



ASIAN AMERICANS
**ADVANCING
JUSTICE**
AAJC

**Testimony of
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For

**Hearing on
“Voting in America: The Potential for Voter ID Laws,
Proof-of-Citizenship Laws, and Lack of Multi-Lingual Support
To Interfere with Free and Fair Access to the Ballot”**

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Introduction

Over the last several decades, Asian Americans are increasingly engaging in the political process. However, despite being among the fastest growing groups in the country and increasing voter engagement, Asian Americans are not maximizing the full potential of their political power. In fact, Asian American voter participation rates continue to lag behind that of white voters. This perpetual lag is a result of various barriers to the ballot for Asian American voters, many of which stem from the racist history in this country against the Asian American community, that are exacerbated by the lack of language support and the imposition of documentary requirements, such as proof of citizenship and voter identification. This testimony will detail the Asian American electorate and the barriers facing full political participation. While Asian Americans are the nation’s fastest growing racial group and are quickly becoming a significant electoral force, the community will continue to be blocked from maximizing its political power as long as there is continued interference with free and fair access to the ballot.

Organizational Information

Asian Americans Advancing Justice – AAJC (Advancing Justice – AAJC) is a national 501 (c)(3) nonprofit founded in 1991 in Washington, D.C. Rooted in the dreams of immigrants and inspired by the promise of opportunity, Advancing Justice – AAJC advocates for an America in which all Americans can benefit equally from, and contribute to, the American dream. Our mission is to advance the civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. Advancing Justice – AAJC fights for our civil rights through

education, litigation, and public policy advocacy and serves to empower our communities by bringing local and national constituencies together and ensuring Asian Americans are able to participate fully in our democracy. In particular, Advancing Justice – AAJC works to eliminate barriers to the participation of Asian Americans in our nation's political process. This includes working to defend and enforce the Voting Rights Act (VRA), improving election systems and providing analysis of Asian American electoral participation. AAJC also provides training and technical assistance to local groups on a wide range of issues that remove barriers to voting, such as implementation of federal voting statutes and enforcing the language assistance provisions of the VRA.

Advancing Justice – AAJC is a member of Asian Americans Advancing Justice (Advancing Justice), a national affiliation of five civil rights nonprofit organizations that joined together in 2013 to promote a fair and equitable society for all by working for civil and human rights and empowering Asian Americans and Pacific Islanders and other underserved communities. The Advancing Justice affiliation is comprised Advancing Justice – ALC located in San Francisco, Advancing Justice – Los Angeles, Advancing Justice – AAJC located in Washington, D.C., Advancing Justice – Chicago, and Advancing Justice – Atlanta.

Advancing Justice – AAJC also has our Community Partners Network, a collaboration of nearly 250 community-based organizations in 37 states and the District of Columbia, which helps to further our reach and strengthen our understanding of the communities we represent. Established in 1995, the Community Partners Network has accumulated more than 20 years of experience in coalition-building as well as providing training and technical assistance to local groups on advocacy and community education efforts. Through this network, we work to increase regional and local capacity to elevate community voices nationwide. In turn, the network provides us insight into the issues facing our diverse community. The states in which we have Community Partners are: AL, AZ, AR, CA, CO, CT, DC, FL, GA, HI, IL, IA, KY, LA, ME, MD, MA, MI, MN, MS, NE, NV, NJ, NM, NY, NC, OH, OK, OR, PA, RI, TN, TX, UT, VA, WA, and WI.

Advancing Justice – AAJC was a key player in collaboration with other civil rights groups regarding the reauthorization of the Voting Rights Act in 2006, helping to lead the effort around reauthorizing Section 203, the language assistance provision. For the 2012 election, Advancing Justice conducted poll monitoring and voter protection efforts across the country, including in California, Florida, Georgia, Illinois, Texas, and Virginia. And since the 2012 election, Advancing Justice – AAJC, in partnership with APIAVote, has run a multilingual Asian election protection hotline, 888-API-VOTE that provides in-language assistance to voters who have questions about the election process or are experiencing problems while trying to vote.

For the 2020 elections, which coincided with the drawn-out 2020 Census, in addition to running our hotline, Advancing Justice – AAJC focused on providing support and resources to local partners whose capacity were stretched conducting both census and voting mobilization work. To supplement subgrants to local partners in twelve states, we provided up-to-date information for voters in targeted states, translated into the most relevant languages for a particular state, as well as training and technical assistance to partners on the ground around election

protection. We also produced national factsheets translated into twelve Asian languages (Bengali, Hindi, Hmong, Japanese, Khmer, Korean, Simplified Chinese, Tagalog, Thai, Traditional Chinese, Urdu, Vietnamese), including one about what to do after voting to check on the status of their ballots and how to cure defects in certain instances.

