



ASIAN AMERICANS  
**ADVANCING  
JUSTICE**

AAJC

July 1, 2014

The Honorable Patrick J. Leahy  
Chairman  
United States Senate Committee on the Judiciary  
Washington, D.C. 20510

The Honorable Chuck Grassley  
Ranking Member  
United States Senate Committee on the Judiciary  
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC), we thank you for holding the hearing, “The Voting Rights Amendment Act, S.1945: Updating the Voting Rights Act in Response to *Shelby County v. Holder*” on June 25, 2014 and for the opportunity to elaborate on why the Voting Rights Amendment Act of 2014 (S. 1945) (“VRAA”) is critical to addressing the continuing discrimination faced by the Asian American community. The VRAA includes commonsense fixes that address the current reality of continuing discrimination while providing significant flexibility to states and counties and ensuring that no one is denied the right to vote. We believe the VRAA to be a modern, effective Voting Rights Act (VRA) that is responsive to the Supreme Court’s decision in *Shelby County v. Holder* and that will protect everyone’s equal access to the political process. Advancing Justice | AAJC strongly supports the passage of the VRAA and asks that this testimony be entered into the record.

***Organizational Statement of Interest***

Asian Americans Advancing Justice (Advancing Justice) is a national affiliation of four nonprofit organizations that joined 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. Its member organizations are: Asian Americans Advancing Justice | AAJC (located in Washington, D.C.)<sup>1</sup>; Asian Americans Advancing Justice | Asian Law Caucus

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<sup>1</sup> Formerly Asian American Justice Center, Advancing Justice | AAJC is a national organization that advances the civil and human rights of Asian Americans and builds and promotes a fair and equitable society for all through public education, policy analysis and research, policy advocacy, litigation, and community capacity and coalition building.

located in San Francisco, CA);<sup>2</sup> Asian Americans Advancing Justice | Chicago;<sup>3</sup> and Asian Americans Advancing Justice | Los Angeles.<sup>4</sup>

A nationally recognized voice on behalf of Asian Americans, Advancing Justice | AAJC is an expert on issues of importance to the community, including voting rights, anti-Asian violence prevention/race relations, census issues, immigrant rights, language access, and affirmative action. Advancing Justice | AAJC has a strong interest in the voting rights of Asian Americans and strives to protect Asian Americans' access to the polls as part of its Building Democracy program area. Through its efforts, Advancing Justice | AAJC has supported increasing access to the political process for Asian Americans, including working on the successful passage of the National Voter Registration Act of 1993 and collaborating with other civil rights groups as a key player to reauthorize the VRA in 2006.

Over the years, Advancing Justice | AAJC has also worked with its affiliates and local partners to conduct coordinated poll monitoring efforts and projects focused on proper implementation of Section 203 of the VRA. 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.

Such long-standing interest in voting rights has resulted in Advancing Justice | AAJC's participation in a number of amicus briefs before the courts regarding voting rights. Last year, Advancing Justice | AAJC filed an amicus brief jointly with the Asian American Legal Defense and Education Fund (AALDEF) in *Shelby County, Alabama v. Holder* to the U.S. Supreme Court on behalf of 28 Asian American groups. Urging the Court to uphold Section 5 of the VRA, the brief demonstrated that Section 5 was necessary to protect Asian Americans from ongoing discrimination in areas such as political representation and problematic voting changes. This brief served as the foundation for testimony, also prepared jointly with AALDEF, submitted for the Senate Judiciary Committee hearing, "From Selma to Shelby County: Working Together to Restore the Protections of the Voting Rights Act," on July 17, 2013.

### ***Current, Ongoing Racial Discrimination Harms Asian American Voters***

The unfortunate reality is that discrimination in voting is not a thing of the past—it still happens today and we need tools to respond. Asian Americans are all too familiar with racial discrimination that has excluded them from full participation in the political process. The perception of Asian Americans as "outsiders," "aliens," and "foreigners" has driven much of the discrimination faced

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<sup>2</sup> Formerly Asian Law Caucus, Advancing Justice | Asian Law Caucus is the nation's oldest legal organization defending the civil rights of Asians and Pacific Islanders, particularly low-income, immigrant, and underserved communities.

<sup>3</sup> Formerly Asian American Institute, Advancing Justice | Chicago is the leading pan-Asian organization in the Midwest dedicated to empowering the Asian American community through advocacy, research, education, leadership development, and coalition-building.

<sup>4</sup> Formerly Asian Pacific American Legal Center, Advancing Justice | Los Angeles is the nation's largest legal organization serving Asians and Pacific Islanders, through direct legal services, impact litigation, policy advocacy, and leadership development.



by Asian Americans.<sup>5</sup> At various points in history, such perceptions have led to Asian Americans being denied rights held by their fellow U.S. citizens.

*The History of Discrimination against Asian Americans is Extensive*

The history of extensive discrimination based on the perception of Asian Americans as “foreigners” cannot be denied. Federal policy barred immigrants of Asian descent from even becoming U.S. citizens until 1943, and racial criteria for naturalization remained until 1952.<sup>6</sup> Indeed, anti-immigrant sentiment directed towards Asian Americans was codified in multiple legislative efforts to prevent Asian immigrants from entering the United States and becoming citizens.<sup>7</sup> Asian immigrants were also prohibited from voting and owning land as they were legally identified as aliens “ineligible for citizenship.”<sup>8</sup>

Asian Americans, whether immigrant or native-born, also regularly experienced pervasive discrimination in daily life.<sup>9</sup> World War II provided the most egregious example of discrimination

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<sup>5</sup> See, e.g., Claire Jean Kim, *The Racial Triangulation of Asian Americans*, 27 Pol. & Soc’y 105, 108-16 (1999) (describing history of whites perceiving Asian Americans as foreign and therefore politically ostracizing them). In 2001, a comprehensive survey revealed that 71% of adult respondents held either decisively negative or partially negative attitudes toward Asian Americans. Committee of 100, *American Attitudes Toward Chinese Americans and Asians* 56 (2001), available at <http://www.committee100.org/publications/survey/C100survey.pdf>. Racial representations and stereotyping of Asian Americans, particularly in well-publicized instances where public figures or the mass media express such attitudes, reflect and reinforce an image of Asian Americans as “different,” “foreign,” and the “enemy,” thus stigmatizing Asian Americans, heightening racial tension, and instigating discrimination. Cynthia Lee, *Beyond Black and White: Racializing Asian Americans in a Society Obsessed with O.J.*, 6 Hastings Women’s L.J. 165, 181 (1995); Spencer K. Turnbull, Comment, *Wen Ho Lee and the Consequences of Enduring Asian American Stereotypes*, 7 UCLA Asian Pac. Am. L.J. 72, 74-75 (2001); Terri Yuh-lin Chen, Comment, *Hate Violence as Border Patrol: An Asian American Theory of Hate Violence*, 7 Asian L.J. 69, 72, 74-75 (2000); Jerry Kang, Note, *Racial Violence Against Asian Americans*, 106 Harv. L. Rev. 1926, 1930-32 (1993); Thierry Devos & Mahzarin R. Banaji, *American = White?*, 88 J. Personality & Soc. Psychol. 447 (2005) (documenting empirical evidence of implicit beliefs that Asian Americans are not “American”).

<sup>6</sup> 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).

<sup>7</sup> See, 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).

<sup>8</sup> See *Ozawa v. United States*, 260 U.S. 178, 198 (1922); see, e.g., Cal. Const. art. II, § 1 (1879) (“no native of China shall ever exercise the privileges of an elector in this State”); *Oyama v. California*, 332 U.S. 633, 662 (1948) (Murphy, J., concurring) (noting that California’s Alien Land Law “was designed to effectuate a purely racial discrimination, to prohibit a Japanese alien from owning or using agricultural land solely because he is a Japanese alien”).

