’s Section 203 lawsuit. In San Diego County, California, Spanish and Filipino registration rates are up over 21 percent, and Vietnamese registration is up over 37 percent since the Division’s enforcement action.”¹²⁵ In Apache County, Arizona, which has been the site of several Department enforcement actions and continuing federal observer coverage, increased availability of Navajo language translators caused turnout in Navajo precincts to increase 26 percent in four years, from 14,277 voters in 2000 to 17,955 voters in 2004.¹²⁶

In addition, there is evidence that “low use” occurs in newly covered jurisdictions that have not yet implemented an effective language assistance program or advertised that program to the voters who need it. For example, King County (including Seattle), Washington, became covered for Chinese under Section 203 as a result of the July 2002 Census determinations. Mauro Mujica testified that in King County, “only 24 of the 3,600 Chinese ballots prepared for the September 2002 primary election were used” and “only 109 Chinese ballots were cast” on the November 2002 general election. Those numbers do not reflect the present reality in King County. A 2005 King County report noted, “Each election since the program began the number of voters requesting and using Chinese language ballots and voting materials has progressively increased.”¹²⁷ According to King County, the number of Chinese ballots cast in the County climbed to 408 in the 2003 General Election, 1,106 in the 2004 General Election, and 1,415 in the

¹²⁵ Statement of Bradley J. Schlozman, Acting Assistant Attorney General, before the House Judiciary Committee, at p. 4 (Nov. 8, 2005).

¹²⁶ Testimony of Penny Pew, Election Director of Apache County, Arizona, before the Subcomm. on the Const. of the House Judiciary Committee (Nov. 15, 2005).

¹²⁷ See <http://www.metrokc.gov/elections/ElectionsReport.pdf>, at p.7.

2005 Primary Election.¹²⁸ Following this initial startup period of “low use,” the number of requests for Chinese ballots has spiked by more than 5800 percent as the language assistance program became more widely implemented. As the King County Recorder’s Office observes, this increase is also a result of the County’s efforts to cooperate with a Chinese-American advisory committee to build “a model program that has progressively served the Chinese-speaking population as well as providing outreach and educational opportunities to other minority communities.”¹²⁹

Far too often “low use” of bilingual voting materials and assistance occurs because those materials and assistance are never made available to voters. In many polling place locations, bilingual materials are left inside boxes or never removed from their shrink-wrap. Polling places may be inadequately staffed with an insufficient number of poll workers who are fluent in English and the covered language. If language materials and assistance are not offered in all of the locations where they should be, their absence artificially creates “low use.”

Furthermore, the Department of Justice’s enforcement actions demonstrate that many covered jurisdictions make no effort to advertise the availability of language materials. Without proper outreach and publicity, voters never even know that language assistance is available; not surprisingly, voters cannot use it if they do not know about it.

Reliance upon a “low use” standard causes problems that would seriously undermine and erode Section 203. As the question has been posed, a covered jurisdiction could “opt out” of coverage if it established that there was a “low use” of language materials or assistance. Such a standard would create a built-in incentive for a jurisdiction to violate Section 203. Specifically, a jurisdiction would want to keep the number of requests for minority language ballots and assistance as artificially low as possible to be eligible to “opt out.” The easiest way to do this is by simply failing to provide any language materials or assistance and to refrain from outreach and publicity to the covered minority language voters about their Section 203 program (or lack thereof), even if there were a substantial number or percentage of language minorities who needed and wanted assistance. We should be encouraging compliance with the law, not violations of it as the proposed language would foster.

The amendment suggested in the question is also unnecessary for at least four additional reasons. First, Congress has long recognized that targeting is a permissible means to comply with Section 203 to ensure “that all members of the language minority who need assistance, receive assistance.”¹³⁰ Department of Justice guidelines explicitly provide for targeting. According to the Department, “a targeting system will normally fulfill the Act’s minority language requirements if it is designed and implemented in such a way

¹²⁸ See *Id.* and

<http://www.secstate.wa.gov/documentvault/The%20Election%20Center%20Report%20to%20King%20County%20-%20October%202005-1048.pdf>

¹²⁹ See <http://www.metrokc.gov/elections/ElectionsReport.pdf>, at p.7.

¹³⁰ H. REP. NO. 102-655 at 9, *reprinted in* 1992 U.S.C.C.A.N. 773.

that language minority group members who need minority language materials and assistance receive them.”¹³¹

Second, in those limited circumstances under which “low use” of language materials and assistance may not be attributable to the issues I have described above and there has been proper targeting, the jurisdiction is deemed to be in full compliance with Section 203. Each of the over two dozen enforcement actions brought by the Department of Justice in the last three years have involved jurisdictions where there has been a substantial need for language assistance. The Department of Justice is not suing “low use” jurisdictions.

Third, more regular Census determinations using American Community Survey (ACS) data will ensure that only those jurisdictions that need to be covered under Section 203 will be covered. As demographics in a jurisdiction change and the number or percent of LEP minority voting age citizens drops below the statutory threshold, that jurisdiction will no longer be covered. This existing language in the bill meets your concerns about supposed “low use.”

Fourth, jurisdictions will continue to have incentives under the statute to address existing language and literacy barriers that prevent language minorities from participating in elections without language assistance. Section 203(d) provides that a covered jurisdiction may bailout from coverage under the bilingual election provisions if it can demonstrate “that the illiteracy rate of the applicable language minority group” that triggered coverage “is equal to or less than the national illiteracy rate.”¹³² “Having found that the voting barriers experienced by these citizens is in large part due to disparate and inadequate educational opportunities,” this bailout procedure “rewards” jurisdictions that are able to remove these barriers.¹³³ Unlike the amendment suggested in the question, the existing bailout formula creates a strong incentive to eliminate the need for language assistance.

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

Section 203(d) already provides an adequate bailout provision for covered jurisdictions, and no amendment is necessary or desirable. For the specific reasons why the underlying premise of the question is wrong, please see my response to Senator Coburn’s first question.

¹³¹ 28 C.F.R. § 55.17.

¹³² 42 U.S.C. § 1973aa-1a(d).

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

RESPONSE TO CHAIRMAN SPECTER

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

As posed, the question does not accurately articulate the standard to be applied when Congress exercises its enforcement powers under the Fourteenth and Fifteenth Amendments. In *Boerne*, the Court recognized the sweeping breadth of Enforcement Clause powers, particularly when Congress exercises those powers to remedy or prevent deprivations of the fundamental right to vote. Indeed, the Court noted, "Legislation which deters or remedies constitutional violations can fall within the sweep of Congress' enforcement power even if in the process it prohibits conduct which is not itself unconstitutional and intrudes into 'legislative spheres of autonomy previously reserved to the States.'" The Court specifically cited the ban on literacy tests and similar voting procedures despite their "facial constitutionality" because they could operate in a manner to deprive certain citizens of their fundamental right to vote. The *Boerne* Court specifically reaffirmed its holding in *Katzenbach v. Morgan* "upholding the ban on literacy tests that prohibited certain people schooled in Puerto Rico from voting" as well as the nationwide ban on literacy tests upheld in *Oregon v. Mitchell*.

Consequently, *Boerne* demonstrates that English-only voting materials and assistance, which are facially constitutional, can operate as a literacy test and thereby deprive language minorities of their right to vote. As the Senate has found during the prior reauthorization of Sections 4(f)(4) and 203, the high illiteracy rates and LEP abilities experienced by language minorities are "not the result of choice or mere happenstance," but instead result from "the failure of state and local officials to afford equal educational opportunities."¹³⁴ Accordingly, evidence supporting the Congressional exercise of Enforcement Clause powers need not be limited to "a record of State misconduct that violates the Constitution." Instead, any evidence showing that the fundamental right to vote of language minorities may be infringed or denied because of these unequal learning opportunities is relevant to the *Boerne* inquiry.

My written testimony and supplemental responses have documented some of this evidence. The fourteen state reports, including the Texas report prepared by MALDEF, provide further evidence of ongoing state misconduct. I have attached MALDEF's Texas report as Attachment A to my written supplemental testimony. The Section 203 Memorandum prepared by NALEO (Attachment B) likewise contains a summary of

¹³⁴ S. REP. NO. 94-295 at 28.

evidence that meets the *Boerne* test for reauthorization of Sections 4(f)(4) and 203. I have attached this Memorandum as Attachment B to my written supplemental testimony.

Of course, there is no substitute for the thousands of pages of evidence that the Senate has before it that demonstrates that the statute is congruent and proportional to the harms it is remedying. Accordingly, I would commend that record to the Chairman's attention as providing far more comprehensive evidence than is necessary to satisfy *Boerne*.

ATTACHMENT A



MALDEF

Mexican American Legal Defense and Educational Fund

VOTING RIGHTS IN TEXAS
1982-2006

A REPORT OF RENEWTHEVRA.ORG

PREPARED BY

NINA PERALES, LUIS FIGUEROA, AND CRISELDA G. RIVAS

JUNE 2006



VOTING RIGHTS IN TEXAS, 1982-2006

NINA PERALES, LUIS FIGUEROA, AND CRISELDA G. RIVAS¹³⁵

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¹³⁵ Nina Perales, Southwest Regional Counsel for the Mexican American Legal Defense and Educational Fund. Luis Figueroa, Legislative Staff Attorney for the Mexican American Legal Defense and Educational Fund. Griselda G. Rivas, Master's Candidate, Department of Sociology, The University of Texas at San Antonio.

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INTRODUCTION AND EXECUTIVE SUMMARY

The Voting Rights Act of 1965 (VRA) has been indispensable to guaranteeing minority voters access to the ballot in Texas. Texas has experienced a long history of voting discrimination against its Latino and African-American citizens dating back to 1845. The enactment of the VRA in 1965 began a process of integrating Latinos, African Americans, and more recently, Asian Americans, into the political structures of Texas. Yet, a review of the minority voting experience in Texas since the 1982 VRA reauthorizations indicates that this process remains incomplete. Infringements on minority voting rights persist and noncompliance with the VRA continues at the state and local level. The VRA has proven to be an essential tool for enhancing minority inclusion in Texas.

Texas is home to the second largest Latino population in the U.S. and demographic projections show that by 2040, Latinos will constitute the majority of citizens in the state. Texas also possesses a growing Asian-American population and an African-American population of more than 2 million. The increasing number of racial and ethnic minority citizens in Texas highlights the need to protect vigilantly the voice and electoral rights of the state's minority electorate.

Section 5 of the VRA, the preclearance requirement, was extended to Texas in 1975 due to the State's history of excluding Mexican Americans from the political process. According to the U.S. Department of Justice (DOJ), since 1982, Texas has had the second highest number of Section 5 objections interposed by the DOJ -- including at least 107 objections, 10 of which were for statewide voting changes. Only Mississippi, with 120 objections, has had more. Moreover, the majority of the DOJ's objections to discriminatory changes actually occurred *post*-1982. Only 96 objections (including seven for statewide voting changes) occurred between 1965 and 1982, compared to the 107 since the VRA's most recent reauthorization.

Texas leads the nation in several categories of voting discrimination, including recent Section 5 violations and Section 2 challenges. Since 1982, there have been at least 29 successful Section 5 enforcement actions in which the U.S. Department of Justice has participated. For example, in 1997, the Supreme Court held that Dallas County wrongly failed to submit a rule limiting poll worker selection that had a discriminatory impact on Latino citizens.¹³⁶

Section 5 preclearance has had important deterrence effects in Texas. For example, Texas had far more Section 5 withdrawals, following the DOJ's request for information to clarify the impact of a proposed voting change, than any other jurisdiction during the 1982-2005 time period. These withdrawals include at least 54 instances in which the state eliminated discriminatory voting changes after it became evident they would not be precleared by the DOJ. Finally, at least 206 successful Section 2 cases have been brought in Texas since 1982 -- many unreported. These cases constitute nearly one-third of all such cases in the nine states covered statewide by Section 5.

¹³⁶ *Foreman v. Dallas County*, 521 U.S. 979 (1997).

Today's Section 5 objections offer a concise snapshot of the remaining challenges to minority voting rights in Texas. Discriminatory voting changes that have been stopped by Section 5 range from statewide voting changes, such as redistricting, to local changes involving changes in election rules, polling place re-locations, and the method of electing officials. Since 1982, the 97 local objections affected nearly 30 percent (72) of Texas's counties, where 71.8 percent of the state's non-white voting age population reside. Additionally, 10 statewide objections worked to protect the voting rights of citizens across the state.

The language assistance provisions of the VRA, enacted in 1975, have also played an important role in increasing Latino and Asian-American voter access to the political process in Texas. These provisions provide for translated voting materials, public notice and assistance at the polls for Texas voters who are limited-English proficient (LEP). Texas' coverage under the language minority provisions addresses the historical discrimination that impeded Latino voters from learning English and ensures that new Latino and Asian-American citizens can participate fully in civic life.

Disparities in English proficiency between Anglos and language minorities in Texas continue today. According to the July 2002 Census determinations, 818,185 people, or 6.15 percent of all voting age citizens in Texas, are LEP Spanish-speaking voting age citizens. In El Paso and Maverick Counties, LEP American-Indian voting age citizens make up more than 24 percent and 59 percent, respectively, of the voting age citizens. In Harris County, where Houston is located, there are nearly 17,000 LEP Vietnamese voting age citizens.

Unequal education and lack of English language learning opportunities have resulted in high illiteracy rates among covered language groups in Texas. Statewide, about 20 percent of LEP Spanish-speaking voting age citizens are low-literate, over fourteen times the national illiteracy rate. In Maverick County, over 86 percent of LEP American Indian voting age citizens are low-literate. Vietnamese LEP voting age citizens in Harris County have a low-literacy rate nearly six times the national rate.

An assessment of the availability of translated voting materials and language assistance in Texas conducted by the Mexican American Legal Defense and Educational Fund (MALDEF), provides a stark indicator of the failure of county election officials to make voting accessible to LEP Texans. In connection with the MALDEF study, of the 101 counties investigated, 80 percent were unable to produce voter registration forms, official ballots, provisional ballots and their written voting instructions; only one county was able to produce evidence of full compliance with the language minority provisions of the Voting Rights Act. Recent DOJ enforcement activities in Ector, Hale and Harris counties confirm that there is widespread non-compliance with the language assistance provisions in Texas.

This non-compliance, combined with low rates of English proficiency and literacy, contributes significantly toward depressed voter registration and turnout for Latino voting

age citizens in Texas. According to the Census Bureau, in the November 2004 presidential election, 58.5 percent of Latino voting age citizens reported that they were registered to vote, compared to 74.7 percent of all non-Hispanic white voting age citizens. Latino turnout also lagged 15.5 percent behind non-Hispanic white turnout in that election.

Texas has also been underserved by the federal observer provisions of the VRA, despite widespread documented voting discrimination. Currently, 18 counties in Texas are designated for federal observers, yet observers were present in just 10 elections between August 1982 and 2004. In spite of these problems, the recent designation of Ector County for observer coverage as part of a consent decree shows that the federal observer provisions continue to play an important role in enforcing the Voting Rights Act in Texas.

The recent 2004 election offers insight into continuing voter discrimination in Texas. In conjunction with other organizations, MALDEF served as a resource center to address election irregularities. Fielding complaints throughout the voting period, MALDEF learned of several voting rights violations, including:

- The closing of a polling place in a predominately African-American precinct, contrary to state law, despite the fact that voters remained in line;
- Minority voters being turned away from their polling locations and asked to return at a later time;
- Election judge intimidation through demands for identification, contrary to Texas law, and threats of jail time if it was determined that voters had outstanding warrants;
- Disproportionately stringent voter screening and questioning; and
- A racial slur directed at a minority voter by an election judge.

The Voting Rights Act has made a significant difference in Texas, particularly in light of Texas' growing Latino voting population. According to data from the U.S. Census Bureau, in the 1984 presidential election, there were about 681,000 Latino voters in Texas, representing about 11 percent of the state's total voters. In the November 2004 presidential election, there were 1,533,000 Latino voters, representing nearly 18 percent of the state's total voters.

The VRA has also contributed to increased political representation for Latinos, African-Americans, Asian Americans and other under-represented minority groups in Texas. For example, in 1973, there were 565 Latino elected officials in the state. By 1984, the number had grown to 1,427. In January 2005, the number had increased to 2,137 Latino elected officials, nearly four times the number in 1973. The growth of Latino elected officials elected to Congress and to the state legislature has been particularly significant.

Between 1984 and 2005, the number of Latino Members of Congress doubled from three to six, the number of state senators nearly doubled from four to seven and the number of state representatives increased from 21 to 29. Additionally, between 1970 and 2001, the number of African-American elected officials in Texas rose from 29 to 475, including two members of Congress (up from zero in 1970). Despite these substantial gains, Latinos and African Americans continue to be vastly underrepresented at every level of federal, state, and local government. This under-representation demonstrates that despite the progress made, Texas still has far to go.

The evidence discussed in this report makes clear that racially discriminatory and exclusionary practices continue to plague the Texas electoral system despite legal challenges and gradual progress. The reauthorization of Sections 5, 203, and the federal observer provisions is of paramount importance to secure the fundamental right to vote for minority citizens in Texas. Therefore, the expiring provisions of the Voting Rights Act should be renewed for 25 years.

I. Introduction to the Voting Rights Act and Texas' Coverage under the Act
The VRA is made up of temporary and permanent provisions. The temporary provisions were designed with expiration dates to address specific discriminatory issues that Congress felt could be eradicated over time. The focus of this report, Sections 5¹³⁷ and 203¹³⁸ and the federal observer provisions,¹³⁹ are three key provisions of the VRA that must be reauthorized by 2007 if they are to continue to protect minority voters at the polls.

Section 5 requires “preclearance”¹⁴⁰ by the DOJ or the U.S. District Court for the District of Columbia of all voting changes proposed in covered jurisdictions. “Voting changes” include any type of change in the manner of voting, including redistricting plans, annexations, the use of at-large election methods, voter registration, and polling place or ballot changes. By requiring administrative or judicial review of election changes, Section 5 ensures that new election changes do not place minority voters in a worse position than they were in before the change, *i.e.* have a “retrogressive effect,” or have a discriminatory intent.

Section 5 coverage is based on whether a state or political sub-jurisdiction has a history of discrimination and disproportionately low minority voter participation.¹⁴¹ In response to discrimination against and low registration and voter turnout among Latinos, Congress extended Section 5 to cover jurisdictions with English literacy tests and other evidence of discrimination against Latinos, Alaskan Natives, and American Indians. By placing the burden of proof on the governmental body proposing the election change, Section 5 protects the franchise of not only minority voters, but also all citizens from the unnecessary burden of litigation costs.

¹³⁷ 42 U.S.C. § 1973c.

¹³⁸ 42 U.S.C. § 1973aa-1a.

¹³⁹ 42 U.S.C. §§ 1973d – 1973g.

¹⁴⁰ 28 C.F.R. § 51.2 (2006). “Preclearance” refers to the obtaining of a declaratory judgment (described in section 5), or to the failure of the Attorney General to interpose an objection pursuant to section 5, or to the withdrawal of an objection by the Attorney General pursuant to section 51.48(b).

¹⁴¹ 42 U.S.C. § 1973b(b) (2006).

Texas was designated for Section 5 coverage in 1975 because it satisfied the requirements of Section 4(f)(4), sometimes called “the language minority trigger.”¹⁴² Texas became covered because, as of November 1972: (1) over five percent of its voting-age citizens were Latinos; (2) its election materials were in English only; and (3) fewer than 50 percent of all of its voting-age citizens were registered to vote or turned out to vote.

Since its enactment in 1965, the provisions of Section 5 have withstood extensive re-evaluation by Congress during the 1970, 1975 and 1982 reauthorizations. Each time Congress has determined that based on continuing discrimination, the protections of Section 5 must be extended.

The VRA was further enhanced in 1975 to reach additional minority voter impediments. Congress enacted the language assistance provisions in Sections 4(f)(4) and 203 after finding that:

[T]hrough 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, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.¹⁴³

A jurisdiction is covered by Section 203 where: (1) a single language minority group (e.g., Spanish) has limited-English proficient voting-age citizens who comprise more than 5 percent of the voting-age citizen population or number more than 10,000; and (2) the illiteracy rate (defined as the failure to complete at least the fifth grade) of the voting-age citizens in the language minority group is higher than the national illiteracy rate (which was 1.35 percent in 2000). Section 203 applies to four language minority groups that Congress found have faced discrimination in the voting process: Alaska Natives, American Indians, Asian Americans, and persons of Spanish heritage.

The language assistance provisions ensure that voting-age citizens who are LEP are not denied access to the electoral process. Consequently, jurisdictions must provide translated voting-related materials, oral language assistance throughout the election process, and outreach and publicity regarding the availability of these services.¹⁴⁴ For historically unwritten languages, including some Alaska Native and American Indian languages, Sections 4(f)(4) and 203 require language assistance in the form of “oral

¹⁴² 40 Fed. Reg. 43746 (Sept. 23, 1975); 40 Fed. Reg. 49422 (Oct. 22, 1975).

¹⁴³ 42 U.S.C. § 1973aa-1a(a).

¹⁴⁴ 42 U.S.C. § 1973aa-1a.

instructions, assistance, or other information relating to registration and voting.”¹⁴⁵

II. History of Voting Discrimination in Texas

The Latino and African-American populations in Texas have experienced a turbulent history of voting discrimination and political exclusion. Efforts to disenfranchise U.S. citizens of Mexican origin in Texas date back to 1845, the year that Texas gained its statehood. Early laws focused on prohibiting new Texas citizens from using their native Spanish language and organizing political rallies.¹⁴⁶ These laws also prohibited Mexican-Americans from serving as election judges. During the early 1900s, poll taxes, direct primaries, and white primaries were adopted with the purpose of establishing voting requirements that the vast majority of Mexican Americans could not meet, although they already constituted a decisive voting bloc in many areas of the state.¹⁴⁷

At the time of emancipation in 1865, African Americans were systematically denied the right to vote, hold office, serve on juries, and even intermarry with whites.¹⁴⁸ Blacks achieved significant political participation during Reconstruction, but the end of Reconstruction in 1873 brought what one former Texas governor called “the restoration of white supremacy and Democratic rule.” From then on, black Texans struggled to overcome obstacles such as the gerrymandering of voting districts implemented with the purpose of disenfranchising blacks, as well as many other forms of political and social discrimination.¹⁴⁹

Discriminatory election practices to disenfranchise African-American and Latino voters, such as white primaries and poll taxes, remained commonplace in Texas into the mid-1900s.¹⁵⁰ The manifestations of voting discrimination in Texas have been both insidious and entrenched.¹⁵¹ These exclusionary practices were rooted in Anglo Texans’ perceptions of minority citizens as “racial inferiors.”¹⁵² When political maneuvers failed to prevent the election of Black officeholders, local whites resorted to ‘fraud, intimidation, intrigue, and murder.’¹⁵³ The struggle for political power and land between Mexican Americans and Anglo Texans similarly escalated into acts of violence on the part of Texas Rangers:

¹⁴⁵ 42 U.S.C. § 1973aa-1a(c).

¹⁴⁶ David Montejano, *ANGLOS AND MEXICANS IN THE MAKING OF TEXAS, 1836-1986* 130 (University of Texas, 1987).

¹⁴⁷ *Id.* at 143.

¹⁴⁸ *QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT, 1965-1990* 234 (Chandler Davidson and Bernard Grofman eds., Princeton University Press 1994).

¹⁴⁹ *Id.* at 234-35.

¹⁵⁰ Montejano, *supra* note 12, at 143.

¹⁵¹ *See id.* (“In 1904 the State Democratic Executive Committee approved the Practice of the White Man’s Primary Association by suggesting that county committees require primary voters to affirm that ‘I am a White person and a Democrat’”).

¹⁵² *See id.* at 131 (“These Mexicans belonged to a class of foreigners who claim American citizenship but who are as ignorant of things American as the mule.” (quoting the *Carrizo Springs Javelin* August 5, 1911”)).

¹⁵³ *QUIET SOUTH*, *supra* note 14, at 235.

Texas Rangers, in cooperation with land speculators, came into small Mexican villages in the border country, massacred hundreds of unarmed, peaceful Mexican villagers and seized their lands. Sometimes the seizures were accompanied by the formality of signing bills of sale – at the point of a gun.”¹⁵⁴

One major tactic that whites used to disenfranchise both African Americans and Latinos in Texas was the infamous “white primary,” which arose in a patchwork of Texas jurisdictions in the early 1900s. This practice began in 1923, when Texas enacted a state law barring African Americans from voting in Democratic primary elections.¹⁵⁵ A black El Paso doctor, Lawrence Nixon, challenged this law, and the U.S. Supreme Court found that it violated the Fourteenth Amendment.¹⁵⁶ However in 1927, the year after the Court struck down Texas’ white primary law, the Texas Legislature passed a law authorizing political parties to set their own voter qualifications, and the Democratic Party simultaneously enacted a rule that only whites could vote in the primary. Nixon again filed suit, and this law was struck down in 1932.¹⁵⁷ That same year, the Texas Democratic party passed a new resolution limiting party membership to white citizens. The lower court in this instance permitted the state Democratic Party to exclude blacks from all primaries, treating the party as a private association.¹⁵⁸ Thurgood Marshall and the newly formed NAACP Legal Defense Fund won a reversal of that precedent in the 1944 case *Smith v. Allwright*.¹⁵⁹ The Court later struck down the “Jaybird primary” for good in 1953.¹⁶⁰ It was not until 1966, however, that the poll tax was eliminated in its entirety as a prerequisite for voter participation.¹⁶¹ In response, the first Senate bill of the first 1966 Texas legislative session required voters to register annually. The annual registration requirement was not removed until 1971.

Black and Latino voters also faced barriers throughout this period that diluted minority voting strength through the use of multi-member districts, racial gerrymandering, and malapportionment.¹⁶² Into the 1970s, Texas demonstrated a steadfast commitment to excluding racial minorities from political life; when forced to abandon one discriminatory measure, the state would enact a new one shortly thereafter.

From the earliest periods of Texas history, Mexican Americans and African Americans experienced segregation and unequal access to the privileges enjoyed by Anglos. Ranch owners employed rules that segregated Mexican cowboys from their Anglo workers in a

¹⁵⁴ Montejano, *supra* note 12, at 127.

¹⁵⁵ QUIET SOUTH, *supra* note 14, at 237-38. The statewide white primary law focused on African-Americans, but in some Texas jurisdictions the purpose of the White Man’s Primary was that, according to a Texas newspaper, it “absolutely eliminates the Mexican vote as a factor in nominating county candidates, though we graciously grant the Mexican the privilege of voting for them afterwards.” Montejano, *supra* note 11, at 144. In another example, the Dimmit County White Primary association was formed expressly to exclude Mexican American voters.

¹⁵⁶ *Nixon v. Herndon*, 273 U.S. 536 (1927).

¹⁵⁷ *Nixon v. Condon*, 286 U.S. 73 (1932).

¹⁵⁸ *Grovey v. Townsend*, 295 U.S. 45 (1935).

¹⁵⁹ *Smith v. Allwright*, 321 U.S. 649 (1944).

¹⁶⁰ *Terry v. Adams*, 345 U.S. 461 (1953).

¹⁶¹ QUIET SOUTH, *supra* note 14, at 239.

¹⁶² QUIET SOUTH, *supra* note 14, at 243.

hierarchical structure “in which Anglo stood over Mexicans.”¹⁶³ Workplace structures carried over into social arenas. Mexican Americans, regarded as an inferior race, were refused entry into restaurants, housing, theaters, and schools.¹⁶⁴ Blacks in Texas also faced extreme segregation and discrimination after emancipation.¹⁶⁵

In the decades that followed, Latinos and African Americans would also face exclusion from the education system. When finally allowed to enter Texas schools, minority citizens were segregated into separate and inferior schools.¹⁶⁶ At the time of the Texas Revolution, the new state had pledged to provide all citizens with a system of education.¹⁶⁷ But minorities were quickly ignored notwithstanding this pledge to Texas’ citizens.

Article VII, Section 7, of the Constitution of 1876 provided for separate schools for white and black students. From 1902 to 1940, and especially after 1920, many Texas school districts also opened mandatory segregated schools for Hispanic children. The “Mexican School” segregation spread rapidly. Houston, San Antonio and El Paso had “Mexican Schools” by the turn of the century. By 1942-43, these schools were operated in fifty-nine counties throughout the state.¹⁶⁸

A 1942 study by Wilson Little found 50 percent of the Mexican American students segregated through the 6th grade in 122 districts in “widely distributed and representative counties” of the state. Few Mexican-American students went beyond the sixth grade. By the 1940s, whole sections of the state had segregated “Mexican School” belts of towns, many of these developed specifically by the growers to isolate Mexican Americans.¹⁶⁹

By the mid-1950s, schools across the state segregated Latino students under the ruse of “instructional purposes” and also used freedom of choice plans, selected student transfer and transportation plans, and classification systems based on language or scholastic ability to maintain segregation. In response to student walk-outs and boycotts in 1967 and 1970, the U.S. Department of Health, Education, and Welfare (HEW) began to take legal action against offending school districts. By 1972, HEW gained compliance in

¹⁶³ MONTEJANO, *supra* note 12, at 83.

¹⁶⁴ *See id.* at 114.

¹⁶⁵ QUIET SOUTH, *supra* note 14, at 234.

¹⁶⁶ Jorge C. Rangel and Carlos M. Alcala, *Project Report: De Jure Segregation of Chicanos in Texas Schools*, 7 HARV. C.R.-C.L. L. REV. 307, 311-14 (1972); *See also*, QUIET SOUTH, *supra* note 14, at 234.

¹⁶⁷ MONTEJANO, *supra* note 12, at 391.

¹⁶⁸ *United States v. Texas*, 506 F. Supp. 405, 412 (E.D. Tex. 1981).

¹⁶⁹ In the Lower Rio Grande Valley, Edinburg, Harlingen, and San Benito school systems were segregated, while on Hwy. 83, Mercedes, McAllen, Mission, Pharr, San Juan, Alamo, and Weslaco districts were completely segregated. On the Gulf Coast in South Texas, Raymondville, Kingsville, Robstown, Kenedy, and Taft schools districts were segregated, while in the Winter Garden, Crystal City, Carrizo Springs, Asherton, and Frio Town were segregated towns with segregated schools. MONTEJANO, *supra* note 12, at 168; Julie Leininger Pycior, *LBJ & MEXICAN AMERICANS: THE PARADOX OF POWER* 14 (University of Texas Press 1997); Guadalupe San Miguel Jr., *LET ALL OF THEM TAKE HEED: MEXICAN AMERICANS AND THE CAMPAIGN FOR EDUCATIONAL EQUALITY IN TEXAS, 1910-1981* 56 (Texas A&M University Press 2001); US Comm’n. Civ. Rts., “Mexican American Education Study,” Report 1: Ethnic Isolation of Mexican Americans in the Public Schools of the Southwest, 1971 at 13.

many South Texas towns, including Bishop, Lyford, Los Fresnos, Beeville, and Weslaco, and it put Del Rio under court order to monitor its compliance.¹⁷⁰

Educational segregation and discrimination continued into the 1970s.¹⁷¹ In 1975, the Corpus Christi school district was finally forced to implement a remedy for its segregation of Mexican-American students, after the Fifth Circuit declared that “action by the school district here has, in terms of cause and effect, resulted in a severely segregated school system in Corpus Christi.”¹⁷²

A 1977 report issued by the U.S. Commission on Civil Rights reported that 19 percent of the Mexican Americans over age 25 in Texas were illiterate. Mexican Americans had twice the Anglo unemployment rate, and 15 percent of them still lived in overcrowded housing with inadequate plumbing as compared to 1.7 percent of Anglos. A clear holdover to the Texas “Mexican towns” was the 70 percent of Mexican Americans in Texas who still lived in barrios. In San Antonio, for example, a 1980 study concluded that the limited residential access of middle-class Mexican Americans to the three affluent northern census tracts tended also to limit their educational access.¹⁷³ A nationally publicized report in 1984 by the National Commission on Secondary Schooling reported that in Texas, the majority of Mexican-American students are still in “inferior and highly segregated schools.” They are “extremely overage” and “disproportionally enrolled in remedial English classes.” Texas Mexican-American students still have an unacceptably high dropout rate, and receive poor preparation for college.¹⁷⁴

As recently as 1981, a federal court declared that the state of Texas continued to fail to meet its obligations to provide compensatory bilingual education to Mexican-American students, noting that:

[w]hile many of the overt forms of discrimination wreaked upon Mexican-Americans have been eliminated, the long history of prejudice and deprivation remains a significant obstacle to equal educational opportunity

¹⁷⁰ San Miguel, Jr., *supra* note 36 at 76, 120, 123, and 134; Jorge C. Rangel and Carlos M. Alcala, *Project Report: De Jure Segregation of Chicanos in Texas Schools*, 7 HARV. C.R.-C.L. L. REV. 369 (1972).