Asian American electorate

Since the passage of the 1965 Immigration Act and the end of race-based immigration quotas, Asian American communities in the United States have grown dramatically. According to Census 2010, Asian Americans are the nation's fastest growing racial group, with a growth rate of 46% between 2000 and 2010; growing to over 17.3 million Asian Americans and making up six percent of the total population.¹ Today there are over 22.8 million Asian Americans living in the United States.²

Often viewed as a monolithic group, Asian Americans are exceedingly diverse with different needs. The country's fastest growing Asian American ethnic groups were South Asian, with the Bangladeshi and Pakistani American populations doubling in size between 2000 and 2010.³ Chinese Americans continue to be the largest Asian American ethnic group, numbering nearly 5.4 million nationwide, followed in size by Indian, Filipino, Vietnamese, and Korean Americans in 2019.⁴

Asian Americans are also geographically diverse and are growing fastest in non-traditional gateway communities. Asian American populations in Nevada, Arizona, North Carolina, and Georgia were the fastest growing nationwide between 2000 and 2010.⁵ California had an Asian population of roughly 6.7 million in 2019, by far the nation's largest. It was followed by New York (1.9 million), Texas (1.6 million), New Jersey (958,000) and Washington (852,000).⁶ The South was the fastest growing region for the Asian American population during the previous decade.⁷

¹ Asian Pacific American Legal Center & Asian American Justice Center, *A Community of Contrasts: Asian Americans in the United States: 2011*, 6, 16, http://www.advancingjustice.org/pdf/Community_of_Contrast.pdf [hereinafter Community of Contrasts] (Note: Figures are for the inclusive population, single race and multi-race combined, and are not exclusive of Hispanic origin, except for white, which is single race, non-Hispanic).

² U.S. Census Bureau, 2019 Population Estimates, Annual Estimates of the Resident Population by Sex, Age, Race Alone or in Combination, and Hispanic Origin: April 1, 2010 to July 1, 2019 (July 1, 2019), <https://www2.census.gov/programs-surveys/popest/tables/2010-2019/national/asrh/nc-est2019-sr11h.xlsx>.

³ Community of Contrasts at 9.

⁴ Abby Budiman & Neil G. Ruiz, *Key facts about Asian Americans, a diverse and growing population*, Pew Research Center (Apr. 29, 2021), <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-americans/>.

⁵ Community of Contrasts at 8.

⁶ Abby Budiman & Neil G. Ruiz, *Key facts about Asian Americans, a diverse and growing population*, Pew Research Center (Apr. 29, 2021), <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-americans/>.

⁷ Asian Americans Advancing Justice, *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islander in the South: 2014*, 6, https://www.advancingjustice-aaajc.org/sites/default/files/2016-09/2014_Community%20of%20Contrasts.pdf.

At the same time, we saw a similar increase among Asian American voters. The number of eligible Asian Americans grew by almost 150% from almost five million in 2000 to over 11.5 million in 2020 (as compared to a growth rate of 24% for the total population over that same time period).⁸ The growth rate of eligible Asian Americans registering (200%; from almost 2.5 million to over 7.3 million registered) and voting (236%; from just over 2 million to almost 7 million who voted) was even greater during that same time period.⁹ The 2020 election showed over 1.2 million additional eligible voters from the previous presidential election, and an even higher increase in Asian Americans who actually registered and voted.¹⁰ This represented a 27.1% increase in registered Asian Americans and 36.4% increase in Asian Americans who voted between the 2016 and 2020 presidential elections.¹¹ This growth will continue, with Asian American and Pacific Islander voters slated to make up five percent of the national electorate by 2025 and ten percent of the national electorate by 2044.¹²

While we saw higher levels of voter participation in the 2020 election, with 63.8% of eligible Asian Americans registered and 59.7% who voted, barriers exist that challenge the ability of Asian Americans to reach their full potential when it comes to civic engagement.¹³ There continues to be a consistent double-digit gap with white voters for both voter registration and turnout, election after election (*see table below*). This persistent gap highlights systemic issues and barriers facing Asian Americans’ free and fair access to the ballot.

TABLE: Asian American Political Participation Gap: Presidential Elections¹⁴

| Year | Asian American Voter Registration Rate | Difference with White Voter Registration Rate | Asian American Voter Turnout Rate | Difference with White Voter Turnout Rate |
|------|--|---|-----------------------------------|--|
| 2020 | 63.8% | -12.7% | 59.7% | -11.2% |
| 2016 | 56.3% | -17.6% | 49.0% | -16.3% |
| 2012 | 56.3% | -17.4% | 47.3% | -16.8% |
| 2008 | 55.3% | -18.2% | 47.6% | -18.5% |
| 2004 | 51.8% | -23.3% | 44.1% | -23.1% |
| 2000 | 52.4% | -19.2% | 43.4% | -18.4% |

⁸ Author’s calculations based on U.S. Census Bureau data available at https://www2.census.gov/programs-surveys/cps/tables/p20/585/table02_5.xlsx (2020 data points) and <https://www2.census.gov/programs-surveys/cps/tables/p20/542/tab04b.xls> (2000 data points).