<sup>9</sup> *People v. Brady*, 40 Cal. 198, 207 (1870) (upholding law providing that “No Indian. or Mongolian or Chinese, shall be permitted to give evidence in favor of, or against, any white man” against Fourteenth Amendment challenge); see also *Gong Lum v. Rice*, 275 U.S. 78 (1927) (upholding segregation of Asian schoolchildren).



with the incarceration of 120,000 Americans of Japanese ancestry without due process.<sup>10</sup> During this time, members of white ethnic groups whose home countries were also at war with the United States were not similarly detained and no similar assumptions were made about their loyalty, trustworthiness, or character.<sup>11</sup>

Racist sentiment towards Asian Americans is a continuing reality, evidenced most recently by reactionary post-9/11 prejudice and a growing backlash against immigrants.<sup>12</sup> Asian Americans have been victims of an increasing number of hate crimes due to their minority group status or the perception that they are unwanted immigrants.<sup>13</sup> In 2012, the nation's law enforcement agencies reported 121 incidents and 134 offenses motivated by anti-Asian/Pacific Islander bias.<sup>14</sup>

### *Discriminatory Attitudes Manifested in the Political Process against Asian Americans Can Have a Chilling Effect on Participation*

Over the years, discriminatory attitudes toward Asian Americans have also manifested themselves in the political process, as evidenced by verbal attacks levied against Asian American candidates and voters. Efforts, such as those listed below, likely had a chilling effect on Asian American engagement in the political process:

- In April 2005, in Trenton, New Jersey, radio hosts used using racial slurs and spoke in mock Asian gibberish during an on-air radio show. The hosts demeaned a Korean American mayoral candidate and made various other derogatory remarks. One of the hosts, Craig Carton, said:

Would you really vote for someone named Jun Choi [said in fast-paced, high-pitched, squeaky voice]? ... And here's the bottom line ... no specific minority group or foreign group should ever dictate the outcome of an American election. I don't care if the Chinese population in Edison has quadrupled in the last year, Chinese, should never dictate the outcome of an election, Americans should... And it's offensive to me... not that I have

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<sup>10</sup> See Exec. Order 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942) (authorizing the internment); see also *Korematsu v. United States*, 323 U.S. 214 (1944) (upholding the internment under strict scrutiny review).

<sup>11</sup> See *Korematsu*, 323 U.S. at 233, 240-42 (Murphy, J., dissenting) (noting that similarly situated American citizens of German and Italian ancestry were not subjected to the “ugly abyss of racism” of forced detention based on racist assumptions that they were disloyal, “subversive,” and of “an enemy race,” as Japanese Americans were); Natsu Taylor Saito, *Internments, Then and Now: Constitutional Accountability in Post-9/11 America*, 72 Duke F. for L. & Soc. Change 71, 75 (2009) (noting “the presumption made by the military and sanctioned by the Supreme Court that Japanese Americans, unlike German or Italian Americans, could be presumed disloyal by virtue of their national origin”).

<sup>12</sup> See U.S. Dep't of Justice, *Confronting Discrimination in the Post-9/11 Era: Challenges and Opportunities Ten Years Later*, at 4 (Oct. 19, 2011) (noting that the FBI reported a 1,600 percent increase in anti-Muslim hate crime incidents in 2001), available at [http://www.justice.gov/crt/publications/post911/post911summit\\_report\\_201204.pdf](http://www.justice.gov/crt/publications/post911/post911summit_report_201204.pdf).

<sup>13</sup> See, e.g., *id.*, at 7-9 (discussing numerous incidents of post-9/11 hate crimes prosecuted by the DOJ).

<sup>14</sup> Fed. Bureau of Investigation, *Hate Crime Statistics* (2012), available at [http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2012/tables-and-data-declarations/1tabledatadecpdf/table\\_1\\_incidents\\_offenses\\_victims\\_and\\_known\\_offenders\\_by\\_bias\\_motivation\\_2012.xls](http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2012/tables-and-data-declarations/1tabledatadecpdf/table_1_incidents_offenses_victims_and_known_offenders_by_bias_motivation_2012.xls).



anything against uh Asians... I really don't... I don't like the fact that they crowd the goddamn black jack tables in Atlantic City with their little chain smoking and little pocket protectors.<sup>15</sup>

- In April 2005 in Washington State, a citizen named Martin Ringhofer challenged the right to vote of more than one thousand people with “foreign-sounding” names. Mr. Ringhofer directed his scrutiny on voters with names that “have no basis in the English language” and “appear to be from outside the United States” while eliminating from his challenge voters with names “that clearly sounded American-born, like John Smith, or Powell,” and ultimately primarily targeted Asian and Hispanic voters.<sup>16</sup> In one of the counties where Mr. Ringhofer initiated his challenge, the county auditor declined to process the challenge and contacted the Department of Justice (DOJ) because of the challenge’s apparent violation of state and federal law.<sup>17</sup>
- In November 2005, a candidate of South Asian descent, Tom Abraham, running for City Council Seat 4 in Orange City, Florida was mocked by his opponent for his accent at a community forum. His opponent, Dan Sherrill, claimed that he could not understand him and was quoted by the *Orlando Sentinel* as saying, “I’m usually not prejudiced, but I don’t want an Indian in my government. As far as I know, he could be a nice guy, but these kind of people get embedded over here. You remember 9/11.” The *St. Petersburg Times* further reported that Sherrill said that voters wouldn’t support Abraham if they saw and heard him.<sup>18</sup>
- In August 2006, former Senator George Allen, while on the campaign trail, made the following announcement – before a predominantly Caucasian audience – about a 20-year-old South Asian staffer working for his opponent: “Let’s give a warm welcome to Macaca, here. Welcome to America and the real world of Virginia.” The term “macaca” is a racial slur in some parts of the world. Allen’s comments implied that the South Asian staffer, who was born and raised in Virginia, did not belong in America because of his appearance and ethnic background.<sup>19</sup>
- During a 2009 Texas House of Representatives hearing, legislator Betty Brown suggested that Asian American voters adopt names that are “easier for Americans to deal with” in order to avoid difficulties imposed on them by voter identification laws.<sup>20</sup> The statement

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<sup>15</sup> Hearing on H.R. 9 Before the H. Subcomm. on the Const. of the H. Judiciary Comm., 109th Cong. 40 at 4 (2006) (prepared statement of K. Narasaki) (hereinafter “Narasaki Testimony”).

<sup>16</sup> *Id.*

<sup>17</sup> Letter dated April 5, 2005 from Franklin County Auditor to Martin Ringhofer.

<sup>18</sup> S. Asian Americans Leading Together, *From Macacas to Turban Toppers: The Rise in Xenophobic and Racist Rhetoric in American Political Discourse* at 21 (2010), available at [http://saalt.org/wp-content/uploads/2012/09/From-Macacas-to-Turban-Toppers-Report.small\\_.pdf](http://saalt.org/wp-content/uploads/2012/09/From-Macacas-to-Turban-Toppers-Report.small_.pdf) (hereinafter “SAALT Report”).

<sup>19</sup> *Id.* at 17.

<sup>20</sup> R.G. Ratcliffe, *Texas Lawmaker Suggests Asians Adopt Easier Names*, *Houston Chron.*, Apr. 8, 2009, available at <http://www.chron.com/news/houston-texas/article/Texas-lawmaker-suggests-Asians-adopt-easier-names-1550512.php>.



made clear that Brown perceived the Asian American community's voice as unwelcome in American politics and notably cast Asian Americans apart from other "Americans."

- In June 2010, State Senator Jake Knotts described South Carolina State Representative Nikki Haley, an Indian American who was running in the state's gubernatorial race, as "[a] f ---ing raghead... [w]e got a raghead in Washington; we don't need one in South Carolina... [s]he's a raghead that's ashamed of her religion trying to hide it behind being Methodist for political reasons." Knotts further stated he believed Haley had been set up by a network of Sikhs and was programmed to run for governor of South Carolina by outside influences in foreign countries.<sup>21</sup>
- On April 3, 2012, Washington, D.C. Councilmember and former mayor Marion Barry made disparaging remarks about Asian Americans at his Ward 8 primary election victory party. He stated, "We got to do something about these Asians coming in and opening up businesses and dirty shops ... They ought to go. I'm going to say that right now."<sup>22</sup> A few weeks later, Barry declared, "In fact, it is so bad, that if you go to the hospital now, you find a number of immigrants who are nurses, particularly from the Philippines."<sup>23</sup>

#### *Anti-Asian Political Ads Are Pervasive and Alienate Asian American Voters*

Political ads have used racially discriminatory imagery or perceptions to malign candidates running for office. Asian Americans perceive these and other expressions of strong anti-Asian views in a negative light and would likely be swayed to vote for someone else even if they were aligned with the candidate on other issues.<sup>24</sup> Such imagery may also turn other voters entirely off from voting. Negative ads include using the misconception of "Asia" as an enemy to the U.S. as well as manipulating the images of candidates to trigger negative stereotypes of minority candidates:

- In October 2008, the National Republican Congressional Committee darkened several photographs of Ashwin Madia, a candidate for Congress in Minnesota, in one of its television ads. Comparisons of the photographs indicated that they were altered despite denials by the Committee of intentionally darkening the photo.<sup>25</sup>
- In May 2010, Americans for Job Security ran a television ad set in Bangalore, India with traditional South Asian music playing in the background. The ad utilized dark-skinned and

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<sup>21</sup> SAALT Report, *supra* note 18, at 19.