¹⁷¹ For example, in 1971, Latino students in Seguin, Texas were expelled for allegedly having lice, despite recurrent doctors' examinations showing the allegations to be greatly exaggerated. These students were subsequently placed in the back of the classroom and prohibited from speaking Spanish. Chad Richardson, *BATOS, BOLILLOS, POCHOS, AND PELADOS: CLASS AND CULTURE ON THE SOUTH TEXAS BORDER* 125, 145 (University of Texas Press 1999).

¹⁷² *Cisneros v. Corpus Christi Indep. Sch. Dist.*, 467 F.2d 142, 148 (5th Cir. 1972). The Court of Appeals affirmed the district court's finding that the school district had: located new school and renovated old schools in racially segregated neighborhoods; provided an elastic transfer policy that allowed Anglo students to avoid ghetto schools; did not allow African American or Latino students the option of attending Anglo schools and by assigning minority teachers to minority schools. *Id.* at 149.

¹⁷³ U.S. Comm'n. Civ. Rts., “The Unfinished Business: Twenty Years Later,” Washington DC, 1997 at 184; Roldofo Rosales, *The Illusion of Inclusion: The Untold Political Story of San Antonio* 12 (University of Texas Press 2000).

¹⁷⁴ See *Session v. Perry*, 298 F.Supp.2d 451 (E.D. Tex. 2004), GI Forum Exhibit # 92 (Expert Report of Dr. Andres Tijerina).

for these children. The deep sense of inferiority, cultural isolation, and acceptance of failure, instilled in a people by generations of subjugation, cannot be eradicated merely by integrating the schools and repealing the "No Spanish" statutes. In seeking to educate the offspring of those who grew up saddled with severe disabilities imposed on the basis of their ancestry, the State of Texas must now confront and treat with the adverse conditions resulting from decades of purposeful discrimination. The effects of that historical tragedy linger and can be dealt with only by specific remedial measures.¹⁷⁵

Today, many Texas counties now have whole segregated school districts that have replaced the old "Mexican Schools." In Nueces County, for example the 95 percent Mexican American school district in Robstown, which was established by Robert Kleberg as a segregated town for his Mexican-American agricultural labor force, adjoins the Callalen I.S.D., in which the students are 55.6 percent Anglo. In Bexar County, the Edgewood school district's students are 94 percent Latino and the San Antonio school district's students are 93 percent Latino and African-American. Adjoining the San Antonio school district is Alamo Heights ISD, in which the students are 70 percent Anglo. The Dallas ISD, which is 83 percent Latino and African-American adjoins Highland Park ISD, which is 68 percent Anglo. In Harris County, North Forest ISD's students are 74 percent African-American and 25 percent Latino; the adjoining Humble school district is 72 percent Anglo.¹⁷⁶

The Texas decision *Graves v. Barnes* also highlights the continuing effects of historical discrimination on minority populations in Texas:

Because of long standing educational, social, legal, economic, political, and other widespread and prevalent restrictions, customs, traditions, biases and prejudices, some of a so-called *de jure* and some of a so-called *de facto* character, the Mexican-American population of Texas...has historically suffered from, and continues to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics and others.¹⁷⁷

¹⁷⁵ *United States v. Texas*, 506 F. Supp. at 412.

¹⁷⁶ Texas Legislative Council, "School Districts with Population," RED-M635, April 3, 2002.

¹⁷⁷ *Graves v. Barnes*, 343 F.Supp 704, 728 (W.D. Texas 1972), *rev'd*, 405 U.S. 1201 (1972). Cases discussing official discrimination against Mexican Americans in voting and other aspects of civic life include *League of United Latin Am. Citizens v. N. E. Indep. Sch. Dist.*, 903 F. Supp. 1071, 1085 (W.D. Tex. 1995) ("There is no dispute that Texas has a long history of discrimination against its Black and Hispanic citizens in all areas of public life."); *Vera v. Richards*, 861 F. Supp. 1304, 1317 (S.D. Tex. 1994) *aff'd sub nom Bush v. Vera*, 517 U.S. 952 (1996)(upholding creation of Latino-majority districts in South Texas and noting "Texas has a long, well-documented history of discrimination that has touched upon the rights of African-Americans and Hispanics to register, to vote, or to participate otherwise in the electoral process. Devices such as the poll tax, an all-white primary system, and restrictive voter registration time periods are an unfortunate part of this State's minority voting rights history."); *Overton v. Austin*, 871 F.2d 529, 536 (5th Cir. 1989) (noting the "common histories of discrimination" of African Americans and Mexican Americans in Austin); *Sierra v. El Paso Indep. Sch. Dist.*, 591 F. Supp. 802, 807-809 (W.D. Tex. 1984) ("[C]onsidered in conjunction with the history of official discrimination and the pattern of polarized voting,

Courts have repeatedly noted the various forms of discrimination against minorities in Texas and elsewhere and its relationship to social inequality. In the 2004 decision *Session v. Perry*, a federal 3-judge panel stated that it was “keenly aware of the long history of discrimination against Latinos and Blacks in Texas, and recognize[d] that their long struggle for economic and personal freedom is not over.”¹⁷⁸

With neither constitutional advances nor litigation having ensured the *total* and *complete* protection of the electoral franchise for minority voters in Texas, the ongoing process to protect their meaningful political participation will require continued vigilance on the part of both courts and lawmakers. Texas’ long history of discrimination has resulted in a substantial gap between minority voters and their Anglo counterparts in educational attainment,¹⁷⁹ health care access¹⁸⁰ and other important measures of economic and social well-being. Although no longer characterized by violence and brutality, present day voting experiences continue to be plagued by attempts to block and dilute minority voting.

III. Texas Demographics

The U.S. Census reports that in 2004, African Americans made up 11 percent of the total Texas population, Hispanics 34.9 percent and non-Hispanic whites 49.5 percent.¹⁸¹ The Texas Demographer’s Report for July 1, 2004 projected that by 2040, Hispanics will grow to make up approximately 52.6 percent of the total population in Texas, non-Hispanic whites 32.2 percent, African Americans 9.5 percent, and all other racial and

the conclusion is inescapable that Mexican-Americans have less opportunity than do other members of the electorate to participate in the political process.”); *Seamon v. Upham*, 536 F. Supp. 931, 987 (E.D. Tex. 1982) (Justice, C.J., dissenting) (referring to West Texas, “[e]ven when official discrimination in politics and the political process is viewed in isolation, the legacy is long and almost overwhelming. No one can seriously contend that a catalog of legal actions pertaining to discrimination in voting adequately captures the harsh reality of political racism in Texas.”). *United States v. Uvalde Consol. Indep. Sch. Dist.*, 625 F.2d 547, 556 n.16 (5th Cir. 1980) (allowing lawsuit against school district alleging intentional vote dilution and citing Senate Report for 1975 amendments to the Voting Rights Act stating at-large election schemes “effectively deny Mexican American and black voters in Texas political access in terms of recruitment, nomination, election and ultimately, representation”); *Pablo Puente v. Crystal City, Texas*, No. DR-70-CA-4 (April 3, 1970) (finding that the real property ownership requirement incorporated in the Charter of Crystal City for candidates for city office was invidiously discriminatory against the Mexican-American Plaintiffs and their class and hence was unconstitutional); *Muniz v. Beto*, 434 F.2d 697 (5th Cir. 1970) (finding exclusion of Mexican Americans from juries in El Paso); *Indep. Sch. Dist. v. Salvatierra*, 33 S.W. 2d 790 (Tex. Civ. App., 1930), *appeal dismissed and cert. denied*, 284 U.S. 580, 52 S. Ct. 28, 76 L. Ed. 503 (1931) (challenging Mexican school); *Delgado v. Bastrop Indep. Sch. Dist.*, Civ. No. 388 (W.D. Tex. June 15, 1948) (challenging Mexican school).

¹⁷⁸ *Session v. Perry*, 298 F. Supp. 2d at 473.

¹⁷⁹ Henry Flores, *Educational Attainment of Latinos 1960-2001*, WILLIAM C. VELASQUEZ INST., Census Project Rep. No. 2, at 5 (Fall 2005).

¹⁸⁰ *Key Facts Race, Ethnicity & Medical Care*, Figure 19b, No Usual Source of Health Care: Adults 18-64, by Race/Ethnicity and Poverty Status, 1999-2000, page 18 citing National Center for Health Statistics, National Health Interview Survey, 1999-2000.

¹⁸¹ U.S. Census Bureau, “Texas Quickfacts,” <http://quickfacts.census.gov/qfd/states/48000.html> (last visited June 11, 2006).

ethnic minority groups 5.7 percent.¹⁸²

According to the 2000 Census, of the 14.9 million voting age citizens in Texas, 42.65 percent are racial or ethnic minorities: 28.6 percent (4.2 million) are Hispanic, 10.9 percent (about 1.6 million) are African-American, 2.8 percent (about 423,276) are Asian, and .35 percent (about 52,562) are American Indian.¹⁸³

Minority groups comprise the fastest growing population in Texas. The 1990s saw the Texas population grow by 3.8 million persons, with Latinos accounting for the majority of that growth (approximately 2.4 million).¹⁸⁴ The Asian population alone grew by 125 percent.¹⁸⁵ Texas has the second highest number of Latinos in the United States, trailing only California.¹⁸⁶

The tremendous growth of racial and ethnic minority voting age citizens in Texas highlights the continuing need for the Voting Rights Act, particularly when combined with evidence of widespread voting discrimination and non-compliance.

III. Section 5 Objections in Texas

The persistence and breadth of voting discrimination across Texas reveals the need for continued efforts to protect minority voting rights. It also counsels against the premature removal of the safeguards provided by Section 5 of the Voting Rights Act. Section 5 objections to voting changes in Texas involve a wide variety of discriminatory election rules, procedures, and methods of election, including:

- Discriminatory use of numbered posts and staggered terms that ensure that a majority – or even plurality – of non-Hispanic white voters continue to be overrepresented in elected offices.¹⁸⁷

¹⁸² Texas State Data Center and Office of the State Demographer, *Projections of the Population of Texas and Counties in Texas by Age, Sex and Race/Ethnicity for 2000-2040*, <http://txsdc.utsa.edu/tpepp/2004projections/> (last visited June 6, 2006).

¹⁸³ Census 2000 Redistricting Data (Public Law 94-171) Summary File, available at http://factfinder.census.gov/servlet/DTTable?_bm=y&-geo_id=04000US48&-ds_name=DEC_2000_PL_U&-lang=en&-redoLog=false&-mt_name=DEC_2000_PL_U_PL004&-format=&-CONTEXT=dt (last visited June 15, 2006).

¹⁸⁴ Leo Estrada, *Redistricting 2000: A Lost Opportunity for Latinos* (Joint Center for Political and Economic Studies, Voting Rights and Minority Representation Conference Paper), available at <http://www.jointcenter.org/whatsnew/redistricting-conference/Estrada.pdf>

¹⁸⁵ U.S. Census Bureau, 2004 American Community Survey, <http://factfinder.census.gov> (select “Texas” hyperlink and then select “2004” column); 1990 Asian population estimates are available in *The Asian Population: 2000*, Census 2000 Brief (February 2002, at 5), available at <http://www.census.gov/prod/2002pubs/c2kbr01-16.pdf>.

¹⁸⁶ U.S. Census Bureau, 2004 Am. Cmty. Survey, Hispanic or Latino (of any race), <http://factfinder.census.gov> (select “Texas” hyperlink and then select “2004” column).

¹⁸⁷ Letter from James P. Turner, Acting Assistant Attorney General, Civil Rights Division, U.S. DOJ to attorneys for Ms. Brenda Adams, City Secretary, El Campo, Texas (November 8, 1985).

- Discriminatory implementation of majority vote and/or runoff requirements.¹⁸⁸
- Polling place or election date changes that deny minorities equal voting opportunities.¹⁸⁹
- Discriminatory absentee voting practices.¹⁹⁰
- Discriminatory annexations or deannexations.¹⁹¹
- Dissolution of single member districts, reductions in the number of offices, or revocation of voting rules when minority candidates of choice are about to be elected to office.¹⁹²
- Election procedures that violate Section 203 of the Voting Rights Act.¹⁹³
- Discriminatory redistricting practices to deny minorities an equal opportunity to elect their chosen candidates.¹⁹⁴

These objections range in time from October 1982, immediately after the VRA's reauthorization, to an objection in May of 2006 to the discriminatory reduction of polling places in the North Harris Montgomery Community College District. The breadth of Section 5 objections made by the DOJ since 1982 illustrates the nature of voting discrimination in Texas, as well as the subtle practices used to keep this political exclusion under the radar. Since 1982, Texas has had the second highest number of objections of any covered state, trailing only Mississippi.¹⁹⁵

In total, the DOJ has issued 201 Section 5 objections to proposed electoral changes in Texas since the state was covered in 1976. Of those 201 objections, 52 percent (N=107)

¹⁸⁸ Letter from William Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. DOJ to Mr. Max Harris, Superintendent, Liberty-Eylau Independent School District (February 26, 1985).

¹⁸⁹ Letter from Deval L. Patrick, Assistant Attorney General, Civil Rights Division, U.S. DOJ to James Finstrom, Esq., Marion County District Attorney (April 18, 1994); Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ to Analeslie Muncy, Esq., City Attorney, City of Dallas (March 13, 1991).

¹⁹⁰ Letter from James P. Turner, Acting Assistant Attorney General, Civil Rights Division, U.S. DOJ to Mary Milford, Esq., Law Offices of Earl Luna, P.C. (February 27, 1989).

¹⁹¹ Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. DOJ to Cindy Maria Garner, Esq., City Attorney, Crockett, Texas (December 21, 1990).

¹⁹² Letter from William Bradford Reynolds, Assistant Attorney General, Civil Rights Division, U.S. DOJ to Lavon L. Jones, Assistant Criminal District Attorney, Beaumont (October 20, 1993); Letter from James P. Turner, Actin Assistant Attorney General, Civil Rights Division, U.S. DOJ to Robert T. Bass, Allison & Associates (July 19, 1993).

¹⁹³ Letter from Deval L. Patrick, Assistant Attorney General, Civil Rights Division, U.S. DOJ to The Honorable Ronald Kirk, Secretary of State, Texas Elections Division (February 17, 1995).

¹⁹⁴ Letter from J. Michael Wiggins, Acting Assistant Attorney General, Civil Rights Division, U.S. DOJ to Denise Nance Pierce, Esq., Bickerstaff, Health, Smiley, Pollan, Kever & McDaniel (June 21, 2002).

¹⁹⁵ NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, PROTECTING MINORITY VOTERS: THE VOTING RIGHTS ACT AT WORK 1982-2005 (2006).

occurred *after* the 1982 reauthorization of Section 5. Ten of the post-1982 objections were interposed in response to statewide voting changes. A summary of all of Texas's Section 5 objections is included in Appendix A to this report.¹⁹⁶

Discriminatory election practices in Texas potentially affect a very large number of minority voters. Since 1982, the DOJ has prevented the implementation of discriminatory electoral changes in nearly 30 percent (N =72)¹⁹⁷ of Texas's 254 counties, where 71.8 percent¹⁹⁸ of the state's non-white voting age population resides.

The majority of Texas' proposed changes related to local jurisdictions. For example, in *Foreman v. Dallas County*, the U.S. Supreme Court held that Dallas County wrongfully failed to submit a voting change for Section 5 preclearance.¹⁹⁹ The voting change had a significant impact on Latino participation as poll workers, limiting the selection of poll workers on the basis of party affiliation. In other jurisdictions where party affiliation was used as a prerequisite to serving as a poll worker, the practice had a negative impact on the availability and quality of language assistance under Section 203.

As noted above, repeated Section 5 violations are not limited to local jurisdictions. Ten of Texas' post-1982 objections involved statewide voting changes. Moreover, forty percent (N=28) of the 72 Texas counties cited by the DOJ are repeat offenders, utilizing various strategies to obstruct minority political participation.

From a public policy standpoint, Section 5 is a cost-effective means to prevent discrimination. Each of the 107 objections, and the 388 voting changes withdrawn, altered or abandoned following DOJ "More Information Requests" (MIRs) since 1982 presented a potential lawsuit; Section 5 removed the need for private parties to spend their own and judicial resources to block these discriminatory changes. More importantly, litigation inevitably takes years to resolve and leaves minority voters without a remedy until these cases are successfully resolved.

Section 5 also has a strong deterrent effect in Texas. Since 1982, Texas has had the largest number of Section 5 submissions withdrawn by jurisdictions after the DOJ signaled that the submission was inadequate and identified specific deficiencies in a jurisdiction's submission.²⁰⁰ Texas also had the largest number of electoral changes deterred by MIRs, with 366 changes either withdrawn changed or dropped since 1982.²⁰¹ A recent study submitted to the Senate Judiciary Committee in connection with its renewal hearings estimated that the use of MIRs increases the deterrent effect of Section 5 by more than 50 percent, because MIRs frequently lead to withdrawals, superseding

¹⁹⁶ U.S. Dep't of Justice, *Section 5 Objections Texas*, http://www.usdoj.gov/crt/voting/sec_5/tx_obj2.htm (last visited June 6, 2006).

¹⁹⁷ See *id.* (Noting that 72 of Texas' 254 counties had proposed electoral changes interposed by the DOJ).

¹⁹⁸ U.S. Census Bureau, *Census 2000 Redistricting Data (Public Law 94-171) Summary File*, <http://www.census.gov>.

¹⁹⁹ *Foreman v. Dallas County*, 521 U.S. 979 (1997).

²⁰⁰ See PROTECTING MINORITY VOTERS, *supra* note 61.

²⁰¹ Luis Ricardo Fraga and Maria Lizet Ocampo, *More Information Requests and the Deterrent Effect of Section 5 of the Voting Rights Act* (2006) (manuscript at 10, on file with authors).

changes, or no responses from jurisdictions proposing changes (all of which prevent the proposed change from being implemented).²⁰² Texas' experience, in particular, illustrates the substantial deterrent effect of Section 5 resulting from the MIR process.

Despite the aforementioned DOJ oversight, compliance with Section 5's mandates is still a problem in Texas. Since 1982, more successful Section 5 enforcement actions (in which DOJ has participated) have been brought in Texas (N = 13) than in any other state.²⁰³ In addition, Section 5 has been vigorously enforced by private voters in Texas. For example, at least 23 additional successful Section 5 enforcement cases were filed by voters since 1982. Numerous Section 5 enforcement actions were brought against Texas jurisdictions that failed to submit to the DOJ voting changes that typically discriminated against Latinos. In summary, Section 5 plays a critical role in protecting minority voters – even when state officials are recalcitrant and fail to comply with it. However, Texas' failure to comply with Section 5 also shows that the state has a long way to go before it fully ensures equal voting opportunities to all of its voting age citizens.²⁰⁴

A. Redistricting

Redistricting plans often seek to redraw district lines to diminish minority voting strength. Such plans can render minority populations electorally ineffective and unable to elect candidates of their choice.

Of the 107 DOJ Section 5 objections filed since 1982, 57 percent (N = 61) of those objections have been related to redistricting plans proposed at various levels of government (i.e., state, county, city, school districts, community college districts).²⁰⁵ While 87 percent (N = 53) of these objections have been filed at the local level, eight of these objections relate to redistricting at the state level, culminating with the Texas redistricting in 2001.

Between 1982 and 1991, the DOJ objected to 28 redistricting plans at various levels of government for their dilutive impact on minority voting populations.²⁰⁶ Since 1992, there have been at least 33 redistricting plans that received DOJ objections for diluting minority voting power.²⁰⁷ Examples include:

- In 1992, the DOJ objected to a redistricting proposal for Calhoun County Commissioner and Justice of the Peace precincts in which the Latino community was fragmented across four districts and no district afforded Latino voters the opportunity to elect their candidate of choice.²⁰⁸
- In 1992, the DOJ objected to a Justice of the Peace and Constable redistricting

²⁰² *Id.* at 3.

²⁰³ See PROTECTING MINORITY VOTERS, *supra* note 61, at Map 11.

²⁰⁴ See *id.*

²⁰⁵ See Appendix A.

²⁰⁶ See *id.*

²⁰⁷ See *id.*

²⁰⁸ See *id.*

plan in Galveston County that fractured African-American and Latino voters and provided no opportunity districts among the eight districts in the plan; African Americans and Latinos make up 31 percent of the county's population.²⁰⁹

- In 1992, the DOJ objected to the redistricting plan for the Castro County Commissioners Court. Although Latinos made up 46 percent of the county population, the two districts with the highest Latino populations were ineffective because they contained a minority of Latino voters. Later that same year, the DOJ objected again to Castro County Commissioners Court's proposed redistricting plan. This proposed plan re-numbered a Latino opportunity district in order to delay the election for a Latino preferred candidate. No Latino had ever been elected to the Commissioner Court.²¹⁰
- In 1993, the DOJ objected to proposed redistricting plans by Bailey County which would have reduced the number of Justice of the Peace and Constable precincts from 4 to 1 and then objected again when Bailey County used the un-precleared district to conduct a local option election.²¹¹

As recently as 2002, the DOJ objected to a redistricting plan proposed by Waller County, Texas, stating that:

The 2000 Census indicates that Waller County has a...voting age population (of) 24,277, of whom 7,601 (31.3 percent) are black and 3,871 (15.9 percent) are Hispanic...

[T]he proposed redistricting plans contain only one district in which minority persons are a majority of the voting age population. According to the information that you provided, the black percentage of the voting age population in proposed Precinct 1 voting age population drops to 29.7 percent. Within the context of electoral behavior in Waller County, the county has not established that implementation of this plan will not result in a retrogression in the ability of minority voters to effectively exercise their electoral franchise. Moreover, the viability of alternative plans demonstrates that the potential retrogression of the proposed plan is avoidable.²¹²

The DOJ further observed that racially polarized voting served to undermine minority voting strength in Waller County:

Our analysis of county elections shows that minority voters in Precinct 1 have been electing candidates of choice since 1996, and that those candidates are elected on the basis of strong, cohesive black and Hispanic support. Our statistical analysis also shows that white voters do not provide significant support

²⁰⁹ See *id.*

²¹⁰ See *id.*

²¹¹ See *id.*

²¹² Letter from Ralph F. Boyd, Jr. Assistant Attorney General, Civil Rights Division, U.S. DOJ to attorneys for Waller County, Texas (June 21, 2002).

to candidates sponsored by the minority community, and that interracial elections are closely contested. For example, the black candidate for commissioner in Precinct 1 prevailed in the last election by two votes. As a result, the proposed reduction in the minority voting age percentage in Precinct 1 casts substantial doubt on whether minority voters would retain the reasonable opportunity to elect their candidate of choice under the proposed plan, particularly if the current incumbent in Precinct 1 declines to run for office again.²¹³

This objection illustrates an example of a jurisdiction that was committed to structuring electoral competition in ways to disadvantage the minority population.

Local jurisdictions also employ what is known as “packing” to concentrate minority populations into districts, virtually guaranteeing them the ability to elect the candidate of their choice in that specific district, but ultimately serving to minimize their influence in surrounding areas. The end result of this strategy is often that only one minority candidate of choice is elected when two or more could be elected under a fairer plan.

For example, in 1992, the DOJ objected to the Terrell County Commissioners Court redistricting plan. Although the Latino population in the county had increased from 43 percent to 53 percent, the proposed redistricting plan diminished the Latino population in one of the two Latino majority districts, while increasing Latino population in the other to 83 percent.²¹⁴

In sum, the use of redistricting strategies to dilute minority voting power is an indicator that jurisdictions forced to guarantee access to the ballot frequently respond with more sophisticated measures to thwart meaningful political participation for minority constituents.

B. Annexations

Attempts to implement discriminatory voting changes have found their way into a range of procedures commonly used by governmental bodies, including annexations. On their face, annexations of residential areas outside larger political jurisdictions are often undertaken to provide the outlying area with public services, such as water, sewage, and electricity, among other things. However, annexations can also be dilutive when the proposed addition of an outlying area with a white majority will have the effect of minimizing existing or growing strength of minority voters. This is a form of minority vote dilution because it serves to minimize the political strength of a growing minority groups and is often proposed for that purpose.

A recent example of attempted vote dilution through annexation occurred in 1997 when the DOJ prevented city officials in Webster, (Harris County) Texas from reducing

²¹³ Letter from J. Michael Wiggins, Acting Assistant Attorney General, U.S. Department of Justice, Civil Rights Division to attorneys for Waller County, Texas (June 21, 2002), *available at* http://www.usdoj.gov/crt/voting/sec_5/pdfs/l_062102.pdf.

²¹⁴ *See id.*

minority voting strength through the annexation of a predominately white outlying area. The DOJ noted that:

Hispanic residents constitute 19 percent and black residents constitute 5 percent of the City's total population...The annexation in Ordinance 95-33 adds approximately 1,162 persons to the City's total population, all of whom appear to be white. Thus the proposed annexation will reduce the City's Hispanic proportion to 15.0 percent and the black proportion to 4.2 percent of the total population.²¹⁵

In its review of the annexation change proposed by Webster officials, the DOJ uncovered a predominantly Hispanic outlying area that was not considered for annexation by city officials. If annexed in addition to the outlying white area, this tract would have reduced the possibility of minority vote dilution. The DOJ found that:

This block has a significant minority population percentage: Hispanic persons constitute 39 percent and black residents constitute 7 percent of the total population...[T]he annexation of Block 101B alone would have increased the City's Hispanic population to 20.2 percent and the black population to 5.3 percent...[T]he Hispanic councilmember and another leader of the Hispanic community opposed the annexation contained in Ordinance 95-33 indicating that if the City was going to annex the all-white residential property...it should also annex the residential property contained in Block 101B...[T]heir requests were refused.²¹⁶

After an extensive investigation into the operation of city government in Webster, Texas, the DOJ concluded its review of Webster's Section 5 submission by stating, "the city's application of its annexation policy and the city's annexation choices appear to have been tainted, if only in part, by an invidious racial purpose" and that claims of unawareness of the racial makeup of the block under review were "at best disingenuous."²¹⁷

Minority vote dilution in the form of "fracturing" or "cracking" minority voters occurs at all levels of government. One recent statewide example illustrates the point. In 2001, the state of Texas enacted a redistricting plan for the Texas House of Representatives that fractured Latino populations across South and West Texas and resulted in the loss of Latino electoral control in four districts.

The DOJ objected to the Texas House plan, noting that the state had reduced by four the number of districts in which Latino voters would be able to elect their candidate of choice. One Latino majority district in San Antonio, which contained close to 70 percent Latino voting age population, was simply eliminated in the state's new redistricting plan and its Latino voters scattered across other districts. In West Texas District 74, the State

²¹⁵ Letter from Isabelle Katz Pinzler Acting Assistant Attorney General Civil Rights Division U.S. DOJ to Attorneys for the City of Webster Texas (Harris County) (March 17, 1997).

²¹⁶ *Id.*

²¹⁷ *See id.*

reduced the Latino voting age population by more than 15 percent; DOJ noted that this reduction rendered the district ineffective for Latino voters and that this change in population was unnecessary because the district fell within the acceptable population deviation at the time of the 2000 Census. In South Texas, the state reduced the Latino-majority District 44 to a bare 50.2 percent Latino voter registration majority, prompting DOJ to note that the district no longer allowed Latino voters to elect their preferred candidate. Finally, in the Rio Grande Valley, the state reduced the Latino population in District 38 and rendered it ineffective for Latino voters.

DOJ concluded that although the state had created a new Latino-majority District 80 in South Texas, there was a net loss of three districts in which Latinos could elect their candidate of choice, and thus, the Texas plan was retrogressive.

Following the DOJ's objection, and because a vote dilution lawsuit challenging this redistricting plan was already pending, a federal court ordered a new map in which these districts were restored.²¹⁸

C. Method of Election

Since 1982, the DOJ has made 47 of its 107 objections based on proposed changes to the method of election.²¹⁹ A jurisdiction's method of election is the system it uses to elect representatives, including single member districts, at-large elections, majority vote requirements, and numbered place elections. Certain methods of election, when combined with the racial polarization prevalent in many parts of Texas, result in minority vote dilution.²²⁰ Polarized voting patterns transcend partisanship and illustrate not only the continuing racial cleavage between Anglo and minority voters, but also the particular challenges that people of color face in electing candidates of their choice.

The numbered post system of election, also known as numbered place, forces candidates to sign up and run for a particular seat on the governing body when more than one seat is up for election. Numbered post elections often discriminate against minority voters because they result in head-to-head contests, usually between an Anglo and minority candidate. In the context of racially polarized voting, these head-to-head races allow Anglo voters to cast more votes than minority voters in each race. The numbered post system is often intentionally designed to prevent minority voters from electing their candidates of choice. By contrast, when all candidates run in a field for multiple seats on the governing body, minority voters can "single shot vote" for their preferred candidate and prevail in at least one race. Despite their disparate negative impact on minority voters, local governmental bodies continue to propose the implementation of numbered post systems.

²¹⁸ *Balderas v. Texas*, No. 6:01-CV-158 (E.D. Tex. November 28, 2001).

²¹⁹ See Appendix A.

²²⁰ A report regarding the phenomenon of racially polarized voting, including a detailed analysis of Texas election voting patterns, will follow as an Appendix from MALDEF in conjunction with Rudy Espino, Ph.D., Department of Political Science, Arizona State University.

In 1990, the DOJ objected to an election change proposed by the state of Texas for the creation of fifteen additional Judicial Districts with numbered post requirements. In response, the DOJ stated in their objection:

“The history of the numbered post feature in Texas elections indicates that its adoption and continued maintenance over the years appears calculated to place an additional limitation on the ability of minority voters to participate equally in the political process and elect candidates of their choice. In that regard, we note that it is commonly understood that numbered posts along with other features such as the use of a majority-vote requirement in the context of an at-large election system, have had a discriminatory impact on racial and ethnic minorities...Numerous federal court decisions have chronicled instances where these features have been adopted in Texas for clearly discriminatory motives, and where their use has produced the intended discriminatory effects.”²²¹

In 1999, the DOJ objected to a proposal by the Sealy Independent School District to adopt the numbered post system of election because it would impair the ability of minority voters to successfully single shot vote for their preferred candidate.²²²

The use of at-large elections in the context of racially polarized voting can also dilute minority votes. Because the at-large election system ensures that political contests contain a majority of Anglo votes, it virtually guarantees that the minority group will be unable to elect the candidate of their choice, particularly when this system is coupled with a majority vote requirement. Such systems weaken minority political power by requiring minority voters to vote in circumstances where an identifiable white bloc vote will defeat their preferences.

In comparison, single member districts subdivide political jurisdictions and their constituencies, allowing for the election of minority candidates as well as white candidates, and resulting in fair and equitable representation.

In 1991, the DOJ objected to election changes proposed for the Refugio Independent School District located in Refugio County. The changes included implementing two at-large and five single member districts for the election of their school board members. In its objection, the DOJ noted that this was a repeated attempt to propose a previously rejected plan deemed discriminatory in nature:

“On May 8, 1989, the Attorney General interposed an objection under Section 5 to an earlier five district, two at large plan adopted by the school district. In that regard, we found that in light of the electoral circumstances present in the school district (in particular, the apparent pattern of polarized voting), the proposed plan

²²¹ Letter from John R. Dunne, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division to Mr. Tom Harrison, Special Assistant for Elections, Elections Division, on file with author (November 5, 1990).

²²² Letter from Bill Lann Lee, Acting Assistant Attorney General, Civil Rights Division, U.S. DOJ to attorneys for Sealy Independent School District, Austin County, Texas (June 5, 2000).

unnecessarily minimized the opportunity of minorities to elect candidates of their choice to office. We noted that our information tended to support a concern that the 5-2 system had been selected over a system of seven single-member districts ‘to avoid the potential for fair minority representation in three majority-minority districts.’...we note that, even though our May 8, 1989 letter expressed concern over the lack of opportunity for minority citizens to participate in that decision making process, it appears that in developing the instant plan the school district perpetuated this problem. Thus while the district did establish a committee of minority citizens to examine the election method issue, the committee appears to have been excluded from any participation in the process once it made known its preference for a seven single-member district plan.”²²³

Additionally, in August of 2002, the DOJ objected to a change in the method of election proposed by the City of Freeport, Texas, which involved abandoning single-member districts in favor of an at-large election system. The DOJ explained:

Until 1992, the City elected its four-member council on an at-large basis. In that year it began to use the single-member district system, which it had adopted as part of a settlement of voting rights litigation challenging the at-large system. Under the subsequent single-member district method of election, minority voters have demonstrated the ability to elect candidates of choice in at least two districts, wards A and D. The City now proposes to reinstitute the at-large method of election. Our analysis shows that the change will have a retrogressive effect on the ability of minority voters to elect a candidate of their choice.”²²⁴

At the time of the proposal, Latinos made up 47.3 percent and African Americans 12.3 percent, of the city’s voting age population. Approximately 29 percent of the city’s registered voters were Spanish-surnamed.²²⁵ In its objection letter, the DOJ recognized that within the context of racially polarized voting, at-large elections would impair the ability of minority voters to elect a candidate of their choice.