⁹ *Id.*

¹⁰ Author’s calculations of U.S. Census Bureau data available on voter participation in federal elections through its Current Population Survey.

¹¹ *Id.*

¹² Karthick Ramakrishnan & Farah Z. Ahmad, State of Asian Americans and Pacific Islanders, Center for American Progress and AAPI Data (2014), <http://ampr.gs/AAPIREports2014>.

¹³ U.S. Census Bureau, Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age, November 2020, https://www2.census.gov/programs-surveys/cps/tables/p20/585/table02_5.xlsx.

¹⁴ Author’s calculations based on U.S. Census Bureau, Reported Voting and Registration by Race, Hispanic Origin, Sex and Age Groups: November 1964 to 2018, <https://www2.census.gov/programs-surveys/cps/tables/time-series/voting-historical-time-series/a1.xlsx>.

Barriers to Free and Fair Access to the Ballot

Some of the most significant barriers to free and fair access to the ballot for Asian Americans stem from the historical discrimination against Asian Americans. Asian Americans were denied rights held by U.S. citizens for most of the country's existence – including the right to vote – as federal policy barred immigrants of Asian descent from even becoming United States citizens until 1943.¹⁵ Indeed, numerous legislative efforts prevented Asian immigrants from entering the United States and becoming citizens throughout our country's history, with the racial criteria for naturalization not being removed altogether until 1952.¹⁶ Because of these racist immigration policies, there were less than 900,000 Asian Americans in the U.S. – representing “a mere one half of one percent of the country's population” – in 1960, despite having Asian immigrants entering the U.S. as early as 1859.¹⁷

Language Barriers and Lack of Multilingual Support

The passage of the Immigration and Nationality Act of 1965 (INA) abolished the immigration system based on national origin quotas heavily favoring immigration from Northern and Western Europe and reopened the U.S. to immigration from Asia and other parts of the world.¹⁸ This has meant that immigration has fueled the growth of the Asian American population today, resulting in over two out of three Asian Americans being born outside of the U.S. today.¹⁹ Because of this, almost three out of every four Asian American speaks a language other than English at home and almost one in three Asian American is limited English proficient (LEP)²⁰ – that is, has some difficulties with the English language.²¹

As a result, a major obstacle facing Asian American voters is the language barrier. Navigating the voting process can be complicated and overwhelming, even for those who are fluent in

¹⁵ See Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, 58-61 (prohibiting immigration of Chinese laborers; repealed 1943); Immigration Act of 1917, ch. 29, 39 Stat. 874, 874-98, and Immigration Act of 1924, ch. 190, 43 Stat. 153 (banning immigration from almost all countries in the Asia-Pacific region; repealed 1952); Leti Volpp, *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 UCLA L. Rev. 405, 415 (2005).

¹⁶ See, *id.* See also, *e.g.*, Philippines Independence Act of 1934, ch. 84, 48 Stat. 456, 462 (imposing annual quota of fifty Filipino immigrants; amended 1946); Immigration Act of 1924, ch. 190, 43 Stat. 153 (denying entry to virtually all Asians; repealed 1952); Scott Act of 1888, ch. 1064, 1, 25 Stat. 504, 504 (rendering 20,000 Chinese re-entry certificates null and void); Naturalization Act of 1790, ch. 3, 1 Stat. 103 (providing one of the first laws to limit naturalization to aliens who were “free white persons” and thus, in effect, excluding African-Americans, and later, Asian Americans; repealed 1795).

¹⁷ Asian Americans Advancing Justice-AAJC and Asian Americans Advancing Justice-Los Angeles, *Inside the Numbers: How Immigration Shapes Asian American and Pacific Islander Communities*, 20 (June 2019), https://advancingjustice-aaajc.org/sites/default/files/2019-07/1153_AAJC_Immigration_Final_0.pdf.

¹⁸ *Id.*

¹⁹ Author's calculation based on U.S. Census Bureau, 2019 ACS 1 Year Estimates, Table B16005D: Nativity by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over (Asian Alone), <https://data.census.gov/cedsci/table?q=ACSDT1Y2019.B16005D&tid=ACSDT1Y2019.B16005D&hidePreview=true>.