<sup>22</sup> Tim Mak, *Report: Marion Barry: 'Dirty' Asian Stores*, Politico, Apr. 5, 2012, available at <http://www.politico.com/news/stories/0412/74866.html>.

<sup>23</sup> Tim Craig, *D.C.'s Marion Barry Called 'racist' for Remark About Filipino Nurses*, The Wash. Post, Apr. 24, 2012, available at [http://www.washingtonpost.com/local/dc-politics/dcs-marion-barry-called-racist-for-remark-about-filipino-nurses/2012/04/24/gIQAX9WXfT\\_story.html](http://www.washingtonpost.com/local/dc-politics/dcs-marion-barry-called-racist-for-remark-about-filipino-nurses/2012/04/24/gIQAX9WXfT_story.html).

<sup>24</sup> Asian American Institute, Asian American Justice Center, APIAVote and Lake Research Partners, *Asian American Survey: Findings from a Survey of 700 Asian American Voters nationwide plus 100 each in FL, IL, NV, and VA* at 25 (2012), available at [http://httpwww.advancingequality.org/sites/aaajc/files/AsianAmericanSurvey.f.050412.final\\_0.pdf](http://httpwww.advancingequality.org/sites/aaajc/files/AsianAmericanSurvey.f.050412.final_0.pdf) [hereinafter "Asian American Survey"].

<sup>25</sup> SAALT Report, *supra* note 18, at 21.



accented actors dressed in traditional South Asian dress facetiously thanking U.S. Senate candidate and Arkansas Lieutenant Governor Bill Halter for outsourcing Arkansan jobs abroad.<sup>26</sup>

- In September 2010, State Senator Nancy King targeted an opponent in the Maryland primary race for state Senate, Maryland State Delegate Saqib Ali, by sending mailers in which Ali's photograph was altered with darker skin tone and hair. Despite the King campaign's denial, the difference was clear when comparing the mailer to the original photo (that was also included in the mailer).<sup>27</sup>
- In October 2010, the Democratic Senatorial Campaign Committee aired an ad in Pennsylvania accusing Pat Toomey of helping the Chinese economy at the expense of America's because of his support for free trade practices. The ad contained a gong sound effect, the color red, and a fortune cookie with the message "Pat Toomey. He's not for you."<sup>28</sup>
- First shown during the fall of 2010, and revived during October 2012, an ad released by Citizens Against Government Waste and Americans for Prosperity Foundation titled "Chinese Professor" opens on a futuristic Chinese classroom festooned with posters of Mao.<sup>29</sup> Set in 2030, holographic Chinese characters floating above a stage announce the class as Global Economics and a professor proceeds to explain how the United States fell: massive stimulus spending and tax increases, government takeover of industry and major changes to the health care system. The ad implies that America will fall and China will rise thanks to the country's extravagant borrowing and spending.<sup>30</sup>
- On July 22, 2011, Mark Amodei, a Congressional candidate from Nevada, ran a political ad projecting fears about China. The ad featured a fictional news report in which a Chinese anchorwoman describes the imagined rebirth of the Chinese empire as a result of the economic troubles of the United States. She states, "Once upon a time, America became its own worst enemy. When all their borrowed money ran out, they kept spending out of control. Their President Obama just kept raising the debt limit and their independence became a new dependence. As their debt grew, our fortune grew. That is how our great

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<sup>26</sup> SAALT Report, *supra* note 18, at 16-17.

<sup>27</sup> *Id.* at 21.

<sup>28</sup> See Brianna Lee, *On the Campaign Trail: The Enemy Hearts China!*, Need to Know on PBS, Oct. 28, 2010, available at <http://www.pbs.org/wnet/need-to-know/the-daily-need/on-the-campaign-trail-the-enemy-hearts-china/4609/>.

<sup>29</sup> Press Release, Citizens Against Government Waste and Americans for Prosperity Foundation, The "Chinese Professor" Returns (Oct. 20, 2012), available at <http://cagw.org/content/%E2%80%9Cchinese-professor%E2%80%9D-returns>.

<sup>30</sup> Rachel Weiner, *Ad Watch: 'Chinese Professor' Going Back on the Air*, The Wash. Post, Oct. 22, 2012, available at <http://www.washingtonpost.com/blogs/post-politics/wp/2012/10/22/ad-watch-chinese-professor-going-back-on-the-air/>. See also, Evan Osnos, *The Year China-Bashing Went Mainstream*, The New Yorker, Nov. 6, 2012, available at <http://www.newyorker.com/online/blogs/evanosnos/2012/11/the-year-that-china-bashing-went-mainstream.html>.



empire rose again." Then, as Chinese soldiers are seen ominously marching on Capitol Hill, the ad cuts to Amodei, who says, "It's not too late to stop this nightmare."<sup>31</sup>

- On January 6, 2012, a YouTube video was uploaded denouncing former Presidential candidate Jon Huntsman for lacking American values, calling him a "Manchurian candidate" and "China Jon." The video featured "traditional" Chinese music and clips of Huntsman speaking Mandarin, taking interviews from Chinese press, and walking around in China. The video also challenged his "American-ness" due to his adoption of daughters from China and India. While it was unclear who created the video, it was made available under various YouTube channels, including NHLiberty4Paul, NH4Santorum, NHLiberty4Huntsman, and NHFreedom4Romney.<sup>32</sup>
- In February 2012, Michigan Senate candidate Pete Hoekstra's campaign ran a political ad on Michigan television stations during the Super Bowl. It opened with the sound of a gong and showed a young Asian woman riding a bike on a narrow path lined by rice paddies. Stopping her bike, the woman smiled into the camera and said, in broken English, "Thank you, Michigan Senator Debbie 'Spenditnow.' Debbie spends so much American money. You borrow more and more from us. Your economy get very weak. Ours get very good. We take your jobs. Thank you, Debbie 'Spenditnow.'" The Hoekstra campaign set up an accompanying website that featured the ad, as well as Chinese writing, paper lanterns, parade dragons, and Stabenow's face on a Chinese fan.<sup>33</sup>

#### *Voting Discrimination Results from Discriminatory Attitudes about Asian Americans*

These racist incidents perpetuate the misperception that Asian American citizens are foreigners and still do not belong as Americans. Moreover, such misperceptions have led to direct discrimination against Asian American voters. As the examples below demonstrate, Asian Americans have faced unlawful obstacles to their right to fully and equally participate in the electoral process:

- In 2000, the United States alleged that Hamtramck City, Michigan violated Section 2 of the Voting Rights Act by implementing discriminatory, race-based challenges against Arab Americans on Election Day. During the general election of November 2, 1999, city election officials required more than 40 Arab Americans to take an oath as a condition to voting. Citizens for a Better Hamtramck, a group that asserted an interest in keeping the elections

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<sup>31</sup> Mark Amodei, *GOP Candidate in Nevada, Under Fire for Ad Warning of a Chinese Takeover*, Huffington Post, Aug. 22, 2011, available at [http://www.huffingtonpost.com/2011/06/22/mark-amodei-nevada-election\\_n\\_882197.html](http://www.huffingtonpost.com/2011/06/22/mark-amodei-nevada-election_n_882197.html).

<sup>32</sup> See Joe Garofoli, *Ad Mocks Jon Huntsman's Adopted Chinese Daughter*, San Francisco Chron., Jan. 6, 2012, available at <http://blog.sfgate.com/nov05election/2012/01/06/pro-ron-paul-ad-mocks-jon-huntsmans-adopted-chinese-daughter/>; Moni Basu, *Hindus Denounce Ad Attacking Huntsman's Faith, Values*, CNN, Jan. 7, 2012, available at <http://www.cnn.com/2012/01/07/politics/huntsman-youtube-ad/>.

