

Testimony of Glenn D. Magpantay
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Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

Hearing on “Lessons Learned from the 2008 Election”
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Good morning, Mr. Chairman and Members of the Subcommittee. My name is Glenn D. Magpantay, and I am a staff attorney at the Asian American Legal Defense and Education Fund (AALDEF). Thank you for the invitation to testify today.

AALDEF is a 35-year old New York-based national organization that promotes and protects the civil rights of Asian Americans through litigation, legal advocacy and community education. Our programs focus primarily in the areas of immigrant rights; economic justice for workers; the elimination of hate violence, police misconduct, and human trafficking; language access to services; youth rights and educational equity; and voting rights and civic participation.

AALDEF led the campaign to secure the first Chinese-language ballots in New York City in 1994. We have filed comments under section 5 of the Voting Rights Act with the U.S. Department of Justice in support of fully-translated ballots. We have litigated and participated in lawsuits arising under the Voting Rights Act, *see, e.g., Chinatown Voter Education Alliance v. Ravitz*, Civ. No. 06-CV-913 (S.D.N.Y. June 11, 2008); *United States v. City of Boston*, 497 F.Supp.2d 263, (D. Mass. 2005) (representing Asian American voters). AALDEF testified before this House Subcommittee in 2006 and the U.S. Senate Judiciary Committee in 2007 in support of reauthorization of the Voting Rights Act’s language assistance (Section 203) and enforcement (Section 5) provisions. In preparation for the 2008 Elections, AALDEF conducted 73 legal trainings on voters’ rights for more than 2,600 community leaders, lawyers, and students.

Asian Americans are the fastest growing minority group in the United States. For almost two decades, AALDEF has monitored elections. We monitored for compliance with the language assistance provisions (section 203) of the federal Voting Rights Act, more recently for compliance with the Help America Vote Act (HAVA), and to document other incidents of anti-Asian voter disenfranchisement.

On November 4, 2008, AALDEF monitored over 229 poll sites and conducted a nonpartisan multilingual exit poll of 16,665 Asian American voters in 52 cities in 11 states – New York, New Jersey, Massachusetts, Pennsylvania, Michigan, Illinois, Texas, Nevada, Louisiana, Virginia, Maryland – and the District of Columbia. AALDEF received more than 800 complaints of voting barriers.

A. The Asian American Population

Asian Americans are becoming U.S. citizens through naturalization and are registering to vote. According to the Census, Asian citizens of voting age numbered 3.9 million in 1996 and rose from 4.7 million in 2000 to 6.7 million in 2004. Asian American voter turnout also steadily increased, from 1.7 million in 1996, nearly 3 million in 2004, and 3.2 million in 2006.¹ In AALDEF’s 2008 exit poll, we found that almost a third (31%) of Asian American respondents were first-time voters.

We also found that 79% were foreign-born naturalized citizens and 21% had no formal U.S. education. Because of this, many Asian Americans were unfamiliar with the American electoral process, having come from Asian countries with political systems very different from that of the United States and which may even lack a tradition of voting. Some did not understand even basic political procedures, such as the need to register by a certain date, the need to enroll in a political party in order to vote in a primary election, and how to operate voting machines. Moreover, among voters surveyed, only 20% identified English as their native language; 35% were limited English proficient. Specific efforts are needed to help Asian Americans fully participate in the electoral franchise.

AALDEF’s Multilingual Exit Poll, Nov. 2008: Respondents

ALL	FIRST-TIME VOTER	FOREIGN BORN	NO FORMAL U.S. EDUCATION	ENGLISH AS NATIVE LANGUAGE	LIMITED ENGLISH PROFICIENT	LARGEST ETHNIC GROUPS
TOTAL: 16,665	31%	79%	21%	20%	35%	32% Chinese 31% South Asian 14% Korean 9% Southeast Asian 5% Filipino
BY ETHNIC GROUP						
Chinese	29%	74%	23%	15%	45%	N/A
Korean	25%	83%	20%	18%	54%	N/A
Filipino	24%	74%	12%	26%	6%	N/A
South Asian	36%	87%	22%	24%	20%	49% Indian 25% Bangladeshi 11% Pakistani
Southeast Asian	35%	83%	20%	9%	49%	70% Vietnamese 18% Cambodian

¹ U.S. Census Bureau, Current Population Survey (2004).