²⁰ *Id.*

²¹ The current definition of LEP is persons who speak English less than “very well.” The Census Bureau has determined that most respondents overestimate their English proficiency and therefore, those who answer other than “very well” are deemed LEP. See H.R. Rep. No. 102-655, at 8 (1992), *as reprinted in* 1992 U.S.C.C.A.N. 766, 772.

English. Trying to understand how to access the ballot for citizens whose first language is not English is even more difficult. Furthermore, the complexity of voting materials makes voting even more challenging for voters with language barriers.

When multilingual support is properly provided and language barriers are addressed, civic engagement increases. In San Diego County, California, voter registration among Latinos and Filipinos rose by over 20% after the county began to properly providing language assistance.²² At the same time, the Vietnamese registration rate increased by 40% after San Diego County also agreed to voluntarily provide additional language assistance in Vietnamese, which just missed Section 203 coverage.²³ In Harris County, Texas, turnout among Vietnamese eligible voters doubled in 2004 after the United States Department of Justice (DOJ) got involved to address language assistance noncompliance and the county elected the first Vietnamese American to the Texas state legislature.²⁴ In Orange County, California, the engagement of Vietnamese American voters helped to elect the first Vietnamese American to California's state legislature in 2004.²⁵ In fact, it is a primary reason why "[a]t the beginning of 2000, there was a single Vietnamese-American elected official in Orange County. There are now ten [in 2007] – four of them elected in November [2006]."²⁶

If the access to multilingual support helps to eradicate language barriers, the withdrawal or denial of multilingual support exacerbates language barriers, interferes with the free and fair access to the ballot through the voting process, and leads to less voters participating in American democracy.

Eligible voters who are LEP face threshold barriers to understanding the election process and registering to vote. Some of these eligible LEP voters will have immigrated from a country with vastly different democratic and voting systems. And even though election notices and voter registration forms provide or request basic information, even that basic information is inaccessible to millions of eligible American voters unless they have access to multilingual translators, preventing the eligible voter from even starting the process.

Even if an eligible voter is able to get past the registration stage, without language assistance, LEP voters may then run into a problem trying to navigate the voting process, such as locating the appropriate polling place, understanding and taking advantage of absentee voting options, or assessing what early voting options are available. Many eligible voters may utilize election administration websites but even then, they must frequently choose one or more links to get to the information they are seeking or personalized logistical information – and most election

²² Alberto R. Gonzales, *Prepared Remarks of Attorney General Alberto R. Gonzales at the Anniversary of the Voting Rights Act*, U.S. Department of Justice (Aug. 2, 2005), <http://www.justice.gov/archive/ag/speeches/2005/080205agvotingrights.htm>.

²³ *Id.*

²⁴ *Id.*

²⁵ Martin Wisckol, *Little Saigon's Big Clout*, Orange County Register (Jan. 4, 2007), <http://www.ocregister.com/articles/vietnamese-188422-community-american.html>.

²⁶ *Id.*

administration websites are in English-only. For instance, a Virginian not fully fluent in English attempting apply online for an absentee ballot must do so on a page that is in English only, and that requires the user to read and agree to the affirmation that, “I certify and affirm that the information provided to access my voter registration is my own or I am expressly authorized by the voter to access this information. I understand that it is unlawful to access the record of any other voter, punishable as computer fraud under Va. Code § 18.2-152.3.”²⁷ Some jurisdictions may attempt to use Google Translate or a similar tool, but these products do not produce complete or accurate translations of webpages, which is the equivalent to not providing translations at all. Additionally, the language on websites and forms that is associated with voter information and transactions can be difficult for even advanced English speakers to understand. The inability to navigate and utilize the election administration website due to the lack of multilingual support will likely stymie a LEP voter’s ability to access the ballot.

Telephone multilingual support is often also not a viable option for LEP voters seeking information in advance of an election. Even where bilingual staffing could allow for the provision of live assistance, help can be hard to reach. For example, Gila County, Arizona provides voter assistance in both Apache and Spanish and the County’s website indicates – in English – that its Voter Outreach coordinator can provide information and personalized assistance in Apache.²⁸ Unfortunately, in order to identify and get in contact with the multilingual employee who could provide the information in language, the constituent must effectively be able to navigate the County’s website in English or communicate effectively with an operator, who is likely not fluent in Apache. The irony is that if the constituent could accomplish all of that to reach the bilingual employee, they would likely not need the language assistance in the first place.

