

CALIFORNIA STATE HEARING

University of California Hastings College of Law
San Francisco, California
January 30, 2014

NATIONAL COMMISSIONER

Dolores Huerta, Lifelong Community Activist; Social Justice Organizer; Co-Founder, United Farm Workers; President, Dolores Huerta Foundation

GUEST COMMISSIONERS

Kathay Feng, Executive Director, California Common Cause	Cruz Reynoso, Justice of California Supreme Court (Ret.); Professor of Law Emeritus, U.C. Davis School of Law
Alice A. Huffman, President, California NAACP	

PANELISTS

Sean Dugar, Western Regional Field Director, NAACP	Dorsey Nunn, Executive Director, Legal Services for Prisoners with Children
Joanna Cuevas Ingram, Attorney, Lawyers' Committee for Civil Rights of the San Francisco Bay Area	Michelle Romero, Claiming Our Democracy Program Director, Greenlining Institute
Neal Kelley, Orange County Registrar of Voters	Dr. Mindy Romero, California Civic Engagement Project Director, U.C. Davis Center for Regional Change
Deanna Kitamura, Senior Staff Attorney, Asian Americans Advancing Justice - Los Angeles	Robert Rubin, Adjunct Faculty, University of California Hastings College of the Law
J. Morgan Kousser, Professor, California Institute of Technology	Thomas A. Saenz, President and General Counsel, Mexican American Legal Defense and Educational Fund
Eugene Lee, Voting Rights Project Director, Asian Americans Advancing Justice - Los Angeles	Lori Schellenberger, Voting Rights Project Director, American Civil Liberties Union of California
Aida S. Macedo, Election Protection Legal Committee – Fresno	
Fred Nisen, Attorney, Disability Rights California	

PUBLIC TESTIMONY

Jerry Elster, All of Us or None	Peter Mendoza, Community Learning Resource Center of San Francisco
Manuel La Fontaine, All of Us or None	
Sun Fung Gao	Jim Sopher, CountItAsCast.org, author
David Gary	Pamela Strong, All of Us or None
Perry Grossman	Lynn Tao, Self-Help for the Elderly
Arie Gutierrez	Brent Turner
David Kerry	Frank Williams
Chris Lavin, Filipino Service Group, Los Angeles	
Mathew Martenyi, All of Us or None	

SUPPORTING ORGANIZATIONS (NOT EXHAUSTIVE)

Altshuler Berzon LLP	Manatt, Phelps & Phillips, LLP
American Civil Liberties Union of California	Mexican American Legal Defense and Educational Fund
Asian Americans Advancing Justice – Los Angeles	Morrison & Foerster
Bay Area Communication Access	National Action Network
Boies, Schiller & Flexner LLP	National Association of Latino Elected and Appointed Officials Educational Fund
California Common Cause	O'Melveny & Myers LLP
California Rural Legal Assistance Foundation	The Greenlining Institute
California-Hawaii State Conference NAACP	TransPerfect
Disability Rights California	UC Hastings College of Law, Center for State and Local Government Law
Dolores Huerta Foundation	
Dolores Street Community Services	
Goldstein, Borgen, Dardarian & Ho	

CALIFORNIA STATE HEARING HIGHLIGHTS



Kimberly Thoms Rapp, Executive Director of the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, provides her opening remarks that the NCVR California hearing.

On January 30, 2014, over 100 voters, activists and voting rights advocates gathered at the University of California Hastings College of the Law in San Francisco to share their experiences of the voting challenges they continue to face in California at a hearing convened by the Lawyers' Committee for Civil Rights Under Law and the Lawyers' Committee for Civil Rights of the San Francisco Bay Area. Witnesses testified about continued barriers to equal participation in the democratic process for voters in California, including the denial of equal representation for racial minority communities, continued barriers for voters with limited English proficiency (LEP) and the disproportionate impact of felony disenfranchisement laws on communities of color.

I. Minority Representation

Morgan Kousser, a professor at the California Institute of Technology, presented testimony on the California Voting Rights Act (“CVRA”), which was passed in 2001 to curtail vote dilution caused by racial polarization in systems that utilize at-large elections. According to Kousser, an ongoing study of K-12 school districts has found that since the passage of the CVRA, the number of school districts that have adopted district-based elections has increased, which has led to an increase in Latinos on the school boards. However, there have been attempts by jurisdictions to work around the CVRA. For example, Kousser testified that in 2002, the Department of Justice (DOJ) objected to a change from district elections to at-large elections in the Chualar Union Elementary School District in Monterey County.¹ The change would have undermined the strength of minority voters in the county.² In 2003, a recall election in Monterey County was also stopped by the courts because the polling precincts had been consolidated.³



Aida S. Macedo, former California Field Manager for Election Protection, spoke on voter intimidation at the California polls at the NCVR California state hearing.

