CHAPTER 4
Impact of Discrimination on Protected Groups

African Americans, Latinos, Native Americans, and Asian Americans are the four groups that Congress primarily (though not exclusively) has sought to protect in the Voting Rights Act (VRA). In 1965, Congress made extensive findings regarding how tests and devices, such as literacy tests and other laws and procedures, had been used to discriminate against African Americans. In 1975, Congress expanded the Voting Rights Act to cover language minorities, in particular Latino, Native-American, and Asian-American voting age citizens because of discrimination they had faced. Included was the determination that the use of English-only elections in jurisdictions where more than 5 percent of the voting age citizens were of a single language minority constituted a test or device because it effectively excluded those citizens from participating in the electoral process.

As detailed below, voting discrimination affecting African Americans, Latinos, Native Americans, and Asian Americans is long-standing and persistent, has taken many forms, and continues today. There is a serious concern that the remaining legal remedies after the Shelby County v. Holder decision will not be adequate to deter new discriminatory voting laws and practices from being enacted and implemented.

I. AFRICAN AMERICANS

Since the Civil War, African Americans have been targeted through discriminatory laws and practices that have resulted in exclusion from the democratic process. Particularly in Southern states, the response to African-American political participation has often been the implementation of new mechanisms for disenfranchisement. This legacy of voting discrimination, like discrimination against African Americans in social and economic arenas, poses an ongoing threat to African-American inclusion in the political process. Though protection under the Voting Rights Act has produced significant gains, African Americans are continually subjected to new threats to their full enfranchisement. The ongoing protection of the Voting Rights Act is vital to the inclusion of this community.

LEFT: Aida Macedo, former Field Manager for the Election Protection Legal Committee, testified at the NCVR hearing in San Francisco about voter intimidation of Latino voters at the polls in Orange Cove, CA in 2012.
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History and Background

The passage of the VRA is often referred to as the Second Reconstruction. The first Reconstruction, as referenced in Chapter 1, followed the Civil War; in the second, the civil rights movement confronted and fought a system of Jim Crow laws that permeated the country, particularly in the South.

As noted in the 2006 National Commission on the Voting Rights Act report,3

Following the Civil War, passage of the Fourteenth and Fifteenth Amendments gave to black males a constitutional right to vote and take part in the civic life of the nation, and they took full advantage of that right during the Reconstruction period. Large numbers of African Americans were elected in the early years of the First Reconstruction, when they composed 15 percent of all southern officeholders. However, following the Compromise of 1877, the Republicans agreed to refrain from using federal troops to protect black voting rights in the South, and white Democrats in that region embarked on a generation-long effort both to disfranchise blacks and remove them from office … In addition to violence and fraud, all manner of legal devices were used to keep blacks, as well as various other minorities, from casting a ballot, including the poll tax, the literacy test, the grandfather clause, the good-character test, the understanding test, and the white primary.4

For nearly 100 years, Southern states used the law and force to continually and systematically exclude African-American citizens from registering and voting on a massive scale.5 In 1890, Mississippi held the first constitutional convention for the purpose of altering the state’s suffrage laws to remove blacks from political life. These new provisions included a sharp increase in the duration of residency requirements, the adoption of a poll tax, and the imposition of a literary test.6 Other Southern states followed suit and began a series of state constitutional or statutory changes that instituted, in varying forms and combinations, poll taxes, literacy tests, secret ballot laws, lengthy residency requirements, complex voter registration systems, multiple voting-box arrangements, and white-only primaries. These practices systematically intimidated and precluded African Americans in the South from voting and registering to vote. During this period, literacy tests continued to be used in six of the 11 ex-Confederate states. Louisiana blocked African-American voters arbitrarily deemed to have “bad character” from voting, and African-American voters in Alabama were barred from voting unless a white citizen would “vouch” for them.7
The mass exclusionary tactics employed in the South during the post-Reconstruction era were successful in blocking African Americans from registering and voting. In Mississippi, African-American voter turnout, which had exceeded 70 percent in the 1870s, dropped to 15 percent by the early 20th century. While more than 130,000 African Americans were registered to vote in Louisiana in 1896, that number dropped to 1,342 by 1904. State actors devised obstacle after obstacle aimed at preventing political participation by African Americans. Legal victories eliminated one practice, and another would pop up in its place to achieve the same result of exclusion. For example, in 1927, 1944, and 1953, the Supreme Court struck down three different versions of the “white primary” in Texas “because it kept reappearing in slightly modified form after each ruling.” Unable to keep up with the pace of tactics used by Southern states to curb registration and turnout, federal intervention and private litigation proved ineffective. The VRA was enacted to confront this long-standing, persistent, and all-encompassing voting discrimination against African Americans.