Similar changes were proposed for the Haskell Consolidated Independent School District in Haskell, Knox and Throckmorton counties. In this submission, the DOJ found that after successful litigation for single-member districts,²²⁶ county officials sought to revert to at-large elections. County officials cited higher voter turnout statistics under the at-large system as opposed to the single-member districts as reason for the reversal; however the DOJ found that their numbers and “assertion(s) (did) not withstand close scrutiny.”²²⁷

²²³ Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice to attorneys for the Refugio I.S.D. (April 22, 1991).

²²⁴ Letter from J. Michael Wiggins, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice to the attorney for the City of Freeport in Brazoria County, Texas (August 12, 2002).

²²⁵ See *id.*

²²⁶ *League of United Latin Am. Citizens, Dist. 5 (LULAC) v. Haskell Consol. Indep. Sch. Dist.*, No. 193-CV-0178 (C) (N.D. Tex. Oct 21, 1994).

²²⁷ Letter from Ralph F. Boyd, Jr., Assistant Attorney General, Civil Rights Division, U.S. Department of Justice to attorneys for the Haskell Consolidated Independent School District (September 24, 2001).

These efforts to return to electoral arrangements that are known to disadvantage minority communities demonstrate the persistence of intentional efforts to dilute minority voting power in Texas, and powerfully make the case for the continuing necessity of the state's Section 5 coverage. In the absence of Section 5, each of these retrogressive efforts would require a costly and time-consuming Section 2 lawsuit to reestablish principles that the Voting Rights Act has long established. Significantly, while the litigation took place, voters would be suffering a loss of their effective voting power.

Other examples of discriminatory methods of elections that were prevented because of Section 5 of the VRA include the following:

- In January 1992, the DOJ objected to a proposal by the city of El Campo to eliminate single-shot voting by converting from at-large plurality elections to majority vote requirements. The DOJ had previously objected to other attempts by El Campo to eliminate single shot voting in 1985, 1986, and 1989.²²⁸
- In 1992, the DOJ objected to a law passed by the Texas Legislature providing that if one of the legislative redistricting plans were to change, there would be no new primary election if a primary had already been held. Under the statute, the candidate-designee would be chosen by the party executive committee. In light of the continued domination of Anglos in Texas' political party leadership, allowing party executive committees to select a candidate would place minority voters in a worse position than before.²²⁹
- In the city of Wilmer (Dallas County), Latinos made up 30 percent of the population and African Americans 20 percent, yet no minority had ever been elected to the City Council. The DOJ objected in 1992 to a proposal that would have eliminated single shot voting and prevented minorities from electing their candidate of choice.²³⁰
- In 1992, the DOJ objected to the adoption by the city of Ganado of staggered terms and numbered post voting, noting that the changes were retrogressive and that the minority community was not afforded the opportunity to participate in the process for adopting these changes.²³¹
- Also in 1992, in Galveston County, the DOJ objected to the adoption of numbered post voting and the change from an at-large election to a 4-2 mixed system. At the time, the combined minority population in the county was 49 percent.²³²

In addition, there is substantial evidence in Texas of non-compliance with Section 5's

²²⁸ See Appendix A.

²²⁹ See *id.*

²³⁰ See *id.*

²³¹ See *id.*

²³² See *id.*

preclearance requirements. A number of counties proceeded to implement voting plans before the DOJ had an opportunity to object to them, in direct violation of Section 5 of the VRA. The following Texas counties illegally implemented their unprecleared redistricting plans in the March 1992 primary election: Castro, Cochran, Deaf Smith, Hale, Bailey and Terrell. The history of Section 5 enforcement litigation, by both the DOJ as well as private parties further demonstrates the extent of non-compliance by jurisdictions across the state.

In many of these changes, the end goal was to remove or exclude minority elected officials from office by repackaging age-old strategies. Without the basic and essential representation afforded to minorities through their ability to elect the candidates of their choice, minority voters will continue to face hurdles not only within the electoral system, but in all social arenas.

D. Voting Procedures

There have been 12 DOJ objections regarding voting procedures since 1982. Examples of voting procedure changes include changes in polling place locations, the form of ballots and absentee ballots used, election dates, and general voter registration requirements.

The loss of a traditional polling place in a minority community can result in voter confusion and, ultimately, depressed voter turnout. Unfortunately, many counties make changes in their voting procedures without submitting the changes for preclearance with the DOJ. For example, in August 2003, Bexar County (which includes the City of San Antonio) announced that it would eliminate the five early voting polling places that serve the predominantly-Latino West Side of San Antonio, leaving the area with no early voting polling place for the upcoming September constitutional amendment election. The loss of every early voting polling place on the West Side would have had a devastating impact on the political participation of the area's Latino voters. Because Bexar County did not timely submit its proposed polling place changes to the DOJ, but instead moved ahead with the changes without securing preclearance, MALDEF brought suit and enjoined the polling place closures.²³³

Voter registration requirements also remain an area of contention. Prairie View A&M is a historically black university in Waller County whose students comprise 20 percent of the county's voting population. In 2003, after two students decided to run for county office, the district attorney in Waller County, Oliver Kitzman, attempted to prevent Prairie View students from registering and voting. Kitzman argued that "it's not right for any college student to vote where they do not have permanent residency,"²³⁴ and ultimately threatened to prosecute students who declared Prairie View as their residence. Waller County has a history of attempting to restrict the votes of the mostly black

²³³ *Miguel Hernandez Chapter of the Am. GI Forum v. Bexar County*, No. SA-04-CA-181-FB (W.D. Tex. August 27, 2003).

²³⁴ *Voter Suppression Tactics Slapped on Prairie View A&M University Students*, GARLAND JOURNAL NEWS, March 2004, available at http://www.garlandjournalnews.com/past_articles/200403.html.

students at Prairie View, whose right to register and vote in Waller County was upheld in a precedent setting case decided by the U.S. Supreme Court in 1979.²³⁵ In the face of that historical experience, and the controlling Supreme Court decision, Prairie View A&M students were indicted in 1992 for “illegally voting” (the charges were later dropped), despite the fact that this change in policy was never submitted for preclearance and flew in the face of a court order.²³⁶ The DOJ wrote to the county demanding that it comply with the previous injunction. The Texas Secretary of State and the Texas Attorney General also condemned the attempt to unlawfully restrict the students’ right to vote.²³⁷ Five students and the local NAACP chapter sued the district attorney, demanding the right to vote in the 2004 election without improper prosecution. Eventually, the county settled and agreed to let the students vote.²³⁸

The issue did not end there, however. Less than a week after the lawsuit was filed, and a month before the election, the Waller County Commissioners’ Court voted to greatly reduce the availability of early voting at the polling place near Prairie View A&M – an important change since the primary election date was during the students’ spring break. In effect, this voting change was an attempt to achieve the same end as the district attorney’s unlawful voter intimidation campaign through another means. It thus presents a textbook example of the brand of persistent and adaptive discrimination that gave rise to Section 5 more than 40 years ago. The NAACP filed a Section 5 enforcement action to enjoin Waller County from implementing this change without Section 5 preclearance. County officials abandoned the change, technically mooted the suit (although its objectives were fulfilled). Most of the Prairie View students who voted utilized early voting, and the Prairie View student running for a seat on the Commissioners’ Court won narrowly.²³⁹

Racially exclusionary political strategies have plagued Texas since 1845 and continue to do so, despite legal challenges and advances. In light of these ongoing challenges to political empowerment, it is apparent that despite measurable progress, the racial cleavages that have afflicted this country, and Texas, have not been so easily eradicated. Given these circumstances, the continued protection of Section 5 of the VRA is of paramount importance to ensuring equal voting opportunities for minority voters, and indeed, all voters in Texas.

V. Section 2 Litigation in Texas

Section 2 of the VRA is a permanent provision, which “prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in one of the

²³⁵ *Symm v. U.S.*, 439 U.S. 1105 (1979).

²³⁶ AMERICAN CIVIL LIBERTIES UNION, THE CASE FOR EXTENDING AND AMENDING THE VOTING RIGHTS ACT (2006).

²³⁷ See *id.* at 842-43.

²³⁸ *Prairie View Chapter of NAACP v. Kitzman*, No. H-04-459 (S.D. Texas); *Prairie View Chapter of NAACP v. Waller County Comm’n*, No. H-04-0591 (S.D. Texas).

²³⁹ See PROTECTING MINORITY VOTERS, *supra* note 61, at 65-66.

language minority groups.”²⁴⁰ Section 2 is an important tool for helping to ensure equal voting opportunities. However, a primary shortcoming of Section 2 of the VRA is the added litigation expenses for all parties involved and the need for private plaintiffs to put significant resources (often not reimbursable under civil rights fee-shifting statutes²⁴¹) into enforcement litigation.

Since 1982, Texas voting rights plaintiffs have prevailed in or successfully settled more than 150 Section 2 cases, more than in any other state.²⁴² As a result of these post-1982 cases, 142 jurisdictions in Texas have altered their discriminatory voting procedures.²⁴³

Section 2 cases represent ongoing and recurrent attempts to discriminate against minority voters in Texas. They underscore the continuing need to protect the minority electoral franchise, particularly in light of the aforementioned examples of Texas jurisdictions that continue their attempts to knowingly revert to dilutive electoral arrangements. In 1988, the Fifth Circuit affirmed a ruling that the city of Baytown had violated Section 2 of the VRA by using an at-large election system that diluted the voting strength of Latinos and African Americans.²⁴⁴ The court concluded that at-large elections, conducted with numbered post and majority vote requirements worked with racially polarized voting to prevent the election of minority candidates to the City Council. Despite the fact that 25 percent of the City population was Latino or African-American, no minority had ever been elected to the Baytown City Council. After evaluating rates of racially polarized voting and noting that Latinos and African Americans suffer the lingering socio-economic effects of past discrimination, the district court concluded that Latinos and African Americans were not able “to participate fully in the electoral system in Baytown.”²⁴⁵

In the 1990 case *Williams v. City of Dallas*, a federal court ruled that the at-large seats in the Dallas City Council’s mixed system diluted the voting strength of both blacks and Mexican-Americans and therefore violated Section 2 of the Voting Rights Act.²⁴⁶ Under the “8-3” system, eight council seats were elected by district and three were elected at large. No African Americans, and only one Mexican American,²⁴⁷ had ever won an at-large seat, although as of the 1980 Census, Dallas was 41.67 percent minority (29.38

²⁴⁰ U.S. Dep’t of Justice, *Section 2 of the Voting Rights Act*, http://www.usdoj.gov/crt/voting/sec_2/about_sec2.html#sec2 (last visited June 6, 2006).

²⁴¹ The VRA renewal bills in both houses of Congress appropriately contain provisions to permit the recovery of expert fees and expenses for prevailing parties.

²⁴² The Voting Rights Initiative: Documenting Discrimination, *Judicial Findings Under Section 2 of the Voting Rights Act since 1982*, <http://www.sitemaker.umich.edu/votingrights/search> (last visited June 6, 2006); According to the National Commission on the Voting Rights Act, there were at least 206 successful Section 2 cases brought in Texas between August 1982 and the end of 2005; PROTECTING MINORITY VOTERS, *supra* note 61, at 87.

²⁴³ *Id.*

²⁴⁴ *Campos v. City of Baytown*, 840 F.2d 1240 (5th Cir. 1988).

²⁴⁵ *Id.* at 1250.

²⁴⁶ *Williams v. City of Dallas*, 734 F.Supp. 1317 (N.D. Tex. 1990).

²⁴⁷ The one Mexican-American elected at large was elected “due to some very unusual circumstances that will not be repeated,” according to the Court (there was no white candidate). *Id.* at 1318.

percent African-American and 12.29 percent Mexican-American).²⁴⁸ The “8-3” system was introduced after Dallas’ previous all-at-large system was invalidated as violative of the VRA.²⁴⁹ The court in *Williams* conducted a searching inquiry into the long history of discrimination against blacks and Latinos in Dallas and the various ways white majorities ensured that blacks and Latinos could only hold political office “with the permission of the white majority.”²⁵⁰ The court noted severe racial tension relating to police brutality and other issues, and continuing patterns of racially polarized voting. In a referendum on how to revise the voting system, the court also found that some of the white at-large council members “simply ignored the minority areas of the city.”²⁵¹ The court held that because of “substantial economic disparities between white and minority residents,” it was not possible for minority candidates to raise the large sums of money from their own communities that are necessary for competing in at-large elections.²⁵² The court also held that the district lines for the eight districted seats under the “8-3” system had diluted the black vote by “packing” African Americans into two concentrated districts and then “cracking” the remaining black voters into multiple districts to prevent the election of a third black candidate.²⁵³

Likewise in 1995, a federal court in San Antonio ruled that the at-large election system used by the Northeast Independent School District violated Section 2 of the VRA.²⁵⁴ Although the combined African-American and Latino population of the district was 30 percent, from 1973 to 1994, Anglo candidates won 47 of 48 elections, a Latino candidate won one election and African-American candidates won none. The district court noted that “voting in NEISD school board elections is significantly polarized along racial lines [and] absent special circumstances, there are not enough Anglo cross-over votes to allow a minority candidate to succeed in the at-large election system presently used in NEISD school board elections.”²⁵⁵ The district court’s conclusion that the school district violated Section 2 was based on very thorough fact findings, including that: persistent socio-economic disparities between Anglos and minorities in NEISD resulting from past discrimination still impair the ability of minority voters to participate in the political system; one high school in NEISD flew the Confederate flag until 1993; NEISD used a numbered place system that prevented single-shot voting by minorities to elect their candidate of choice; and, until 1999, the district provided only eight polling places for a jurisdiction of more than 250,000 people.²⁵⁶

It is noteworthy that many of the successful Section 2 cases in Texas occurred through settlements, without any reported decision, and are known only to local residents and the parties and counsel that litigated them. The examples described above illustrate the

²⁴⁸ *Id.* at 1323.

²⁴⁹ *Lipscomb v. Wise*, 399 F.Supp. 782 (1975), rev’d 551 F.2d 1043 (5th Cir.1977), but aff’d 437 U.S. 535, 98 S.Ct. 2493, 57 L.Ed.2d 411 (1978).

²⁵⁰ *Williams*, 734 F.Supp. at 1320.

²⁵¹ *Id.* at 1364-65, 1384.

²⁵² *Id.* at 1382.

²⁵³ *Id.* at 1415.

²⁵⁴ *LULAC v. North East Indep. Sch. Dist.*, 903 F. Supp. 1071 (W.D. Tex. 1995).

²⁵⁵ *Id.* at 1084-85.

²⁵⁶ *Id.* at 1086.

ongoing importance of Section 2 of the VRA as one necessary, but not sufficient, tool for ensuring the political enfranchisement of Texas' minority citizens.

A. Voting Rights Violations in the City of Seguin – A Case Study in Persistent Discrimination

The experience of minority voters in the city of Seguin, Texas provides a notable example of how jurisdictions will use a series of tactics to dilute minority voting strength and how both Section 2 and Section 5 of the Voting Rights Act operate in concert to ensure equal access in voting.²⁵⁷

In 1978, Latino plaintiffs sued the city of Seguin for failing to redistrict following the 1970 Census. At the time, the city elected eight council members from four multi-member wards and the city was 40 percent Mexican American and 15 percent African American. There had never been more than two minority candidates elected at a time to the council. A federal court enjoined the 1978 election and the following year adopted a new redistricting plan for Seguin proposed by the city. The plaintiffs objected to this plan because it afforded insufficient Latino representation.

Shortly afterwards, the plaintiffs filed a second lawsuit seeking to block implementation of the city's plan until it received the required preclearance from the DOJ. Ultimately, the plaintiffs won a ruling from the U.S. Court of Appeals for the Fifth Circuit requiring the redistricting plan to be precleared.²⁵⁸

Following these victories, the city of Seguin failed to redistrict after the 1980 and 1990 Census. By 1993, 60 percent of the City was minority, but only three of nine city Council members were Latino. Latino plaintiffs sued again and won a settlement in 1994 from the City that created eight single member districts.²⁵⁹

Following the 2000 Census, Seguin redistricted but fractured the city's Latino population across the districts to preserve the incumbency of an Anglo councilmember and thus maintain a majority of Anglos on the City Council. When the DOJ refused to preclear the redistricting plan, Seguin corrected the violation but then closed its candidate filing period so that the Anglo incumbent would run for office unopposed. Latino plaintiffs sued once again, securing an injunction under Section 5 of the Voting Rights Act. The parties settled after negotiating a new election date, and today, a Latino majority serves on the Seguin City Council.²⁶⁰ The persistence of the opposition to minority voting power in Seguin presents powerful evidence that the equality principles protected by the VRA would not be vindicated in Texas absent vigilant enforcement of all of the VRA's protections.

²⁵⁸ *Ramos v. Koebig*, 638 F.2d 838 (1981) and *Trinidad v. Koebig*, 638 F.2d 846 (1981).

²⁵⁹ *LULAC Council #682 v. City of Seguin*, No. 93-0333 (W.D. Tex).

²⁶⁰ *LULAC v. City of Seguin*, No. SA-02-369-OG (U.S. Dist. Ct. W.D. Tex.).

VI. Continuing Discrimination in the 2004 Election

During the November 2004 presidential election, MALDEF served as a legal resource center for coalitions conducting election protection work, including NALEO (National Association of Latino Elected Officials), the Bexar County Voting Rights Coalition, and Texas Election Protection. MALDEF received numerous telephone calls from Latino voters unable to find their polling site, many as a result of language barriers. In addition to the calls about polling site locations, MALDEF received more than 30 calls relating to irregularities, complaints, assistance needed, or problems in the voting process from predominantly Latino and African-American voters. Specific reports from callers included:

- At polling places in a predominantly Latino precinct, understaffing of poll workers resulted in long lines and only two voting stalls being put to use. Election judges informed voters they should come back at a later time.
- An elderly Latina voter was told that she was not on the voter registration list and not allowed to vote with a provisional ballot, despite the recently enacted Help America Vote Act (HAVA), which provides for provisional ballots in such situations. She and her family had been voting at the same location for more than 20 years. The election judge refused to unlock a box containing provisional ballots until a MALDEF attorney arrived and negotiated on behalf of the Latina voter.
- An eligible African-American woman was told by an Anglo election judge to “take that doo-rag off your head” before voting.
- Police officers were stationed outside three polling sites in the outskirts of San Antonio’s far west side, an overwhelmingly Latino area. This practice is a familiar form of voter intimidation.
- A polling site closed while voters were still in line in a predominantly African-American precinct contrary to Texas law, resulting in vote denial.

The national Election Protection coalition issued a report entitled, “Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections.” The report documents the following additional incidents in Texas:

- During early voting at the Power Center in Harris County, a voter observed Harris County police officers yelling at the 200 or more voters in line that they must show I.D. and that anyone with a warrant would go to jail. People left the line, including the voter who reported the situation. Proof of identity is not required to vote in Texas.
- An African-American voter and her mother were subjected to heightened

levels of questioning at their local polling place. At the time they arrived, they were the only black voters present. The poll workers first asked all voters for registration or I.D. and then if they had moved. The voter and her mother were subjected to additional questions, as the workers appeared not to believe their responses. The polling agents took the voter's license to check against other records. Reportedly, this did not happen to other voters. She was eventually allowed to vote.

Even with federal legislative efforts such as the National Voter Registration Act, and HAVA, the need for the VRA's permanent and temporary provisions cannot be overstated. The 2004 election demonstrated the continuing discriminatory practices that occur on the ground level of elections. Legislative efforts to repress minority voting rights continue to garner support and represent a real threat to Latinos and African-Americans' ability to elect candidates of their choice.

VII. Texas's Voter Access Record under Sections 4(f)(4) and 203

Historical discrimination against Latinos in Texas, including the practice of educational segregation, is strongly linked to the limited English proficiency (LEP) status of many of Texas' Latino citizens. Additionally, failure to accommodate LEP voters has resulted in low voter participation, especially when elections are conducted only in English.

In *White v. Regester*, the U.S. Supreme Court recognized that discrimination resulted in the social and linguistic isolation of native-born Mexican Americans in Texas. With respect to this history of discrimination, the court noted that:

The bulk of the Mexican-American community in Bexar County occupied the Barrio, an area consisting of about 28 contiguous census tracts in the city of San Antonio. Over 78% of Barrio residents were Mexican-Americans, making up 29% of the county's total population. The Barrio is an area of poor housing; its residents have low income and a high rate of unemployment. The typical Mexican-American suffers a cultural and language barrier that makes his participation in community processes extremely difficult, particularly, the court thought, with respect to the political life of Bexar County. '[A] cultural incompatibility . . . conjoined with the poll tax and the most restrictive voter registration procedures in the nation have operated to effectively deny Mexican-Americans access to the political processes in Texas even longer than the Blacks were formally denied access by the white primary.'²⁶¹

Today, Latinos in Texas continue to suffer language-based discrimination and marginalization in the election process, further demonstrating the need for the protections of Section 203. For example, in 2003, the chairman of Texas House Redistricting Committee stated that he did not intend to hold redistricting hearings in the Rio Grande Valley in South Texas, where many U.S. citizens are Latino, because only two members of the Redistricting Committee spoke Spanish. Chairman Crabb stated that the members

²⁶¹ *White v. Regester*, 412 U.S. 755, 768 (1973).

of the Committee who did not speak Spanish “would have a very difficult time if we were out in an area other than Austin or other English speaking areas to be able to have committee hearings to be able to converse with the people that did not speak English.”²⁶² This is a stark example of a situation in which limited LEP status was invoked as a justification for closing off access to critical governmental functions that bear upon the lives of all of Texas’s citizens. Only after widespread media coverage of his remarks did the Chairman agree to hold hearings in South Texas.

In Texas, there are still many Mexican Americans, as well as other racial minorities, who are LEP as a result of educational discrimination. In 2000, the U.S. Census reported that 473,099 Latino voting age *native born citizens* in Texas were limited English proficient.²⁶³ For similar reasons, many Spanish-speaking American Indians are LEP.²⁶⁴ In addition, naturalized citizens who are limited English proficient benefit from Spanish language assistance in voting. The language assistance provisions – Sections 203 and 4(f)(4) – perform the indispensable role of ensuring equal access for Spanish-speaking Texans to the democratic process.

A. Section 203 Coverage in Texas

Texas must comply with Section 203 because of its coverage under Section 4(f)(4) of the Voting Rights Act. Thus, all political subdivisions of Texas must provide language assistance to Spanish-speaking voters where it is needed in statewide elections.

In addition, 103 counties are separately covered for Spanish in their own right because of high LEP and illiteracy rates among language minority citizens. Two of these counties (El Paso and Maverick counties) are also covered for American Indian languages. In addition, Harris County is covered for an Asian language (Vietnamese).

B. High Number of LEP Citizens

Section 203 of the VRA defines those citizens categorized as having Limited English Proficiency (LEP) as being “unable to speak or understand English adequately enough to participate in the electoral process.”²⁶⁵

According to the Census Bureau’s July 2002 determinations of jurisdictions covered by Section 203, in Texas, there are **818,185 Latino voting-age citizens** – or nearly one out of every four Latino voting-age citizens – who are not yet fully proficient in English. These numbers are highest in the state’s most populous counties, for example:

- In Bexar County (San Antonio), there are 98,165 Latino voting-age citizens – or

²⁶² See *Session v. Perry*, 298 F.Supp.2d 451 (E.D. Tex. 2004), Jackson Exhibit #122 (Letter from Texas Representative Richard Raymond to Department of Justice regarding preclearance of Plan 1374C).

²⁶³ Data provided by Dr. Jorge Chapa, June 15, 2006, on file with MALDEF.

²⁶⁴ See Section B. below.

²⁶⁵ U.S. Dep’t of Justice, Civil Rights Div., *Bilingual Election Requirements*, http://www.usdoj.gov/crt/voting/42usc/subch_ib.htm#anchor_1973aa-1a (last visited June 6, 2006).

nearly one out of every four Latino voting-age citizens – who are LEP;

- In Dallas and Tarrant Counties (Dallas/Fort Worth), there are 79,335 Latino voting age-citizens – or nearly one out of every three Latino voting-age citizens – who are LEP; and,
- In Harris County (Houston), there are 107,915 Latino voting-age citizens – or nearly one out of every three Latino voting-age citizens – who are LEP.

In El Paso and Maverick counties, over 24 percent and 59 percent, respectively, of American-Indian voting age citizens are LEP. In Harris County, where Houston is located, there are nearly 17,000 LEP Vietnamese voting age citizens. Overall, about 42 percent of the 200,000 Asian Americans in Harris County are LEP.

Appendix B summarizes the LEP numbers for Texas and the 103 separately covered counties, identifying the language group triggering coverage.

C. Educational Discrimination against Latino Citizens

Texas has an unfortunate past and present history of providing unequal education opportunities to Latinos that has impaired their ability to learn English and resulted in the high LEP rates described above. In Section 203(a) of the VRA, Congress expressly concluded that education discrimination results in depressed language minority voter registration and turnout.²⁶⁶ Congress additionally concluded that educational discrimination manifests itself through both “present barriers to equal educational opportunities” and “the current effect that past educational discrimination has on today’s Hispanic adult population.”²⁶⁷

The most egregious forms of educational segregation against Latinos in Texas precedes the last reauthorization of the VRA. Today, 473,099 native born and voting age Latinos in Texas are LEP as a result of this discrimination.²⁶⁸

In 1981, U.S. District Court Judge William Wayne Justice found the Texas bilingual education plan inadequate, and that measures had not been taken to fully “remove the disabling vestiges of past *de jure* discrimination.”²⁶⁹ He ordered corrections to train teachers, identify LEP students, and to expand the program. He noted that many school districts simply ignored their obligation to deliver bilingual education:

Unfortunately, the monitoring conducted by the TEA throughout the state has revealed that these laudable guidelines are frequently ignored by local

²⁶⁶ See 42 U.S.C. § 1973aa-1a(a).

²⁶⁷ 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.

²⁶⁸ Dr. Jorge Chapa analysis of 2000 Census PUIMS data.

²⁶⁹ *U.S. v. Texas*, 506 F. Supp. 405 (E.D. Tex. 1981); *U.S. v. Texas*, 523 F. Supp. 703 (E.D. Tex. 1981); *U.S. v. Texas*, 680 F.2d 356 (5th Cir. 1982).

school districts. A few examples should suffice to demonstrate the wide gap between theory and practice in this field:

A TEA visit to Lockhart Independent School District in 1975 found that the bilingual program was conducted primarily in English.

A TEA visit to Aransas Pass Independent School District in 1977 found that no substantive courses within the bilingual program were being taught in Spanish.

In 1977, the North Forest Independent School District's bilingual program offered no instruction in Spanish for language or reading.

In 1979, the TEA reported that there was no teaching of substantive content in Spanish in the Laredo Independent School District

A 1978 TEA monitoring report found very little native language instruction in the Fort Worth Independent School District bilingual program.²⁷⁰

[The State] stipulated to the existence of these and similar deficiencies in local bilingual programs in at least twenty-five additional school districts throughout the state.²⁷¹

In short, many Latino voters age 40 and over either attended segregated Mexican schools into the 1960s, or attended inadequate educational programs into the 1980s, and bear the effects of this discrimination and educational neglect in the form of low literacy and limited-English proficiency.

The youngest cohort of voters, who have exited the public school system more recently, as well as children in public schools today, still face an inferior educational system for LEP students. According to the Department of Education, there are at least 570,022 LEP students in Texas's public schools.²⁷² On February 4, 2006, MALDEF and META filed a Motion for Further Relief on behalf of Intervenors LULAC and the GI Forum, with the federal court overseeing the desegregation remedy in *U.S. v. Texas*. The motion is set for a hearing on July 24, 2006.²⁷³

In the motion, MALDEF and META assert that the state of Texas has failed to monitor, supervise and enforce the bilingual education program as required by state and federal law. The motion is supported by Texas Education Agency data stating that LEP students

²⁷⁰ *U.S. v. Texas*, 506 F.Supp. at 422.

²⁷¹ *Id.* at 411, 412.

²⁷² U.S. DEPARTMENT OF EDUCATION, OFFICE OF ENGLISH LANGUAGE ACQUISITION, LANGUAGE ENHANCEMENT AND ACADEMIC ACHIEVEMENT FOR LIMITED ENGLISH PROFICIENT STUDENTS (OELA), SURVEY OF THE STATES' LIMITED ENGLISH PROFICIENT STUDENTS AND AVAILABLE EDUCATIONAL PROGRAMS AND SERVICES 4, 19 (Oct. 2002).

²⁷³ *U.S. v. Texas*, 6:71-CV-5281 (E.D. Tex. 2006).

in Texas are pushed out of school prior to graduation at rates of more than twice the rate of non-LEP students and are failing the state standardized test at rates in excess of 80 percent for some grade levels. For the class of 2004, 16.3 percent of LEP students dropped out of school statewide, as compared with only 1.9 percent of white students and 3.9 percent of all students.

Even taking into consideration the large number of LEP students who drop out of school by grade 11, the failure rate among those remaining LEP students on the April administration of the 2004-2005 TAKS exit exam was 81 percent, or more than 8 in 10. According to TEA data in 2004-2005, more than 8 out of 10 (84 percent) of Texas LEP students in Grade 7 failed to meet the state's standards on the TAKS test; more than 8 out of 10 (86 percent) of Texas LEP students in Grade 8 failed to meet the state's standards on the TAKS test; almost 9 out of 10 (87 percent) of Texas LEP students in Grade 9 failed to meet the state's standards on the TAKS test; and more than 9 in 10 (94 percent) of Texas LEP students in Grade 10 failed to meet the state's standards on the TAKS test.²⁷⁴

These English Language Learners ("ELLs") have been denied the opportunity to learn English, resulting in a substantial impairment in their ability to be fully literate without receiving assistance in Spanish. They join hundreds of thousands of other LEP Texans who also suffer the lingering effects of educational discrimination, and who will be denied meaningful participation in the voting process without adequate language assistance.

D. High Illiteracy Rates among LEP Citizens

Texas' long history of unequal education has also resulted in depressed literacy and graduation rates for many LEP Texans.

According to the 2000 Census, the following numbers of voting age citizens in Texas do not have a high school diploma: nearly 1.2 million Latino voting age citizens, (approximately 40 percent of all Latino voting age citizens in Texas); more than 43,000 Asian voting age citizens (16.5 percent of all Asian voting age citizens); and nearly 33,000 American Indian voting age citizens (approximately 22 percent of all American Indian voting age citizens).²⁷⁵ Access to higher education for Texas' minority residents has also been restricted by unequal opportunity. Just 9 percent of all Latino voting age citizens in Texas have a four-year college degree. In sharp contrast, 86.5 percent of all Anglo voting age citizens have a high school diploma and over 27.5 percent have a four-year college degree.²⁷⁶ As late as 1993, the state of Texas settled a court challenge to its failure to provide equal higher educational opportunities to residents in South Texas by agreeing to improve University of Texas System schools in Brownsville, Edinburg, San

²⁷⁴ Texas Education Agency Division of Performance Reporting Academic Excellence Indicator System 2004-2005 State Performance Report available at <http://www.tea.state.tx.us/perfreport/aeis/2005/state.html>.

²⁷⁵ See 2000 Census, sampled data files, available at <http://advancedquery.census.gov>

<<http://advancedquery.census.gov/> .

²⁷⁶ *Id.*

Antonio, and El Paso, and newly acquired Texas A&M University System branches in Corpus Christi, Laredo, and Kingsville.²⁷⁷

The failure of Texas to educate LEP students in the public schools has contributed to high illiteracy rates among minority voters in Texas. The illiteracy rate (defined as the percent who have less than a fifth-grade education) for LEP Latino voting-age citizens is an extraordinarily high 19.46 percent. This percentage equates to more than fourteen times the national illiteracy rate.

Illiteracy rates are particularly high in the state's most populous counties, and are the product of very high dropout rates. For example,

- In Bexar County (San Antonio), the illiteracy rate among Latino voting-age citizens is 15.22 percent, over eleven times the national average. About 32.7 percent (145,000) of Bexar County Latino voting-age citizens have not completed high school, with less than ten percent (43,685) having at least a four-year college degree.
- In Dallas County (Dallas), the illiteracy rate among LEP Latino voting-age citizens is 17.42 percent, nearly thirteen times the national average. About 45.3 percent (82,858) of Dallas County Latino voting-age citizens have not completed high school, with only 8.8 percent (16,180) having at least a four-year college degree.
- In Tarrant County (Fort Worth), the illiteracy rate among LEP Latino voting-age citizens is 16.33 percent, more than twelve times the national average. About 39.8 percent (42,231) of Tarrant County Latino voting-age citizens have not completed high school, with only 10.8 percent (11,507) having at least a four-year college degree.
- In Harris County (Houston), the illiteracy rate among LEP Latino voting-age citizens is 14.97 percent, over eleven times the national average. About 42.5 percent (159,233) of Harris County Latino voting-age citizens have not completed high school, with only 9.2 percent (34,503) having at least a four-year college degree.²⁷⁸

Latino voting age citizens are not the only ones who suffer from high illiteracy rates as a result of educational discrimination and neglect in Texas. In Maverick County, over 86 percent of LEP American Indian voting age citizens are low-literate. Vietnamese LEP voting age citizens in Harris County have an illiteracy rate nearly six times the national illiteracy rate.