<sup>33</sup> See David Catanese, *Pete Hoekstra Super Bowl Ad Riles Republicans, Too*, Politico, Feb. 7, 2012, available at <http://www.politico.com/news/stories/0212/72532.html>.



"pure,"<sup>34</sup> had challenged the citizenship of these voters based on their appearance, color, and Arabic-sounding names. Once challenged, the voters had to swear their citizenship before being permitted to vote; other voters did not have to take this oath. Even challenged voters who provided their U.S. passports were forced to take the oath. The chair of the election precinct also told poll workers to demand driver's licenses and voter registration cards from anyone who looked Arabic. Other Arab American citizens who heard about the incidents decided not to vote rather than endure the embarrassment of being challenged as a non-citizen. On August 7, 2000, the court approved a consent order and decree that required the city to train election officials and poll workers on the proper application of federal and state laws, including nondiscriminatory challenge procedures, and to appoint Arabic and Bengali-speaking election inspectors. The consent order also certified the city for the assignment of federal observers through December 31, 2003.<sup>35</sup>

- In New York City, local community school boards provided Asian Americans the only electoral success before 2001. In 1993, 1996, and 1999, Asian American candidates ran for the school board and won, in part due to the use of an alternative voting system known as "single transferable voting" or "preference voting."<sup>36</sup> Rather than selecting one representative from single-member districts, voters ranked candidates in order of preference, from "1" to "9."<sup>37</sup> In 1998, New York attempted to switch from this "preference voting" system to a "limited voting" system, where voters could select only four candidates for the nine-member board, and the nine candidates with the highest number of votes were elected.<sup>38</sup> This change would have put Asian American voters in a worse position to elect candidates of their choice and DOJ interposed an objection and prevented the voting change from taking effect.<sup>39</sup>
- In 2001, as a result of the attack on the World Trade Center, primary elections in New York City were rescheduled. A certain poll site, I.S. 131, which was a school located in the heart of Chinatown and within the restricted zone in lower Manhattan, was being used by the Federal Emergency Management Agency for services related to the World Trade Center attacks. The Board of Elections decided to close down the poll site but provided no notice

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<sup>34</sup> Consent Order, *United States v. City of Hamtramck*, Mich. (No. 00-73541, E.D. Mich. Aug. 7, 2000), available at [http://www.justice.gov/crt/about/vot/sec\\_2/hamtramck\\_cd.pdf](http://www.justice.gov/crt/about/vot/sec_2/hamtramck_cd.pdf).

<sup>35</sup> *Id.*

<sup>36</sup> See Lynette Holloway, *This Just In: May 18 School Board Election Results*, N.Y. Times, June 13, 1999, available at <http://www.nytimes.com/1999/06/13/nyregion/making-it-work-this-just-in-may-18-school-board-election-results.html>; Jacques Steinberg, *School Board Election Results*, N.Y. Times, June 23, 1996, available at <http://www.nytimes.com/1996/06/23/nyregion/neighborhood-report-new-york-up-close-school-board-election-results.html>; Sam Dillon, *Ethnic Shifts Are Revealed in Voting for Schools*, N.Y. Times, May 20, 1993, available at <http://www.nytimes.com/1993/05/20/nyregion/ethnic-shifts-are-revealed-in-voting-for-schools.html>.

<sup>37</sup> See Thomas T. Mackie & Richard Rose, *The International Almanac of Electoral History* 508 (3d ed. 1991).

<sup>38</sup> See 1998 N. Y. Sess. Laws 569-70 (McKinney).

<sup>39</sup> Asian Am. Legal Def. & Educ. Fund, *Asian Americans and the Voting Rights Act: The Case for Reauthorization* 39-40 (2006) (hereinafter "AALDEF Report"); see also, *Voting Rights Act: Section 5 of the Act-History, Scope, and Purpose*, Hearing Before the H. Subcomm. on the Const., H. Judiciary Comm., 109th Cong. 1664-66 (2005) (appendix to statement of the Honorable Bradley J. Schlozman, U.S. Dep't. of Justice) (providing Section 5 objection letter to Board and summarizing changes made to the voting methods, along with overall objections to the changes).



to the voters. The majority of voters at this site were limited English proficient (LEP), and the site had been targeted for Asian language assistance under Section 203. The Board of Elections failed to provide media announcements to the Asian language newspapers, send out a mailing to voters, or place signs or poll workers at the site to redirect voters to other sites. Through the Section 5 preclearance process, DOJ informed the Board that the change could not take effect, thereby protecting Asian American voters from this sudden change that would have caused significant confusion and lost votes. Subsequently, the elections were held as originally planned at I.S. 131, and hundreds of Asian Americans cast their votes on September 25.<sup>40</sup>

- In the 2004 primary elections in Bayou La Batre, Alabama, supporters of a white incumbent running against Phuong Tan Huynh, a Vietnamese American candidate, intimidated Asian American voters by challenging only Asian Americans at the polls and falsely accusing them of not being U.S. citizens, or city residents, or of having felony convictions.<sup>41</sup> The challenged voters were forced to complete a paper ballot and have that ballot vouched for by a registered voter. As an explanation for these actions, the losing incumbent stated, “We figured if they couldn’t speak good English, they possibly weren’t American citizens.”<sup>42</sup> After investigating these allegations, DOJ determined the challenges were racially motivated and prohibited the challengers from interfering in the general election. That year, Bayou La Batre elected its first Asian American to the City Council.<sup>43</sup>
- In the 2004 Texas House of Representatives race, the losing incumbent requested the Texas House of Representatives to investigate the legality of the votes cast in the election leading to the victory of Hubert Vo, a Vietnamese American. The recount request implied Vo’s Vietnamese American supporters voted in the wrong district or were not U.S. citizens. Vo’s campaign voiced concern that such an investigation could intimidate Asian Americans from political participation altogether.<sup>44</sup> Nonetheless, both recounts affirmed Vo’s victory. Vo’s election was particularly significant for the Asian American community because he is the first Vietnamese American state representative in Texas history.<sup>45</sup>
- In 2004 in New York, poll workers at numerous poll sites directed improper requests for identification at Asian American voters. At a certain poll site, poll workers required Asian

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<sup>40</sup> See AALDEF Report, *supra* note 39, at 41.

<sup>41</sup> See H.R. Rep. No. 109-478, at 45; see also *Challenged Asian ballots in council race stir discrimination concern*, Associated Press State & Local Wire, Aug. 29, 2004, available at <http://news.google.com/newspapers?nid=1817&dat=20040830&id=cc4dAAAIBAJ&sjid=w6cEAAAIBAJ&pg=6668,5046184>.

<sup>42</sup> See DeWayne Wickham, *Why renew Voting Rights Act? Ala. Town provides answer*, USA Today, Feb 22, 2006, available at [http://www.usatoday.com/news/opinion/editorials/2006-02-22-forum-voting-act\\_x.htm](http://www.usatoday.com/news/opinion/editorials/2006-02-22-forum-voting-act_x.htm).

<sup>43</sup> See H.R. Rep. No. 109-478, at 45; see also Press Release, U.S. Dep’t of Justice, *Justice Department to Monitor Elections in New York, Washington, and Alabama*, Sept. 13, 2004, available at [http://www.justice.gov/opa/pr/2004/September/04\\_crt\\_615.htm](http://www.justice.gov/opa/pr/2004/September/04_crt_615.htm) (“In Bayou La Batre, Alabama, the Department will monitor the treatment of Vietnamese-American voters.”). See also, Wickham, *supra*.

<sup>44</sup> See Thao L. Ha, *The Vietnamese Texans*, in *Asian Texas* 284-85 (Irwin A. Tang ed. 2007).

<sup>45</sup> See Test. of Ed Martin, Trial Tr. at 350:15-23, *Perez v. Perry*, 835 F. Supp. 2d 209 (W.D. Tex. 2011) (hereinafter “Martin Test.”); Test. of Rogene Calvert, Trial Tr. at 420:2-421:13, *Perez*, 835 F. Supp. 2d 209; Test. of Sarah Winkler, Trial Tr. at 425:18-426:10, *Perez*, 835 F. Supp. 2d at 209.