B. The Language Assistance Provisions (Section 203) of the Voting Rights Act

In 1975, Congress enacted the language assistance provisions of the Voting Rights Act, codified at Section 203. In 2007, after extensive fact-finding into the continued disenfranchisement of Asian American and other minority voters, Congress reauthorized the Act for twenty-five more years. AALDEF provided evidence to Congress about the need for an extension of Section 203 to remove barriers to voting for Asian Americans.²

Section 203 covers counties that have, according to the Census, 5% or more than 10,000 voting-age citizens who speak the same language, are limited English proficient, and, as a group, have a higher illiteracy rate than the national illiteracy rate as measured by educational attainment. Covered counties must translate ballots and all voting materials, including voter registration forms, instructions, and notices, into the covered language(s), as well as provide interpreters at poll sites to assist voters.³ Currently, five Asian language groups – Chinese, Japanese, Korean, Filipino, and Vietnamese – are covered in 16 counties in 7 states.⁴

Section 203 has opened the political process to hundreds of thousands of Asian American voters, many of them new citizens. Partly due to Section 203's mandate for translated voter registration forms, Asian American voter registration growth from 1996 to 2004 was nearly 60%. This number led all other demographic groups (Hispanics at 44.6%, Blacks at 14.6%, and whites at 6.9%). Asian Americans also led in voter turnout growth at 71.2%, (Hispanics at 57.1%, Black at 25.6%, and white at 15.0%).

According to AALDEF's 2008 exit poll, nearly one in five voters (18%) preferred voting with some form of language assistance in order to exercise their right to vote. The rates were higher in jurisdictions required to provide translated ballots. Translated ballots have enabled Asian American voters to exercise their right to vote independently and privately inside the voting booth.

² See Oversight Hearing on the Voting Rights Act: Section 203-Bilingual Election Requirements, Part I Before the House Subcomm. on the Const., House Judiciary Comm., 109th Cong. 19 (2005) (statement of Margaret Fung, AALDEF Exec. Dir.).

³ Voting Rights Act, 42 U.S.C. § 1973; Implementation of the Voting Rights Act Regarding Language Minority Groups, 28 C.F.R. §§ 55.16.

⁴ 67 Fed. Reg. No. 144, 48871-77 (July 26, 2002) (Notices). For Spanish, 217 jurisdictions are covered, and Native American languages are covered in 80 jurisdictions. Asian language coverage follows: AK- Kodiak Island Borough (Filipino); CA- Alameda (Chinese), Los Angeles (Chinese, Filipino, Japanese, Korean, Vietnamese), Orange (Chinese, Korean, Vietnamese), San Diego (Filipino), San Francisco (Chinese), San Mateo (Chinese), Santa Clara (Chinese, Filipino, Vietnamese); HI- Honolulu (Chinese, Filipino, Japanese), Maui (Filipino); IL- Cook (Chinese); NY- Kings (Chinese), New York (Chinese), Queens (Chinese, Korean); TX- Harris (Texas); and WA- King (Chinese).

C. AALDEF Poll Monitoring Findings from Election Day 2008

Notwithstanding such increased participation in the elections, Asian American voters continued to encounter several voting barriers in November 2008 in regard to language assistance, racist and poorly trained poll workers, inaccurate voter registration lists and denials of provisional ballots, improper and excessive identification checks, and confusion at poll sites.

1. Language Assistance

Language assistance, such as interpreters or translated voting materials, if any, was far from adequate. Some poll workers were completely unaware of their legal responsibilities or outright refused to make language assistance available to voters.

New York and Boston are required to provide language assistance, but there were many shortcomings. New York is covered under Section 203 for assistance in Chinese and Korean. Boston is obligated to provide assistance in Chinese and Vietnamese pursuant to a settlement to remedy violations of Section 2 of the Voting Rights Act.