If a voter beats the odds and overcomes all the foregoing obstacles to register and to understand how to vote in a jurisdiction that does not provide effective language assistance, that voter must then undertake the daunting task to actually cast a ballot. In multilingual polling places, multilingual poll workers are prepared for LEP voters and prepared to treat them with respect. Without multilingual poll workers, there is a higher risk of LEP voters encountering hostility from monolingual poll workers. During the 2012 election, voters reported to the Election Protection Coalition that they had been unlawfully prevented from obtaining language assistance at polling places from Suffolk County, New York to New Orleans, Louisiana, including an incident in Kansas City, Missouri where a poll worker asked a voter’s interpreter to leave the polling place and threatened her with arrest.²⁹

²⁷ Virginia Department of Elections, *Voter Information Lookup*, <https://vote.elections.virginia.gov/VoterInformation/Lookup/absentee>.

²⁸ Gila County Elections Department, *Voter Outreach and Language Assistance*, http://www.gilacountyaz.gov/government/elections/voter_outreach_and_language.php.

²⁹ Asian Americans Advancing Justice-AAJC, Mexican American Legal Defense and Educational Fund, & NALEO Educational Fund, *Practice-Based Preclearance: Protecting Against Tactics Persistently Used to Silence Minority Communities’ Votes* (Nov. 2019), <https://www.advancingjustice-aajc.org/report/practice-based-preclearance>.

Other problems can arise from poll workers who do not fully understand voting rights laws, especially as they pertain to language assistance. Specifically, poll workers have denied Asian American voters their right to an assistor of their choice under Section 208 of the VRA.³⁰ For example, during the 2012 general election, a poll worker in New Orleans mistaken thought only LEP voters of languages covered by Section 203 of the VRA were entitled to assistance in voting under Section 208. Since Vietnamese was not a Section 203-covered language either for the county or the state, the poll worker denied LEP Vietnamese voters the assistance of their choice when voting.³¹ DOJ sued the city of Boston, alleging Section 2 violations based on disrespectful treatment toward LEP Chinese- and Vietnamese-American voters during the 2004 elections, including these voters being ignored or improperly influenced in making ballot choices.³² In 2004, Bayou La Batre, Alabama had its first Asian American candidate running a competitive race for city council 2004. A white incumbent and his supporters challenged about 50 Asian American voters at the polls during the primary elections. The challengers' rationale was that if the voters "couldn't speak good English, they possibly weren't American citizens."³³

Finally, even if a LEP voter is able to obtain a ballot, as previously noted, it is often written in advanced English, which is not accessible for LEP voters. "Ballotpedia's analysis of statewide ballot measures upon which citizens voted in 2018 found that their average grade level was between 19 and 20, meaning that it would require a graduate degree-level education to understand them... Review of measures put before voters between 1997 and 2007 produced similar results... and demonstrated that administrators wrote ballots at consistently high grade levels."³⁴ The complex English used on ballots and throughout voter materials makes it difficult for LEP voters to comprehend and respond. This can be compounded by higher levels of illiteracy rates, whether in English or in the LEP voter's original language.³⁵

Ultimately, the withdrawal or denial of multilingual support create formidable hurdles for language-minority voters – approximately 85% of whom are voters of color – the effects of which are predictable: LEP voters "often have a difficult time exercising their right to vote[and have] much lower participation rates than non-LEP voters."³⁶ Additionally, if an LEP voter, who may be a first-time voter as a newly naturalized citizen, has a bad experience when they

³⁰ Section 208 of the Voting Rights Act is the right to assistance by a person voter's choice (excluding employers and union representatives) by reason of blindness, disability, or inability to read or write.

³¹ Terry Ao Minnis & Mee Moua, 50 Years of the Voting Rights Act: The Asian American Perspective, Asian Americans Advancing Justice-AAJC, 16 (Aug. 4, 2015), <https://www.advancingjustice-aaic.org/sites/default/files/2016-09/50-years-of-VRA.pdf>.

³² Angelo N. Ancheta, Language Accommodation and The Voting Rights Act, *in* VOTING RIGHTS ACT REAUTHORIZATION OF 2006: PERSPECTIVES ON DEMOCRACY, PARTICIPATION, AND POWER, 293-395 (2007), https://www.law.berkeley.edu/files/ch_11_ancheta_3-9-07.pdf.

³³ Brennan Center for Justice, The Voting Rights Act: Protecting Voters for Nearly Five Decades (Feb. 26, 2013), <https://www.brennancenter.org/our-work/research-reports/voting-rights-act-protecting-voters-nearly-five-decades>.

³⁴ Asian Americans Advancing Justice-AAJC, Mexican American Legal Defense and Educational Fund, & NALEO Educational Fund, Practice-Based Preclearance: Protecting Against Tactics Persistently Used to Silence Minority Communities' Votes, 53 (Nov. 2019), <https://www.advancingjustice-aaic.org/report/practice-based-preclearance>.

³⁵ *Id.*

³⁶ *Id.*

attempt to vote for the first time, especially if that bad experience is related to being ridiculed, humiliated, or discriminated against due to their difficulties with the English language, it stands to reason they will not attempt to vote again without significant intervention and motivation by a third party.