²⁷⁷ See *Richards v. LULAC*, 868 S.W.2d 306 (1993) and description of *LULAC v. Richards* settlement in the Handbook of Texas online, available at <http://www.tsha.utexas.edu/handbook/online/articles/MM/jom1.html>

²⁷⁸ See Dr. James Thomas Tucker & Rodolfo Espino, *Minority Language Assistance Practices in Public Elections* Appendix C (Mar. 2006).

Appendix B summarizes the illiteracy numbers for Texas and the 103 separately covered counties, identifying the language group triggering coverage. In light of these statistics, the importance of providing translated voting materials and election information cannot be understated.

E. Non-Compliance with Sections 203 and 4(f)(4)

In 2005, MALDEF sent letters to 101 Texas counties covered by Section 203 requesting, under the Texas Open Records Act, copies of translated voting materials and information on language assistance in elections. The letters called for voting related materials or election information relevant to determining whether covered counties in Texas are complying with the language minority provisions. Requested materials included, but were not limited to, voter registration forms, official ballots, polling place notices related to voting locations, days and hours of voting, and the availability of Spanish speaking poll workers.²⁷⁹

Of the 101 requests for translated voting materials, 67 counties or 66 percent of Texas counties responded to MALDEF's request. Of the 67 counties that responded to the request for records, 47 (70 percent) failed to demonstrate that they provided voter registration forms, a ballot, a provisional ballot and written voting instructions in Spanish. Of the counties that could demonstrate provision of some basic language assistance to voters, only one could show that it complied fully with the requirements of Section 203.

In addition, a substantial amount of Spanish language voting materials provided by covered counties to MALDEF were characterized by incomplete and inaccurate translations, including misplaced gender identifiers, and misspellings. For example, one Texas county failed to translate on the ballot the political offices for which the election was being held. In another county, a notice directing voters to contact the county clerk for additional election information did not translate the term "county clerk."

The survey indicates widespread non-compliance with the requirements of Section 203. In light of the failure of most covered counties to provide even the most basic materials

²⁷⁹ The Voting Rights Act Open Records Checklist used by MALDEF can be found as an appendix to this report. In its request, MALDEF asked for copies of translated: voter registration forms; official ballot; application to vote a ballot by mail; written instructions provided to voters who were sent a ballot by mail; Help America Vote Act (HAVA) identification requirements; provisional ballot instructions; election-related material mailed to voters; sample ballot; written voting instructions provided at the polls; notices related to election law provided at the polls; polling place notice informing voters of the availability of Spanish language assistance; polling place notices informing voters of the days and hours of voting; and election-related information published in newspapers, radio, and/or other media; election-related information published on the internet. In addition, MALDEF requested information showing: the polling places at which the county posted notices informing voters of the availability of Spanish language assistance to voters; the names of all Spanish-speaking county employees who respond to oral or written requests for election-related information; public notices and advertisements used by the county to recruit Spanish-speaking election judges and clerks; the names of Spanish-speaking election judges and clerks in the county; and all training offered to individuals who provide Spanish language assistance to voters.

guaranteeing access to the ballot for Spanish speaking voters, the provisions of Section 203 must be reauthorized.

F. Department of Justice Section 203 Enforcement Actions in Texas

The DOJ has become increasingly active in identifying violations of Section 4(f)(4) and 203 and bringing enforcement actions to remedy those violations.

In 2005 and 2006, the DOJ filed Section 203 enforcement lawsuits against Hale County and Ector County, Texas.²⁸⁰ In Ector County, the county conceded that it had not fully complied with the language minority provisions of the VRA and agreed to a consent decree. This decree required the county to immediately implement a Spanish language program for minority voters and to use federal observers during elections to monitor compliance.

Opponents of Section 203 argue that naturalized American citizens must be able to speak English as a requirement of naturalization and that efforts to provide minority language voting information are unnecessary and expensive. These arguments fail to account for the fact that some immigrants, particularly the elderly, may naturalize with a level of English proficiency that is often insufficient to be able to understand and vote a complex ballot. Ballot language can be confusing even for native English speakers.

On February 27, 2006, the United States filed a complaint alleging that Hale County in Texas violated Section 203 of the Voting Rights Act of 1965. The complaint alleged that Hale County violated Section 203 requirements by failing to provide an adequate number of bilingual poll workers trained to assist Spanish-speaking voters on election day and failing to effectively publicize election information in Spanish. On the same day that the complaint was filed, the United States also filed a proposed consent decree agreement. The consent decree will allow the Department to monitor future elections in Hale County and will require the County to increase the number of bilingual poll workers, employ a bilingual coordinator, and establish a bilingual advisory group.²⁸¹

On August 23, 2005, the United States filed a complaint alleging that Ector County in Texas violated Section 4(f)(4) of the Voting Rights Act. As with Hale County, the complaint claimed that the County failed to provide an adequate number of bilingual workers to serve the county's Spanish-speaking population and failed to effectively publicize information to the Spanish-speaking community. On the same day that the complaint was filed, the United States also filed a proposed consent decree agreement. The [consent decree agreement](#), which was approved by a federal district judge on August 26, 2005, requires the county to establish an effective Spanish language program and authorizes the use of federal observers to monitor the county's elections.²⁸²

²⁸⁰ U.S. Dep't of Justice: Civil Rights Div., *Litigation Brought by the Voting Section*, <http://www.usdoj.gov/crt/voting/litigation/caselist.htm> (last visited June 6, 2006).

²⁸¹ Available at <http://www.usdoj.gov/crt/voting/litigation/recent203.htm#hale>.

²⁸² Available at <http://www.usdoj.gov/crt/voting/litigation/recent203.htm#ector>.

The DOJ also intervened in Harris County, Texas, which includes the city of Houston. According to the 1990 and the 2000 Census, 1.7 percent of the county population was Vietnamese, and about half of these Vietnamese households are considered linguistically isolated.²⁸³ In 2002, Harris County was required under Section 203 to provide ballots in both Spanish and Vietnamese. The county failed to arrange Vietnamese translations within the voting machines, and a plan to provide backup paper ballots was not implemented. The DOJ intervened, and the county signed a Memorandum of Agreement outlining the steps by which it would comply with Section 203. In the next election in 2004, Vietnamese turnout doubled, allowing the first Vietnamese candidate in history to be elected to the Texas Legislature (and defeating the incumbent chair of the Appropriations Committee by 16 votes out of over 40,000 cast). A community leader involved in bringing the Vietnamese translations to Harris County testified that while the Asian American community is interested in working with the county to provide Chinese language translations as well, on a voluntary basis, the county is not “enthusiastic” about any accommodations not mandated by Section 203.²⁸⁴ If Section 203 were to expire, it is likely that some of the jurisdictions currently providing language accommodation would cease to do so.

The continuing need for Sections 4(f)(4) and 203 in Texas is clear. These provisions have a substantial impact in increasing language minority registration and turnout, and ensuring the meaningful participation of Texas’ language minority citizens in the electoral process.

VII. Conclusion

The Voting Rights Act has undoubtedly had a profound impact on securing the rights of minority voters to effectively exercise their franchise in many Texas jurisdictions with substantial histories of imposing barriers to minority voting power. The reauthorization of the temporary provisions of the VRA for 25 years is crucial to ensuring that minority voters’ voices will be heard in Texas, and to guard against the backsliding that would occur if the VRA’s enforcement provisions were weakened or abandoned.

²⁸³ Asian American Justice Center, *A Community of Contrasts: Asian Americans and Pacific Islanders in the United States* (2005).

²⁸⁴ Testimony of Rogene Gee Calvert, National Commission on the Voting Rights Act, Southwest Regional Hearing (Tempe, AZ), April 7, 2005.

Appendix A: Section 5 Objections to Voting Changes in Texas since August 1982²⁸⁵

Harris County School District (82-0519)	Election date	10-4-82
Pleasanton (Atascosa Cty.) (82-0025)	Numbered posts	10-14-82
Stockdale Independent School District (Wilson Cty.) (83-1188)	Numbered posts	8-19-83
Jefferson County (Beaumont and South Park Independent School Districts) (83-0785, 83-3379)	Dissolution of the Beaumont Independent School District; the creation of a common school district and its attachment to the South Park Independent School District	10-20-83
Pewitt Consolidated Independent School District (Cass, Morris, and Titus Ctys.) (83-0935)	Numbered posts	12-27-83
Wilmer-Hutchins Independent School District (Dallas Cty.) (84-0339)	Four polling place and absentee voting location changes	4-2-84
El Paso Independent School District (El Paso Cty.) (84-0391)	Implementation schedule for the election of board members	11-9-84
Rusk Independent School District (Cherokee Cty.) (83-0174)	Numbered posts	1-18-85
Liberty-Eylau Independent School District (Bowie Cty.) (84-0121)	Majority vote requirement	2-26-85
Dawson County (84-0343)	Bilingual election procedures	8-6-85
El Campo (Wharton Cty.) (84-1364)	1975 imposition of numbered positions and a majority vote requirement, and the 1985 change to	11-8-85

²⁸⁵ United States DOJ Voting Section home page, http://www.usdoj.gov/crt/voting/sec_5/tx_obj2.htm (last visited June 6, 2006).

	the election of four councilmembers by single-member districts and three at large with a new staggering method	
Lynn County (85-0895)	Redistricting (justice of the peace and constable precincts); reduction in the number of justices and constables from five to two	11-18-85
Terrell County (85-0674)	Reduction in number of justices of the peace from four to one and the resulting at-large method of election	1-13-86
Plainview Independent School District (Hale Cty.) (86-0674)	Method of election and districting plan	4-10-86
El Campo (Wharton Cty.) (86-1633)	Two districting plans	7-18-86
Trinity Valley Community College District (Anderson, Henderson, Hunt, Kaufman and Van Zandt Ctys.) (86-0002)	Redistricting plan	10-14-86
Wharton Independent School District (Wharton Cty.) (86-1638)	Majority vote requirement	12-29-86
Marlin Independent School District (Falls Cty.) (87-0487)	Method of election; numbered positions and staggered terms for two at-large seats; implementation schedule	6-22-87
Crockett County (87-0300)	Chapter 2, S.B. No. 88 (1987)--to the extent that it proposes to use the at-large system with numbered positions for electing the board of directors for the newly created Crockett County Hospital District	10-2-87
Columbus Independent School District (Colorado and Austin Ctys.) (87-0025)	Numbered positions and majority vote requirement	1-4-88
Hondo Independent	Method of election; districting plan	1-22-88

School District (Frio and Medina Ctys.) (87-0952)		
Marshall Independent School District (Harrison Cty.) (87-0060)	Method of election; districting plan; majority-vote requirement for trustees elected from single-member districts; polling place consolidation	4-18-88
San Patricio County (87-1132)	Reduction in the number of justice of the peace and constable precincts and the districting plan adopted for its implementation	6-14-88
Jasper (Jasper Cty.) (88-0951)	Ordinance No. 3-88-1--annexation	8-12-88 Withdrawn 12-24-91 upon change in method of election
Lynn County (85-0895)	Reduction in the number of justice of the peace and constable precincts from five to one	9-26-88
El Campo (Wharton Cty.) (88-1471)	Numbered positions and a majority-vote requirement for the at-large positions	2-3-89
Dallas County (88-0363)	Absentee voting procedures for the November 8, 1988, general election	2-27-89
Baytown (Chambers and Harris Ctys.) (88-0634)	Method of election (5-3-1); districting plan; increase in number of councilmembers from seven to nine; provision that the three at-large members other than the mayor will be elected from numbered positions to staggered terms	3-20-89
Refugio Independent School District (Refugio Cty.) (88-1251)	Method of election from seven trustees elected at large (with numbered posts and plurality win) to five single-member districts and two at-large positions (plurality win), the districting plan, an implementation schedule that includes staggered terms for the two at-large seats, and the selection of two polling places	5-8-89
Cuero (DeWitt Cty.) (89-0326)	Districting plan	10-27-89
Denver City (Yoakum Cty.) (88-	Adoption of numbered positions and a majority vote requirement for	2-5-90

1530; 88-1533)	councilmanic elections	
Nolan County Hospital District (89-0794)	Method of election and districting plan, as contained in Senate Bill No. 315 (1989), for the board of directors of the newly created Nolan County Hospital District	2-12-90
San Patricio County (89-0874)	1987 transfer of registration duties from the county clerk to the county tax assessor/collector	5-7-90
State (90-0015)	Chapter 632, S.B. No. 1379 (1989)--creation of fifteen additional judicial districts and the implementation schedule	11-5-90 Clarified 11-20-90 to limit objection to nine judgeships. Objection ruled untimely in <u>Mexican American Bar Ass'n v. Texas</u> , 755 F. Supp. 735 (W.D. Tex. 1990), appeal dismissed for want of jurisdiction, 500 U.S. 940 (1991)
Freeport (Brazoria Cty.) (90-0164)	Majority vote requirement	11-13-90
Grapeland (Houston Cty.) (90-0960)	Four annexations (March 27, 1990)	12-21-90 Withdrawn 4-19-91, based on change in method of election
Dallas (Collin, Dallas, Denton, Kaufman & Rockwall Ctys.) (89-0245)	Charter amendments under Chapter XXIV, Section 21 (1-5), which provide for a delay of the regularly scheduled May 4, 1991, election and an implementation schedule therefore	3-13-91 Withdrawn 8-2-91, based on change in method of election
Lubbock County Water Control and Improvement District No. 1 (Lubbock Cty.) (90-4938)	Selection of polling places for Precincts 2 and 3	3-19-91
Refugio Independent School District (Refugio Cty.) (90-1268)	Method of electing the school board from at large to five single-member districts and two at large, the concurrent election of the at-large seats by numbered position, the districting plan and the implementation schedule	4-22-91

Dallas (Collin, Dallas, Denton, Kaufman and Rockwall Ctys.) (89-0245, 91-0642)	Redistricting plans and the proposed charter amendments establishing the 10-4-1 method of election and changing the definition of terms under the consecutive terms provisions for non-mayoral candidate eligibility	5-6-91
State (90-0003)	Chapter 206, S.B. No. 907 (1989), which provides for three alternative methods of election for hospital district governing boards (at large; at large with numbered posts; mixed single-member districts and at large)	8-23-91 Withdrawn 8-4-92 following Texas Attorney General opinion interpreting the act to allow for straight single-member district method of election
Houston (Harris, Montgomery and Fort Bend Ctys.) (91-2353)	Redistricting plan	10-4-91
State (91-3395)	Texas House redistricting plan	11-12-91
Del Valle Independent School District (Travis Cty.) (91-3124)	Change in method of election to five trustees elected from single-member districts and two elected at large, the districting plan, and a polling place change	12-24-91
El Campo (Wharton Cty.) (91-0530)	Method of electing the at-large councilmembers (in a four district, three at-large method of election) involving the separate designation of one seat on the ballot and the adoption of a majority vote requirement for that seat	1-7-92
State (92-0070)	Senate redistricting plan (S.B. No. 1 (1992))	3-9-92 Declaratory judgment granted in <u>Texas v. United States</u> , No. 91-2383 (D.D.C. July 27, 1992)
State (92-0146)	Chapter 3, Section 8, H.B. No. 2 (1992), procedures for nomination of candidates by political party executive committees in the event that a different redistricting plan for either house of the legislature is used for the 1992 general election than was used for the primary	3-10-92

Gregg County (91-3349)	Redistricting plan (commissioners court districts)	3-17-92
Calhoun County (91-3549)	Redistricting plan (commissioners court districts, and justice of the peace and constable districts)	3-17-92
Galveston County (91-3601)	Redistricting plan (justice of the peace/constable districts)	3-17-92
Castro County (91-3780)	1991 redistricting plan (commissioners court districts)	3-30-92
Monahans-Wickett-Pyote Independent School District (Ward Cty.) (91-3272)	1991 redistricting plan (trustee districts)	3-30-92
Ellis County (91-4250)	1991 redistricting plan (commissioners court districts)	3-30-92
Lubbock Independent School District (Lubbock Cty.) (91-3910)	1991 redistricting plan	3-30-92
Terrell County (91-4052)	1991 redistricting plan (commissioners court districts)	4-6-92
Bailey County (91-3730)	1991 redistricting plan (commissioner and justice of the peace/constable districts)	4-6-92
Cochran County (91-4049)	1991 redistricting plan (commissioners court districts)	4-6-92
Hale County (91-4048)	1991 redistricting plan (commissioners court districts)	4-10-92
Deaf Smith County (91-4051)	1991 redistricting plan (commissioners court districts)	4-10-92
Gaines County (91-3990)	1991 redistricting plan (commissioners court districts)	7-14-92
Wilmer (Dallas Cty.) (90-0393)	Use of numbered positions for city council elections	7-20-92
Del Valle Independent School District (Travis Cty.) (92-3482)	Method of election, districting plan, and the majority vote requirement for at-large position	7-31-92
Ganado (Jackson Cty.) (92-0319)	The adoption of numbered positions and staggered terms; and the	8-17-92 Withdrawn 1-22-93, as to

	implementation schedule	staggered terms
Castro County (92-4027)	1992 redistricting plan (commissioners court districts)	10-6-92
Galveston (Galveston Cty.) (92-0136)	Method of election; four single-member districts and two at-large seats; the adoption of numbered posts	12-14-92
Atlanta Independent School District (Cass Cty.) (92-3754)	Method of election; five single-member districts and two at-large seats	2-19-93
Carthage Independent School District (Panola Cty.) (92-4890)	Method of election from seven members elected at large by numbered places and majority vote to five members elected from single-member districts and two at-large seats by numbered places with a majority vote requirement	3-22-93 Withdrawn 1-3-94
Corsicana Independent School District (Navarro Cty.) (92-4186)	Majority vote requirement for election of school board trustees	3-22-93
Lamesa (Dawson Cty.) (92-0907)	Majority vote requirement for election of mayor	4-26-93
Bailey County (93-0880)	Procedures for conducting the January 5, 1993, special local option election	5-4-93
Castro County (93-0917)	1993 redistricting plan for the commissioners court	5-10-93
McCulloch County (93-0075)	1991 redistricting plan for the commissioners court	6-4-93
Bailey County (93-0194)	Reduction in the number of justice of the peace and constable districts from four to one	7-19-93
Wharton County (92-5239)	Redistricting plans (commissioners court, justices of the peace/constables)	8-30-93
Edwards Underground Water District (93-2267)	Chapter 626 (1993)--dissolution of the Edwards Underground Water District with elected governing body, and its replacement by the Edwards Aquifer Authority with an appointed governing body	11-19-93
Marion County (93-3983)	Polling place change	4-18-94

State District Court (93-2585)	Chapter 1032 (1993)--creation of the 385th Judicial District Court in Midland County	5-9-94
Harris County Criminal Court at Law (Harris Cty.) (93-2664)	Chapter 318 (1993)--creates a fifteenth county criminal court at law judgeship	5-31-94
Fort Bend County Court at Law (Fort Bend Cty.) (93-2475)	Chapter 653 (1993)--creates a third county court at law judgeship	5-31-94
Mexia Independent School District (Limestone Cty.) (93-4623)	Method of election--five single-member districts and two at large	6-13-94
Tarrant County (94-3012)	Chapter 38 (1987)--creation of, and implementation schedule for, Tarrant County Criminal Court Nos. 7 through 10	8-15-94
Edna Independent School District (Jackson Cty.) (94-0866)	Method of election--five single-member districts and two at large	8-22-94
Morton (Cochran Cty.) (94-1303)	Method of election--cumulative voting	9-12-94
San Antonio (Bexar Cty.) (94-2531)	Special election procedures--failure to comply with bilingual procedures	10-21-94
Karnes City (Karnes Cty.) (94-2366)	Increase in the number of officials from 2 to 5 insofar as the additional positions would be elected at large with staggered terms	10-31-94 Withdrawn 10-23-95
Gonzales County Underground Water Conservation District (Gonzales Cty.) (94-0333)	Districting plan	10-31-94
Judson Independent School District (Bexar Cty.) (94-4175)	Special bond election	11-18-94
State (94-4077)	Spanish language versions of registration forms and instructions	2-17-95
Edwards	Temporary use of punch card ballots	3-2-95

Underground Water District (Bexar, Hays, and Comal Ctys.) (94-3902)	and the procedures relating thereto	
Andrews (Andrews Cty.) (94-2271)	Method of election from at-large by majority vote with numbered posts, staggered terms, and a 2-2-1 method of staggering to cumulative voting by plurality vote with numbered posts, staggered terms, and a 3-2 method of staggering	6-26-95 Declaratory judgment entered 1-29-96, in <u>City of Andrews v. Reno</u> (D.D.C. 1995)
State (95-2017)	Chapter 797 (1995)--authorizes agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in the agency's file	1-16-96
Webster (Harris Cty.) (96-1006)	Annexation (Ordinance No. 95-33)	3-17-97 Withdrawn 4-7-98
State (98-1365)	Procedure for filling prospective judicial vacancies	9-29-98 Withdrawn 10-21-98
Galveston (Galveston Cty.)(98-2149)	Method of election to four single-member districts and two at-large seats, the adoption of numbered posts for the at-large seats, the adoption of a majority vote requirement for the election of city officers, and the proposed redistricting criteria	12-14-98 Withdrawn 02-04-02
Lamesa (Dawson Cty.) (99-0270)	Deannexation by referendum of the property annexed under Ordinance No. 0-06-98	7-16-99
Sealy Independent School District (Austin Cty.) (99-3823)	Numbered posts	6-5-00
Haskell Consolidated Independent School District (Haskell, Knox, and Throckmorton Ctys.) (2000-4426)	Cumulative voting with staggered terms	9-24-01
State (2001-2430)	Redistricting plan (House)	11-16-01
Waller County	2001 redistricting plans for the	6-21-02

(2001-3951)	commissioners court, justice of the peace and constable districts	
Freeport (Brazoria Cty) (2002-1725)	Method of electing city council members	8-12-02
North Harris Montgomery Community College District (2006-2240)	Reduction in polling places and early voting locations	5-5-06

Appendix B: Census Data from July 2002 Section 203(c) Coverage Determinations²⁸⁶

Tables C-1 through C-4 were compiled from sampled data used by the Census Bureau to make its July 26, 2002 determinations under Section 203 of the Voting Rights Act. According to the Voting Rights Output File Documentation, the determination data was created from sampled weights of data from the Census 2000 long forms (Summary Table Files 3 and 4). The file contains records for the entire United States, including all states and political subdivisions, which are defined as “counties for all states except for Connecticut, Maine, Massachusetts, Michigan, New Hampshire, Rhode Island, Vermont, and Wisconsin” where political subdivisions are minor civil divisions (“MCDs”) or MCD equivalents. There are 62 records in the file, including one each for total population and Spanish/Hispanic/Latino, one for American Indian/Alaskan Native and 42 for American Indian/Alaskan Natives tribal groups, one for Asian and 16 for Asian groups.

The Census Bureau has suppressed data for jurisdictions indicated by an asterisk (“*”) to avoid disclosure of specific persons. According to Census documentation, “[t]his means that data in a record are suppressed if the unweighted count of voting age citizens for a record is less than 50 and the weighted population count for the record is not 0 or the unweighted population count for the record is not 0.” The Census Bureau rounded data that has not been suppressed. Section 203 determinations are based on data prior to rounding and prior to suppression.

“LEP Number (N)” refers to the number of voting age citizens in the identified language group who are limited-English proficient, or “LEP.” A person is LEP if they speak English less than “very well.”

“LEP Percent (P)” refers to the percentage of voting age citizens in the identified language group who are LEP.

“Illiteracy Rate” refers to the percent of voting age citizens in the identified language group who are LEP and low-literate. According to the Census Bureau, “voting age limited-English proficient illiteracy” refers to all voting age citizens who are limited-English proficient and who have completed less than fifth grade. Jurisdictions are covered if they meet one of the population triggers and have an illiteracy rate among voting age citizens in a single language minority group that exceeds the national illiteracy rate of all voting age citizens of 1.35 percent.

“Coverage basis” refers to the population trigger resulting in Section 203 coverage. There are four different bases for coverage: “N” if the number of LEP voting age citizens in a single language group is more than 10,000; “P” if the percentage of LEP voting age citizens in a single language group is more than five percent of all voting age citizens; “RW” if an Alaskan Native or American Indian reservation is wholly located within the

²⁸⁶ This summary and data is the Texas portion of data taken from Dr. James Thomas Tucker & Dr. Rodolfo Espino et al., *MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS* App. C (Mar. 2006) (summarizing the July 2002 Census determination).

jurisdiction and the percentage of LEP voting age citizens in a single language group is more than five percent of all voting age citizens on that reservation; and “RP” if an Alaskan Native or American Indian reservation is partially located within the jurisdiction and the percentage of LEP voting age citizens in a single language group is more than five percent of all voting age citizens on that reservation. A jurisdiction can be covered for a single language group by multiple population triggers.

Table B-1: Texas Jurisdictions Covered by Section 203 for Spanish Heritage

TEXAS				
Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
State of Texas [†]	818185	6.15	19.46	P
Andrews County	585	7.22	29.91	P
Atascosa County	3985	15.62	25.35	P
Bailey County	330	8.26	21.21	P
Bee County	3335	13.58	21.44	P
Bexar County	98165	10.65	15.22	N, P
Borden County	*	*	*	P
Brewster County	620	9.48	31.45	P
Brooks County	1540	29.39	24.03	P
Caldwell County	1790	8.06	21.51	P
Calhoun County	935	6.79	27.81	P
Cameron County	46875	26.84	25.05	N, P
Castro County	620	12.34	35.48	P
Cochran County	295	12.66	32.20	P
Concho County	265	8.14	24.53	P
Crane County	210	8.64	19.05	P
Crockett County	415	15.34	15.66	P
Crosby County	580	12.17	29.31	P
Culberson County	420	22.52	38.10	P
Dallas County	53985	4.17	17.42	N
Dawson County	1270	11.64	40.16	P
Deaf Smith County	1650	14.66	30.61	P
DeWitt County	890	5.94	34.83	P
Dimmit County	1950	29.84	34.87	P
Duval County	2500	27.65	22.40	P
Ector County	6775	8.75	18.97	P
Edwards County	230	15.70	32.61	P
El Paso County	85400	23.12	16.00	N, P
Fisher County	185	5.70	43.24	P
Floyd County	555	10.85	32.43	P
Frio County	2360	21.17	25.42	P
Gaines County	895	10.94	30.17	P
Garza County	365	10.80	10.96	P
Glasscock County	45	5.45	33.33	P
Goliad County	350	6.99	31.43	P
Gonzales County	1085	8.85	29.03	P

[†] All 254 counties and their political subdivisions are covered as a result of statewide coverage of Texas.

* Loving County apparently was inadvertently included by the Census Bureau in its coverage determination. Census data indicates it is only flagged for statewide coverage. Therefore, it is excluded from this table.

TEXAS (CONT.)				
Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Guadalupe County	3540	5.79	20.34	P
Hale County	2625	10.97	27.43	P
Hall County	130	5.06	23.08	P
Hansford County	180	5.41	22.22	P
Harris County	107915	5.49	14.97	N, P
Hidalgo County	75255	27.86	26.04	N, P
Hockley County	1285	8.29	33.07	P
Howard County	1945	8.08	17.74	P
Hudspeth County	355	23.13	22.54	P
Irion County	75	5.88	33.33	P
Jeff Davis County	170	10.97	26.47	P
Jim Hogg County	1025	29.50	27.80	P
Jim Wells County	5530	20.99	19.26	P
Karnes County	1505	12.85	30.56	P
Kenedy County	90	33.33	22.22	P
Kinney County	365	15.77	38.36	P
Kleberg County	3430	15.64	16.18	P
Knox County	210	7.05	38.10	P
La Salle County	1170	28.92	28.63	P
Lamb County	1135	11.52	33.92	P
Live Oak County	815	8.64	28.83	P
Lubbock County	9285	5.26	25.20	P
Lynn County	495	11.47	33.33	P
Madison County	540	5.50	6.48	P
Martin County	320	10.88	40.63	P
Matagorda County	1385	5.64	31.77	P
Maverick County	8530	41.87	19.87	P
McMullen County	60	9.68	25.00	P
Medina County	2920	10.75	23.46	P
Menard County	145	8.41	44.83	P
Midland County	4290	5.62	21.21	P
Mitchell County	765	10.06	21.57	P
Moore County	940	8.67	23.94	P
Nolan County	625	5.54	39.20	P
Nueces County	26190	12.18	20.41	N, P
Parmer County	655	11.47	32.82	P
Pecos County	1850	16.88	33.51	P
Presidio County	955	29.25	30.37	P
Reagan County	175	9.51	20.00	P
Reeves County	2110	25.65	29.15	P
Refugio County	540	9.52	35.19	P
Runnels County	525	6.46	24.76	P
San Patricio County	5740	12.68	29.18	P
Schleicher County	230	11.86	34.78	P

TEXAS (CONT.)				
Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Scurry County	660	5.52	35.61	P
Starr County	10050	44.47	24.08	N, P
Sterling County	75	8.11	46.67	P
Sutton County	375	14.34	29.33	P
Swisher County	430	7.44	32.56	P
Tarrant County	25350	2.71	16.33	N
Terrell County	70	9.66	21.43	P
Terry County	900	10.32	35.00	P
Titus County	1005	5.98	29.85	P
Tom Green County	4180	5.65	21.53	P
Travis County	19195	3.54	15.37	N
Upton County	260	11.85	36.54	P
Uvalde County	3245	19.99	29.43	P
Val Verde County	5740	23.07	24.22	P
Victoria County	3915	6.78	25.03	P
Ward County	785	10.84	24.84	P
Webb County	33000	36.03	14.91	N, P
Wharton County	1450	5.22	29.66	P
Willacy County	3875	30.96	32.26	P
Wilson County	1675	7.45	22.69	P
Winkler County	460	10.53	36.96	P
Yoakum County	390	9.08	25.64	P
Zapata County	1940	29.24	23.97	P
Zavala County	2860	40.92	30.42	P

Table B-2: Texas Jurisdictions Covered by Section 203 for American Indian Languages

TEXAS						
Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
El Paso County	Pueblo	Ysleta Del Sur Pueblo and Off-Reservation Trust Land	40	24.24	10	RP
Maverick County	Other American Indian	Kickapoo (TX) Reservation	145	59.18	86.21	RP

Table B-3: Texas Counties Covered by Section 203 for Asian Languages

TEXAS					
Covered Jurisdiction	Covered Asian Languages	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Harris County	Vietnamese	16970	0.86	7.81	N

ATTACHMENT B

The Continuing Need for and Constitutionality of Section 203 of the Voting Rights Act

June 30, 2006

Dr. James Thomas Tucker
NALEO Educational Fund

Disclaimer: This memorandum summarizes some of the evidence supporting reauthorization of the language assistance provisions (Sections 4(f)(4) and 203) of the Voting Rights Act. While it provides many illustrative examples of voting and educational discrimination and the constitutional basis for reauthorization, it is not a substitute for the thousands of pages of testimony and evidence that have been introduced into the record. The Senate record itself is the most comprehensive and official source of all of the evidence supporting reauthorization of all of the temporary provisions of the Act.