Following the passage of the VRA, African-American voter registration and turnout increased significantly. It is estimated that more than one million new African-American voters were registered between 1964 and 1972. In the seven covered or partially covered Southern states, African-American registration increased from 29.3 percent to 56.6 percent between the enactment of the VRA in August 1965 and January 1972. In Mississippi alone, African-American voter registration rates rose from 6.7 percent to 59.8 percent. In fact, this increase was relatively immediate, a testament both to the much-needed protections provided by the VRA and the devastating effects of prior disenfranchisement. The U.S. Commission on Civil Rights found that, by 1968, African-American voter registration was over 50 percent in several Southern states; prior to the passage of the Act, only Florida, Tennessee, and Texas recorded African-American registration at those levels.

Yet, the large successes of the Voting Rights Act of 1965 in protecting the right to register and vote prompted officials to continue targeting African American voting strength through
dilutive tactics. At-large elections were seen as an especially effective way to prevent African-American candidates from getting elected, as were municipal annexations of predominantly white suburbs, and reapportionment and redistricting statutes. A landmark decision by the Supreme Court in Allen v. State Board of Elections held that these and other electoral modifications were subject to preclearance under Section 5 of the Act.

Still, Section 5 alone was not sufficient to eliminate certain discriminatory voting mechanisms in the South during the 1970s. Some jurisdictions implementing these tactics remained uncovered, and even in covered jurisdictions citizens were unable to challenge long-standing dilutive practices unless and until changes were proposed. In addition, jurisdictions that passed laws diluting the African-American vote often were noncompliant and did not submit these changes to the United States Department of Justice (DOJ) or the district court for preclearance, as required by the VRA. Many such discriminatory practices were thus implemented and left unchallenged in the Southern states.

As jurisdictions adopted a range of ingenious dilutive tactics, Congress recognized that the VRA needed to be extended and strengthened. As a result of the 1982 adoption of the results standard under Section 2, voting rights litigation changed dramatically nationwide. Section 2 has since been widely used as a means to combat racial vote dilution and has been critically important for the success of minority candidates at the local level. The 1980s saw an explosion in the number of these cases. “The number of Section 2 cases filed between 1982 and 1989 dwarfed the number of constitutional challenges brought during the 1970s,” with one study finding “over 150 Section 2 challenges to municipal elections in the eight states that were covered by Section 5 during this time period alone.” Moreover, municipal data from these states show that “[n]early 65 percent of all changes from at-large elections were attributable to litigation or settlements resulting from litigation.”

In some instances, officials made little effort to disguise their efforts to adopt racially discriminatory districting schemes despite the existence of Section 2. Governor Dave Treen of Louisiana proposed three districting schemes that would have left Orleans Parish, which was 55 percent African American by 1980, without a single majority African-American congressional district.

It was not until after a federal court rejected Treen’s proposal and a new redistricting plan was adopted that Louisiana was able to elect its first African-American congressional representative since Reconstruction.

Still, the adoption of the Section 2 results standard did not stop states from creating and attempting to create racially discriminatory election structures. In fact, the number of Section 5 objections increased after 1982 in spite of improved registration and turnout numbers and successful litigation. In Mississippi alone, the DOJ lodged 37 objections just
to county redistricting plans following the 1980 census.\textsuperscript{27} In particular, jurisdictions in some circumstances attempted to re-implement discriminatory tactics previously used to dilute the African-American vote, even where those tactics had been previously successfully challenged.\textsuperscript{28} For example, in Lancaster County, South Carolina, the General Assembly adopted staggered terms for at-large seats on the local area school boards in 1972 and again in 1976 and 1984 following the DOJ’s initial objection.\textsuperscript{29} Based on the evidence it received, the 2006 U.S. House Judiciary Committee report concluded that “[t]he changes sought by covered jurisdictions were calculated decisions to keep minority voters from fully participating in the political process.”\textsuperscript{30}

Alabama, a state historically and continually at the center of the battle for racial equality in voting rights, is an example of how litigation dismantled policies that intentionally discriminated against African-American voters. A series of cases brought in the 1980s aided in breaking apart some of Alabama’s most overt racially discriminatory electoral schemes. In a seminal 1986 case, African-American plaintiffs challenged the use of at-large elections for commissioners in nine counties in \textit{Dillard v. Crenshaw County}.\textsuperscript{31} The court relied on evidence that 1951 and 1961 statewide electoral changes, both of which utilized vote dilution tactics, were adopted by the Alabama legislature with a discriminatory intent.\textsuperscript{32} Among other probative evidence, expert testimony was presented “that a third of the state’s counties shifted from district to at-large elections between 1947 and 1971, after blacks began to register and vote in large numbers.”\textsuperscript{33} Based on the court’s finding of a statewide policy of intentional discrimination, the federal district court enjoined the use of at-large elections in these counties.\textsuperscript{34} This ruling propelled subsequent litigation challenging dilutive practices that resulted in more than 100 Alabama jurisdictions changing their method of election.\textsuperscript{35} African-American plaintiffs in Alabama also challenged the discriminatory appointment of poll workers under Section 2 of the VRA. The district court first granted preliminary relief against almost every county, prohibiting further enforcement or implementation of the widespread practice of appointing “disproportionately too few”\textsuperscript{36} African-American poll workers. The court later found that the dearth of African-American poll workers was the product of intentional discrimination by the state.\textsuperscript{37}