- At a poll site in the Lower East Side, there was only one interpreter for hundreds of voters. Poll workers tried to get additional interpreters but were told they “didn’t need” them. The lone Chinese interpreter was extremely overworked. At another site in Jackson Heights, NY the poll site coordinator did not even know that a Korean interpreter was available at the site.
- Some interpreters did not effectively assist voters. In Houston, TX, two Vietnamese American voters stated that they were unable to vote for president even after requesting poll worker assistance.
- Poll workers in Dorchester, MA could not locate Vietnamese-language provisional ballots. They said these were not provided to them.
- In Boston, ballots did not have transliterations of candidates’ names in Chinese. Limited English proficient voters typically know the candidates by their transliterated names, which often appear in Asian-language media. In our survey, ninety-five (95) Chinese voters stated that they had difficulty identifying their candidates of choice because the names were not transliterated. One voter in Chinatown remarked that new citizens were happy to have just been sworn in and were excited about voting but were disappointed to find that ballots were not fully translated.

Voters have the right to be assisted by persons of their choice under Section 208 of the Voting Rights Act. Unlike Section 203, this provision applies across the nation. These assistants may accompany voters inside the voting booth to translate the ballot for them. The only exception under this federal law is that they may not be the voters’ union representatives or employers. Poll workers, however, obstructed this right.

- At one site in Alexandria, VA, poll workers did not allow limited English proficient voters to bring interpreters with them into the voting booth. Poll workers stated that individuals should have a minimum proficiency in English in order to be American citizens and to vote.

Many jurisdictions voluntarily provided language assistance to Asian American voters on November 4, 2008. For example:

- Chicago, IL hired election judges who spoke Gujarati, Hindi, Tagalog, Korean, Urdu, and Vietnamese.
- New Orleans, LA had about half a dozen Vietnamese interpreters and bilingual election commissioners.
- Lowell, MA hired about 20 Khmer and Vietnamese interpreters.
- Quincy, MA hired 15 Chinese and Vietnamese speaking poll workers.
- Middlesex, NJ appointed Chinese and Hindi/Gujarati speaking poll workers.
- Philadelphia, PA provided 30 Chinese, Khmer, Korean, and Vietnamese interpreters.

While we commend these efforts, there were also many shortcomings.

- Bergen County translates voting instructions into Korean. During the Presidential Primary Elections, one poll worker in Fort Lee, NJ did not even know why she received the Korean voting instructions.
- Under New Jersey state law, Voter Bill of Rights signs must be available and translated into the language spoken by 10% or more of registered voters in a district.⁵ However, none of the 25 poll sites inspected in Bergen County provided a translated Voter Bill of Rights, even though translated signs were required by law.
- During the Presidential Primary Elections, Philadelphia provided a language line that poll workers could call and get on-the-spot assistance for voters. However, poll workers did not know it existed, did not know how to access the line, or the line was overwhelmed and was constantly busy. Voters in Olney left because they could not understand the ballots and were not able to get help.
- The lack of language assistance created opportunities to take advantage of limited English proficient voters for partisan gain. In Annandale, VA, limited English proficient Korean American senior citizens had to turn to a Republican campaigner for assistance. This person led groups of voters into the poll site and refused to give them privacy while they cast their votes. AALDEF received and reported similar complaints of improper voter influence during the 2006 elections by the same individual involved.

⁵ N.J. Stat. § 19:12-7.1(b) (2007).

2. Poll Workers

Some poll workers were rude, hostile, and made derogatory remarks.

- At different poll sites in Brooklyn, NY one poll worker remarked that Middle Eastern voters “looked like terrorists to [him],” and another poll site supervisor challenged an Arab American voter saying to the voter, “We don’t trust you; you’re not voting. It’s my authority. If you want to complain go to the judge.” The voter was not able to vote.
- A voter complained that a poll worker in Long Island City, Queens, NY made her feel uncomfortable when the poll worker said, “Why do you have an American name? Are you Japanese?”
- A Sikh voter was made to vote by provisional ballot because his last name (Singh) was very common and poll workers in Ozone Park, Queens, NY “couldn’t figure out which one he was.”

Sometimes Asian American voters were simply treated with less courtesy than white voters, or they were simply ignored.

- In Chinatown, Manhattan, NY, a poll worker made comments complaining about Chinese voters and was inattentive when they arrived. The poll worker made an entire line of Chinese voters wait while he sent text messages on his cell phone.
- In Lowell, MA, several Asian American voters reported being ignored by poll workers. One particular voter complained that when she came to the front of the line, the poll worker instead turned to the white voter standing behind her. The voter had to go to a different poll worker to vote.