- **Congress has recognized the importance of Section 203 to allow United States citizens who are not yet fully proficient in English to exercise their fundamental right to vote.**
 - ✓ **Sen. Hatch:** “The 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.” [S. Hrg. 102-1066, 134]
 - ✓ **Congressional findings:** The high illiteracy rates experienced by language minorities are “not the result of choice or mere happenstance,” but instead result from “the failure of state and local officials to afford equal educational opportunities.” [S. REP. NO. 94-295 at 28; see also 42 U.S.C. § 1973aa-1a(a)]
- **Continuing voting and educational discrimination, and the effects of past discrimination, support the exercise of Congressional powers to reauthorize Section 203.**
 - ✓ **Section 4(f)(4) findings of voting discrimination against language minorities:** “The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The 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 English-only elections, and by prescribing other remedial devices.” [42 U.S.C. § 1973b(f)(1)]
 - ✓ **Section 203(a) findings of educational discrimination:** “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.” [42 U.S.C. § 1973aa-1a(a)] – **There are two ways educational discrimination manifests itself:**

- “Present barriers to equal educational opportunities.” [S. REP. NO. 102-315, at 5]
 - “The current effect that past educational discrimination has on today’s [language minority] adult population.” [S. REP. NO. 102-315, at 5]
- **Although there has been some progress in covered jurisdictions to cure the evils of voting discrimination, much work remains left to be done.**
 - ✓ **Persistent and sustained racially polarized voting prevents language minorities from being elected in majority non-Hispanic white districts.**
 - **Latinos.**
 - As of 2000, no Hispanics were elected from majority non-Hispanic white districts. [National Commission on the VRA, at 43-46]
 - “The parties agree that racially polarized voting exists throughout Florida to varying degrees. The results of Florida’s legislative elections over the past 10 years established the presence of racially polarized voting.” [*DeGrandy v. Wetherell*, 794 F. Supp. 1076 (N.D. Fla. 1992), *aff’d in part and rev’d in part on other grounds*, *Johnson v. DeGrandy*, 512 U.S. 997, 1079 (1994)]
 - “This court recognizes that Plaintiffs have established racially polarized voting and a political, social, and economic legacy of past discrimination.” [*Session v. Perry*, 298 F. Supp.2d 451, 492 (E.D. Tex. 2004), *vacated and remanded on other grounds*, *Jackson v. Perry*, 125 S. Ct. 351 (2004)]
 - **American Indians and Alaska Natives.**
 - As of 2000, no Native Americans were elected from majority non-Indian districts. [National Commission on the VRA, at 43-46]
 - “The court concludes that substantial evidence, both statistical and lay, demonstrates that voting in South Dakota is racially polarized among whites and Indians in

Districts 26 and 27.” [*Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 1036 (D.S.D. 2004)]

- **Asian Americans.**

- A recent study of state and municipal elections in California between 1998 and 2002 found that there was “evidence of bloc voting in every race where a Vietnamese candidate is pitted against a White candidate.... But like African Americans and Latinos, they vote regularly as a bloc in order to protect the interests of their community against White majorities inclined to defeat them.” [Christian Collet, “Bloc Voting, Polarization and the Panethnic Hypothesis: The Case of Little Saigon,” *The Journal of Politics* Vol. 67, Issue 3, at 2 and 19 (August 2005)]

- ✓ **The Department of Justice has brought several successful Section 2 cases to stop several forms of voting discrimination against language minorities.** DOJ’s cases involve voting discrimination against language minority voters, including discriminatory voting purges, failure to hire minority poll workers, threats and intimidation, active efforts to suppress the vote, discriminatory methods of election, and intentional discrimination, among many others. See Appendix A for a list of some of these cases, as well as the following summaries:

- **Florida – *United States v. Osceola County* (M.D. Fla. 2006):** A challenge to the at-large system for electing the county Board of Commissioners in violation of Section 2. Although Hispanics comprise nearly one-third of the county’s electorate, the county has never elected a Hispanic candidate to the Board under the at-large system or to any countywide office. On June 26, 2006, the federal court granted preliminary injunctive relief, finding that the United States had shown a likelihood of success on the merits that sustained racial bloc voting combined with the at-large system to dilute Hispanic voting strength. The court also found a likelihood of success on the merits that Osceola County adopted and maintained the at-large method of election with a discriminatory purpose.
- **Montana – *United States v. Blaine County* (D. Mt. 2000):** Despite comprising over one-third of the County’s population, no American Indian had served as a County Commissioner in the County’s 86-year history. The appellate court found that there was substantial evidence of white bloc voting that defeated American Indian candidates of choice. In reaching this conclusion, the court

rejected the County's arguments that the racially polarized voting could be ignored because there was no evidence American Indians had distinct political concerns or that white voters had discriminatory motives. The court reasoned that the County's at-large voting system enhanced the possibility that a bloc of white voters prevented American Indians from electing candidates of their choice.

- **Massachusetts – United States v. City of Lawrence (D. Mass. 2002):** The United States alleged that the city's methods of electing its city council and school board violated Section 2 of the Voting Rights Act because both denied Hispanic citizens an equal opportunity to participate in the political process and elect candidates of their choice. The complaint also alleged violations of Section 203 and Section 2 of the Act based on the city's failure to provide Spanish-language minority citizens with electoral information and assistance in Spanish and the refusal to appoint Hispanic and Spanish-speaking poll workers. The city agreed to comply with the language assistance provisions of the Act and to change the method of electing its school committee from at-large to single-member districts, and to adopt an election plan for its city council and school board that complied with Section 2 upon release of the 2000 Census. In 2001, the United States filed a supplemental complaint, which alleged that the post-2000 Census redistricting plans did not resolve the Section 2 violation. In a separate consent decree, the city agreed in 2002 to revise the districting plans for both bodies to provide an additional Hispanic-majority district. The consent decree also required the city to appoint a person who is bilingual in English and Spanish to the board of registrars and to the staff in the elections office.
- **South Dakota – United States v. Day County and Enemy Swim Sanitary District (D.S.D. 1999):** The defendants admitted violating Section 2 by intentionally excluding American Indian citizens from the Enemy Swim Sanitary District. The sanitary district is comprised of several noncontiguous pieces of land representing only 13 percent of the land area around Enemy Swim Lake owned by non-Indians. The sanitary district was drawn to exclude the remaining 87 percent of the land around the Lake, owned by the Sisseton-Wahpeton Sioux Tribe and about 200 of its members. All of the registered voters in the district were non-Indian white voters. Day County entered into a consent decree to remedy the violation by incorporating a new sanitary district comprised of all voters, including American Indian citizens around and near Enemy Swim Lake.

- ✓ **The Department of Justice has brought at least 26 successful language assistance cases.** Nationally, since 1992 (when Section 203 was last reauthorized) the Department of Justice (DOJ) has brought at least 26 successful cases to stop voting discrimination against language minorities in 12 of the states covered in whole or in part by Section 203. A summary of all of DOJ's language assistance cases is attached as Appendix A. Some of the cases are discussed below:
 - **Arizona – *United States v. State of Arizona* (D. Ariz. May 22, 1989) (amended Sept. 27, 1993) (No. 88-1989-PHX EHC):** The State of Arizona and Apache and Navajo Counties continue to be under a federal consent decree entered in 1989 and amended in 1993 that addresses the State's failure to provide adequate language assistance and equal voting opportunities to American Indian voters. The consent decree summarized the complaint: "The challenged practices include alleged discriminatory voter registration, absentee ballot, and voter registration cancellation procedures, and the alleged failure of the defendants to implement, as required by Section 4(f)(4), effective bilingual election procedures, including the effective dissemination of election information in Navajo and providing for a sufficient number of adequately trained bilingual persons to serve as translators for Navajo voters needing assistance at the polls on election day." [Slip op. at 1-2] In response, the State and counties agreed to comprehensive relief to bring them into compliance with Sections 2, 4(f)(4), 5, 203, and 208 of the Voting Rights Act. They subsequently failed to do so, as noted by the Department of Justice in a report prepared after the November 2002 general election. Federal observers continue to monitor and document compliance issues in Apache and Navajo Counties.
 - **Florida – *United States v. Osceola County* (M.D. Fla. 2002):** The Department of Justice filed suit because of the "widespread violation of minority voting rights, including poll workers making hostile remarks to Spanish-speaking voters to discourage them from voting, the failure of poll officials to communicate effectively with Spanish-speaking voters, failure to staff polling places with bilingual poll officials, and failure to translate ballots and other election materials in Spanish." The County subsequently entered into a Consent Decree to remedy these widespread violations. The County is separately being sued for vote dilution in violation of Section 2 of the VRA, resulting from acknowledged polarized voting under an at-large election system. [JONEL NEWMAN, UNFINISHED BUSINESS: THE CASE FOR CONTINUING SPECIAL VOTING RIGHTS ACT COVERAGE IN FLORIDA (2006) (citing *United*

States v. Osceola County, No. 6:02-CV-738-ORL-22JGG (M.D. Fla. 2002)]

- **Massachusetts – *United States v. Boston* (D. Mass. 2005):** On July 29, 2005, the United States filed complaint against the City of Boston under Sections 2 and 203 of the Voting Rights Act. The City’s election practices and procedures discriminated against persons of Spanish, Chinese, and Vietnamese heritage and denied and abridged their right to vote in violation of Section 2. The suit also alleged that the City has violated Section 203 by failing to make all election information available in Spanish to voters who need it. On October 18, 2005, the three-judge court issued an order authorizing federal examiners through December 31, 2008.
- **New Jersey – *United States v. Passaic City, N.J. et al., and Passaic County, N.J., et al.*, No. 99-2544 (NHP) (D.N.J. 1999):** A three-judge court found voting discrimination so severe and pervasive that it resulted in the first Federal Court takeover of a county’s election system. Federal observers were deployed for 18 elections, documenting direct disenfranchisement, discriminatory voter purges, threats, intimidation, violence, and widespread non-compliance with the VRA. The *Passaic County* litigation is detailed in Jim Tucker’s federal observer testimony.
- **Pennsylvania – *United States v. Berks County*, 277 F. Supp. 2d 570 (E.D. Pa. 2003) and 250 F. Supp.2d 525 (E.D. Pa. 2003):** Federal court finding widespread discrimination against Latino voters in Reading, Pennsylvania. Some of the findings include:
 - “The Court finds that there is substantial evidence of hostile and unequal treatment of Hispanic and Spanish-speaking voters by poll officials” including hostile treatment and intimidation to discourage them from voting. “Poll officials in the City of Reading boasted of the outright exclusion of Hispanic voters....” [*United States v. Berks County*, 277 F. Supp.2d 570, 575-76 (E.D. Pa. 2003)]
 - “Poll officials in the City of Reading placed burdens on Hispanic voters that were not imposed on white voters,” such as demanding photo ID when it is not required under Pennsylvania law and requiring them to verify their address.” [277 F. Supp.2d at 575]
 - Although the largely Puerto Rican Hispanic population comprised nearly one-third of Reading’s voting age population, in the 1999 election only 1.3 percent of all poll

workers were Hispanic. The failure to recruit bilingual Spanish-speaking poll workers deprived LEP Spanish-speaking voters of an equal opportunity “to cast an informed and effective vote.” [277 F. Supp.2d at 574, 576, 579]

- o “The only impediment to Defendants’ appointment of bilingual persons to serve as clerks or machine inspectors, and to fill vacant elected poll worker positions, was Defendants’ apparent unwillingness to ensure that poll workers included persons reflective of the community.” [277 F. Supp. 2d at 581]
- o “Many Reading voters attempt to bring a bilingual friend or family member to the polls to assist them in voting. Poll officials have barred voters from bringing their assistants of choice into the voting booth to assist them,” in violation of Sections 2, 4(e), and 208 of the VRA. [277 F. Supp.2d at 577, 579-80]
- o Reading election officials required Latino poll worker applicants to be subjected to lengthy applications and criminal background checks to which non-Latino poll workers were not subjected, even after the Department of Justice repeatedly objected to the discriminatory practice. [277 F. Supp. 2d at 577]

✓ **Election officials admit widespread non-compliance with Section 203:**

In a survey of 810 covered jurisdictions, 52 percent of which responded, election officials acknowledged widespread non-compliance with Section 203 and other provisions of the Voting Rights Act. [DR. JAMES THOMAS TUCKER & RODOLFO ESPINO, MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS EXECUTIVE SUMMARY (Mar. 2006) (“MINORITY LANGUAGE ASSISTANCE PRACTICES”)]

- 19.4 percent provide no language assistance and 14 percent provide only bilingual written materials. These jurisdictions generally have high percentages of LEP voters in one or more of the covered languages. [Ibid. at 22]
- 61 percent fail to provide language assistance to voters making telephonic inquiries. [Ibid. at 22]
- 57.1 percent do not have at least one full-time worker in the covered languages. [Ibid. at 22]

- 67.1 percent fail to provide oral language assistance for more than half of all common election activities. [Ibid. at 22]
 - Nearly two-thirds do not engage in community outreach with covered language groups. [Ibid. at 23]
 - Over two-thirds do not confirm the language abilities of poll workers who claim to be bilingual. [Ibid. at 23]
 - Nearly two-thirds do not provide any training on compliance with Section 203. [Ibid. at 23]
 - Approximately 90 percent report using voter assistance practices that do not comply with Section 208 of the Voting Rights Act. [Ibid. at 23]
- ✓ **Alaska examples of continuing need for 203:** Residents of nearly 200 Native villages accessible only by plane live in abject poverty, have high unemployment rates, the lowest levels of education, and a high level of limited-English proficiency that impair their ability to participate in elections. There is substantial non-compliance with Section 203, including lack of oral language assistance, no voter outreach, and the absence of language assistance by telephone. [Testimony of Natalie Landreth; NATALIE LANDRETH & MOIRA SMITH, VOTING RIGHTS IN ALASKA 1982-2006, at 27-28 (2006)]
- ✓ **Arizona examples of continuing need for 203:** Since 1982, DOJ 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. Over 80 percent of all Section 5 objections in Arizona have occurred since 1982. DOJ has interposed objections to discriminatory voting changes in nearly half of Arizona's counties since the last reauthorization. [DR. JAMES THOMAS TUCKER & DR. RODOLFO ESPINO ET AL., VOTING RIGHTS IN ARIZONA 1982-2006, at 4, 17, 54, 56-57 (2006)]
- **Discriminatory state legislative plan.** In 2002, the Department of Justice objected to Arizona's state legislative redistricting plan because it fractured Latino voters and reduced Latino voting age population in five districts below their 1994 benchmarks, despite the growth of the state's Latino population and the ability to draw three compact majority-Latino districts. The state court responded by accepting an interim plan recommended by a Special Master that restored one district to its benchmark level and created two new Latino-majority districts in metropolitan Phoenix to replace

some of the other four majority Latino-majority districts that had been eliminated. [DOJ Submission No. 2002-0276]

- **Elimination of American Indian polling places.** In 1985, the Department of Justice objected to voting changes proposed by the Apache County Board of Supervisors including: the elimination of two polling places; the implementation of a rotating polling place system; and a reduction in the daily hours of operation for those voting stations that remained open. Of the two polling places that were closing, one was the last remaining polling place on the Fort Apache Reservation. The elimination of all polling places on the reservation was exacerbated by the new rotating poll system, which made polling places even less accessible to Navajo voters. Absentee voting opportunities also were not provided to Indian voters. As a result of this objection, American Indian voters continued to have the opportunity to vote at their existing polling places. [DOJ Submission No. 85-1768]
- **Failure to comply with 203.** In June 2006, Cochise County, Arizona acknowledged non-compliance with Section 203 and entered into a Consent Decree with the Department of Justice to cure those violations.

✓ **California examples of continuing need for 203:**

- **Failure to comply with 5.** Monterey County, one of four Section 5 covered counties, refused to submit any of its ordinances for preclearance and did not do so until ordered by a federal court. [*Lopez v. Monterey County*, 525 U.S. 266 (1999)]
- **Discriminatory method of election.** In March 2002, the Department of Justice found that Chualar Union school district elections from district to at-large “was motivated, at least in part, by a discriminatory animus,” and it had a retrogressive impact on Latino voting strength.
- **Discriminatory polling place change.** In 2003, the Department of Justice obtained a TRO to stop at least seventeen instances in which Monterey County was moving polling places to limit Latino voting access. In once instance, a polling place was moved “almost 5 miles away from a predominately Latino community to a new site without easy access to public transportation.” In another case, a proposed consolidation “would close two school-site polling places in predominately Latino communities and force voters to cast their ballots at the Sheriff’s Posse Club House, a hunting club in a predominately Anglo area and clearly a site that

would discourage Latino voters.” [National Commission on the VRA, at 57]

- **At least eight successful 203 cases.** The Department of Justice has brought eight successful language assistance cases in California on behalf of Asian American and Spanish speaking voting age U.S. citizens, including six since 2004. Summaries of many of these cases are included in Appendix A.
- ✓ **New Mexico has had several violations of 203:** New Mexico, which is covered statewide by Section 203 for Spanish and for American Indian languages in several counties (see Appendix B), has been the location of the second highest number of successful Section 203 cases, trailing only California. These successful cases have been brought on behalf of both American Indian and Spanish language voters. There has been more federal observer coverage in New Mexico than any other state for language assistance cases, with over 70 elections covered. Summaries of many of these cases are included in Appendix A.
- ✓ **New York examples of continuing need for 203:**
 - **New Section 203 case filed because of widespread violations.** In February 2006, AALDEF sued New York City for violations of Section 203, including failure to train and provide adequate numbers of bilingual poll inspectors; failure to provide adequately translated materials to voters regarding registration and poll site information; failure to make telephone assistance available in the required Asian languages; failure to post translated signs at polling places; and failure to provide correctly translated ballots. [Chinatown Voter Education Alliance v. Ravitz, No. 06-CV-913 (S.D.N.Y. Feb. 6, 2006)]
 - **At least three successful 203 cases.** Since 2003, successful Section 203 cases have been brought against Westchester County, Suffolk County, and the Brentwood Union Free School District for failure to provide Spanish language assistance. Summaries of some of these cases are included in Appendix A.
- ✓ **South Dakota examples of continuing need for 203:** South Dakota has a sustained pattern of voting discrimination and non-compliance with the VRA.
 - **Discriminatory state legislative plan.** In 2004, a three-judge Court found that the State’s 2001 legislative redistricting plan diluted American Indian voting strength in violation of Section 2 of the VRA. The court found that there was “substantial evidence

that South Dakota officially excluded Indians from voting and holding office.” To achieve its unlawful plan, the State packed American Indians from Shannon and Todd Counties, which were separated by another county, into a single 90 percent American Indian district. The Court found that by unpacking these voters, two more compact American Indian majority districts could be drawn. [*Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 1019 (D.S.D. 2004)]

- **Wholesale failure to comply with 5.** In 2002, several members of the Oglala and Rosebud Sioux Tribes in Shannon and Todd Counties (the two South Dakota counties covered under Section 5 of the VRA) sued South Dakota to force it to comply with Section 5. Following negotiations among the parties, the court entered a consent order in December 2002, in which it directed the state to develop a comprehensive plan “that will promptly bring the State into full compliance under Section 5.” [*Quick Bear Quiver v. Hazeltine*, Case No. 02-5069 (D.S.D. Dec, 27, 2002) (three-judge court), slip op. at 3]
 - Since Shannon and Todd Counties became covered under Section 5 of the VRA in 1972, state and county officials failed to apply for preclearance of at least 600 voting changes.
 - The failure stemmed at least in part from a recommendation made in 1977 by then-Attorney General William Janklow to refrain from complying with Section 5 in the two covered American Indian counties. Janklow described the preclearance requirement as a “facial absurdity” and advised against compliance, stating “I see no need to proceed with undue speed to subject our State laws to a ‘one-man veto’ by the United States Attorney General.” [1977 S.D. Op. Atty. Gen. 175, *available at* 1977 WL 36011]
- **Failure to comply with 203.** As recently as June 2006, the Department of Justice monitored primary elections in two 4(f)(4) covered counties (Shannon and Todd) and four 203 covered counties (Bennett, Dewey, Mellette, and Ziebach Counties) because of widespread noncompliance with the language assistance provisions.
- ✓ **Texas examples of continuing need for 203:** Since 1982, DOJ has issued at least 107 objections to proposed electoral changes in Texas (including ten statewide objections), which is the second highest total of

Section 5 objections, trailing only Mississippi. 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). Since 1982, Texas also has the highest number of successful Section 2 cases (at least 206). [NINA PERALES, LUIS FIGUEROA & CRISelda RIVAS, THE MINORITY VOTING EXPERIENCE IN TEXAS SINCE 1982: DEMONSTRATING THE IMPORTANCE OF REAUTHORIZATION OF THE VOTING RIGHTS ACT 3, 15-16 (2006)]

- **Voting discrimination in Seguin.** The City of Seguin failed to redistrict after the 1980 and 1990 Census, after Latinos were successful in challenges to earlier discriminatory redistricting plans. By 1993, when two-thirds of the City was Latino, the City divided the compact Latino population so Latinos only had an opportunity to elect one-third of the nine City Council members. Latino plaintiffs sued and won a settlement in 1994 from the City that created eight single-member districts, five of them with a majority-Latino population. Following the 2000 Census, Seguin redistricted again but again fractured Latino population to preserve the incumbency of an Anglo member of the City Council. When DOJ refused to preclear the redistricting plan, Seguin corrected the violation but then closed its candidate-filing period so the Anglo incumbent would run for office unopposed. Latino plaintiffs sued, securing an injunction under Section 5. The parties settled after negotiating a new election date. Today a majority of the Seguin City Council members are Latino. [*LULAC v. City of Seguin, Texas*, No. SA-02-369-OG (W.D. Tex. 2002); NINA PERALES, LUIS FIGUEROA & CRISelda RIVAS, THE MINORITY VOTING EXPERIENCE IN TEXAS SINCE 1982: DEMONSTRATING THE IMPORTANCE OF REAUTHORIZATION OF THE VOTING RIGHTS ACT (2006).]
- **City of Freeport's restoration of discriminatory election system.** In 2002, DOJ objected to a change in the method of election proposed by the City of Freeport, Texas, which involved abandoning single-member districts adopted as a result of a Section 2 violation in favor of a return to at-large elections. At the time of the proposal, Latinos comprised 47.3 percent and African Americans comprised 12.3 percent of the City's voting age population. Approximately 29 percent of the City's registered voters were Spanish-surnamed. DOJ recognized that because of the extremely polarized racially polarized voting, at-large elections would impair the ability of minority voters to elect a candidate of their choice. [*Ibid.*]

- **Haskell School District’s restoration of discriminatory election system.** In 2001, DOJ objected to attempts to reinstitute a discriminatory at-large voting system for the Haskell Consolidated Independent School District in Haskell, Knox and Throckmorton Counties, which had been abandoned in favor of single-member districts as a result of a successful Section 2 case. [Ibid.]
 - **Widespread failure to provide Spanish language materials.** In connection with a 2005 MALDEF study, of the 101 counties investigated, 80 percent were unable to produce voter registration forms, official ballots, provisional ballots and their written voting instructions; only one county was able to produce evidence of full compliance with the language minority provisions of the Voting Rights Act. [Ibid.]
 - **Failure to comply with 203.** The Department of Justice brought successful enforcement actions against Hale County in 2006 and Ector County in 2005 for widespread violations of Section 203 by failing to provide Spanish language materials and assistance.
- **Section 203 is also needed to provide relief to millions of limited English proficient United States citizens denied equal educational opportunities in the public schools.**
 - ✓ **Widespread educational discrimination:** Since 1975, at least twenty-four successful educational discrimination cases have been brought on behalf of English Language Learner (ELL) students in fifteen states, fourteen of which are presently covered in whole or in part by the language assistance provisions. [DR. JAMES THOMAS TUCKER, UNEQUAL EDUCATIONAL OPPORTUNITIES FOR ENGLISH LANGUAGE LEARNERS IN SECTION 203 COVERED JURISDICTIONS (June 2006) (“UNEQUAL OPPORTUNITIES”)]
 - Successful cases have been brought on behalf of all four of the covered language minority groups.
 - For a complete listing and summaries of these cases, which represent only a sample of all successful ELL cases, see UNEQUAL OPPORTUNITIES.
 - ✓ **Current educational discrimination against English Language Learners:** 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. [UNEQUAL OPPORTUNITIES]

- **Consent decrees and court orders still in effect for covered states:** Consent decrees or court orders remain in effect for ELL students statewide in Arizona, Florida, and Texas, and in the cities of Boston, Denver, Philadelphia, and Seattle. [UNEQUAL OPPORTUNITIES]
- **Recent educational discrimination cases have been successfully brought or are pending in all three states covered statewide under Section 4(f)(4):**
 - **Alaska:** 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 ELL students enrolled in the public schools. [*Kasayulie v. State of Alaska*, Case No. 3AN-97-3782-CIV (Alaska Superior Ct. 1999)]
 - **Arizona:** In a December 2005 decision, a Federal Court cited the State of Arizona for contempt for failing over the course of the preceding thirteen years to provide opportunities for Spanish-language students in the public schools to learn English. The Court has been fining the State at least \$500,000 a day until the problem is corrected and equal opportunities are provided to the 175,000 ELL students estimated to be in Arizona's schools in 2006. [*Flores v. State of Arizona*, 405 F. Supp.2d 1112 (D. Ariz. 2005)]
 - **Texas:** In 2006, a request for post-judgment relief was filed for widespread non-compliance under a 1981 consent decree still in effect for Texas's public schools. The request is still pending. [*United States v. State of Texas*, 6:71-CV-5281 (E.D. Tex. 2006)]
- **Successful school funding cases have been brought in half of all of the Section 203 covered states and are pending in many others.** [ACCESS, a Project of the Campaign for Educational Equity, Teacher's College at Columbia University, available at www.schoolfunding.info]
 - **Successful school funding cases have been brought in fifteen of the thirty-one states covered in whole or in part by Section 203:** Alaska, Arizona, California, Connecticut, Idaho, Kansas, Maryland, Massachusetts, Montana, New Jersey, New Mexico, New York, North

Dakota, Texas, and Washington. [UNEQUAL OPPORTUNITIES]

- o **Additional school funding cases are pending in four states that are partially covered by Section 203:** Colorado, Nebraska, Oklahoma, and Oregon. [UNEQUAL OPPORTUNITIES]
- ✓ **Millions of ELL students, nearly three-quarters of whom are native-born United States citizens, are impacted by ongoing educational discrimination.**
 - **3.4 million of the 4.5 million ELLs in the public schools are native-born U.S. citizens.** [U.S. DEPARTMENT OF EDUCATION, OFFICE OF ENGLISH LANGUAGE ACQUISITION, LANGUAGE ENHANCEMENT AND ACADEMIC ACHIEVEMENT FOR LIMITED ENGLISH PROFICIENT STUDENTS (OELE), SURVEY OF THE STATES' LIMITED ENGLISH PROFICIENT STUDENTS AND AVAILABLE EDUCATIONAL PROGRAMS AND SERVICES 4, 19 (Oct. 2002)]
 - **The states with the most LEP students are all covered by 203.** According to 2002 data, the top six states with ELL students are all covered by Section 203: 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. [OELE at 4, 19]
 - **The school districts with the most LEP students are all covered by 203.** Twenty-seven of the 28 school districts that had 10,000 or more ELL students in 2004-2005 are in Section 203 covered jurisdictions, including all of the top-25. [Clearinghouse for English Language Acquisition and Language Instruction Educational Programs, FAQ No. 2, available at <http://www.ncela.gwu.edu/faq/02districts.htm>]
 - **The school districts with more than 50,000 LEP students are all covered by 203.** According to 2004-2005 data, school districts with more than 50,000 ELL students include: Los Angeles with 328,684; New York with 122,840; Chicago with 82,540; Miami-Dade with 62,767; Houston with 61,319; Clark County (Las Vegas), Nevada, with 53,517; and Dallas with 51,328. [Ibid.]
- ✓ **A majority of surveyed ESL providers in sixteen states covered by Section 203 reported that they have lengthy waiting lists and cannot even meet the needs of providing basic English instruction, much less more advanced instruction required to cast effective ballots.** [JAMES

THOMAS TUCKER, WAITING TIMES FOR ADULT ESL CLASSES AND THE IMPACT ON ENGLISH LEARNERS 3, 18 (June 2006)]

- **Phoenix, Arizona:** the state's largest ESL provider has a waiting list of over 1,000 people with a waiting time of up to 18 months for the highest-demand evening classes. [Ibid. 4, 19]
 - **Boston, Massachusetts:** Since the state mandated class sizes of no more than twenty students to improve quality and learning opportunities, there are at least 16,725 adults on ESL waiting lists, with wait times as long as three years for some programs. [Ibid. 4, 29-30]
 - **Albuquerque, New Mexico:** the largest provider reported waiting times of twelve to fourteen months. [Ibid. 4, 31]
 - **New York City, New York:** the ESL need is estimated to be one million, but only 41,347 adults were able to enroll in 2005 because of limited availability. Most adult ESL programs no longer keep waiting lists because of the extreme demand, but use lotteries in which at least three of four are turned away and the waiting time can be several years. [Ibid. 4, 32-33]
- ✓ **Educational discrimination and lack of ESL opportunities has resulted in the inability to acquire English language abilities and high illiteracy rates.**
- **High failure rates on graduation tests caused by educational discrimination.** According to an OELA study, LEP students are twice as likely to fail graduation tests as native-English speakers. [PAUL J. HOPSTOCK & TODD G. STEPHENSON, DESCRIPTIVE STUDY OF SERVICES TO LEP STUDENTS AND LEP STUDENTS WITH DISABILITIES 17 (Aug. 2003) (commissioned by OELA)]
 - **Arizona's high failure rates among American Indian and Latino LEP students caused by educational discrimination.** In Arizona, eighty-three percent of juniors and sophomores who qualify as English learners failed key portions of the state-mandated graduation test including reading comprehension. [UNEQUAL OPPORTUNITIES]
 - **Alaska's high failure rates among Alaska Natives and American Indians students caused by educational discrimination.** In Alaska, 80.5 percent of Alaska Native graduating seniors are not proficient in reading comprehension, they have failure rates on standardized

tests more than 20 percent higher than non-Native students, and graduation rates that lag more than 15 percent behind the statewide average. [LANDRETH & SMITH, at 27-28]

- o **Texas's high failure rates among Latino LEP students is caused by educational discrimination.** In Texas, the Texas Education Agency reports that in 2004-2005, more than 9 out of 10 (94%) of Texas LEP students in Grade 10 failed to meet the state's standards. Nearly 1.2 million Latino voting age citizens in Texas lack a high school diploma, or 40 percent of all Latino voting age citizens, compared to only 13.5 percent of all Anglo voting age citizens. As a result of these substantial disparities, in early 2006, plaintiffs filed a motion for further post-judgment relief in *United States v. Texas*, in which the federal court has retained jurisdiction under a 1981 Consent Decree. [THE MINORITY VOTING EXPERIENCE IN TEXAS, 34-36]
- **High LEP rates among covered voting age citizens.** Among all covered jurisdictions, an average of 13.1 percent of citizens of voting age are limited-English proficient (LEP) in the languages triggering coverage. [MINORITY LANGUAGE ASSISTANCE at 21 (summarizing July 2002 Census determinations for Section 203 coverage)]
 - o **Alaska Natives:** In the 59 covered reservations for which Census data is available, an average of 22.6 percent of all voting age citizens are Alaska Native LEP citizens. Forty percent (36) of these reservations have LEP rates greater than 50 percent. [MINORITY LANGUAGE ASSISTANCE FULL REPORT, at 35]
 - o **American Indians:** In the 100 covered reservations for which Census data is available, an average of 16.3 percent of all voting age citizens are American Indian LEP citizens. Over one-quarter of all reservations have LEP rates greater than 50 percent. [Ibid. at 38]
 - o **Latinos:** In the 217 covered counties for which Census data is available, an average of 10.4 percent of all voting age citizens are Latino LEP citizens. [Ibid. at 32]
 - o **Asian Americans:** Twenty-five of the 27 jurisdictions covered for Asian languages have more than 10,000 Asian American LEP citizens. [Ibid. at 39]

- **High illiteracy rates among covered voting age citizens.** According to the 2000 Census, covered language minority citizens have an average illiteracy rate of 18.8 percent, nearly fourteen times the national rate. [MINORITY LANGUAGE ASSISTANCE at 21]
 - **Alaska Natives:** In the 59 covered reservations for which Census data is available, an average of 28.3 percent of Alaska Native LEP voting age citizens are illiterate, nearly 21 times the national illiteracy rate. Forty percent (36) of these reservations have illiteracy rates greater than 50 percent. [MINORITY LANGUAGE ASSISTANCE FULL REPORT, at 36]
 - **American Indians:** In the 100 covered reservations for which Census data is available, an average of 11.7 percent of all LEP American Indian voting age citizens are illiterate, nearly nine times the national illiteracy rate. Over one-quarter of these reservations have illiteracy rates greater than 50 percent. [Ibid. at 38-39]
 - **Latinos:** In the 217 covered counties for which Census data is available, an average of 20.8 percent of all LEP Latino voting age citizens are illiterate, over fifteen times the national illiteracy rate. [Ibid. at 32-33]
 - **Asian Americans:** In the 27 jurisdictions covered for Asian languages, an average of 8.5 percent of all LEP Asian American voting age citizens are illiterate, more than six times the national illiteracy rate. [Ibid. at 42]
- **See the full Tucker & Espino report on Minority Language Assistance Practices for a detailed discussion of LEP and illiteracy rates and their impact.** Chapter 1 discusses the triggering formulas and Chapter 3 discusses the need for assistance by summarizing Census determinations. The July 2002 Census determination data (from the Tucker & Espino appendices) is attached as Exhibit B to this Memorandum.
- **Voting and educational discrimination has resulted in severely depressed voter registration and turnout among covered language minorities. Section 203 has made a difference in addressing the effects of this discrimination.**
 - ✓ **Alaska Natives:** The “largely monolingual elections in Alaska have clearly impacted Alaska Natives’ ability to exercise their right to vote,”

resulting in voter turnout that trails statewide turnout by nearly seventeen percent. [LANDRETH & SMITH, at 25-26]