American voters to provide naturalization certificates before they could vote. At another poll site, a police officer demanded that all Asian American voters show photo identification, even though photo identification is not required to vote in New York elections. If voters could not produce such identification, the officer turned them away and told them to go home.<sup>46</sup>

- On July 14, 2005, DOJ filed a complaint and proposed consent decree alleging that the City of Rosemead, California violated Section 203 of the VRA. 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. A three-judge court approved the consent decree and required the city to establish effective Spanish, Chinese, and Vietnamese language election programs and authorized the use of federal observers to monitor the city's elections.<sup>47</sup>
- On July 29, 2005, DOJ filed a complaint against the City of Boston under Sections 2 and 203 of the VRA alleging that the City's election practices and procedures discriminated against persons of Spanish, Chinese, and Vietnamese heritage, in violation of section 2 of the VRA. The suit also alleged that the City violated section 203 by failing to make all election information available in Spanish to voters who need it. At the time, Boston's Chinese population was 19,885 and the Vietnamese population was 11,126, representing 3.4 percent and 1.8 percent respectively of the City's total population. There were 9,825 Chinese and 4,220 Vietnamese voting-age citizens among those populations, among whom 50.1 percent and 61.2 percent, respectively, were LEP. DOJ alleged that the City abridged the right of LEP members of language minority groups to vote, by treating LEP Latino and Asian American voters disrespectfully; refusing to permit LEP Latino and Asian American voters to be assisted by an assistor of their choice; improperly influencing, coercing or ignoring the ballot choices of LEP Latino and Asian American voters; failing to make available bilingual personnel to provide effectively assistance and information needed by minority language voters; and refusing or failing to provide provisional ballots to LEP Latino and Asian American voters. On October 18, 2005, the court issued an order that, among other requirements, mandated the provision of language assistance to Chinese and Vietnamese voters.<sup>48</sup>
- On April 12, 2007, DOJ filed a complaint against the City of Walnut, California under Section 203 of the Voting Rights Act alleging that the City failed to translate election materials and provide assistance for LEP Chinese and Korean voters. On November 9, 2007, the court entered a consent decree to ensure that the City translate election materials and provide assistance for LEP Chinese and Korean voters and ordering the appointment of federal observers until December 31, 2010.<sup>49</sup>

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<sup>46</sup> See AALDEF Report, *supra* note 39, at 19, 32.

<sup>47</sup> Consent Order, *United States v. City of Rosemead, Cal.*, (No. CV05-5131, C.D. Cal. Sept. 8, 2005) available at [http://www.justice.gov/crt/about/vot/sec\\_203/documents/rosemead\\_cd.pdf](http://www.justice.gov/crt/about/vot/sec_203/documents/rosemead_cd.pdf).

<sup>48</sup> Consent Order, *United States v. City of Boston, Mass.*, (No. 05-11598, D. Mass., Oct. 18, 2005), available at [http://www.justice.gov/crt/about/vot/sec\\_203/documents/boston\\_cd2.pdf](http://www.justice.gov/crt/about/vot/sec_203/documents/boston_cd2.pdf).

<sup>49</sup> Consent Order, *United States v. City of Walnut, Cal.*, (No. CV07-2437, C.D. Cal., Nov. 9, 2007), available at [http://www.justice.gov/crt/about/vot/sec\\_203/documents/walnut\\_cd.pdf](http://www.justice.gov/crt/about/vot/sec_203/documents/walnut_cd.pdf).



- In 2011, the Texas Legislature drafted a redistricting plan, Plan H283, that would significantly diminished the ability of minorities, including Asian Americans, to exercise their right to vote.<sup>50</sup> Texas is home to the U.S.'s third-largest Asian American community, which grew 72 percent between 2000 and 2010.<sup>51</sup> Since 2004, the Asian American community in Texas State House District 149 has voted as a bloc with Hispanic and African American voters to elect Hubert Vo, a Vietnamese American, as their state representative. District 149 has a combined minority citizen voting-age population of 62 percent.<sup>52</sup> The Texas Legislature sought to eliminate Vo's State House seat and redistribute the coalition of minority voters to the surrounding three districts. Plan H283, if implemented, would have redistributed the Asian American population in certain State House voting districts, including District 149, to districts with larger non-minority populations.<sup>53</sup> Plan H283 would have thus abridged the Asian American community's right to vote in Texas by diluting the large Asian American populations across the state. Section 5's preclearance procedures provided an avenue for Asian Americans and other minorities to object to the Texas Legislature's retrogressive plan, which the U.S. District Court for the District of Columbia ultimately rejected as a violation of Section 5.<sup>54</sup>
- In June 2011, DOJ filed a complaint alleging that Alameda County, California violated Section 203 of the VRA by failing to provide effective access to Spanish- and Chinese-speaking citizens who needed language assistance and translated materials and information to cast an informed ballot. In particular, the county failed to provide election-related information and assistance to LEP Chinese voters, recruit, train, and appoint an adequate pool of Chinese-speaking poll workers, and translate information (e.g., ballots, registration forms, sample ballots, election notices, and its website) into Chinese. Alameda County has been continuously covered under Section 203 for Spanish and Chinese languages since 1992. On October 19, 2011 the court entered a consent decree requiring the County to provide bilingual language assistance at the polls and election-related materials and information in Spanish, Chinese, and newly covered languages as determined by the Census Bureau. The parties agreed that federal observers may monitor Election Day

<sup>50</sup> *Perry v. Perez*, 132 S. Ct. 934 (2012).

<sup>51</sup> Asian American Center for Advancing Justice, *A Community of Contrasts: Asian Americans in the United States 2011*, App. B, at 60 (2011), available at [http://www.advancingjustice.org/pdf/Community\\_of\\_Contrast.pdf](http://www.advancingjustice.org/pdf/Community_of_Contrast.pdf). (hereinafter "Community of Contrasts").

<sup>52</sup> See United States and Defendant-Intervenors Identification of Issues 6, *Texas v. United States*, C.A. No. 11-1303 (D.D.C.), Sept. 29, 2011, Dkt. No. 53.

<sup>53</sup> See Test. of Ed Martin, Trial Tr. 350:25-352:25 (Sept. 7, 2011). District 149 would have been relocated to a county on the other side of the State, where there are few minority voters. See <http://gis1.tlc.state.tx.us/download/House/PLANH283.pdf>.

<sup>54</sup> See *Texas v. United States*, C.A. No. 11-1303 (D.D.C.), Sept. 19, 2011, Dkt. No. 45, ¶ 3. A coalition of Asian American and other civil rights organizations participated in the Texas redistricting process and advocated on the District 149 issue. Despite the community's best efforts, the Texas Legislature pushed through this problematic redistricting plan, which was only ameliorated by the Section 5 process. However, the U.S. Supreme Court vacated the District Court of the District of Columbia's ruling suspending Texas' redistricting map as moot in light of their decision in *Shelby*. See Aaron Blake, *Supreme Court Vacates Texas Voter ID and Redistricting Rulings*, The Wash. Post, June 27, 2013, available at <http://www.washingtonpost.com/blogs/post-politics/wp/2013/06/27/supreme-court-vacates-texas-voter-id-and-redistricting-rulings/>.



activities in polling places in Alameda County.<sup>55</sup>

- In July 2013, plaintiffs sued the NYC Board of Elections for failing to comply with the language assistance provisions of the VRA.<sup>56</sup> At the time the suit was filed, four elections had passed since the Census Bureau announced in October 2011 that Queens County was covered under Section 203 for Asian Indian language assistance, but the Board had not complied with the law. The Board had failed to provide language assistance in Asian Indian languages in any of the elections since the 2011 determinations. In March 2014, the case settled with the Board agreeing to provide language assistance to the Asian Indian voters in Queens.<sup>57</sup>

### *Voting Violations Aimed More Generally at Communities of Color Also Harm Asian Americans*

In addition to direct infractions on the rights of Asian American voters, Asian Americans are also harmed by voting violations that are aimed more generally at communities of color. History and the current post-*Shelby County* voting rights landscape provide many examples of how Asian Americans are affected by discriminatory practices even when they are not the “target” community:

- In 2002, a court looked at whether the permission granted by California’s Secretary of State to counties to adopt either punch-card voting procedures or more reliable voting procedures violated Section 2 because the counties that chose the punch-card system have high racial minority populations compared to counties using other voting systems. The plaintiffs argued that in 2000, millions of votes in the November election were spoiled, uncounted or unmarked because they were submitted through defective punch-card machines. This disproportionately impacted minorities. For example, in California, minorities comprised 45.5 percent of the population in counties that used the punch-card system, but only 30.9 percent of counties with other, more reliable voting systems. The court concluded that racial minorities were disproportionately denied the right to vote because their votes were uncounted in disproportionate numbers as a result of the voting mechanism they were supplied. The court ordered a consent decree requiring the nine California counties using the pre-scored punch card voting systems to convert to other certified voting equipment by March 2004. According to the 2000 Census, six of the nine counties covered had significant Asian American populations that were afforded the protections as a result of this case.<sup>58</sup>

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<sup>55</sup> Consent Order, *United States v. Alameda County, Cal.*, (No. C-11-3262, N.D. Cal. Oct. 19, 2011) available at [http://www.justice.gov/crt/about/vot/sec\\_203/documents/alameda\\_cd11.pdf](http://www.justice.gov/crt/about/vot/sec_203/documents/alameda_cd11.pdf).

<sup>56</sup> Complaint, *Alliance of South Asian American Labor et al v. Bd. of Elec. of the City of New York*, (No. 1:2013cv03732, E.D.N.Y. July 2, 2013).

<sup>57</sup> Press Release, AALDEF, NYC Board of Elections Settles Lawsuit on Bengali Ballots in Queens (Mar. 24, 2014), available at <http://aaldef.org/press-releases/press-release/nyc-board-of-elections-settles-lawsuit-on-bengali-ballots-in-queens.html>.

<sup>58</sup> Common Cause S. Christian Leadership Conference of LA v. Jones, 2002 WL 1766436 (C.D. Cal. 2002). The six counties are: Alameda County (22.6%); Los Angeles County (13.1%); Sacramento County (13.0%); San Diego County (10.5%); Santa Clara County (27.5%); and Solano County (15.4%). U.S. Census Bureau; American Community Survey, 2010 American Community Survey 5-Year Estimates, Table DP05; generated by Terry Minnis; using American FactFinder; <<http://factfinder2.census.gov>>; (1 July 2014).



- In March 2007, Georgia implemented a citizenship confirmation system to cross-check information provided on voter registration forms against lists maintained by the Georgia Department of Driver Services (“DDS”) and the federal Social Security Administration to verify citizenship.<sup>59</sup> The verification system contained several flaws, including reliance upon outdated information contained in the DDS database, which is not updated to reflect citizenship status for persons who become naturalized after receiving a driver’s license. Thus, the Georgia verification system disproportionately hindered minorities from voting: 83 percent of Georgia residents who became naturalized citizens in the two years prior to the system’s implementation were African American, Latino, or Asian American.<sup>60</sup> Not surprisingly, during the year-and-a-half period when Georgia operated the system before the court stayed implementation of the system, the individuals who were “flagged” under the system as non-citizens were also disproportionately minorities, including Asian Americans. Of the 4,596 individuals who were flagged and also identified by race or ethnicity, 20 percent were Asian American, an incredibly high number considering that less than 4 percent of Georgia’s population was Asian American and only 1 percent of Georgia’s registered voters were Asian American at the time.<sup>61</sup> One of these voters, Marvin Lim, who became a naturalized citizen in 2007, underwent many efforts to prove his citizenship to Gwinnett County election officials after being flagged, such as making repeated phone calls and multiple faxes of his naturalization papers. While Mr. Lim was eventually able to vote (by absentee ballot, which he had to return by express mail), he could only do so after these unnecessary steps to prove his citizenship.<sup>62</sup>
- In 2013, North Carolina passed H.B. 589, which included a multitude of strict voting restrictions such as a ban on paid voter registration drives, elimination of same-day voter registration, a provision allowing voters to be challenged by any registered voter of the county in which they vote, rather than just their precinct, a week less of early voting, authorization of vigilante poll observers with expanded range of interference, an expansion of the scope of who may examine registration records and challenge voters, a repeal of out-of-precinct voting, the elimination of flexibility in opening early voting sites at different hours within a county, and a provision making it more difficult to add satellite polling sites for the elderly or voters with disabilities. The law was enacted just one month after the *Shelby County* decision and is currently being challenged in three lawsuits.<sup>63</sup> North Carolina saw the third-fastest growing Asian American population in the country between

<sup>59</sup> See Jonathan Springston, Federal Court Intervenes in Handel’s Voter Purge, *The Atlanta Pro-gressive News* (Oct. 31, 2008), available at <http://www.atlantaprogressivenews.com/news/0395.html>.

<sup>60</sup> See Letter from the Lawyers’ Committee for Civil Rights Under Law, MALDEF, the Voting Rights Project of the American Civil Liberties Union, and Brian Spears to Christopher Coates, Chief, Voting Section, U.S. Dep’t of Justice (Nov. 25, 2008) [hereinafter “Joint Letter to Coates”] (on file with the authors), at 9, citing DHS 2007 Yearbook of Immigration Statistics, Supp. Table 1, available at <http://www.dhs.gov/ximgtn/statistics/publications/YrBk07Na.shtm>; DHS Yearbook of Immigration Statistics, Supp. Table 1, available at <http://www.dhs.gov/ximgtn/statistics/publications/YrBk06Na.shtm>.

<sup>61</sup> See Joint Letter to Coates, *supra*, at 9, citing U.S. Bureau of the Census, Voting and Registration in the Election of 2006, Table 4b, available at [www.census.gov/population/wwwsocdemo/voting/cps2006.html](http://www.census.gov/population/wwwsocdemo/voting/cps2006.html).

<sup>62</sup> See *id.* at 13.

<sup>63</sup> Complaint, North Carolina State Conference of the NAACP et al. v. McCrory et al., No. 1:13-cv-658 (M.D.N.C. Aug. 12, 2013), Complaint, League of Women Voters et al v. North Carolina et al., No. 1:13-cv-00660 (M.D.N.C. Aug. 12, 2013), and, Complaint, U.S. v. The State of North Carolina, No. 13-cv-861 (M.D.N.C. Sept. 30, 2013).



- 2000 and 2010 with an 85 percent increase. As the population continues to grow in North Carolina, draconian, restrictive voting laws such as this will make voting more difficult for more and more Asian Americans.
- In 2012, Florida used a highly inaccurate matching program to conduct a systematic purge of alleged noncitizen voters from the voter registration database. This initiative negatively affected naturalized citizens, a large majority of whom are Latino, Asian American, and of African descent. Initially, Florida planned to use outdated Florida Department of Motor Vehicle (DMV) database records, which failed to account for citizens who naturalized after visiting a DMV office, to “verify” the citizenship of voters on the rolls. Florida eventually began the purge anew in September 2012 using information from a U.S. Department of Homeland Security (DHS) database. The purge initiative was initially blocked prior to the 2012 general elections, but restarted after the *Shelby County* decision. According to the 2010 Census, Florida, currently has the eighth largest Asian American population, with the state’s 600,000 Asian Americans representing a 72 percent increase from the previous census.<sup>64</sup> The impact of this faulty voter purge process will weigh heavily on the Asian American community in Florida, where 67.9 percent of the population above 5 years old is foreign-born and 50 percent of its citizens are naturalized.<sup>65</sup>
  - In 2012, Texas sought a declaratory judgment that SB 14, a newly-enacted law requiring in-person voters to present a photo ID, did not violate Section 5 of the VRA. The federal court found that Texas’s law violated Section 5 because the implicit costs of obtaining qualifying ID would have fallen most heavily on the poor, whom in Texas were disproportionately African American and Latino. The court concluded that, if implemented, SB 14 would have likely led to retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.<sup>66</sup> However, in the wake of the *Shelby County* decision, Texas proceeded to implement the problematic photo ID provision.<sup>67</sup> Because there are over one million Asian Americans in Texas and 11 out of 16 Asian subgroups had poverty rates above the 8.8 percent rate for non-Hispanic

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<sup>64</sup> See Community of Contrasts, *supra* note 51, App. B, at 60.