Some poll workers were simply poorly trained. HAVA requires that voters be informed of their rights at poll sites. But poll workers failed to post the Voter Bill of Rights signs in Virginia, New Jersey, Pennsylvania, and New York. In Alexandria, VA, one poll worker did not even know what the sign was. In Bergen County, NJ, only seven poll sites, out of 26 poll sites observed, displayed the sign. In New York City, 40% of 47 poll sites observed were missing the sign. In Fairfax, VA, poll workers posted the sign only after our observer inquired about its absence.

3. Voter Registration Lists and Provisional Ballots

Many Asian Americans complained that their names were missing from lists of registered voters located at poll sites. In our survey, 540 voters complained that their names were not listed or had errors in their voting records.

In the past, poll workers used to turn away voters, but HAVA now grants these voters the right to vote by provisional ballots to preserve their votes. But such ballots were not always offered or were expressly denied. Voters were again turned away.

Sometimes, poll workers were too quick to turn away Asian American voters and assumed they were not registered, as we observed in Quincy, MA; Philadelphia and Upper Darby, PA; and Falls Church and Fairfax County, VA.

Some cities had more systemic problems that totally undermined HAVA's goal of allowing voters to vote by provisional ballots.

- In Lowell, MA, voters were not permitted to vote by provisional ballot at poll sites. Instead, if names were missing, poll workers either called City Hall or directed the voter to City Hall to confirm their registration and cast a provisional ballot. Voters were unable to vote on Election Day. This problem also occurred in 2004.
- In Chinatown Philadelphia, the main poll site for the area had a limited number of provisional ballots and poll workers would not distribute the ballots unless voters specifically demanded them. When voters did ask, poll workers requested documentation of their addresses. But many voters did not know they could ask for a provisional ballot and simply left without voting. Similar problems occurred during the Presidential Primary Election, but in that election, poll workers turned away voters and told them to register for the next election.

4. Identification Checks

Poll workers made improper and excessive demands for identification, misapplying HAVA's ID requirements. These demands were often only made of Asian American voters in violation of the Voting Rights Act.

Asian American Voter Complaints About Identification Checks								
<i>In states where ID is not generally required to vote</i>								
	DC	NV	MD	IL	NJ	NY	PA	MA
Required to provide ID to vote	28	43	51	124	262	1,903	199	185
% of total voters surveyed	22%	25%	7%	40%	18%	24%	42%	18%
% ID not required under HAVA	82%	77%	76%	70%	69%	68%	68%	60%

AALDEF received specific complaints of racial profiling and demands for identifications from Indian American voters in Bensalem, PA and Bangladeshi American voters in Woodside, Queens, NY.

Some states required all voters to provide identification before they could vote. However, we occasionally found that such identification checks were only applied to Asian American voters and white voters did not have to show ID to vote. Sometimes, Asian American voters had to provide additional forms of ID.

5. Poll Site Confusion

Inadequate notice of poll sites and misdirection to voting booth lines inside sites created much confusion. Frustrated voters left without voting. For example, in Philadelphia's Chinatown,

during both the Presidential Primary and General Elections, Asian American voters complained about slow poll workers and extremely long lines. During the Primary Election, some voters waited in line for up to four hours. Our observers witnessed voters leaving due to frustration.

AALDEF sent complaint letters to local election officials that detailed these voting obstacles and offered recommendations for improvements. Our findings demonstrate that vigorous enforcement of the Voting Rights Act is still needed. Copies of the complaint letters were sent to the U.S. Department of Justice's Voting Section for further investigation.

D. Recommendations

Several steps must be taken to address the barriers faced by Asian American voters. AALDEF makes the following recommendations.