- Where language assistance is offered in Alaska, it has made a tremendous difference in Alaska Native registration and turnout. In recent years, seven new Alaska Natives have been elected to the Alaska state legislature. [Joint Statement of the National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF) before the House Judiciary Committee]
- ✓ **American Indians:** In Arizona, American Indian turnout remains low, comprising just over 54 percent of all registered American Indian voters in the 2004 presidential election, compared to the statewide turnout of 76 percent. [DR. JAMES THOMAS TUCKER & DR. RODOLFO ESPINO ET AL., VOTING RIGHTS IN ARIZONA 1982-2006, at 19 (2006)]
 - In many places, American Indian registration and turnout is up between 50 percent and 150 percent as a direct result of language assistance. [Joint Statement of the National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF) before the House Judiciary Committee]
 - As a direct result of the Justice Department's litigation in *United States v. State of Arizona* and the resulting consent decree which also applies to Apache and Navajo Counties, turnout among Navajo voters increased by 26 percent between 2000 and 2004, from 14,277 to 17,955 [Statement of Penny Pew, Elections Director of Apache County, Arizona, before the House Judiciary Committee]
- ✓ **Latinos:** According to the Census Bureau, in the November 2004 Presidential Election, Hispanic voting-age U.S. citizens had a registration rate of 57.9 percent, compared to 75.1 percent of all non-Hispanic white voting-age U.S. citizens. [U.S. CENSUS BUREAU, Table 4a, Reported Voting and Registration of the Total Voting-Age Population by Sex, Race and Hispanic Origin: November 2004]
 - Although Latino registration trails far behind non-Latino registration, increased enforcement of Section 203 has had a tremendous impact. Between 2000 and 2004, the number of registered Latino voters grew from 7.6 million to 9.3 million. [U.S. CENSUS BUREAU, Table 4a, Reported Voting and Registration of the Total Voting-Age Population by Sex, Race and Hispanic Origin: November 2004]

- Overall, the Latino voter registration rate has nearly doubled as a result of Sections 4(f)(4) and 203. In 1974, only 34.9 percent of all eligible Latino voting-age citizens were registered to vote, compared to 57.9 percent in 2004. [Testimony of John Trasviña]
 - In January 2005, there were more than 5,200 Latino elected officials in the United States, including two U.S. Senators, sixteen U.S. Representatives, six statewide officials, forty state senators, and 122 state representatives. Nevertheless, Latinos still only occupy 0.9 percent of all elected offices, despite comprising nearly 9 percent of all voting age citizens in the United States.
 - Between 1973 (prior to the 1975 amendments that added coverage under Sections 4(f)(4) and 203) and 2005, the number of Latino elected officials in six states (AZ, CA, FL, NM, NY, and TX) increased more than 347 percent, from 1,280 to 4,446. [NALEO Educational Fund, 1985 and 2005 National Directory of Latino Elected Officials]
 - In Texas, the number of Latino elected officials has grown from 565 in 1973 to 2,137 in January 2005. [NALEO Educational Fund, 1985 and 2005 National Directory of Latino Elected Officials]
 - There has been substantial evidence of the causal link between Latino registration and turnout and coverage under Sections 4(f)(4) and 203 of the VRA. For example, in Yakima County, Washington, Latino voter registration was up over 24 percent one year after the Department of Justice brought its enforcement action. [Testimony of Wan J. Kim, Juan Cartagena, and John Trasviña]
- ✓ **Asian Americans:** According to the Census Bureau, in the November 2004 Presidential Election, Asian American voting-age U.S. citizens had a registration rate of only 52.5 percent, compared to 75.1 percent of all non-Hispanic white voting-age U.S. citizens. [U.S. CENSUS BUREAU, Table 4a, Reported Voting and Registration of the Total Voting-Age Population by Sex, Race and Hispanic Origin: November 2004]
- Section 203 has a tremendous impact on Asian Americans, many of whom are either new citizens or first-time voters who struggle without receiving language assistance in their native languages.
 - Between 1996 and 2004, Asian Americans experienced the greatest increase in voter registration and turnout of any group, 58 percent and 71 percent respectively, as a direct result of increased coverage that followed the 1992 amendments to Section 203. The

addition of the 10,000-person trigger in 1992 has played an integral role in this result. [Testimony of Margaret Fung of AALDEF]

- According to the AAJC, 346 Asian Americans have been elected to office, including six to federal offices, an increase from 120 elected officials in 1978. [Asian American Justice Center] The number of Asian Americans elected to California's state assembly increased from zero in 1990 to nine in 2005. [Testimony of Margaret Fung of AALDEF]
- A Memorandum of Agreement between the Department of Justice and Harris County, Texas helped double Vietnamese voter turnout, allowing Hubert Vo, the first Vietnamese candidate in history to be elected to the Texas legislature, to defeat the incumbent eleven-term chair of the Appropriations Committee by sixteen votes out of 40,000 cast. [Testimony of Assistant Attorney General Wan J. Kim]
- **Language assistance is widely used where it is made available to LEP voters.**
 - **AALDEF's eight-state exit poll of Asian American voters.** According to a November 2004 exit poll of 11,000 Asian American voters, almost one-third indicated that they needed language assistance to vote, including 46 percent of all first-time voters. Among all respondents, 51 percent indicated that they got most of their news about politics and community issues from the Asian-language media. [Testimony of Margaret Fung of AALDEF]
 - **Arizona.** According to a November 2004 survey of LEP Navajo and Latino voters in Coconino and Maricopa Counties and a follow-up telephone survey in March 2005 of Latino voters in Maricopa County, 76 percent reported that they received some type of language assistance when they voted. [VOTING RIGHTS IN ARIZONA, at 39]
 - **California.**
 - According to the Los Angeles County, California Registrar of Voters, the total number of voters in Los Angeles County who have requested language assistance increased by 38 percent between December 1999 and August 2005 as a result of outreach efforts. During this period, requests for language assistance among specific language groups increased as follows: Tagalog (Filipino) requests increased

by 63 percent; Chinese requests increased by 49 percent; Vietnamese requests increased by 40 percent; Spanish requests increased by 37 percent; Korean requests increased by 26 percent; and Japanese requests increased by 25 percent. [Statement of Eugene Lee before the National Commission on the VRA (Sept. 27, 2005), at 4 http://www.votingrightsact.org/hearings/pdfs/eugene_lee.pdf].

- o According to a November 2000 exit survey of language minority voters in Los Angeles and Orange Counties in California, 54 percent of Asian American and Pacific Islander voters and 46 percent of Hispanic voters reported that they would be more likely to vote if they received language assistance. These numbers are consistent with other exit surveys done in the same counties in March 2000 and November 1998. [Ibid.]
- o In a 1991 survey of limited-English proficient Chinese voters in San Francisco, 90 percent believed bilingual ballots were important, and one-third reported actually using bilingual election assistance. Asian American voters in other parts of the country agreed. In Los Angeles County, California, 84 percent of Asian American voters believed bilingual ballots were helpful, and 56 percent said that they would be more likely to vote if they had them. [S. REP. NO. 102-315 at p. 12].
- o In the 1990 general election, 18 percent of Hispanic voters in California used language assistance. [S. REP. NO. 102-315 at p. 12].
- **New Mexico.** A 1992 survey of Navajo and Pueblo Indians in northwestern New Mexico found that 48 percent were “more comfortable” speaking their own language than English and that they needed assistance when they voted. [S. 2236 *Hearings*, 102d Cong., 2d Sess., S. HRG. 102-1066, at 328 (1992) (joint testimony of Native Am. Rts. Fund and National Cong. of Am. Indians)].
- **New York.** According to AALDEF’s November 2004 exit survey of 7,247 Asian American voters in New York City, 46 percent said they were LEP. Thirty-seven percent of Chinese voters and 42 percent of Korean voters reported they needed language assistance to vote. Among first-time voters, 68 percent used a bilingual interpreter to vote and 53 percent used translated voting materials. [Testimony of Margaret Fung of AALDEF]

- **Texas.**
 - In the 1990 general election, 25 percent of Hispanic voters in the State of Texas used language assistance. [S. REP. NO. 102-315 at p. 12].
 - In a 1984 study of 283,000 Hispanic voters in Texas, the GAO found that 69,000 used bilingual materials and 85,000 received oral language assistance. Among Hispanic voters who read Spanish better than English, 56 percent used Spanish ballots. [U.S. GEN. ACCT. OFF., BILINGUAL VOTING ASSISTANCE: COST OF AND USE DURING THE NOVEMBER 1984 GENERAL ELECTION, at pp. 25, 29, 33 (1986)].
- **Washington.** According to the King County (Seattle), Washington Elections Office, “[t]hanks to increased outreach efforts, King County had a record number of requests for elections materials in Chinese during the 2005 Primary and enlisted more bilingual poll workers than ever. The number of registered voters requesting election materials in Chinese for this year's General Election has increased more than 26 percent over last year's General Election. The pool of bilingual poll workers has increased 60 percent from 60 in the 2004 General Election to 96 so far this year.” [http://www.metrokc.gov/elections/news/2005_10_25.htm].
- **The bailout provision in Section 203 allows jurisdictions that have remedied the effects of educational discrimination to be removed from coverage.**
 - ✓ **The bailout provision allows jurisdictions to prove they should no longer be covered:** 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.” [42 U.S.C. § 1973aa-1a(d)]
 - ✓ **The bailout provision gives covered jurisdictions an incentive to cure the unlawful educational discrimination:** “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. [121 CONG. REC. H4719 (daily ed. June 2, 1975) (statement of Rep. Edwards)]
- **Language assistance can be provided effectively at little or no cost.**

- ✓ **Effective targeting results in little or no cost for language assistance.**
 - **Targeting is consistent with Congressional intent:** In 1975, Congress recognized targeting as a permissible means to comply with Section 203 as long as “it is designed and implemented in a manner that ensures that all members of the language minority who need assistance, receive assistance.” [H. REP. NO. 102-655 at 9, *reprinted in* 1992 U.S.C.C.A.N. 773]. Specifically, it must ensure language minority voters have “access to bilingual materials” and “does not place an unequal burden upon those voters requiring information and materials in a language other than English.” [S. REP. NO. 94-295 at 69, *reprinted in* 1975 U.S.C.C.A.N. 820]
 - **Department of Justice guidelines explicitly provide for targeting:** According to the Department, “a targeting system will normally fulfill the Act’s minority language requirements if it is designed and implemented in such a way that language minority group members who need minority language materials and assistance receive them.” [Source: 28 C.F.R. § 55.17].
- ✓ **Nearly 40 percent of jurisdictions incur no costs.** In a 2005 study of election officials in the 31 states covered by Section 203, 39.5 percent reported that they incur no additional costs for providing language assistance. [MINORITY LANGUAGE ASSISTANCE PRACTICES at 23].
- ✓ **Oral costs are negligible, if there are any at all.**
 - According to a 2005 study, 59.1 percent of responding jurisdictions reported that they incur no additional costs for providing oral language assistance. Of the 154 jurisdictions reporting oral cost data, 138 jurisdictions reported average costs of only 1.5 percent. [MINORITY LANGUAGE ASSISTANCE PRACTICES at 23].
 - According to a 1984 GAO study, of the 259 jurisdictions providing oral language assistance, 205 reported no cost at all and 39 reported a total cost of only \$30,000, about 2.9 percent of election expenditures. [U.S. GEN. ACCT. OFF., BILINGUAL VOTING ASSISTANCE: COSTS OF AND USE DURING THE 1984 GENERAL ELECTION, at p. 20 (1986)].
 - Election officials reported that in most cases, bilingual poll workers are paid the same wages as other poll workers, resulting in no added costs. [U.S. GEN. ACCT. OFF., BILINGUAL VOTING ASSISTANCE: COSTS OF AND USE DURING THE 1984 GENERAL ELECTION, at p. 20 (1986)].
- ✓ **The costs of written bilingual language materials are modest, if there are any additional costs at all.**

- According to a 2005 study, 54.2 percent of responding jurisdictions reported that they incur no additional costs for providing bilingual language materials. Of the 144 jurisdictions reporting written cost data, 129 jurisdictions reported average costs of only 3.0 percent. [MINORITY LANGUAGE ASSISTANCE PRACTICES at 23-24]
- According to a 1984 GAO study, 18 states incurred no additional costs for providing bilingual written materials. Of the 295 responding jurisdictions, the average cost of providing written bilingual language materials or assistance was 7.6 percent of the total election expenditures. [U.S. GEN. ACCT. OFF., BILINGUAL VOTING ASSISTANCE: COSTS OF AND USE DURING THE 1984 GENERAL ELECTION, at p. 17 (1986)].
- ✓ **In Los Angeles County, just below 10 percent of total election costs are spent on providing language assistance in six languages to limited-English proficient United States citizens comprising 12.9 percent of the electorate.** [Testimony of Deborah Wright, LA County Registrar's Office, at p. 1]
 - “Los Angeles County is the largest and most diverse local election jurisdiction in the United States. No other jurisdiction provides assistance in as many languages.” [Ibid.]
 - “The costs of L.A. County’s ML program are reasonable in light of the challenges the County faces. Only eight States have more registered voters than our nearly four million registered voters. The 2000 Census reported that L.A. County has approximately five million voting age citizens, 12.9 percent of whom (644,505) are LEP in one of the six covered languages: 428,580 Spanish speakers; 95,700 Chinese speakers; 42,390 Korean speakers; 34,985 Tagalog speakers; 30,340 Vietnamese speakers; and 12,510 Japanese speakers.” [Ibid.]
 - “Considering all of these challenges, the percentage of election expenses for language assistance is reasonable and is virtually the same as the percentage of voters who need assistance.” [Ibid.]
 - “In recent years we have been able to realize cost savings in providing multilingual materials by analyzing the cost components and restricting printing to the exact precincts within the County where written materials are needed.” [Ibid. at 3]
 - “Hiring bilingual poll workers does not incur extra costs, as bilingual poll workers are paid the same stipend as other election day staff, and of course perform regular duties of a poll worker as well.” [Ibid. at 3-

- ✓ **What price tag do you put on the fundamental right to vote, for which language minorities fight and die to defend here and abroad?**
- The voter assistance provisions of Section 208 are an inadequate substitute for language assistance under Sections 4(f)(4) and 203.
 - ✓ **Many language minority voters have no family members who can assist them in the voting process.** According to the 2000 Census, 4.4 million households encompassing 11.9 million people are “linguistically isolated” from the rest of the population, which means that all members of the household fourteen years and older are limited-English proficient. Among the language groups covered by Section 203, the following are linguistically isolated:
 - 29.2 percent of the 2.8 million Asian American and Pacific Island language-speaking households;
 - 23.9 percent of the 10.7 million Spanish-speaking households; and
 - 5.0 percent of all Alaskan Native and American Indian persons. [BUREAU OF THE CENSUS, ECONOMICS & STATISTICS ADMIN., U.S. DEP’T OF COMMERCE, LANGUAGE USE AND ENGLISH-SPEAKING ABILITY: 2000, at p. 10 (OCT. 2003); 2000 Census, Summary Tape File 3 (STF-3), Tables QT-P17 and P20].
 - ✓ **Widespread vote denial occurs without language assistance under Sections 4(f)(4) and 203.**
 - **Election officials admit they do not permit voter assistance:** Only 10.3 percent of responding election officials in 31 states covered by Section 203 of the Voting Rights Act reported voter assistance practices that are at least as protective as Section 208: only 1.9 percent correctly stated the federal standard; an additional 8.4 percent stated voter assistance practices more protective than Section 208. [MINORITY LANGUAGE ASSISTANCE PRACTICES at 23].
 - **United States v. Berks County (2003):** “When Defendants deny Spanish-speaking voters in Reading the right to bring their assistor of choice into the voting booth, voters feel uncomfortable with the process, do not understand the ballot, do not know how to operate the voting machine, and cannot cast a meaningful ballot, in violation of Section 208.” [277 F. Supp.2d 570, 580 (E.D. Pa. 2003)].

- **Vote denial in Texas without Section 203:** Prior to the enactment of Section 203, language minority voters were routinely denied assistance if they were illiterate in English. In Texas, election officials construed state voter assistance laws narrowly to exclude all forms of language assistance, resulting in the disenfranchisement of over 300,000 illiterate Mexican American citizens. [*Garza v. Smith*, 320 F. Supp. 121 (W.D. Tex. 1970); 94 Cong. Rec. 800, 875 (1975)].
- **Millions of voting age U.S. citizens who need language assistance are native-born.**
 - ✓ **Latinos:**
 - **Generally.** According to the 2000 Census, 84.2 percent of all Hispanic citizens in the United States are native born. Hispanics comprise the single largest language group covered by Section 203, with 35.2 million persons who are 12.5 percent of the United States population. [U.S. CENSUS BUREAU, *We the People: Hispanics in the United States*, at pp. 1, 8 (Dec. 2004)].
 - **Puerto Ricans.** According to the 2000 Census, 98.6 percent of all Puerto Rican persons in the United States are native born. [U.S. CENSUS BUREAU, *We the People: Hispanics in the United States*, at p. 8 (Dec. 2004)].
 - **The GAO's description of the typical Latino voter in Texas.** The GAO found that of 283,000 Hispanic voters it surveyed in Texas in 1984, "[t]he typical bilingual voter was a native-born U.S. citizen, was older, and lacked a high school education." Seventy-seven percent of Hispanic voters who used a bilingual ballot were born in the United States. [U.S. GEN. ACCT. OFF., BILINGUAL VOTING ASSISTANCE: COST OF AND USE DURING THE NOVEMBER 1984 GENERAL ELECTION, at p. 61 (1986)].
 - ✓ **Alaska Natives and American Indians:** According to the 2000 Census, nearly all 4.1 million Alaskan Native and American Indian persons in the United States are native born. [U.S. CENSUS BUREAU, *The American Indian and Alaska Native Population: 2000*, at p. 1 (Feb. 2002)].
 - ✓ **Asian Americans:** According to the 2000 Census, a majority of Asian American citizens in the United States of Japanese, Cambodian, Hmong, and other Asian ethnicities are native born. [U.S. CENSUS BUREAU, *We the People: Asians in the United States*, at p. 9 (Dec. 2004)].

- **Evidence of ongoing voting and educational discrimination and the continuing need for language assistance provides a compelling basis upon which to reauthorize Sections 4(f)(4) and 203 for twenty-five years.**
 - ✓ **Election officials support reauthorization of Section 203.** According to a 2005 survey, an overwhelming majority of the 254 responding jurisdictions, 71.3 percent (181 jurisdictions) think that the federal language assistance provisions should remain in effect for public elections. [MINORITY LANGUAGE ASSISTANCE PRACTICES at 24].
 - ✓ **Numerous groups, such as NACO, the National Association of Secretaries of State, and the National League of Cities support reauthorization of Section 203.** See the LCCR letter for more examples of organizations that support reauthorization.
- **Congress has the authority to reauthorize Section 203 pursuant to its broad powers to protect the fundamental right to vote under the Enforcement Clauses of the Fourteenth and Fifteenth Amendments.**
 - ✓ **Congress has broad remedial power to reauthorize the VRA.** Several witnesses, particularly Professor Pam Karlan, Professor Drew Days, Anita Earls, Armand Derfner, Laughlin McDonald, Ted Shaw, John Trasviña, and Debo Adegbile, have described at length congressional powers to reauthorize the VRA in Supreme Court opinions including:
 - ***South Carolina v. Katzenbach*, 383 U.S. 301 (1966) and its progeny.**
 - *City of Rome v. United States*, 466 U.S. 156 (1980)
 - *Lopez v. Monterey County*, 525 U.S. 283 (1999)
 - ***City of Boerne v. Flores*, 521 U.S. (1997) and its progeny.**
 - *Lopez v. Monterey County*, 525 U.S. 283 (1999)
 - *Nevada Dep’t Resources v. Hibbs*, 538 U.S. 721 (2003)
 - *Tennessee v. Lane*, 541 U.S. 509 (2004)
 - ✓ **The Supreme Court has acknowledged the exercise of this broad remedial power to address language and literacy barriers caused in part by unequal educational opportunities.**
 - **Oregon v. Mitchell (1970):** Observing that English literacy tests “have been used at times as a discriminatory weapon against some

Americans, not only Negroes but Americans of Mexican ancestry, and American Indians.” [400 U.S. 112 (1970)].

- **Gaston County v. United States (1969):** The Supreme Court concluded “that it is only reasonable to infer that among black children compelled to endure a segregated and inferior education, fewer will achieve any degree of literacy than will their better-educated white contemporaries.” [395 U.S. 285, 295 (1969)]
- **Katzenbach v. Morgan (1966):** In 1966, the United States Supreme Court held that Congress had the authority to enact Section 4(e) of the Voting Rights Act, which provided for language assistance to Puerto Rican citizens. [384 U.S. 641 (1966)].
 - The Supreme Court rejected New York’s assertion that it enacted its English language requirement for voting to give language minorities an incentive to learn English.
 - The Supreme Court observed 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.” [384 U.S. at 658]
 - The Supreme Court 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” in Article I, section 8, clause 18 of the Constitution. [Ibid.]

✓ **The Supreme Court has denounced different gradations of citizenship, including those based upon language ability.**

- **Meyer v. Nebraska (1923):** “The protection of the Constitution extends to all, to those who speak other languages as well as those born with English on the tongue.” [262 U.S. 390, 401 (1923)]
- **Osborn v. Bank of the United States (1824):** “A naturalized citizen is indeed made a citizen under an act of Congress, but the act does not proceed to give, to regulate, or to prescribe his capacities. He becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the

constitution, on the footing of a native. The constitution does not authorize Congress to enlarge or abridge those rights.” [22 U.S. 738, 827-28 (1824)]

- **Luria v. United States (1913)**: “Citizenship is membership in a political society, and implies a duty of allegiance on the part of the member and a duty of protection on the part of the society. These are reciprocal obligations, one being a compensation for the other. Under our Constitution, a naturalized citizen stands on an equal footing with the native citizen in all respects, save that of eligibility to the Presidency.” [231 U.S. 9, 22 (1913)]
- **Knauer v. United States (1946)**: “Citizenship obtained through naturalization is not a second-class citizenship. It has been said that citizenship carries with it all of the rights and prerogatives of citizenship obtained by birth in this country ‘save that of eligibility to the Presidency.’ There are other exceptions of a limited character. But it is plain that citizenship obtained through naturalization carries with it the privilege of full participation in the affairs of our society, including the right to speak freely, to criticize officials and administrators, and to promote changes in our laws including the very Charter of our Government.” [328 U.S. 654, 658 (1946)]
- **Schneider v. Rusk (1964)**: “We start from the premise that the rights of citizenship of the native born and of the naturalized person are of the same dignity and are coextensive. The only difference drawn by the Constitution is that only the ‘natural born’ citizen is eligible to be President. Art. II, s 1.” [377 U.S. 163, 165 (1964)]

Appendix A:

Successful Language Assistance Litigation Brought by DOJ

Case Name	Case Type [‡]	Covered by Section 4(f)(4) or 5	Covered by Section 203
<u>United States v. Cochise County, AZ</u> (D. Ariz. 2006)	Section 203	Yes	Yes
<u>United States v. Hale County, TX</u> (N.D. Tex. 2006)	Section 203	Yes	Yes
<u>United States v. Ector County, TX</u> (W.D. Tex. 2005)	Section 203	Yes	Yes
<u>United States v. City of Boston, MA</u> (D. Mass. 2005)	Section 203 [†]	No	No [†]
<u>United States v. City of Azusa, CA</u> (C.D. Cal. 2005)	Section 203	No	Yes
<u>United States v. City of Paramount, CA</u> (C.D. Cal. 2005)	Section 203	No	Yes
<u>United States v. City of Rosemead, CA</u> (C.D. Cal. 2005)	Section 203	No	Yes
<u>United States v. Westchester County, NY</u> (S.D.N.Y. 2005)	Section 203	No	Yes
<u>United States v. Ventura County, CA</u> (C.D. Cal. 2004)	Section 203	No	Yes
<u>United States v. Yakima County, WA</u> (E.D. Wash. 2004)	Section 203	No	Yes

[‡] Many of the Section 203 cases also involved Section 2 claims. “Section 2” is listed if no Section 203 claim was included in the litigation because the jurisdiction was not covered for the minority language that was the subject of the suit.

[†] The jurisdiction is covered by Section 203, but not for Asian languages. Claims involving Asian languages brought under Section 2.

Case Name	Case Type^j	Covered by Section 4(f)(4) or 5	Covered by Section 203
<u>United States v. Suffolk County</u> , NY (E.D.N.Y. 2004)	Section 203	No	Yes
<u>United States v. San Diego County</u> , CA (S.D. Cal. 2004)	Section 203	No	Yes
<u>United States v. San Benito County</u> , CA (N.D. Cal. 2004)	Section 203	No	Yes
<u>United States v. Brentwood Union Free School District</u> , NY (E.D.N.Y. 2003)	Section 203	No	Yes
<u>United States v. Berks County</u> , PA (E.D. Pa. 2003)	Section 2	No	No
<u>United States v. Osceola County</u> , FL (M.D. Fla. 2002)	Section 2	No	No
<u>United States v. Orange County</u> , FL (M.D. Fla. 2002)	Section 203	Yes	No
<u>United States v. City of Hamtramck</u> , MI (E.D. Mich. 2000)	Section 2*	No	No
<u>United States v. Town of Cicero</u> , IL (N.D. Ill. 2000)	Section 2	No	Yes
<u>United States v. Passaic City and Passaic County</u> , NJ (D.N.J. 1999)	Section 203	No	Yes
<u>United States v. City of Lawrence</u> , MA (D. Mass. 1998)	Section 203	No	Yes
<u>United States v. Bernalillo County</u> , NM (D.N.M. 1998)	Section 203	No	Yes
<u>United States v. Alameda County</u> , CA (N.D. Cal. 1995)	Section 203	No	Yes

^j Many of the Section 203 cases also involved Section 2 claims. “Section 2” is listed if no Section 203 claim was included in the litigation because the jurisdiction was not covered for the minority language that was the subject of the suit.

* Lawsuit brought on behalf of Asian language (Arabic) voting age citizens.

Case Name	Case Type^f	Covered by Section 4(f)(4) or 5	Covered by Section 203
United States v. Socorro County, NM (D.N.M. 1993)	Section 203 ²⁸⁷	No	Yes
United States v. Cibola County, NM (D.N.M. 1993)	Section 203	No	Yes
United States v. Metropolitan Dade County, FL (S.D. Fla. 1993)	Section 203	No	Yes
United States v. State of Arizona (D. Ariz. 1988)	Section 203	Yes	Yes
United States v. State of New Mexico and Sandoval County, NM (D.N.M. 1988)	Section 203	No	Yes
United States v. McKinley County, NM (D.N.M. 1986)	Section 203	No	Yes
United States v. San Juan County, UT (D. Utah 1983)	Section 203	No	Yes
United States v. San Juan County, NM (D.N.M. 1979)	Section 203	No	Yes
United States v. City and County of San Francisco, CA (N.D. Cal. 1978)	Section 203	No	Yes



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United States v. Hale County, TX (N.D. Tex. 2006)

On February 27, 2006, the United States filed a complaint alleging that Hale County in Texas violated Section 203 of the Voting Rights Act of 1965. The complaint alleges that Hale County violated Section 203 requirements by failing to provide for an adequate number of bilingual poll workers trained to assist Spanish-speaking voters on election day and by failing to publicize effectively election information in Spanish. On April 27, 2006, a consent decree was entered which will allow the Department to monitor future elections in Hale County and will require the County to increase the number of bilingual poll workers, employ a bilingual coordinator, and establish a bilingual advisory group.

United States v. Ector County, TX (W.D. Tex. 2005)

On August 23, 2005, the United States filed a complaint alleging that Ector County in Texas violated Section 4(f)(4) of the Voting Rights Act. The complaint claimed that the county failed to provide an adequate number of bilingual workers to serve the county's Spanish-speaking population and failed to effectively publicize information to the Spanish-speaking community. On the same day that the complaint was filed, the United States also filed a proposed consent decree agreement. The consent decree agreement, which was approved by a federal district judge on August 26, requires the county to establish an effective Spanish language program and authorizes the use of federal observers to monitor the county's elections.

United States v. City of Boston, MA (D. Mass. 2005)

On July 29, 2005, the United States filed a complaint against the City of Boston under Sections 2 and 203 of the Voting Rights Act. The complaint alleged that the City's election practices and procedures discriminate against members of language-minority groups, specifically persons of Spanish, Chinese, and Vietnamese heritage, so as to deny and abridge their right to vote in violation of Section 2. The suit also alleged that the City has violated Section 203 by failing to make all election information available in Spanish to voters who need it. On October 18, 2005, the three-judge court issued an order authorizing federal examiners through December 31, 2008; retaining the court's

jurisdiction through expiration of the federal examiner designation and the agreement, both to occur on December 31, 2008; and providing that either the Department or the City may petition to the court to resolve any disputes during the life of the agreement.

United States v. City of Azusa, CA (C.D. Cal. 2005)

On July 14, 2005, the United States filed a complaint and proposed consent decree alleging that the City of Azusa violated Section 203 of the Voting Rights Act. The complaint claimed that the city failed to translate much of its election-related information into Spanish, as required by the Act. The consent decree, was approved on August 26 by a three judge federal court, requires the city to establish an effective Spanish language program and authorizes the use of federal observers to monitor the city's elections.

United States v. City of Paramount, CA (C.D. Cal. 2005)

On July 14, 2005, the United States filed a complaint and proposed consent decree alleging that the City of Paramount violated Section 203 of the Voting Rights Act. The complaint claimed that the city failed to translate much of its election-related information into Spanish, as required by the Act. The consent decree, which was approved on August 23, requires the city to establish an effective Spanish language program and authorizes the use of federal observers to monitor the city's elections.

United States v. City of Rosemead, CA (C.D. Cal. 2005)

On July 14, 2005, the United States filed a complaint and proposed consent decree alleging that the City of Rosemead violated Section 203 of the Voting Rights Act. The complaint claimed that the city failed to translate most of its election-related information into Spanish, Chinese, and Vietnamese or to provide bilingual assistance at polling sites in those languages, as required by the Act. The consent decree, was approved by a three judge court, and requires the city to establish effective Spanish, Chinese, and Vietnamese language election programs and authorizes the use of federal observers to monitor the city's elections.

United States v. Westchester County (S.D. NY 2005)

In this action, the United States alleged in its complaint that the county had violated both Section 203 of the Voting Rights Act by failing to have an effective Spanish language election program and Section 302 of the Help America Vote Act by failing to post the information required by the section to be posted in polling places. On July 19, 2005, a consent decree resolving both claims was approved by a three-judge court. The decree would require the county to provide a Spanish language election program and assure compliance with the Help America Vote Act. The decree would expire on August 7, 2007, but could be extended through December 31, 2008 on motion by the United States.

United States v. San Benito County (N.D. Cal. 2004)

In this action, the United States alleged in its complaint that the county had violated both Section 203 of the Voting Rights Act by failing to have an effective Spanish language election program and Section 302 of the Help America Vote Act by failing to post the information required by that section to be posted in polling places and by failing to provide the requisite written information regarding the process of casting a provisional ballot. The court entered a consent agreement, requiring the county to provide a Spanish language election program. The decree, which expires on December 31, 2006, provides that if the county is not complying with its requirements, the United States would have an additional 90 days to move for further relief.

United States v. San Diego County (S.D. Cal. 2004)

In this case, the United States' complaint alleged that the county's practices and procedures concerning Spanish heritage and Filipino voters violated Section 203 of the Voting Rights Act. The United States and the county agreed to a memorandum of agreement and a stipulated order, both of which were filed on June 23, 2004. The agreement provides for Spanish and Tagalog (Filipino) language election programs, and also a complete Vietnamese language program to serve a minority language group that narrowly missed the threshold for Section 203 coverage. The court signed the order, including an interlocutory order providing for the appointment of federal examiners and observers pursuant to Section 3 of the Act on July 7, 2004. The agreement expires on March 31, 2007; Section 3 coverage will expire following the 2006 general election, absent a motion for additional relief based on non-compliance by the county.

United States v. Ventura County (C.D. Cal. 2004)

The United States claimed that the county violated Section 203 of the Voting Rights Act. The complaint alleged that the county did not have sufficient bilingual polls officials and did not translate all election-related information into Spanish, as required by the Act. On September 2, 2004, the court entered a consent decree, which requires the county establish an effective Spanish language election program. The decree, which expires on August 1, 2007, provides that if the county is not complying with the decree's requirements, the United States would have an additional 90 days to move for additional relief.

United States v. Brentwood Union Free School District (E.D. N.Y. 2004)

The United States alleged in its complaint that the Brentwood School District had violated Section 203 because it did not have sufficient bilingual election officials, did not translate all election-related information into Spanish, as required by the Act, and failed to adequately train its election officials to prevent hostile treatment of Hispanic voters who are limited-English proficient. On July 14, 2003, the court entered a consent agreement, which requires the county establish an effective Spanish language election program. The decree, which expires on January 31, 2007, also permits the assignment of federal observers to monitor school district elections.