Robert Rubin, a leading voting rights attorney in California, testified that “California voters have not only benefited from Section 5’s protections, but they are harmed by their dismantlement.” Prior to *Shelby County v. Holder*, three counties in California were subject to Section 5 preclearance by the DOJ before making any changes to their voting laws and procedures: Yuba County, Monterey County, and Kings County.⁴ Witness Eugene Lee, of Asian Americans Advancing Justice—Los Angeles (AAAJ), elaborated that “Asian-American communities in California ... face racially polarized voting, which when coupled with certain election struc-

¹ See, DOJ’s March 29, 2002 determination letter:

http://www.justice.gov/crt/records/vot/obj_letters/letters/CA/CA-1050.pdf

² See, Luis Alejo, *Voting Rights Act repeal would have serious consequences in Monterey County*, MONETARY COUNTY WEEKLY, May 16, 2013, http://m.montereycountyweekly.com/opinion/forum/voting-rights-act-repeal-would-have-serious-consequences-in-monterey/article_9170a368-33af-5c9c-a3f9-ecdea957de36.html?mode=jqm

³ *Id.*

⁴ See also, DOJ’s list of jurisdictions covered by Section 5 pre-Shelby:

http://www.justice.gov/crt/about/vot/sec_5/covered.php

tures, creates the potential for dilution of Asian-American voting strength.... If forced to rely on Section 2 alone, Asian-American communities face an uphill battle in asserting challenges to at-large election systems and unfairly drawn districts.”

II. Language Access

Mindy Romero of the California Civic Engagement Project at the UC Davis Center for Regional Change and Deana Kitamura of AAAJ testified about the challenges faced by LEP voters in exercising their fundamental right to vote. According to Romero, research has shown a clear association between language access and voter participation rates (which is, in part, due to uneven access to language assistance).⁵ For Latino citizens who speak little English, Romero stated that access to Spanish-language ballots increases turnout and influences election outcomes. Furthermore, Romero testified that structural barriers, such as lack of language access, are a primary contributor to lower registration rates for naturalized citizens. Kitamura testified that comprehensive language assistance mandated by federal law has increased voter registration and turnout in Asian-American communities. For example, Kitamura testified that once San Diego County adopted a comprehensive language program, “voter registration increased by 20 percent in the Filipino-American community and increased by 40 percent in the Vietnamese-American community.”

Neil Kelley, registrar of voters for Orange County, California, testified about the importance of providing language access. Orange County, he said, provides election services in eight languages, including Chinese, Hindi, Japanese, Khmer, Korean, Spanish, Tagalog, and Vietnamese.⁶ According to Kelley, Orange County’s comprehensive language access program employs procedures to ensure that language translations are accurate, updated and that they reach the target communities. Unfortunately, as reported by witnesses at the hearing, language access problems persist in parts of California. For example, in the last decade, Kitamura noted that four enforcement lawsuits under Section 203 of the Voting Rights Act were brought by the DOJ against California counties for failure to comply with language requirements: San Diego County (2004), the City of Rosemead (2005), the City of Walnut (2007) and Alameda County (2011).

Lastly, Michelle Romero, director of the Greenlining Institute’s Claiming Our Democracy Program, identified California’s English-only initiative process as a major barrier. Romero testified that California’s ballot initiative process plays a crucial role in determining policy in California and that the English-only process silences and excludes LEP voters from the process to

⁵ *A lack of proper training or planning by election officials and limited legal protections of LEP voters can ultimately lead to the disenfranchisement of eligible citizens. See, Terin M. Barbas, Note, We Count Too! Ending the Disenfranchisement of Limited English Proficiency Voters, 37 FLA. ST. U. L. REV. 189, 201-02 (2009).*

⁶ *These multilingual election services are required by California state law (AB 817). http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0801-0850/ab_817_cfa_20130614_131025_sen_comm.html*

determine which initiatives make it on the ballot. Romero testified that the English-only process also subjects LEP voters to manipulation by paid signature gatherers. One example of this was cited by Thomas A. Saenz, president and general counsel of the Mexican American Legal Defense and Educational Fund (MALDEF). Saenz testified that MALDEF represented challengers to a recall petition that was circulated in English in a district with a large number LEP voters. According to Saenz, a number of people signed the petition after being told that they were signing in support of something else. Ultimately, said Saenz, the petition resulted in the recall of a school board member who appeared to have the support of the Latino community in that district. Romero also testified that there is some confusion about how federal language assistance provisions should be applied to initiative, referendum, and recall materials. According to Romero, this lack of clarity in the law needs to be addressed to ensure that language barriers do not hinder LEP communities from participating.

III. Disenfranchisement of Minority Californians Who Complete Felony Sentences and Have Been Discharged from Parole

In 2011, there were approximately 144,000 inmates in the California state prison system.⁷ African-American and Latino males made up a disproportionate 70 percent (approximately 98,000 inmates) of the adult-male prison population.⁸ Although California automatically restores the voting rights of persons convicted of a felony upon completion of their felony sentence and discharge from parole, Dorsey Nunn, executive director of legal services for Prisoners with Children, testified that many of these individuals who are eligible to vote are underrepresented in the California electorate due to misinformation and lack of information (i.e., they think they cannot vote because of the former felony conviction).⁹ As a result, equal access to the ballot for persons with felony conviction histories remains a serious problem in California for the minority community.



Lori Shellenberger, Director of the Voting Rights Project at the ACLU California shares her testimony.

⁷ See, *California's Changing Prison Population*, Public Policy Institute of California (June 2013), http://www.ppic.org/content/pubs/jtf/JTF_PrisonsJTF.pdf

⁸ *Id.*

⁹ See also, *Voting as an Ex-Offender: State by State*, Nonprofit VOTE: <http://www.nonprofitvote.org/voting-as-an-ex-offender/#California>