<sup>65</sup> Mexican American Legal Defense and Educational Fund, National Association of Latino Elected and Appointed Officials, and National Hispanic Leadership Agenda, *Latinos and the VRA: A Modern Fix for Modern-Day Discrimination* 8-9 (2014), available at <http://latinosunited.org/votingrights/latinovraareport.pdf> [hereinafter *Latino VRA Report*]. U.S. Census Bureau; American Community Survey, 2010 American Community Survey 5-Year Estimates, Table B16005; generated by Terry Minnis; using American FactFinder; <<http://factfinder2.census.gov>>; (27 June 2014). U.S. Census Bureau; American Community Survey, 2010 American Community Survey 5-Year Estimates, Table B05001; generated by Terry Minnis; using American FactFinder; <<http://factfinder2.census.gov>>; (27 June 2014).

<sup>66</sup> *Texas v. Holder*, 888 F. Supp. 2d 113 (D.D.C. 2012) (vacated on appeal in light of *Shelby Co. v. Holder*).

<sup>67</sup> On the day of the *Shelby County* decision, the Texas attorney general tweeted about the Voter ID law going into effect immediately and how the decisions freed Texas from its preclearance obligations. The Texas attorney general followed up with a written statement, confirming that, “With today’s decision, the state’s voter ID law will take effect immediately.” Matt Vasilogambros, *That Was Quick: Texas Moves Forward with Voter ID Law After Supreme Court Ruling*, NAT’L J., June 25, 2013, available at <http://www.nationaljournal.com/politics/that-was-quick-texas-moves-forward-with-voter-id-law-after-supreme-court-ruling-20130625>.



Whites,<sup>68</sup> it is likely that the photo ID provisions will continue to negatively affect many Asian Americans.

### ***Current Protections Are Not Enough***

Without passage of the VRAA, what has been left of the VRA after the decision is not enough to effectively combat the ongoing voting discrimination we currently see. This is particularly true for the Asian American population, which is likely to see voting barriers and discrimination increase as the population continues to grow.

Asian Americans are now the fastest-growing minority group in the United States. Recent Census Bureau statistics show that Asian Americans were the fastest growing minority group in 2013, with a population increase of 2.9 percent, or 554,000, for a total of 19.4 million.<sup>69</sup> Moreover, while the total population in the United States rose 10 percent between 2000 and 2010, the Asian American population increased 43 percent during that same time span.<sup>70</sup> Asian Americans are not just living in traditional gateway cities but are now growing in other areas of the country. While Asian Americans are most numerous in California and New York, the third-largest Asian American population is in Texas and the fourth in New Jersey.<sup>71</sup> The top five states with the fastest growth of the Asian American population over the same ten year time span were Nevada (116 percent), Arizona (95 percent), North Carolina (85 percent), North Dakota (85 percent), and Georgia (83 percent).<sup>72</sup> The fastest population growth by region occurred in the South, where the Asian American population increased by 69 percent.<sup>73</sup>

When groups of minorities move into or outpace general population growth in an area, reactions to the influx of outsiders can result in racial tension.<sup>74</sup> As Asian American populations continue to

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<sup>68</sup> The eleven subgroups are: Asian Indian (9.3%); Bangladeshi (10.6%); Cambodian (16.2%); Chinese (except Taiwanese) (11.7%); Indonesian (10.6%); Japanese (10.6%); Korean (14.6%); Pakistani (17.8%); Taiwanese (22.1%); Thai (9.4%) and Vietnamese (14.4%). U.S. Census Bureau; American Community Survey, 2010 American Community Survey 5-Year Estimates, Table DP03; generated by Terry Minnis; using American FactFinder; <<http://factfinder2.census.gov>>; (1 July 2014). See also, Community of Contrasts, *supra* note 51, App. B, at 60. See also, *Tex. v. Holder*, 888 F. Supp. 2d 113, 140 (D.D.C. 2012).

<sup>69</sup> Press Release, U.S. Census Bureau, As the Nation Ages, Seven States Become Younger, Census Bureau Reports (June 26, 2014), available at <http://www.census.gov/newsroom/releases/archives/population/cb14-118.html>.

<sup>70</sup> See Elizabeth M. Hoeffel, Sonya Rastogi, Myoung Ouk Kim & Hasan Shahid, U.S. Census Bureau, *The Asian Population: 2010*, note 5, at 1, 3 (2012), available at [www.census.gov/prod/cen2010/briefs/c2010br-11.pdf](http://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf) (hereinafter “Hoeffel”). The U.S. Census Bureau data in this brief reflects figures for Asian Americans who reported themselves as “Asian alone.” Counting the Asian American community’s rapidly growing multiracial population, who reported as “Asian alone or in combination,” this growth rate is 46 percent. *Community of Contrasts*, *supra* note 51, at 15.

<sup>71</sup> Community of Contrasts, *supra* note 51, at 8.

<sup>72</sup> *Id.*

<sup>73</sup> Hoeffel, *supra* note 70, at 6.

<sup>74</sup> See Gillian Gaynair, *Demographic shifts helped fuel anti-immigration policy in Va.*, The Capital (Feb. 26, 2009), available at <http://www.hometownannapolis.com/news/gov/2009/02/26-10/Demographic-shifts-helped-fuel-anti-immigration-policy-in-Va.html> (noting that longtime residents of Prince William County, Virginia, perceived that their quality of life was diminishing as Latinos and other minorities settled in their neighborhoods); James Angelos, *The Great Divide*, N.Y. Times, Feb. 22, 2009 (describing ethnic tensions in Bellerose, Queens, New York, where the South Asian population is growing), available at



increase rapidly, particularly in the South, levels of racial tension and discrimination against racial minorities can be expected to increase, including in the voting context.<sup>75</sup> Such discrimination creates an environment of fear and resentment toward Asian Americans, which jeopardizes Asian Americans' ability to exercise their right to vote free of harassment and discrimination.

The community's population growth will likely lead to increased efforts to reduce the political voice of Asian Americans similar to the recent and ongoing efforts to restrict access to the polls.<sup>76</sup> This trend has already become evident in relation to the growth of the Latino voting population.<sup>77</sup> Asian Americans are potential swing voters<sup>78</sup> and are becoming numerous enough to make the difference in certain races, and they will be facing new, more aggressive tactics to minimize their political impact. This is due in part to the distinct and unique voice of the Asian American community, which sometimes favors different candidates than White voters:<sup>79</sup>

- During the 1998 U.S. Congressional 39<sup>th</sup> District race in California, Cecy Groom, a Filipino American Democrat, ran against Ed Royce. While almost 57 percent of Asian Americans voted for Groom, over 61 percent of White voters supported Royce.<sup>80</sup>

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[http://www.nytimes.com/2009/02/22/nyregion/thecity/22froz.html?\\_r=3&pagewanted=1](http://www.nytimes.com/2009/02/22/nyregion/thecity/22froz.html?_r=3&pagewanted=1); Ramona E. Romero and Cristóbal Joshua Alex, *Immigrants becoming targets of attacks*, The Philadelphia Inquirer, Jan. 25, 2009 (describing the rise in anti-Latino violence where the immigration debate is heated in New York, Pennsylvania, Texas, and Virginia); Sara Lin, *An Ethnic Shift is in Store*, L.A. Times, Apr. 12, 2007, at B1 (describing protest of Chino Hill residents to Asian market opening in their community where 39% of residents were Asian), available at <http://articles.latimes.com/2007/apr/12/local/me-chinohills12>.

<sup>75</sup> In 2011, the growth of immigrant communities and rising anti-immigrant sentiment in Alabama led to the passage of H.B. 56, the toughest immigration enforcement law in the country. Also in 2011, state lawmakers in other southern states, including Georgia and South Carolina, launched efforts to deny the automatic right of citizenship to the U.S.-born children of undocumented immigrants. See Shankar Vedantam, *State Lawmakers Taking Aim at Amendment Granting Birthright Citizenship*, Wash. Post, Jan. 5, 2011, available at <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/05/AR2011010503134.html>; see also *United States v. Wong Kim Ark*, 169 U.S. 649 (1898) (holding Fourteenth Amendment grants U.S. citizenship to native-born children of alien parents). At the federal level, Alabama members of the U.S. House of Representatives co-sponsored legislation to enact this restriction. Birthright Citizenship Act of 2011, H.R. 140, 112th Cong. (2011). This bill was reintroduced in 2013 and co-sponsored again by Alabama Representatives, as well as legislators from Arizona, Georgia, and Texas. Birthright Citizenship Act of 2013, H.R. 140, 113th Cong., (2013).