In addition to the harmful effect the withdrawal or denial of multilingual support, the history of discriminatory intent in denying language assistance further indicates the problematic nature and purpose in denying multilingual support today. A review of the more than 150 years of linguistic restrictions on voting reveals the explicit and implicit targets of such laws. The following examples elucidate the sordid record of denying multilingual support:

- “a pair of 1905 editorials in support of Arizona’s English literacy requirement stated, first, that, ‘There is a foreign element in our voting population which is both illiterate and ignorant of our institutions,’ and, eleven days later, that, ‘We are referring, of course, to the ignorant Mexican vote.’
- “poll watchers in south Phoenix, AZ during the 1964 presidential election observed white activists – including future Supreme Court Chief Justice William Rehnquist – systematically and selectively challenge black voters and people not yet fully fluent in English to confirm their residences and to read and interpret Constitutional passages to demonstrate sufficient literacy to vote.
- “As of 1970 – before Congress extended the VRA to protect language-minority citizens – Texas law forbid election administrators from using any language other than English except in limited circumstances, and forbid assistance to any voter except those physically unable to mark ballots. The Court that invalidated the state’s prohibition on assistance to illiterate voters noted that evidence showed that ‘the majority of illiterate voters in Texas are members of the Mexican-American and Negro ethnic groups,’ and that ‘the effect of the statute may be to exclude many Mexican-Americans and Negroes from assistance.’”³⁷

The lack of multilingual support has long been understood to interfere with a LEP voter’s free and fair access to the ballot and has been used for just that purpose.

Anti-Immigrant Purpose and Effect of Documentary Requirements

Similar to the nefarious purpose behind the denial of multilingual support, the practice of creating additional and/or onerous documentary requirements for voting, such as proof of citizenship and voter ID, are often targeted at immigrants (i.e., naturalized citizens). These practices also serve to simply make it more difficult for them to access the ballot. Voter ID and proof of citizenship requirements disproportionately impact Asian Americans due to high rates of immigration and naturalization in the community. Studies show that Asian Americans and

³⁷ *Id.*

other communities of color are less likely to have photo IDs compared to whites.³⁸ Moreover, naturalized citizens' ability to obtain the requisite documents needed to obtain the requisite photo IDs may be even more constrained as they often lack access to the required underlying documents such as naturalization documents.

It is the law that citizenship is a prerequisite to voting in federal elections. In order to register, individuals must sign a statement under penalty of perjury affirming that they are citizens and that they meet all voter eligibility requirements. While this has been the accepted practice for decades, beginning in 2004, a handful of states decided to go further and require voters to provide documentary proof of their citizenship, such as birth certificates, naturalization cards, or Native American tribal documents. Arizona was the first state in 2004 to impose such a documentary proof-of-citizenship requirement, with Kansas, Alabama, Tennessee and Georgia subsequently doing the same in the following decade.

Acceptable documents to prove citizenship for this requirement generally include: any driver's or non-driver's ID that includes a notation that the person submitted proof of U.S. citizenship, a U.S. birth certificate, a U.S. passport or U.S. naturalization documents, certain tribal IDs, and other rare documents. Naturalized citizens will not have some of these options available to them because of their place of birth. They also face additional fees to obtaining a replacement Certificate of Naturalization, which currently requires \$555 and takes around 8.5 to 11 months to process.³⁹ Asian Americans will face greater barriers to registration than white voters under these laws as 76.6% of Asian American adults are foreign-born and 39.5% of Asian American adults have naturalized nationwide, compared to 4.6% of white adults who are foreign-born and 3.8% who have naturalized.⁴⁰

While not as prevalent, there have been states who have treated their naturalized citizens as second-class citizens by placing additional requirements upon them in order to vote. For example, in 2006, Ohio enacted legislation that directed poll workers to require certain naturalized voters to present proof of U.S. citizenship before providing them with ballots or approving their provisional votes to be counted. The law would have applied to any voter challenged on the basis of their citizenship and would have required election judges processing challenges to distinguish between native-born and naturalized citizens, in order to single out naturalized Americans for extra scrutiny. Whereas native-born Americans would not have been subject to demands for documentation, any challenged voter who professed to be a naturalized

³⁸ See e.g. Barreto MA, Nuño S, Sanchez GR, Walker HL, The Racial Implications of Voter Identification Laws in America, American Politics Research, March 2019, 47(2): 238-249.

³⁹ See U.S. Department of Homeland Security., Our Fees Chart, <https://www.uscis.gov/forms/our-fees> (documenting the filing fee) (last visited May 21, 2021); U.S. Citizenship and Immigration Services, Check Case Processing Times, <https://egov.uscis.gov/processing-times/> (check for most current processing time by form) (last visited May 21, 2021).