United States v. Suffolk County (E.D. N.Y. 2004)

The United States alleged in its complaint that the county violated Section 203 by not having sufficient bilingual election officials, not translating all election-related information into Spanish, as required by the Act, and by failing to adequately train its election officials to prevent hostile treatment of Hispanic voters, who are limited-English proficient. On October 4, 2004, the court entered a consent agreement, which requires the county establish an effective Spanish language election program. The decree, which expires on January 31, 2007, also permits the assignment of federal observers to monitor county elections.

United States v. Yakima County (E.D. Wash. 2004)

In its complaint, the United States alleged that the county had violated Section 203 of the Voting Rights Act by not providing effective election-related materials, information, and/or assistance in Spanish to those persons who were limited English proficient. The United States and the county were able to resolve the matter with a consent agreement (Esp.) that required the county to establish an effective Spanish language election program. The decree, which was entered on September 14, 2004, will expire on December 31, 2006. However, if the county is not complying with the requirements of the decree, the United States would have an additional 90 days to move for additional relief.

United States v. Orange County (M.D. Fla. 2002)

In this action, the United States alleged in its complaint that the county had violated both Sections 203 and 208 of the Voting Rights Act by failing to have an effective Spanish language election program and by failing to allow voters their assistants of choice. The court entered a consent agreement, requiring the county to provide a Spanish language election program and requiring the county to ensure that voters could receive assistance. The decree expires on January 31, 2005.

United States v. Bernalillo County (D.N.M. 1998)

In 1998, the United States filed its complaint alleging that Bernalillo County had violated Sections 2 and 203 of the Voting Rights Act by failing to provide voting and election information in the Navajo language, an American Indian language that is historically unwritten. The parties initially resolved this case that year through a consent decree that required the county to establish an effective Native American Election Information Program. On July 1, 2003, a three-judge federal court entered an order approving a Stipulation which extended certain provisions of the consent decree through January 31, 2005.

United States v. Cibola County (D.N.M. 1993)

In its complaint, filed in 1993, the United States alleging that Cibola County had violated Sections 2 and 203 of the Voting Rights Act by failing to provide voting and election information in the Keresan and Navajo languages, American Indian languages that are historically unwritten. The parties initially resolved this case in 1994 through a stipulation and order that required the county to establish an effective Native American Election Information Program. On May 3, 2004, a three-judge federal court entered an order approving a joint stipulation, which modified the original one, and extended it through December 31, 2006.

United States v. Socorro County (D.N.M. 1993)

The United States initiated this action in 1993 with its complaint alleging that the county had violated Sections 2 and 203 of the Voting Rights Act by failing to provide voting and election information in the Navajo language, an American Indian language that is historically unwritten. The parties initially resolved this case in 1994 through a consent agreement that required the county to establish an effective Navajo language program. On July 13, 2004, a three-judge federal court issued an order extending the federal examiner provision of that consent agreement through December 15, 2004.

United States v. New Mexico and Sandoval County (D.N.M. 1990)

The United States filed a complaint alleging that the State of New Mexico and Cibola County had violated Sections 2 and 203 of the Voting Rights Act by failing to provide voting and election information in the Keresan and Navajo languages, American Indian languages that are historically unwritten. The parties initially resolved this case that same year through a settlement agreement that required the state and county to implement a Native American Election Information Program. Pursuant to the agreement, the case was dismissed against the state defendants on December 31, 1990. On September 9, 1994, a three-judge federal court entered a consent decree proposed by the county and the United States, which modified the original Native American Election Information Program (NAEIP) and extended the modified program through September 9, 2004. On November 8, 2004, a three-judge court entered an order approving a joint stipulation between the county and the United States, which further modified the NAEIP and extended its provisions through January 15, 2007.

Appendix B:

Census Data from July 2002 Section 203(c) Coverage Determinations

Tables B-1 through B-4 were compiled from sampled data used by the Census Bureau to make its July 26, 2002 determinations under Section 203 of the Voting Rights Act. According to the Voting Rights Output File Documentation, the determination data was created from sampled weights of data from the Census 2000 long forms (Summary Table Files 3 and 4). The file contains records for the entire United States, including all states and political subdivisions, which are defined as “counties for all states except for Connecticut, Maine, Massachusetts, Michigan, New Hampshire, Rhode Island, Vermont, and Wisconsin” where political subdivisions are minor civil divisions (“MCDs”) or MCD equivalents. There are 62 records in the file, including one each for total population and Spanish/Hispanic/Latino, one for American Indian/Alaskan Native and 42 for American Indian/Alaskan Natives tribal groups, one for Asian and 16 for Asian groups.

The Census Bureau has suppressed data for jurisdictions indicated by an asterisk (“*”) to avoid disclosure of specific persons. According to Census documentation, “[t]his means that data in a record are suppressed if the unweighted count of voting age citizens for a record is less than 50 and the weighted population count for the record is not 0 or the unweighted population count for the record is not 0.” The Census Bureau rounded data that has not been suppressed. Section 203 determinations are based on data prior to rounding and prior to suppression.

“LEP Number (N)” refers to the number of voting age citizens in the identified language group who are limited-English proficient, or “LEP.” A person is LEP if they speak English less than “very well.”

“LEP Percent (P)” refers to the percentage of voting age citizens in the identified language group who are LEP.

“Illiteracy Rate” refers to the percent of voting age citizens in the identified language group who are LEP and illiterate. According to the Census Bureau, “voting age limited-English proficient illiteracy” refers to all voting age citizens who are limited-English proficient and who have completed less than fifth grade. Jurisdictions are covered if they meet one of the population triggers and have an illiteracy rate among voting age citizens in a single language minority group that exceeds the national illiteracy rate of all voting age citizens of 1.35 percent.

“Coverage basis” refers to the population trigger resulting in Section 203 coverage. There are four different bases for coverage: “N” if the number of LEP voting age citizens in a single language group is more than 10,000; “P” if the percentage of LEP voting age citizens in a single language group is more than five percent of all voting age citizens; “RW” if an Alaskan Native or American Indian reservation is wholly located within the jurisdiction and the percentage of LEP voting age citizens in a single language group is more than five percent of all voting age citizens on that reservation; and “RP” if an Alaskan Native or American Indian reservation is partially located within the jurisdiction and the percentage of LEP voting age citizens in a single language group is more than five percent of all voting age citizens on that reservation. A jurisdiction can be covered for a single language group by multiple population triggers.

Table B-1:**Jurisdictions Covered by Section 203 for Spanish Heritage, by State**

ARIZONA				
Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Cochise County	4325	5.36	14.34	P
Greenlee County	315	5.52	4.76	P
Maricopa County	53385	2.70	12.71	N
Pima County	23220	3.97	12.36	N
Santa Cruz County	5585	29.68	8.59	P
Yuma County	7440	8.23	15.79	P
CALIFORNIA				
Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
State of California [†]	1003995	5.02	16.36	P
Alameda County	22010	2.45	13.90	N
Colusa County	805	8.31	31.06	P
Contra Costa County	13115	2.14	11.55	N
Fresno County	32195	7.21	24.13	N, P
Imperial County	16110	21.64	20.17	N, P
Kern County	23285	6.04	23.34	N, P
Kings County	5080	6.36	17.13	P
Los Angeles County	428580	8.58	15.92	N, P
Madera County	4380	6.13	23.29	P
Merced County	8500	7.73	23.00	P
Monterey County	16935	7.80	22.91	N, P
Orange County	64385	3.95	15.89	N
Riverside County	49495	5.39	15.83	N, P
Sacramento County	13440	1.69	14.32	N
San Benito County	2540	8.36	21.85	P
San Bernardino County	56250	5.69	13.50	N, P
San Diego County	65520	3.66	12.80	N
San Francisco County	14645	2.65	13.21	N
San Joaquin County	14630	4.42	17.19	N
San Mateo County	15365	3.46	12.50	N
Santa Barbara County	10595	4.20	16.66	N
Santa Clara County	33520	3.44	14.53	N
Stanislaus County	12035	4.53	19.53	N
Tulare County	15505	8.00	23.44	N, P
Ventura County	24505	5.35	18.87	N, P

[†] All 58 counties and their political subdivisions are covered as a result of statewide coverage of California.

COLORADO

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Alamosa County	565	5.37	15.04	P
Conejos County	680	12.24	14.71	P
Costilla County	490	18.85	16.33	P
Crowley County	245	5.49	10.20	P
Denver County	10880	2.92	14.20	N
Otero County	840	5.91	19.64	P
Rio Grande County	535	6.22	15.89	P
Saguache County	250	6.74	34.00	P

CONNECTICUT

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Bridgeport (Fairfield County)	9585	11.28	12.36	P
Hartford (Hartford County)	12400	16.69	14.44	N, P
Meriden (New Haven County)	2600	6.24	8.46	P
New Britain (Hartford County)	4140	8.62	8.57	P
New Haven (New Haven County)	5090	6.08	10.61	P
Waterbury (New Haven County)	5045	6.91	11.60	P
Windham (Windham County)	1180	7.17	12.29	P

FLORIDA

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Broward County	35780	3.42	5.14	N
Hardee County	900	5.52	35.00	P
Hendry County	1430	7.32	21.33	P
Hillsborough County	27480	3.99	9.04	N
Miami-Dade County	273975	23.53	8.27	N, P
Orange County	30935	5.10	6.24	N, P
Osceola County	11375	9.99	5.45	N, P
Palm Beach County	20020	2.52	9.24	N

ILLINOIS				
Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Cook County	131530	3.84	12.61	N
Kane County	10055	4.12	13.53	N
KANSAS				
Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Finney County	1420	6.72	9.86	P
Ford County	990	5.62	15.15	P
Grant County	305	6.36	21.31	P
Haskell County	140	5.34	14.29	P
Kearny County	135	5.04	25.93	P
Seward County	1160	9.90	11.64	P
MARYLAND				
Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Montgomery County	10055	1.86	8.20	N
MASSACHUSETTS				
Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Boston (Suffolk County)	11820	3.04	11.59	N
Chelsea (Suffolk County)	2160	12.91	15.51	P
Holyoke (Hampden County)	3840	14.10	16.67	P
Lawrence (Essex County)	6410	18.02	10.92	P
Southbridge (Worcester County)	930	7.45	17.20	P
Springfield (Hampden County)	9560	9.33	17.05	P
MICHIGAN				
Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Clyde township, Allegan County	75	5.47	33.33	P

NEBRASKA				
Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Colfax County	385	6.15	15.58	P
NEVADA				
Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Clark County	27020	3.03	12.12	N
NEW JERSEY				
Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Bergen County	12885	2.19	3.76	N
Cumberland County	5685	5.44	11.70	P
Essex County	23065	4.56	9.73	N
Hudson County	47440	13.49	8.83	N, P
Middlesex County	14200	2.94	10.07	N
Passaic County	24270	8.20	8.67	N, P
Union County	17235	5.22	5.98	N, P
NEW MEXICO				
Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
State of New Mexico [†]	74855	6.08	13.21	P
Bernalillo County	18140	4.65	8.30	N
Chaves County	3220	8.10	19.25	P
De Baca County	160	9.55	21.88	P
Dona Ana County	13770	13.08	19.79	N, P
Eddy County	2715	7.62	24.31	P
Grant County	2015	8.96	13.15	P
Guadalupe County	440	12.83	10.23	P
Harding County	65	10.24	15.38	P
Hidalgo County	460	12.33	21.74	P
Lea County	2330	6.60	23.61	P
Luna County	1610	11.01	15.53	P
Mora County	985	26.09	11.17	P
Rio Arriba County	4025	14.16	10.06	P

[†] All 33 counties and their political subdivisions are covered as a result of statewide coverage of New Mexico.

NEW MEXICO (CONT.)

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Roosevelt County	765	6.11	20.26	P
San Miguel County	2900	13.58	9.83	P
Santa Fe County	5060	5.59	7.71	P
Socorro County	870	7.11	12.07	P
Taos County	2395	10.90	5.01	P
Torrance County	600	5.25	18.33	P
Union County	200	6.70	17.50	P
Valencia County	2980	6.78	12.58	P

NEW YORK

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Bronx County	119365	16.21	11.67	N, P
Kings County	84760	6.13	13.51	N, P
Nassau County	14820	1.62	9.99	N
New York County	80140	7.76	13.55	N, P
Queens County	84460	6.87	7.99	N, P
Suffolk County	16685	1.71	8.45	N
Westchester County	16305	2.77	9.14	N

OKLAHOMA

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Harmon County	145	6.04	31.03	P
Texas County	720	5.83	16.67	P

PENNSYLVANIA

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Philadelphia County	25660	2.39	13.33	N

RHODE ISLAND

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Central Falls (Providence County)	1305	13.80	8.81	P
Providence (Providence County)	7395	7.11	10.55	P

TEXAS				
Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
State of Texas [†]	818185	6.15	19.46	P
Andrews County	585	7.22	29.91	P
Atascosa County	3985	15.62	25.35	P
Bailey County	330	8.26	21.21	P
Bee County	3335	13.58	21.44	P
Bexar County	98165	10.65	15.22	N, P
Borden County	*	*	*	P
Brewster County	620	9.48	31.45	P
Brooks County	1540	29.39	24.03	P
Caldwell County	1790	8.06	21.51	P
Calhoun County	935	6.79	27.81	P
Cameron County	46875	26.84	25.05	N, P
Castro County	620	12.34	35.48	P
Cochran County	295	12.66	32.20	P
Concho County	265	8.14	24.53	P
Crane County	210	8.64	19.05	P
Crockett County	415	15.34	15.66	P
Crosby County	580	12.17	29.31	P
Culberson County	420	22.52	38.10	P
Dallas County	53985	4.17	17.42	N
Dawson County	1270	11.64	40.16	P
Deaf Smith County	1650	14.66	30.61	P
DeWitt County	890	5.94	34.83	P
Dimmit County	1950	29.84	34.87	P
Duval County	2500	27.65	22.40	P
Ector County	6775	8.75	18.97	P
Edwards County	230	15.70	32.61	P
El Paso County	85400	23.12	16.00	N, P
Fisher County	185	5.70	43.24	P
Floyd County	555	10.85	32.43	P
Frio County	2360	21.17	25.42	P
Gaines County	895	10.94	30.17	P
Garza County	365	10.80	10.96	P
Glasscock County	45	5.45	33.33	P
Goliad County	350	6.99	31.43	P
Gonzales County	1085	8.85	29.03	P
Guadalupe County	3540	5.79	20.34	P
Hale County	2625	10.97	27.43	P
Hall County	130	5.06	23.08	P

[†] All 254 counties and their political subdivisions are covered as a result of statewide coverage of Texas.

* Loving County apparently was inadvertently included by the Census Bureau in its coverage determination. Census data indicates it is only flagged for statewide coverage. Therefore, it is excluded from this table.

TEXAS (CONT.)

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Hansford County	180	5.41	22.22	P
Harris County	107915	5.49	14.97	N, P
Hidalgo County	75255	27.86	26.04	N, P
Hockley County	1285	8.29	33.07	P
Howard County	1945	8.08	17.74	P
Hudspeth County	355	23.13	22.54	P
Irion County	75	5.88	33.33	P
Jeff Davis County	170	10.97	26.47	P
Jim Hogg County	1025	29.50	27.80	P
Jim Wells County	5530	20.99	19.26	P
Karnes County	1505	12.85	30.56	P
Kenedy County	90	33.33	22.22	P
Kinney County	365	15.77	38.36	P
Kleberg County	3430	15.64	16.18	P
Knox County	210	7.05	38.10	P
La Salle County	1170	28.92	28.63	P
Lamb County	1135	11.52	33.92	P
Live Oak County	815	8.64	28.83	P
Lubbock County	9285	5.26	25.20	P
Lynn County	495	11.47	33.33	P
Madison County	540	5.50	6.48	P
Martin County	320	10.88	40.63	P
Matagorda County	1385	5.64	31.77	P
Maverick County	8530	41.87	19.87	P
McMullen County	60	9.68	25.00	P
Medina County	2920	10.75	23.46	P
Menard County	145	8.41	44.83	P
Midland County	4290	5.62	21.21	P
Mitchell County	765	10.06	21.57	P
Moore County	940	8.67	23.94	P
Nolan County	625	5.54	39.20	P
Nueces County	26190	12.18	20.41	N, P
Parmer County	655	11.47	32.82	P
Pecos County	1850	16.88	33.51	P
Presidio County	955	29.25	30.37	P
Reagan County	175	9.51	20.00	P
Reeves County	2110	25.65	29.15	P
Refugio County	540	9.52	35.19	P
Runnels County	525	6.46	24.76	P
San Patricio County	5740	12.68	29.18	P
Schleicher County	230	11.86	34.78	P
Scurry County	660	5.52	35.61	P
Starr County	10050	44.47	24.08	N, P
Sterling County	75	8.11	46.67	P

TEXAS (CONT.)

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Sutton County	375	14.34	29.33	P
Swisher County	430	7.44	32.56	P
Tarrant County	25350	2.71	16.33	N
Terrell County	70	9.66	21.43	P
Terry County	900	10.32	35.00	P
Titus County	1005	5.98	29.85	P
Tom Green County	4180	5.65	21.53	P
Travis County	19195	3.54	15.37	N
Upton County	260	11.85	36.54	P
Uvalde County	3245	19.99	29.43	P
Val Verde County	5740	23.07	24.22	P
Victoria County	3915	6.78	25.03	P
Ward County	785	10.84	24.84	P
Webb County	33000	36.03	14.91	N, P
Wharton County	1450	5.22	29.66	P
Willacy County	3875	30.96	32.26	P
Wilson County	1675	7.45	22.69	P
Winkler County	460	10.53	36.96	P
Yoakum County	390	9.08	25.64	P
Zapata County	1940	29.24	23.97	P
Zavala County	2860	40.92	30.42	P

WASHINGTON

Covered Jurisdiction	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Adams County	745	8.76	28.19	P
Franklin County	1840	7.53	20.38	P
Yakima County	6950	5.36	28.92	P

Table B-2:**Jurisdictions Covered by Section 203 for Alaskan Native Languages**

Covered Jurisdiction	Covered Language	Indian Reservation	Number LEP	Percent LEP	Illiteracy Rate	Coverage Basis
Aleutians West Census Area	Aleut	Atka ANVSA	0	*	*	RP
	Aleut	Nikolski ANVSA	0	*	*	RP
	Aleut	St. Paul ANVSA	40	11.94	10	RP
Bethel Census Area	Eskimo		1980	20.82	21.46	P
	Eskimo	Akiachak ANVSA	75	23.44	26.67	RP
	Eskimo	Akiak ANVSA	25	17.24	40	RP
	Eskimo	Aniak ANVSA	15	6.98	66.67	RP
	Eskimo	Atmautluak ANVSA	105	51.22	19.05	RP
	Eskimo	Bethel ANVSA	195	9.31	20.51	RP
	Eskimo	Chefornak ANVSA	105	58.33	19.05	RP
	Eskimo	Goodnews Bay ANVSA	45	32.14	22.22	RP
	Eskimo	Kalskag ANVSA	0	*	*	RP
	Eskimo	Kasigluk ANVSA	105	38.89	14.29	RP
	Eskimo	Kipnuk ANVSA	170	45.95	14.71	RP
	Eskimo	Kwethluk ANVSA	90	25.71	27.78	RP
	Eskimo	Kwigillingok ANVSA	65	39.39	15.38	RP
	Eskimo	Mekoryuk ANVSA	20	16.67	75	RP
	Eskimo	Napakiak ANVSA	50	27.03	8	RP
	Eskimo	Napaskiak ANVSA	110	44.9	22.73	RP
	Eskimo	Newtok ANVSA	95	52.78	15.79	RP
	Eskimo	Nightmute ANVSA	0	*	*	RP
	Eskimo	Nunapitchuk ANVSA	105	43.75	14.29	RP
	Eskimo	Oscarville ANVSA	0	*	*	RP
	Eskimo	Platinum ANVSA	0	*	*	RP
	Eskimo	Toksook Bay ANVSA	180	65.45	16.67	RP
	Eskimo	Tuluksak ANVSA	70	25.45	28.57	RP
	Eskimo	Tuntutuliak ANVSA	80	50	31.25	RP
	Eskimo	Tununak ANVSA	100	60.61	15	RP
Denali Borough	Alaskan Athabascan	Cantwell ANVSA	0	*	*	RP
Dillingham Census Area	Eskimo		310	10.32	45.16	P
	Eskimo	Aleknagik ANVSA	0	*	*	RP

Covered Jurisdiction	Covered Language	Indian Reservation	Number LEP	Percent LEP	Illiteracy Rate	Coverage Basis
Dillingham Census Area (continued)	Eskimo	Clark's Point ANVSA	0	*	*	RP
	Eskimo	Dillingham ANVSA	55	6.47	36.36	RP
	Eskimo	Manokotak ANVSA	0	*	*	RP
	Eskimo	New Koliganek ANVSA	0	*	*	RP
	Eskimo	New Stuyahok ANVSA	50	18.87	50	RP
	Eskimo	Togiak ANVSA	100	24.39	45	RP
	Eskimo	Twin Hills ANVSA	0	*	*	RP
	Other Alaska Native	Manokotak ANVSA	0	*	*	RP
Kenai Peninsula Borough	Aleut	Port Graham ANVSA	0	*	*	RP
Lake and Peninsula Borough	Alaskan Athabascan	Newhalen ANVSA	0	*	*	RP
	Aleut	Igiugig ANVSA	0	*	*	RP
	Aleut	Port Heiden ANVSA	0	*	*	RP
	Eskimo	Newhalen ANVSA	0	*	*	RP
Nome Census Area	Eskimo		360	6.26	12.50	P
	Eskimo	Brevig Mission ANVSA	15	11.54	26.67	RP
	Eskimo	Gambell ANVSA	75	22.39	5.33	RP
	Eskimo	Shishmaref ANVSA	40	12.7	10	RP
	Eskimo	Stebbins ANVSA	20	7.02	20	RP
	Eskimo	Teller ANVSA	10	7.41	40	RP
	Eskimo	Unalakleet ANVSA	30	7.5	13.33	RP
North Slope Borough	Eskimo		525	11.86	22.86	P
	Eskimo	Barrow ANVSA	350	21.21	21.43	RP
	Eskimo	Kaktovik ANVSA	20	14.81	50	RP
	Eskimo	Nuiqsut ANVSA	25	11.9	80	RP
	Eskimo	Point Hope ANVSA	65	17.57	15.38	RP
	Eskimo	Wainwright ANVSA	50	15.63	8	RP
Northwest Arctic Borough	Eskimo		335	7.98	13.43	P
	Eskimo	Kiana ANVSA	60	37.5	6.67	RP
	Eskimo	Kotzebue ANVSA	125	9.62	12	RP
	Eskimo	Noatak ANVSA	15	6.67	26.67	RP
	Eskimo	Noorvik ANVSA	35	9.09	11.43	RP
	Eskimo	Shungnak ANVSA	60	42.86	33.33	RP

Covered Jurisdiction	Covered Language	Indian Reservation	Number LEP	Percent LEP	Illiteracy Rate	Coverage Basis
Northwest Arctic Borough (continued)	Other Alaska Native	Selawik ANVSA	80	21.33	5	RP
Southeast Fairbanks Census Area	Alaskan Athabascan	Northway ANVSA	0	*	*	RP
	Alaskan Athabascan	Tanacross ANVSA	0	*	*	RP
	Alaskan Athabascan	Tetlin TDSA	0	*	*	RP
	Other Alaska Native	Tetlin TDSA	0	*	*	RP
Valdez-Cordova Census Area	Alaskan Athabascan	Chistochina ANVSA	0	*	*	RP
Wade Hampton Census Area	Eskimo		570	15.24	36.84	P
	Eskimo	Alakanuk ANVSA	55	15.94	54.55	RP
	Eskimo	Algaacig ANVSA	35	18.92	28.57	RP
	Eskimo	Andreafsky ANVSA	0	*	*	RP
	Eskimo	Chevak ANVSA	20	6.06	50	RP
	Eskimo	Emmonak ANVSA	85	22.37	23.53	RP
	Eskimo	Hooper Bay ANVSA	100	20.2	45	RP
	Eskimo	Kotlik ANVSA	45	15.25	22.22	RP
	Eskimo	Marshall ANVSA	30	16.67	50	RP
	Eskimo	Mountain Village ANVSA	65	18.31	38.46	RP
	Eskimo	Nunam Iqua ANVSA	0	*	*	RP
	Eskimo	Pilot Station ANVSA	65	24.07	46.15	RP
	Eskimo	Pitkas Point ANVSA	0	*	*	RP
	Eskimo	Russian Mission ANVSA	20	14.81	75	RP
Yukon-Koyukuk Census Area	Alaskan Athabascan	Allakaket ANVSA	0	*	*	RP
	Alaskan Athabascan	Chalkyitsik ANVSA	0	*	*	RP
	Alaskan Athabascan	Fort Yukon ANVSA	25	6.58	16	RP
	Alaskan Athabascan	Galena ANVSA	15	5.56	26.67	RP
	Alaskan Athabascan	Nikolai ANVSA	0	*	*	RP
	Eskimo	Nikolai ANVSA	0	*	*	RP
	Eskimo	Stevens Village ANVSA	0	*	*	RP

Table B-3:**Jurisdictions Covered by Section 203 for American Indian Languages, by State**

ALASKA						
Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Bethel Census Area	American Indian	Eek ANVSA	80	53.33	5	RP
	American Indian	Kongiganak ANVSA	35	14	42.86	RP
	American Indian	Kwinhagak ANVSA	175	53.03	20	RP
	American Indian	Lower Kalskag ANVSA	10	7.14	100	RP
	American Indian	Sleetmute ANVSA	0	*	*	RP
	Other American Indian	Kwigillingok ANVSA	0	*	*	RP
Dillingham Census Area	Other American Indian	Manokotak ANVSA	0	*	*	RP
Kenai Peninsula Borough	American Indian	Port Graham ANVSA	0	*	*	RP
North Slope Borough	American Indian	Anaktuvuk Pass ANVSA	30	18.75	33.33	RP
Wade Hampton Census Area	American Indian	Nunam Iqua ANVSA	0	*	*	RP
	American Indian	Scammon Bay ANVSA	45	20.45	22.22	RP
	Chickasaw	Chevak ANVSA	45	13.64	33.33	RP
Yukon-Koyukuk Census Area	Other American Indian	Hughes ANVSA	0	*	*	RP

ARIZONA

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Apache County	Apache	Fort Apache Reservation	15	10	0	RP
	Navajo		11245	26.52	25.43	N, P
	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	11175	36.11	25.37	RP
	Pueblo	Zuni Reservation and Off-Reservation Trust Land	0	0	0	RP
Coconino County	Navajo		5405	6.74	26.64	P
	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	4555	35.41	29.75	RP
	Pueblo	Hopi Reservation and Off-Reservation Trust Land	90	14.75	0	RP
Gila County	Apache	Fort Apache Reservation	270	32.53	1.48	RP
	Apache	San Carlos Reservation	570	22.01	2.63	RP
	Apache	Tonto Apache Reservation	0	*	*	RP
Graham County	Apache	San Carlos Reservation	715	29.24	0.56	RP
Maricopa County	Tohono O'Odham	Tohono O'odham Reservation and Off-Reservation Trust Land	190	62.3	28.95	RP
Navajo County	Apache	Fort Apache Reservation	1620	29.54	2.78	RP
	Navajo		7185	11.58	30.48	P
	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	6515	43.16	32.46	RP
	Pueblo	Hopi Reservation and Off-Reservation Trust Land	815	23.55	3.68	RP

ARIZONA (CONT.)

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Pima County	Tohono O'Odham	Tohono O'odham Reservation and Off-Reservation Trust Land	1670	31.48	9.28	RP
	Yaqui	Pascua Yaqui Reservation	280	18.24	10.71	RP
Pinal County	Apache	San Carlos Reservation	0	0	0	RP
	Tohono O'Odham	Maricopa (Ak Chin) Reservation	45	11.84	8.89	RP
	Tohono O'Odham	Tohono O'odham Reservation and Off-Reservation Trust Land	170	39.08	14.71	RP
Yuma County	Yuman	Cocopah Reservation	80	20.78	37.5	RP
	Yuman	Fort Yuma Reservation	0	*	*	RP

CALIFORNIA

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Imperial County	Latin American Indian	Torres-Martinez Reservation	0	0	0	RP
	Yuman	Fort Yuma Reservation	50	6.29	8	RP
Riverside County	Latin American Indian	Torres-Martinez Reservation	0	*	*	RP

COLORADO

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
La Plata County	Navajo	Ute Mountain Reservation and Off-Reservation Trust Land	0	0	0	RP
	Ute	Ute Mountain Reservation and Off-Reservation Trust Land	0	0	0	RP

COLORADO (CONT.)

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Montezuma County	Navajo	Ute Mountain Reservation and Off-Reservation Trust Land	0	*	*	RP
	Ute	Ute Mountain Reservation and Off-Reservation Trust Land	200	23.67	10	RP

FLORIDA

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Broward County	Seminole	Hollywood Reservation	35	11.29	57.14	RP
Collier County	Seminole	Immokalee Reservation	0	*	*	RP
Glades County	Seminole	Brighton Reservation	0	*	*	RP

IDAHO

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Bannock County	Other American Indian	Fort Hall Reservation and Off-Reservation Trust Land	55	7.69	7.27	RP
Bingham County	Other American Indian	Fort Hall Reservation and Off-Reservation Trust Land	80	5.8	5	RP
Caribou County	Other American Indian	Fort Hall Reservation and Off-Reservation Trust Land	0	0	0	RP
Owyhee County	Other American Indian	Duck Valley Reservation	0	*	*	RP
Power County	Other American Indian	Fort Hall Reservation and Off-Reservation Trust Land	0	*	*	RP

LOUISIANA

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Allen Parish	Other American Indian	Coushatta Reservation	0	*	*	RP

MISSISSIPPI

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Attala County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	0	0	0	RP
Jackson County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	0	0	0	RP
Jones County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	0	*	*	RP
Kemper County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	0	*	*	RP
Leake County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	0	*	*	RP
Neshoba County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	620	38.39	16.13	RP
Newton County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	0	*	*	RP
Scott County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	0	0	0	RP
Winston County	Choctaw	Mississippi Choctaw Reservation and Off-Reservation Trust Land	0	*	*	RP

MONTANA						
Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Big Horn County	Cheyenne	Northern Cheyenne Reservation and Off-Reservation	55	7.14	0	RP
Rosebud County	Cheyenne	Northern Cheyenne Reservation and Off-Reservation	170	11.6	2.35	RP
NEBRASKA						
Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Sheridan County	Sioux	Pine Ridge Reservation and Off-Reservation	0	*	*	RP
NEVADA						
Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Elko County	Other American Indian	Duck Valley Reservation	95	18.45	10.53	RP
	Shoshone	Elko Colony	40	9.64	10	RP
Humboldt County	Other American Indian	Fort McDermitt Reservation	60	31.58	6.67	RP
Lyon County	Paiute	Yerington Colony	0	*	*	RP
Nye County	Shoshone	Duckwater Reservation	0	*	*	RP
White Pine County	Shoshone	Ely Reservation	0	*	*	RP

NEW MEXICO						
Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Bernalillo County	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	265	31.55	26.42	RP
	Pueblo	Laguna Pueblo and Off-Reservation Trust Land	0	0	0	RP
Catron County	Pueblo	Acoma Pueblo and Off-Reservation Trust Land	0	0	0	RP
	Pueblo	Zuni Reservation and Off-Reservation Trust Land	0	0	0	RP
Cibola County	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	465	38.43	29.03	RP
	Pueblo	Acoma Pueblo and Off-Reservation Trust Land	300	16.9	3.33	RP
	Pueblo	Laguna Pueblo and Off-Reservation Trust Land	430	17.48	2.33	RP
	Pueblo	Zuni Reservation and Off-Reservation Trust Land	0	0	0	RP
McKinley County	Navajo		8510	18.58	25.91	P
	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	6640	34.35	27.41	RP
	Pueblo	Zuni Reservation and Off-Reservation Trust Land	1310	27.93	1.91	RP
Rio Arriba County	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	0	*	*	RP
San Juan County	Navajo		6730	8.95	25.33	P
	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	5325	32.13	27.98	RP
	Navajo	Ute Mountain Reservation and Off-Reservation Trust Land	0	0	0	RP
	Ute	Ute Mountain Reservation and Off-Reservation Trust Land	0	0	0	RP

NEW MEXICO (CONT.)