1. National Recommendations

- The United States Supreme Court should uphold Section 5 of the Voting Rights Act. Congress reauthorized the enforcement provision for 25 years in 2007 finding that racial, ethnic, and language minority voters continued to face voting discrimination and that the provision was necessary to protect the right to vote. The provision is being challenged in *Northwest Austin Municipal Utility District One v. Holder*.
- Congress should consider legislation to allow for universal voter registration which will alleviate many of the registration problems that Asian American voters encountered.
- Congress should amend HAVA to clarify that voting by provisional ballot should also be used to correct errors and omissions in voters' registrations, as was recommended by the Carter/Ford National Commission on Federal Election Reform.
- The U.S. Department of Justice should continue its vigorous enforcement of Section 203 of the Voting Rights Act for Asian language assistance and increase enforcement of Section 208 to ensure that voters can be assisted by persons of their choice.
- The U.S. Department of Justice should more forcefully investigate and enforce full compliance with HAVA, including the proper and nondiscriminatory application of identification requirements and the availability of provisional ballots.
- The U.S. Election Assistance Commission should translate the national voter registration form into the federally required Asian languages.

2. Local Recommendations

- Language assistance should be provided to limited English proficient voters at the local level. There should be translated voter registration forms, voting instructions, and ballots, as well as interpreters and bilingual poll workers at poll sites.

- Poll workers who are rude, hostile, or racially discriminatory toward Asian American and limited English proficient voters, or who deny language assistance, should be reprimanded or removed from their posts.
- Voters whose names cannot be found in lists of registered voters located at poll sites must be given provisional ballots. Local election officials should count the ballots of all these registered voters when their ballots are cast in their neighborhoods and local districts, even if they were at the wrong poll sites.
- Errors in the registrations of new voters must be corrected so that ballots are not disqualified. Voting by provisional ballot should be used as opportunities to correct such errors.
- Poll workers need better training in election procedures and voters' rights, especially on:
 - the requirements for language assistance and the proper use and posting of translated voting materials and signs under Section 203, where applicable;
 - voters' rights to be assisted by persons of their choice, who may also accompany voters inside voting booths under Section 208;
 - how to properly direct voters to their assigned poll sites and precinct voting booths;
 - proper demands for voter identification checks under HAVA; and
 - proper administration of provisional ballots under HAVA.

Asian American populations have surged throughout the United States. Asian Americans are becoming citizens and seek to participate in the nation's political franchise, but they have encountered many voting barriers. The findings and recommendations herein will hopefully assist the Committee in ensuring that Asian Americans, and indeed all Americans, can fully and fairly exercise their right to vote.

AALDEF Multilingual Exit Poll, Nov. 2008: Language Minority Groups

STATE - LOCALITY	LANGUAGE MINORITY GROUP	LIMITED ENGLISH PROFCIENT	PREFERS VOTING W/ ASSISTANCE	USED INTER- PRETER	USED TRANSLATED MATERIALS
NEW YORK					
- Manhattan	Chinese	61%	36%	27%	23%
- Queens	Chinese	58%	31%	21%	20%
	Korean	75%	29%	35%	26%
	Urdu	22%	9%	*	*
- Brooklyn	Chinese	62%	43%	31%	26%
	Bengali	50%	21%	*	*
	Urdu	39%	20%	*	*
NEW JERSEY					
- Bergen Co.	Korean	62%	22%	22%	*
- Middlesex Co.	Gujarati	29%	12%	*	*
	Chinese	25%	9%	*	*
MASSACHUSETTS					
- Boston	Chinese	63%	45%	31%	39%
	Vietnamese	54%	32%	20%	23%
- Lowell	Khmer	47%	31%	29%	*
- Quincy	Chinese	38%	15%	*	*
ILLINOIS					
- Chicago/Cook Co.	Korean	81%	43%	35%	34%
MICHIGAN					
- Dearborn	Arab	27%	18%	*	*
- Detroit	Bengali	45%	27%	*	*
- Hamtramck	Arab	40%	29%	16%	*
MARYLAND					
- Rockville	Chinese	36%	20%	*	*
- Silver Spring	Korean	45%	10%	*	*
	Vietnamese	43%	13%	*	*
VIRGINIA					
- Centreville	Korean	53%	12%	*	*
- Falls Church	Vietnamese	49%	13%	*	*
- Annandale	Korean	78%	31%	32%	*
PENNSYLVANIA					
- Philadelphia	Chinese	63%	41%	34%	*
- Bensalem	Gujarati	42%	17%	*	*
TEXAS					
- Houston	Vietnamese	51%	27%	18%	23%
LOUISIANA					
- New Orleans	Vietnamese	63%	45%	*	*

* None available