⁴⁰ Author's calculations based on U.S. Census Bureau, 2019 ACS 1 Year Estimates, Sex by Age by Nativity and Citizenship Status <https://data.census.gov/cedsci/table?q=B05003&tid=ACSDT1Y2019.B05003D&hidePreview=false> (Asian alone); <https://data.census.gov/cedsci/table?q=B05003&tid=ACSDT1Y2019.B05003H&hidePreview=false> (white alone, not Hispanic or Latino).

U.S. Census Bureau, Table B05003D: Sex By Age By Nativity And Citizenship Status (Asian Alone), 2019 American Community Survey 1-Year Estimates, <https://data.census.gov/cedsci/table?q=B05003D&tid=ACSDT1Y2019.B05003D>.

citizen would have been asked to immediately produce proof of citizenship, or in the alternative, to vote a provisional ballot that would only be counted if the voter displayed proof of citizenship to an elections official within ten days of attempting to vote. Prior to adoption of this legislation, Ohio law allowed any challenged naturalized voter to swear an oath affirming his or her citizenship in lieu of producing original documentation. As of 2006, naturalized Ohioans were far more likely than all eligible voters to be historically underrepresented people of color. Even though African Americans, Latinos, and Asian Americans constituted just 14.3% of the state's eligible electorate that year, they accounted for 47.8% of naturalized Ohioans eligible to cast ballots, who were potentially subject to additional restrictions on the franchise. In light of its potential to incentivize racial and ethnic profiling of Ohio voters, and its likely discriminatory effects, a federal court permanently enjoined the law in October of 2006.⁴¹

And in Louisiana, a law on the books for almost 150 years required only naturalized citizens to submit proof of citizenship in person at their local registrar's office after submitting their voter registration form.⁴² For groups on the ground, there was a noticeable uptick in strict enforcement of this law around 2012.⁴³ This resulted in more naturalized citizens declining to register when they learned about the cumbersome process.⁴⁴ After a lawsuit was filed challenging this law, Louisiana's governor signed a bill that repealed the discriminatory requirement in 2016.⁴⁵ More recently, in Mississippi, a lawsuit was filed in November 2019 challenging state law that imposes a documentary proof-of-citizenship requirement for voter registration on only naturalized citizens.⁴⁶

Restrictive voter ID provisions in which only a few specified government-issued photo IDs can be used to vote can be problematic for Asian Americans. Studies show that Asian Americans and other communities of color are less likely to have photo IDs compared to whites. According to one study, immigrant and minority voters are "consistently less likely to have" the required identification.⁴⁷ Obtaining the requisite government-issued photo IDs requires both time and some expense. In addition to the time and fees involved in obtaining one of these photo IDs, racial and ethnic minorities, including Asian Americans, do not have the same access to identification as whites.⁴⁸ According to one study, Asian Americans were over 20% less likely to have two forms of identification compared to whites.⁴⁹ For example, Asian Americans and

⁴¹ *Boustani v. Blackwell*, 460 F. Supp. 2d 822, 825-27 (N.D. Ohio 2006).

⁴² Maura Ewing, *Foreign-born citizens in Louisiana have had to take extra steps to register to vote — until now*, The World (June 5, 2016), <https://www.pri.org/stories/2016-06-06/foreign-born-citizens-louisiana-have-had-take-extra-steps-register-vote-until-now>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Emily Wagster Pettus, *Voting suit challenges Mississippi law on citizenship proof*, AP (Nov. 18, 2019), <https://apnews.com/article/4ffb6d691734447baf51f72c65824142>.

⁴⁷ Matt A. Barreto, et. al, *Voter Id Requirements and the Disenfranchisements of Latino, Black And Asian Voters 1* (Sept. 1, 2007), https://www.brennancenter.org/sites/default/files/legal-work/63836ceea55aa81e4f_hlm6bhkse%281%29.pdf.

⁴⁸ *Id.* at 9-10.