<sup>76</sup> See Ari Berman, *Texas Voter ID Law Discriminates Against Women, Students and Minorities*, The Nation (Oct. 23, 2013), available at <http://www.thenation.com/blog/176792/texas-voter-id-law-discriminates-against-women-students-and-minorities#> (noting that Texas' voter ID law likely would have an extremely disproportionate impact on Hispanic voters); Emily Deruy, *Could New Voter ID Laws Really Disenfranchise 10 Million Latinos?*, Fusion (Sep. 24, 2012), available at <http://fusion.net/justice/story/voter-id-laws-hinder-10-million-eligible-latinos-11471> (arguing that recent proof of citizenship and photo identification requirements and voter roll purges had the potential to disenfranchise millions of Latino voters); and Christopher Ingraham, *Study finds strong evidence for discriminatory intent behind voter ID laws*, The Washington Post (Jun. 3, 2014), available at <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/06/03/study-finds-strong-evidence-for-discriminatory-intent-behind-voter-id-laws/> (finding that state legislators who had supported voter ID laws were less likely to respond to emails sent from voters with Hispanic-sounding names).

<sup>77</sup> *Latino VRA Report*, *supra* note 65, at 3.

<sup>78</sup> See Asian American Survey, *supra* note 24, at 14-15.

<sup>79</sup> In many cases, the major opponents to Asian American candidates are white voters. Christian Collet, *Bloc Voting, Polarization and the Panethnic Hypothesis: The Case of Little Saigon*, 67 J.Pol. 3 (Aug. 2005).

<sup>80</sup> Narasaki Testimony, *supra* note 15, at 7.



- During the 1998 race for California State Assembly District 60, in which Bob Pacheco ran against Ben Wong, 61 percent of Asian Americans voted for Wong, but only 23 percent of White voters did so.<sup>81</sup>
- During the 1998 race for California State Assembly District 68, in which Ken Maddox ran against Mike Matsuda, 68 percent of Asian Americans and Pacific Islanders voted for Matsuda; most White voters supported Maddox (56 percent).<sup>82</sup>
- A study of Vietnamese American voting patterns in Westminster, California, found that in every election examined since 1998, racially polarized voting was evident, with Vietnamese American voters giving their support to Vietnamese and other Asian American candidates and white voters backing the white opponents.<sup>83</sup>
  - During the highly contested 2000 Westminster City Council race, eight candidates, including three Asian Americans, ran for two seats. Despite overwhelming support from Asian American voters, the Asian American candidates lost to white candidates who were opposed by the Asian American community. This was the case despite the fact that one of the Asian Americans spent more than the top vote-getter.<sup>84</sup>
  - During the 1998 Westminster mayoral race, five candidates ran for the position of Westminster Mayor, including a Vietnamese American, Chuyen Nguyen. While Asian American voters surveyed overwhelmingly supported Nguyen, white voters tended to support Joy Neugebauer and eventual winner Frank Fry.<sup>85</sup>
  - During the 1998 Westminster City Council race, a Republican Vietnamese American ran for reelection against six white opponents and one other Asian American candidate. Mayor Frank Fry, a fellow Republican, unleashed mail urging voters to “reject Tony ‘Little Saigon’ Lam” in the non-partisan race. While he eventually retained his seat as an incumbent of six years, Lam had to spend almost four times as much as the other incumbent who retained her seat and who happened to be white.<sup>86</sup>
- The 2003 gubernatorial election in Louisiana suggests that racial issues remain salient in former Section 5-covered jurisdictions. Pre-election polls in the weeks prior to the November runoff showed now-Representative Bobby Jindal, an Indian American Republican supported by George W. Bush and Governor Mike Foster, with a comfortable lead over Caucasian Democratic Lt. Gov. Kathleen Blanco. But on Election Day, Jindal lost to Blanco by the margin of 52 percent to 48 percent. Analysis done on the race showed that a significant number of those who voted for Republican David Duke, the former leader

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *See id.* (citing Christian Collet, *Bloc Voting, Polarization and the Panethnic Hypothesis: The Case of Little Saigon*, 67 *J.Pol.* 3 (Aug. 2005)).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*



of the Ku Klux Klan, swung their support away from the non-white Republican, Jindal, to the white Democrat, Blanco.<sup>87</sup>

As these examples illustrate, efforts to minimize the Asian American vote are likely to increase in the coming years and decades as Asian Americans become more visible and politically engaged. Unfortunately, with the Supreme Court's decision in *Shelby County v. Holder*, we have lost the use of the most powerful tool to monitor and combat these efforts. The impact of the decision goes well beyond simply invalidating the preclearance coverage formula in Section 4(b). It also essentially eliminated the requirements under Section 5 of the VRA, including the requirement that certain states, counties, and other jurisdictions provide notice to their communities regarding new voting changes, and the ability for potentially discriminatory voting changes to be put "on hold" pending a federal determination of whether the proposed change is discriminatory. It also functionally invalidated the federal observer program, which has been an important tool to protect all voters from racial intimidation at the polls.

The remaining tools left of the VRA are inadequate on their own to combat voting discrimination without Section 5. While Section 2, which allows the U.S. attorney general or private plaintiffs to challenge discriminatory voting practices by filing suit in local federal district courts, is still available, it alone is not a sufficient substitute for Section 5 preclearance:

- Section 2 litigation is among the most complex and costly type of civil litigation.
- Section 2 does not have the same deterrent effect as Section 5. Voting changes go into effect and then must be challenged after the discrimination has occurred. In contrast, Section 5 deterred jurisdictions from discriminating because officials knew that every change had to be reviewed before it could be implemented.
- Section 2 litigation is generally brought following the implementation of a voting change and after the discrimination has occurred. By then, the voting change or elected official is in place and has become entrenched, making it more difficult to correct the discrimination.

Similarly, Section 3(c) alone is not a sufficient substitute for Section 5 preclearance. Under Section 3(c), a federal court can order a jurisdiction to be "bailed in," i.e., to be covered under a preclearance requirement if the jurisdiction has been found to have intentionally discriminated against minority voters. A court currently can order a jurisdiction subject to preclearance under 3(c) only as a remedy after a finding in a separate voting rights lawsuit that the jurisdiction has engaged in intentional discrimination. Jurisdictions that are bailed in under Section 3(c) are only covered for a specified period of time and only for particular kinds of voting changes.

### ***VRAA Addresses Current Needs and Must Be Enacted***

Congress must address the gap left by the Supreme Court's decision in *Shelby County* and pass the VRAA. The bill currently proposed includes many key elements of a modern, flexible and forward-looking VRA that would protect the voting rights of all, including Asian American voters.

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<sup>87</sup> *Id.* at 6-7 (citing Richard Skinner and Philip A. Klinkner, *Black, White, Brown and Cajun: The Racial Dynamics of the 2003 Louisiana Gubernatorial Election*, Forum: Vol. 2: No. 1, Article 3 (2004)).



These elements include remedies to address current discriminatory voting practices, an ability to review voting changes before they are implemented in places that have recently proposed or implemented discriminatory voting changes, and public notification of some types of potential voting changes to enhance transparency and accountability. The bill is also an important step toward protecting language-minority voters. The bill provides strong protections for language-minority voters by allowing the language-assistance provision of the VRA, Section 203, to serve as a possible basis for preclearance requirements and the sending of federal observers to monitor polling places in Section 203-jurisdictions on Election Day. The nationwide transparency provision that requires notice of potential voting changes will allow language-minority communities, among others, to combat potentially discriminatory tactics in a timely fashion.

We believe the time is now to pass legislation to ensure that the VRA can be fully enforced. Every day we wait is another day voters are at risk of being kept from the polls and kept silent. We must move this bipartisan bill forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Mee Moua". The signature is fluid and cursive, with a large loop at the end.

Mee Moua  
President and Executive Director