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Sandoval County	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	795	50.64	35.22	RP
	Pueblo	Jemez Pueblo	525	42	1.9	RP
	Pueblo	Laguna Pueblo and Off-Reservation Trust Land	0	0	0	RP
	Pueblo	San Felipe Pueblo	600	38.71	4.17	RP
	Pueblo	Santo Domingo Pueblo	425	22.14	3.53	RP
	Pueblo	Zia Pueblo and Off-Reservation Trust Land	180	47.37	2.22	RP
Santa Fe County	Pueblo	Santo Domingo Pueblo	0	0	0	RP
	Pueblo	Tesuque Pueblo and Off-Reservation Trust Land	20	6.9	20	RP
Socorro County	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	575	62.84	13.04	RP
	Pueblo	Acoma Pueblo and Off-Reservation Trust Land	0	0	0	RP
Taos County	Pueblo	Taos Pueblo and Off-Reservation Trust Land	160	16.16	2.5	RP
Valencia County	Pueblo	Laguna Pueblo and Off-Reservation Trust Land	0	0	0	RP

NORTH DAKOTA

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Richland County	Sioux	Lake Traverse Reservation	0	0	0	RP
Sargent County	Sioux	Lake Traverse Reservation	0	*	*	RP

OREGON						
Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Malheur County	Other American Indian	Fort McDermitt Reservation	0	0	0	RP

SOUTH DAKOTA						
Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Bennett County	Sioux	Pine Ridge Reservation and Off-Reservation Trust Land	70	9.86	0	RP
Codington County	Sioux	Lake Traverse Reservation	0	0	0	RP
Day County	Sioux	Lake Traverse Reservation	30	20.69	0	RP
Dewey County	Sioux	Cheyenne River Reservation and Off-Reservation Trust Land	125	5.04	0	RP
Grant County	Sioux	Lake Traverse Reservation	0	0	0	RP
Gregory County	Sioux	Rosebud Reservation and Off-Reservation Trust Land	0	*	*	RP
Haakon County	Sioux	Cheyenne River Reservation and Off-Reservation Trust Land	0	0	0	RP
Jackson County	Sioux	Pine Ridge Reservation and Off-Reservation Trust Land	25	3.82	0	RP
Lyman County	Sioux	Rosebud Reservation and Off-Reservation Trust Land	0	0	0	RP
Marshall County	Sioux	Lake Traverse Reservation	15	9.09	0	RP
Meade County	Cheyenne	Northern Cheyenne Reservation and Off-Reservation Trust Land	0	0	0	RP
	Sioux	Cheyenne River Reservation and Off-Reservation Trust Land	0	0	0	RP
Mellette County	Sioux	Rosebud Reservation and Off-Reservation Trust Land	45	11.69	0	RP
Roberts County	Sioux	Lake Traverse Reservation	80	4.79	5	RP

SOUTH DAKOTA (CONT.)

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Shannon County	Sioux		400	5.86	3.75	P
	Sioux	Pine Ridge Reservation and Off-Reservation Trust Land	400	6.38	3.75	RP
Stanley County	Sioux	Cheyenne River Reservation and Off-Reservation Trust Land	0	0	0	RP
Todd County	Sioux		265	5.25	1.51	P
	Sioux	Rosebud Reservation and Off-Reservation Trust Land	265	6.48	1.51	RW
Tripp County	Sioux	Rosebud Reservation and Off-Reservation Trust Land	0	*	*	RP
Ziebach County	Sioux		105	7.02	3.81	P
	Sioux	Cheyenne River Reservation and Off-Reservation Trust Land	105	10.94	3.81	RP

TEXAS

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
El Paso County	Pueblo	Ysleta Del Sur Pueblo and Off-Reservation Trust Land	40	24.24	10	RP
Maverick County	Other American Indian	Kickapoo (TX) Reservation	145	59.18	86.21	RP

UTAH

Covered Jurisdiction	Covered Language	Indian Reservation (RP or RW)	Number LEP (L)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
San Juan County	Navajo		1660	19.12	25.60	P
	Navajo	Navajo Nation Reservation and Off-Reservation Trust Land	1510	42.24	26.82	RP
	Navajo	Ute Mountain Reservation and Off-Reservation Trust Land	0	*	*	RP
	Ute	Ute Mountain Reservation and Off-Reservation Trust Land	15	8.82	66.67	RP

Table B-4:

Jurisdictions Covered by Section 203 for Asian Languages, by State

ALASKA					
Covered Jurisdiction	Covered Asian Languages	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Kodiak Island Borough	Filipino	470	5.58	12.77	P
CALIFORNIA					
Covered Jurisdiction	Covered Asian Languages	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Alameda County	Chinese (including Taiwanese)	28280	3.15	10.98	N
Los Angeles County	Chinese (including Taiwanese)	95700	1.92	10.71	N
	Filipino	34985	0.7	4.46	N
	Japanese	12510	0.25	2.88	N
	Korean	42390	0.85	2.67	N
	Vietnamese	30340	0.61	10.42	N
Orange County	Chinese (including Taiwanese)	14805	0.91	4.36	N
	Korean	12240	0.75	2.37	N
	Vietnamese	45730	2.8	6.9	N
San Diego County	Filipino	17155	0.96	4.58	N
San Francisco County	Chinese (including Taiwanese)	58735	10.61	16.89	N, P
San Mateo County	Chinese (including Taiwanese)	11780	2.65	6.24	N
Santa Clara County	Chinese (including Taiwanese)	24895	2.56	5.12	N
	Filipino	11245	1.15	3.65	N
	Vietnamese	31265	3.21	5.76	N
HAWAII					
Covered Jurisdiction	Covered Asian Languages	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Honolulu County	Chinese (including Taiwanese)	12640	2.07	13.49	N
	Filipino	24815	4.06	10.44	N
	Japanese	13865	2.27	5.27	N
Maui County	Filipino	5350	6.09	13.08	P
ILLINOIS					
Covered Jurisdiction	Covered Asian Languages	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Cook County	Chinese (including Taiwanese)	11645	0.34	9.36	N

NEW YORK					
Covered Jurisdiction	Covered Asian Languages	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Kings County	Chinese (including Taiwanese)	33635	2.43	13.32	N
New York County	Chinese (including Taiwanese)	21070	2.04	21.33	N
Queens County	Chinese (including Taiwanese)	37865	3.08	8.05	N
	Korean	11835	0.96	6.46	N
TEXAS					
Covered Jurisdiction	Covered Asian Languages	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
Harris County	Vietnamese	16970	0.86	7.81	N
WASHINGTON					
Covered Jurisdiction	Covered Asian Languages	Number LEP (N)	Percent LEP (P)	Illiteracy Rate	Coverage Basis
King County	Chinese	10535	0.86	9.35	N

ATTACHMENT C

English Language Naturalization Requirements and the Bilingual Assistance Provisions of the Voting Rights Act

by Ana Henderson

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An often-cited argument regarding the continuing need for the Voting Rights Act's language assistance provisions is that since immigrants must speak English to become naturalized citizens, native language assistance in voting is not needed. This paper will present research suggesting that English language naturalization requirements do not indicate an ability to vote in English without bilingual voting assistance. As explained further below: (1) the level of English required to satisfy naturalization English requirements is significantly lower than the level required for voting; (2) the law contains provisions that may exempt a large portion of naturalized citizens; and (3) naturalization requirements do not apply to native born citizens, many of whom have limited English proficiency.

1. Naturalization requires only elementary (3rd or 4th grade) levels of English proficiency while voting requires high school or even college levels of English proficiency

The fact that a naturalized citizen proves English proficiency for naturalization purposes does not mean he does not need native language assistance in order to participate in the democratic process in a meaningful way because the level of English proficiency needed for voting is significantly higher than that needed for naturalization. Candidates for naturalization must demonstrate "an understanding of the English language, including an ability to read, write, and speak words in *ordinary usage* in the

English language.”²⁸⁸ The statute clarifies that English reading and writing requirements “shall be met if the applicant can read or write *simple* words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable condition shall be imposed upon the applicant.”²⁸⁹ The statute does not require any specialized English language ability or that applicants speak, read, or write English at advanced levels.

Department of Homeland Security implementing regulations confirm that candidates must demonstrate proficiency in basic levels of English. Regarding verbal skills, the regulations specify that an applicant’s English speaking skills should be determined through her “answers to questions normally asked in the course of the examination.”²⁹⁰ An applicant’s English reading and writing abilities may be assessed by “using excerpts from one or more parts of the Service authorized Federal Textbooks on Citizenship written at the *elementary literacy level*.”²⁹¹

The United States Citizen and Immigration Services’ list of sample English sentences for the written English citizenship test further illustrates the basic level of English required for naturalization.²⁹² The list includes 48 sentences regarding “civics/history” and 50 sentences regarding “everyday life.” The sentences are short – none have more than 10 words and nearly three quarter of them consist of 7 words or less – and are comprised almost entirely of one- or two-syllable words. The sentences are grammatically simple and do not contain compound sentences or complicated verb

²⁸⁸ 8 U.S.C. § 1423 (2006) (emphasis provided).

²⁸⁹ *Id.* (emphasis provided).

²⁹⁰ 8 C.F.R. § 312.1(c)(1).

²⁹¹ 8 C.F.R. § 312.1(c)(2) (emphasis provided). In addition, another section of the regulations describes the English language naturalization requirements as a “minimal understanding of ordinary English.” 8 C.F.R. § 245a.17(a).

²⁹² See Appendix A (attached), U.S. Citizenship and Immigration Services, “Sample Sentences for Written English Testing” available at <http://uscis.gov/graphics/services/natz/natzsamp.htm> (3/5/06).

conjugations or punctuation. Most of the sentences, particularly those in the “everyday life” list are written at the third grade level or lower, with a significant number at the first grade level.²⁹³ Only four “civics/history” sentences and one “everyday life” sentence have ten words. The ten-word “civics/history” sentences are: “I want to become an American so I can vote,” which is assessed to be at the 4.8 grade level; “The colors of the American flag are red, white, and blue,” assessed to be at the 4.7 grade level; “I want to be a citizen of the United States,” assessed at the 4.8 grade level; and “The stripes of the American flag are red and white,” which is assessed at the 3.6 grade level. The lone ten word sentence on the “everyday life” list is: “I count cars as they pass by the office,” which is assessed at the first grade level.²⁹⁴

In contrast, voting-related materials are written at a significantly higher grade level and thus require more advanced English language literacy skills to be fully understood. Analysis of voter registration information from all 50 states reveals that registration directions and information are consistently written at high grade levels and use complex English, e.g., contain longer sentences and words as well as complicated vocabulary and grammar.²⁹⁵ Only eight states provide registration information written at lower than the 9th grade level.²⁹⁶ In fact, only one state (Missouri) provides voter registration information near the elementary level required for naturalization, with

²⁹³ The grade level for all 98 sentences together is 3.3 grade. All grade levels discussed in this paper were determined by analyzing pertinent text with Microsoft Word to obtain a Flesch-Kincaid reading score. The Flesch-Kincaid reading score indicates the grade level of reader who would understand the analyzed text.

²⁹⁴ The low grade level of these sample sentences is understandable because highly sophisticated levels of English are not needed for every day functioning, especially when oral communication can be aided by gestures and other expressive methods.

²⁹⁵ See Appendix B (attached) “Grade Level and Average Words per Sentence for Voter Registration Information Provided via Internet for all 50 States.”

²⁹⁶ See *id.* These states are: Colorado (8.4 grade), Idaho (8.6 grade), Kentucky (7.9 grade), Missouri (6.7 grade), New York (8.9 grade), Oregon (7.9 grade), Wyoming (7.7 grade), and North Dakota (7.4) (materials explain that North Dakota does not require registration and describe voter qualification).

materials provided at the 6.7 grade level. Voter registration information in 42 states is drafted at high school level or higher. Moreover, 19 states provide registration information written at college levels of English, with the most advanced materials in South Carolina (14.6 grade) and Maine (14.3 grade).²⁹⁷ Voter registration information is critical to incorporating citizens into the democratic process. Materials written at the high school or college level are significantly more advanced than the level of English needed to pass naturalization tests.

Other voting information and ballot measures are presented in equally or even more complex written English. For example, information about Louisiana's 2003 voter ID requirements is written at the 15.9 grade level.²⁹⁸ Ballot initiatives, constitutional amendments and ballot questions are particularly complex because they are often drafted in sophisticated legal jargon and in what some might argue are intentionally confusing manners, i.e., use of double negatives, very long sentences, etc. For example, California's Proposition 77, on the ballot during the November 8, 2005 special election was one, 42 word long sentence written at the 12th grade level.²⁹⁹ A home rule charter question regarding tax increases for infrastructure improvement on the ballot in Fargo,

²⁹⁷ See *id.* College level English is indicated by a grade level greater than 12.0. States and corresponding grade levels are: Alaska (12.7), California (13.6), Connecticut (Hartford) (12.1), Delaware (New Castle Co.) (12.9), Georgia (12.6), Kansas (Sedgwick Co.) (13.5), Louisiana (12.4), Maryland (12.1), Maine (14.3), Minnesota (13.6), Mississippi (12.5), New Hampshire (12.7), New Jersey (14.0), Pennsylvania (13.1), South Carolina (14.6), Tennessee (13.9), Utah (12.7), Washington (12.3), and Wisconsin (12.7).

²⁹⁸ See www.sos.state.al.us/election/general/voterid2003.aspx (5/22/06).

²⁹⁹ The text of Proposition 77 read: "Should the California Constitution be amended to change the process of redistricting California's State Senate, State Assembly, Congressional and Board of Equalization districts, transferring the implementation of redistricting from the Legislature to a panel of three retired judges, selected by legislative leaders?" www.smartvoter.org/sv/2005/11/08/ca/state/prop/77/.

ND in 2006 contains one sentence that is 150 words long and is written at the graduate school level.³⁰⁰

Complex election materials and ballot issues that are written using advanced levels of English can be difficult to understand even for native English speakers. Voters for whom English is a second language may have even more difficulty, particularly if their native language is unwritten, is logographic (characters represent complete words) or syllabic (characters represent syllables) as opposed to English's alphabetic system, or is written in a different alphabet than English. The ability to read at the third or fourth grade level – the level that the English language naturalization test appears to require – is not sufficient to understand complex ballots and election materials. As such, the ability to pass the minimum English standards for citizenship does not prove sufficient English ability to understand fully the sophisticated language involved with voting.³⁰¹

2. Naturalization exempts certain individuals from English language requirements, with potentially large effects

Even assuming that English language naturalization requirements are an accurate gauge of English abilities for voting purposes, they do not indicate a lack of need for assistance because not all candidates for naturalization must demonstrate English

³⁰⁰ The text of the Fargo, ND ballot question reads: “Shall Article 3 of the Home Rule Charter of the City of Fargo be amended to authorize collection of a one percent (1%) municipal sales, gross receipts and use tax to commence January 1, 2009 for a period of twenty (20) years to expire on December 31, 2028, and to be utilized by the City of Fargo for such infrastructure capital improvements as the governing body of the city may select, said infrastructure capital improvements meaning expenditures for streets and traffic management; water supply and treatment needs including construction or expansion of water treatment facilities; water distribution system needs; sewerage treatment and collection system needs, including construction or expansion of sewage treatment facilities, and flood protection projects, all as provided in the Notice of Proposed Home Rule Charter Amendment as published in THE FORUM on the 11th day of April, 2006?” www.ci.fargo.nd.us/voting.htm.

³⁰¹ Language assistance in the Act is triggered by voting age citizens who indicated on their census forms that they speak English less than “very well.” It is not incongruent for LEP voters to have some level of English proficiency, such as that needed for naturalization, but still need native language assistance to negotiate the registration and voting process and cast a meaningful ballot.

proficiency in order to become citizens. Most significantly, the law exempts candidates based on their age and time living in the country as follows:

1. candidates over age 50 who have lived in the country as permanent residents for a total of 20 years are exempted from the English language test and may take the civics test in the language of their choice.
2. candidates over age 55 who have lived in the country as permanent residents for a total of 15 years do not have to take the English test and may take the civics test in the language of their choice.
3. candidates over age 65 who have lived in the country as permanent residents for 20 years are exempted from English language requirements and may take a simplified civics test in the language of their choice.³⁰²

The age-based exemptions recognize that language acquisition is more difficult for older individuals. In addition, neither the English language nor civics test requirements apply to candidates who are unable to comply with them due to physical or developmental disability or mental impairment.³⁰³

The age-based exemptions have potentially large effects. According to Department of Homeland Security records, 25.1% (2,274,384 of 9,055,732) of all citizens who were naturalized from 1986 to 2004 were age 50 or over and thus old enough to be exempted from English language proficiency requirements and to take the civics test in

³⁰² See 8 U.S.C. § 1423; 8 C.F.R. §§ 312.1(b) & 312.2(b). See also U.S. Citizenship & Immigration Services, A Guide to Naturalization, Form M-476 (rev. 2/04)Y, at 26. Available at <http://uscis.gov/graphics/services/natz/English.pdf>.

³⁰³ See 8 U.S.C.A. 1423(b)(1). In addition, up to 45,000 Hmong veterans who fought with special guerrilla units or irregular forces in Laos and their spouses who were admitted as refugees from Laos pursuant to 8 U.S.C. 1157 were eligible to be exempted from the English language requirements. See Pub.L. 107-77, Title I, § 112 (Nov. 28, 2001).

the language of their choice.³⁰⁴ These figures represent the highest number of people potentially exempted from English requirements, since no data were publicly available regarding either the length of time such applicants were legal residents (the other prong of the exemption) or the number of candidates who were actually exempted from the English language requirement and/or took the civics test in a language other than English.

3. English naturalization requirements do not apply to native-born limited English proficient citizens

English language naturalization requirements are also, at best, a limited indication of need for assistance because they do not apply to native born citizens. Census data demonstrate that a significant number of native-born citizens have limited English skills. American Community Survey data from 2004 estimate that 4,739,332 native-born citizens age five and over are limited English proficient (“LEP”).³⁰⁵ Of these, 3,418,281 (72.1%) are native-born Latino, Native American, Alaska Native, and Asian American citizens.³⁰⁶ Moreover, according to 2000 Census data, 29.8% (673,373 of 2,258,366) of voting age Puerto Ricans, who are citizens by birth, have limited English proficiency;

³⁰⁴ See Appendix C (attached), “Naturalized Citizens by English Language Exemption Age Thresholds.” All data was provided by the Department of Homeland Security, Office of Immigration Studies. Data for 1986-2001 can be accessed at www.uscis.gov/graphics/shared/statistics/yearbook/2001/NATZ2001list.htm; data for 2002 can be accessed at www.uscis.gov/graphics/shared/statistics/yearbook/NATZ2002list.htm; data for 2003 can be accessed at www.uscis.gov/graphics/shared/statistics/yearbook/YrBk03Na.htm; and data for 2004 is set forth in the 2004 Yearbook of Immigration Statistics at www.uscis.gov/graphics/shared/statistics/yearbook/Yearbook2004.pdf, Table 34.

³⁰⁵ See Census’s 2004 American Community Survey, B06007. Place of Birth by Language Spoken at Home and Ability to Speak English.

³⁰⁶ See U.S. Census, B16005I. Nativity by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over (Hispanic or Latino); B16005C. Nativity by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over (American Indian and Alaska Native Alone); and B16005D. Nativity by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over (Asian alone).

67.7% (110,162 of 186,792) of Puerto Ricans age 65 or older have limited English proficiency.³⁰⁷

In conclusion, English language requirements for naturalization do not guarantee that limited English proficient citizens will be able to vote effectively without native language assistance. The level of English required for naturalization is substantially lower than that required for voting. Many naturalized citizens may be exempted from English language requirements. Naturalization requirements do not apply to native-born citizens.

³⁰⁷ See U.S. Census, PCT38. Age by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over, Racial or Ethnic Group: Puerto Rican. Note that Puerto Ricans are the only Latino subgroup that are citizens by birth. Data for other Latino and all Asian subgroups is not available for citizens age 18 and over.

Appendix A

(Note: copied verbatim from www.uscis.gov/graphics/services/natz/natzsamp.htm)

U.S. Citizenship and Immigration Services

Sample Sentences for Written English Testing

To be eligible for naturalization, you must be able to read, write, and speak basic English. The sentences on this page are **examples** of the types of sentences an INS officer may ask you to read aloud or write during your interview. They are not an exhaustive list. **The INS officer who interviews you may ask you to read or write other sentences.**

CIVICS/HISTORY

A Senator is elected for 6 years.
_____ is the Vice President of the United States.
All people want to be free.
America is the land of freedom.
All United States citizens have the right to vote.
America is the home of the brave.
America is the land of the free.
_____ is the President of the United States.
Citizens have the right to vote.
Congress is part of the American government.
Congress meets in Washington, D.C.
Congress passes laws in the United States.
George Washington was the first president.
I want to be a citizen of the United States.
I want to be an American citizen.
I want to become an American so I can vote.
It is important for all citizens to vote.
Many people come to America for freedom.
Many people have died for freedom.
Martha Washington was the first first lady.
Only Congress can declare war.
Our Government is divided into three branches.
People in America have the right to freedom.
People vote for the President in November.
The American flag has stars and stripes.
The American flag has 13 stripes.
The capital of the United States is Washington, D.C.
The colors of the flag are red, white, and blue.
The Constitution is the supreme law of our land.
The flag of the United States has 50 stars.
The House and Senate are parts of Congress.
The people have a voice in Government.
The people in the class took a citizenship test.
The President enforces the laws.
The President has the power of veto.
The President is elected every 4 years.

The President lives in the White House.
The President lives in Washington, D.C.
The President must be an American citizen.
The President must be born in the United States.
The President signs bills into law.
The stars of the American flag are white.
The Statue of Liberty was a gift from France.
The stripes of the American flag are red and white.
The White House is in Washington, D.C.
The United States flag is red, white, and blue.
The United States of America has 50 states.
There are 50 states in the Union.

EVERDAY LIFE

There are three branches of Government.
He came to live with his brother.
He has a very big dog.
He knows how to ride a bike.
He wanted to find a job.
He wanted to talk to his boss.
He went to the post office.
His wife is at work right now.
His wife worked in the house.
I am too busy to talk today.
I bought a blue car today.
I came to _____ (city) today for my interview.
I count the cars as they pass by the office.
I drive a blue car to work.
I go to work everyday.
I have three children.
I know how to speak English.
I live in the State of _____.
I want to be a United States citizen.
It is a good job to start with.
My car does not work.
She can speak English very well.
She cooks for her friends.
She is my daughter, and he is my son.
She needs to buy some new clothes.
She wanted to live near her brother.
She was happy with her house.
The boy threw a ball.
The children bought a newspaper.
The children play at school.
The children wanted a television.
The man wanted to get a job.
The teacher was proud of her class.
The white house has a big tree.
They are a very happy family.
They are very happy with their car.
They buy many things at the store.
They came to live in the United States.
They go to the grocery store.
They have horses on their farm.

They live together in a big house.
They work well together.
Today I am going to the store.
Today is a sunny day.
Warm clothing was on sale in the store.
We are very smart to learn this.
We have a very clean house.
You cook very well.
You drink too much coffee.
You work very hard at your job.

Appendix B:

Grade Level and Average Words per Sentence for Voter Registration Information Provided via Internet in All 50 States³⁰⁸

State	Voter Info	Grade Level	Ave. words per sentence
AK	Registration	12.7	22.4
AL	Voter registration info	10.3	14.4
AL	New voter ID info	15.9	22.5
AR	Voter registration	9.2	15.5
AZ	Online registration	10.8	15.5
CA	Registration	13.6	21.7
CO (Denver Co.)	Registration	8.4	16.0
CT (Hartford)	Registration	12.1	25.2
DE (New Castle Co.)	Registration	12.9	17.7
FL	Registration	11.8	17.4
GA	Registration	12.6	23.2
HI	Registration	11.6	12.5
IA	Registration	9.8	15.4
ID	Registration	8.6	13.7
IL	Registration FAQs	9.7	15.7
IN	Registration	11.9	17.8
KS (Sedgwick Co.)	Registration	13.5	19.7
KY	Registration	7.9	13.5
LA	Registration	12.4	22.5
MA	Registration	9.3	14.2
MD	Registration	12.1	17.8
ME	Reg & Eligibility	14.3	23.8
MI	Registration	9.9	15.0
MO	Registration	6.7	15
MN	Registration FAQs	13.6	24.2
MS	Registration	12.5	21.4
MT	Registration	9.4	17.4
NC	Registration	11.0	18.2
ND	Limited info (no Reg)	7.4	12.1
ND (Cass Co.)	Voting info (no Reg in ND)	11.9	21.7
NE	Registration FAQs	10.9	14.3

³⁰⁸ In some cases, the state website did not provide detailed voter registration information. In those states, information was collected from a smaller political subdivision in charge of elections within that state. Such subdivision is indicated in parentheses.

State	Voter Info	Grade Level	Ave. words per sentence
NH	Registration	12.7	23.0
NJ	Registration	14.0	24.0
NM	Registration	11.9	19.0
NV	Registration	11.2	18.2
NY	Registration	8.9	16.3
OH	Registration	12.0	19.7
OR	Registration	7.9	14.3
OK	Registration	11.8	17.6
PA	Registration	13.1	17.0
RI	Registration	10.5	18.5
SC	Registration	14.6	26.3
SD	Registration	10.2	14.6
TN	Registration	13.9	16.2
TX (VOTEXAS)	Registration	11.6	20.9
TX	Registration FAQs	10.7	21.1
UT	Registration	12.7	18.4
VA	Registration	12.0	16.6
VT	Registration	9.8	18.9
WA	Registration	12.3	21.6
WI	Registration	12.7	19.1
WV	Registration	9.4	15.0
WY	Registration	7.7	13.7

Voter registration information analyzed was gathered from the following websites. In addition, a .pdf and Word copy of each page analyzed is on file with the author.

AK: http://ltgov.state.ak.us/elections/regapp.php
AL (Reg. info): http://www.sos.state.al.us/election/vr/vr-a.htm
AL (ID info): http://www.sos.state.al.us/election/general/voterid2003.aspx
AR: http://www.sos.arkansas.gov/elections/vote/vote.html
AZ: https://servicearizona.com/webapp/evoter/show_info.do
CA: http://www.ss.ca.gov/elections/elections_vr.htm
CO (Denver Co.): http://www.denvergov.org/ElectionCommission/template2426.asp
CT (Hartford): http://www.hartford.gov/Voters/faqs/faq.htm
DE (New Castle Co.): http://www.state.de.us/doe_ncc/votreg.shtml
FL: http://election.dos.state.fl.us/voterreg/voting_info.shtml
GA: http://www.sos.state.ga.us/elections/elections/voter_information/default.htm
HI: http://www.hawaii.gov/elections/voters/registration.htm
IA: http://www.sos.state.ia.us/elections/voterreg/index.html
ID: http://www.idahovotes.gov/VoterGuide/vote.htm
IL: http://www.elections.il.gov/VotingInformation/Register.aspx
IN: http://www.in.gov/sos/elections/pdfs/06_Voter_Guide.pdf
KS (Sedgwick Co.): http://www.sedgwickcounty.org/elections/information.htm
KY: http://www.elect.ky.gov/register.htm
LA: http://www.sos.louisiana.gov/elections/elect-absentee.htm
MA: http://www.sec.state.ma.us/ele/eleifv/howreg.htm
MD: http://www.elections.state.md.us/citizens/registration/information.html
ME: http://www.maine.gov/sos/cec/elec/resident.htm
MI: http://www.michigan.gov/sos/0,1607,7-127-1633_11619_38093-123989--,00.html
MN: http://www.sos.state.mn.us/home/index.asp?page=12&select_faq_by_faq_cat=2#29
MO: http://www.sos.mo.gov/elections/s_default.asp?id=voter
MS: http://www.sos.state.ms.us/elections/voterinfoguide.asp
MT: http://sos.state.mt.us/ELB/Voter_Information.asp
NC: http://www.sboe.state.nc.us/newpages/voting1.htm
ND: http://www.nd.gov/sos/electvote/voting/voter-qualifi.html
ND (Cass Co.): http://www.co.cass.nd.us/departments/auditor/FrequentlyAskedQuestions.htm
NE: http://www.sos.state.ne.us/elec/vote_reg_page.html
NH: http://www.sos.nh.gov/vote.htm
NJ: http://www.state.nj.us/lps/elections/vote_doe.html
NM: http://www.sos.state.nm.us/Main/Elections/ElectionInfo.htm
NY: http://www.elections.state.ny.us/portal/page?_pageid=153,42096,153_42249:153_42253&_dad=portal&_schema=PORTAL
NV: http://www.sos.state.nv.us/nvelection/faq.htm#regis
OH: http://www.sos.state.oh.us/sos/PublicAffairs/VoterInfoGuide.aspx?Section=14
OR: http://www.sos.state.or.us/elections/votreg/vreg.htm
OK: http://www.ok.gov/%7EElections/voterreg.html
PA: http://www.dos.state.pa.us/voting/cwp/view.asp?a=1192&q=443159&votingNav=
Note: this is a portal page with links to five pages with voter registration information.

RI: http://www.sec.state.ri.us/elections/voting/register/register.html
Note: this is a portal page with links to 12 pages with voter registration information.
SC: http://www.state.sc.us/scsec/vr.html
Note: this is a portal page with links to pages with voter registration information
SD: http://www.sdsos.gov/electionsvoteregistration/registrationvoting.shtm
TN: http://www.state.tn.us/sos/election/register.htm
TX (VOTEXAS): http://www.votexas.org/english/english_register.htm
TX: http://www.sos.state.tx.us/elections/pamphlets/faqs.shtml
UT: http://www.elections.utah.gov/voterregistrationnewhow.html
VA: http://www.sbe.virginia.gov/cms/Voter_Information/Registering_to_Vote/Index.html
VT: http://vermont-elections.org/elections1/register tovote.html
WA: http://www.secstate.wa.gov/elections/register.aspx
WI: http://elections.state.wi.us/faq_detail.asp?faqid=119&fid=27
WV: http://www.wvsos.com/elections/voters/voterbasics.htm
WY: http://soswy.state.wy.us/election/vote.htm

Appendix C:

Naturalized Citizens by English Language Exemption Age Thresholds³⁰⁹

Year	Total Naturalized	50 +	% 50 +	55 +	% 55 +	65 +	% 65 +
1986	280,623	41,991	14.9%	28,604	10.2%	10,858	3.8%
1987	227,008	56,495	24.9%	22,932	10.1%	8,947	3.9%
1988	242,063	36,695	15.2%	25,174	10.4%	10,146	4.2%
1989	233,777	35,316	15.1%	24,217	10.4%	9,875	4.2%
1990	270,101	41,269	15.3%	28,479	10.5%	11,402	4.2%
1991	308,058	47,166	15.3%	31,674	10.3%	14,597	4.7%
1992	240,252	47,599	19.8%	35,716	14.9%	17,368	7.2%
1993	314,681	78,890	25.1%	60,036	19.1%	28,207	9%
1994	434,107	113,940	26.2%	84,910	19.6%	38,353	6.5%
1995	488,088	138,649	28.4%	104,715	21.5%	49,491	10.1%
1996	1,044,689	309,021	29.6%	235,459	22.5%	118,257	11.3%
1997	598,225	149,294	25%	110,580	18.5%	54,748	9.2%
1998	463,060	164,146	35.4%	132,654	28.6%	82,374	17.9%
1999	839,944	256,342	30.5%	192,240	22.9%	99,169	11.8%
2000	888,788	243,138	27.4%	173,564	19.5%	80,274	9%
2001	608,205	162,089	26.7%	115,427	19.0%	52,653	8.7%
2002	573,708	136,112	23.7%	94,961	16.6%	40,546	7.1%
2003	463,204	112,275	24.2%	79,701	17.2%	35,400	7.6%
2004	537,151	103,957	19.4%	97,032	18.1%	43,307	8.1%
Total	9,055,732	2,274,384	25.1%	1,843,197	20.4%	807,972	8.9%

Note: Candidates over age 50 are exempted from English language proficiency requirements and may take the civics test in the language of their choice if they have lived in the country as legal permanent residents for 20 years or more. Candidates over 55 are exempted from English language proficiency requirements and can take the civics test in the language of their choice if they have lived as legal permanent residents for 15 years or more. Candidates over 65 are exempted from English language proficiency requirements and may take a simplified civic test in the language of their choice if they have been legal permanent residents for 20 years or more.

³⁰⁹ All data was provided by the Department of Homeland Security, Office of Immigration Studies. Data for 1986-2001 can be accessed at <http://www.uscis.gov/graphics/shared/statistics/yearbook/2001/NATZ2001list.htm>; data for 2002 can be accessed at <http://www.uscis.gov/graphics/shared/statistics/yearbook/NATZ2002list.htm>; data for 2003 can be accessed at <http://www.uscis.gov/graphics/shared/statistics/yearbook/YrBk03Na.htm>; and data for 2004 is set forth in the 2004 Yearbook of Immigration Statistics at <http://www.uscis.gov/graphics/shared/statistics/yearbook/Yearbook2004.pdf>, Table 34.

ATTACHMENT D

See accompanying Adobe Acrobat file containing Texas absentee ballot request form.