⁴⁹ *Id.* at 10.

immigrants were significantly less likely to have at least a driver's license and one additional form of identification.⁵⁰ There are also considerable group differences for forms of *identification* that many considered very basic or accessible.⁵¹ For example, Asian Americans were almost 24% less likely to have access to a recent bank statement. Additionally, in the case of family and multi-generational households, a living pattern Asian Americans and Pacific Islanders are more likely to engage in, bills may be solely in the name of the male head of household, leaving the other adults without proof of their residency in that house.⁵² Asian American voters are 18% less likely to be able to produce a utility bill and 11% less likely to be able to produce a property tax bill that would contain their name.⁵³

Moreover, naturalized citizens' ability to obtain the requisite documents to obtain requisite photo IDs may be even more constrained as they often lack access to the required underlying documents such as naturalization documents. Census data show that 62.8% of eligible Asian American; 31.0% of eligible Latino voters; 23.9% Native Hawaiian and Pacific Islander voters; and 10.3% of eligible black voters were naturalized citizens as of 2019, compared to just 3.8% of non-Hispanic white voters.⁵⁴ If naturalized and derivative citizens need a replacement certificate of citizenship or naturalization to register or vote, they face a major hurdle: certificates of citizenship presently cost upwards of \$1,170 and replacement certificates of naturalization cost upwards of \$555. In addition, to obtain a replacement, the average wait is between 8.5 to 11 months for the Department of Homeland Security to process and to obtain a certificate of citizenship the average wait is 6.5 to 14.5 months.⁵⁵ Thus being able to obtain photo ID is harder for many Asian Americans.

Finally, we know that the application of photo ID laws by poll workers can be discriminatorily employed. For example, we have seen poll workers single out only Asian American voters for photo identification, whether it was legally mandated or not. During the 2008 election, in Washington, D.C., an Asian American voter was required to present identification several times,

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Author's calculations based on U.S. Census Bureau, 2019 ACS 1 Year Estimates, Sex by Age by Nativity and Citizenship Status <https://data.census.gov/cedsci/table?q=B05003&tid=ACSDT1Y2019.B05003B&hidePreview=false> (Black or African American alone); <https://data.census.gov/cedsci/table?q=B05003&tid=ACSDT1Y2019.B05003D&hidePreview=false> (Asian alone); <https://data.census.gov/cedsci/table?q=B05003&tid=ACSDT1Y2019.B05003E&hidePreview=false> (Native Hawaiian and Other Pacific Islander Alone); <https://data.census.gov/cedsci/table?q=B05003&tid=ACSDT1Y2019.B05003H&hidePreview=false> (white alone, not Hispanic or Latino); <https://data.census.gov/cedsci/table?q=B05003&tid=ACSDT1Y2019.B05003I&hidePreview=false> (Hispanic or Latino).

⁵⁵ See U.S. Department of Homeland Security, Our Fees Chart, <https://www.uscis.gov/forms/our-fees> (documenting the filing fee) (last visited May 21, 2021); U.S. Citizenship and Immigration Services, Check Case Processing Times, <https://egov.uscis.gov/processing-times/> (check for most current processing time by form) (last visited May 21, 2021).

while a white voter in line behind her was not similarly asked to provide identification.⁵⁶ Also in 2008, poll workers only asked a Korean American voter and his family, but no one else, to prove their identity in Centreville, VA.⁵⁷ Even in California, where state law only requires identification when voting in one instance (when a person is voting in California for the first time and did not provide any form of identification when registering to vote), poll monitors during the 2016 election encountered polling places where identification was being asked for inappropriately, with some poll workers (mistakenly) appearing to think they were safeguarding the integrity of the election process by asking for identification.⁵⁸ Additionally, some poll workers asked for identification only when they had difficulty understanding or spelling a voter's name, which creates a particular obstacle for only naturalized immigrant voters and/or voters who have non-Anglo names with a Voter ID requirement.⁵⁹

Documentary requirements have a negative effect on Asian American voters and interfere with their free and fair access to the ballot.

Conclusion

Barriers such as lack of multilingual support and documentary requirements remain among the greatest obstacles for Asian American voters in fully exercising their fundamental right to vote. The U.S. Census Bureau forecasts that the number of Asian immigrants will grow between now and 2040. It is likely that voter participation rates among the Asian American community, including of newly naturalized Asian Americans, will only increase. Restrictions on, and denials of, linguistic assistance in voting, as well as documentary requirements that fall heaviest on immigrant voters, not only produce obviously and inevitably discriminatory results, but also lack legitimate justifications, and will serve to interfere with Asian Americans' free and fair access to the ballot.

⁵⁶ Asian American Legal Defense and Educational Fund, Asian American Access to Democracy in the 2008 Elections: Local compliance with the Voting Rights Act and Help America Vote Act (HAVA) in NY, NJ, MA, MI, IL, PA, LA, NV, TX, VA, MD, and DC, 25 (2009), https://www.aaldef.org/uploads/pdf/AALDEF_Election_2008_Report.pdf.

⁵⁷ *Id.*

⁵⁸ Asian Americans Advancing Justice-California, Voices of Democracy: The State of Language Access in California's November 2016 Elections, 21, https://www.advancingjustice-alc.org/wp-content/uploads/2017/05/05042017_AJ_State_of_Language_Report_DIGITAL_FINAL.pdf.

⁵⁹ *Id.*