Despite these successful challenges to discriminatory voting laws over the past 50 years, recently there has been a resurgence in barriers to African-American voter participation through such measures as voter identification laws as well continued vote dilution. Discrimination against African Americans did not end with the passage of the VRA, and as has been and as will be detailed throughout this Report, continues to plague the American voting system today.
Geography

As shown in Map 1, the African-American population is still heavily concentrated in the South, as well as big cities in other parts of the country. The most recent census found that 14 percent of all people in the United States identified as black, with 55 percent of the black population living in the South. One-hundred five Southern counties had a black population of 50 percent or higher.38

Participation

As can be seen in the graphs in Appendix C, registration and turnout among African Americans has been improving in recent years, according to the U.S. Census Bureau. In the last two presidential elections that brought President Barack Obama into office, African-American voter registration and turnout rates increased. In 2012 and 2008, African-American turnout levels among citizens of voting age were at approximately 66 and 65 percent, respectively, which represents a steady increase in turnout from previous years (compared with 60, 57, and 53 percent in 2004, 2000, and 1996, respectively).39 However, this has not been the case in other types of elections. In the last two midterm elections, for example, African-American participation rates continued to fall below that of whites. In 2010 and 2006, the
negative differentials between African-American and white participation rates were 5 and 11 percentage points, respectively.  

**Elected Officials**

Section 2 and Section 5 of the VRA were highly effective working in tandem to reduce minority vote dilution, including through the districting process. As a result, in jurisdictions where the African-American population is sufficiently concentrated, African-American candidates can regularly gain elected office. Between 1970 and 2000, the nation saw a 600 percent gain in the number of African-American elected officials nationally and a 1,000 percent gain in those states that were formerly entirely covered by Section 5. Nonetheless, getting elected in areas without a majority of minority voters continues to be a challenge for African-American candidates. As several voting rights experts recently concluded, “Although there is evidence to suggest that minority candidates are beginning to win elections in some non-minority districts, the overwhelming number of minority legislators continue to represent majority-minority districts.”

**Current Types of Discrimination**

Several types of election procedures have been used to discriminate against African-American citizens, including vote dilution, barriers to voting, and even attempts at intimidation, and these procedures continue to be used to disempower African Americans. As is demonstrated by the tables outlining the cases litigated under the Voting Rights Act since 1995 (see Supplemental Online Appendix), there have been numerous cases striking down redistricting plans, at-large elections, and other election practices that were found to discriminate against African Americans. Over 1/3 of the successful Section 2 cases brought from January 1995 to June 2014 involved African-American voters. These cases continue to be largely concentrated in the Southern United States. About 2/3 of the cases involving African Americans occurred in jurisdictions in the former Section 5-covered jurisdictions, with Mississippi, Louisiana, and Georgia alone accounting for 42 percent of these cases. Additionally, the overwhelming majority of Section 5 and Section 3(c) preclearance denials, where the Justice Department or federal court refused to preclear election changes, issued between January 1995 and June 2014 were for changes impacting African Americans. Of the 113 Section 5 preclearance denials issued during this period, 101—or nearly 90 percent of the denials—involving circumstances where the submitting jurisdictions failed to prove the proposed change would not discriminate against African Americans.
Dr. Brenda Williams of The Family Unit testified at the NCVR South Carolina state hearing, stating “[T]he South Carolina Election Commission now has a dress code for people wanting and needing photo IDs in the State. […] You have to wear a certain kind of attire. No hats are allowed, no scarves. African-American women oftentimes adorn ourselves in scarves and turbans. It’s a part of our culture. […] [T]he voter registration office people have the authority to stop and not take your picture if you don’t fit their attire guidelines.”

At-large elections and discriminatory redistricting plans have been the primary tactics most recently employed to dilute African-American voting strength. Of the 62 successful Section 2 cases involving African Americans, almost 1/2 involved at-large methods of election and 1/3 involved redistricting plans. Additionally, as is discussed in Chapter 6, evidence indicates that increasingly stringent voter identification requirements, restrictions on voter registration drives, and reductions in early voting opportunities disproportionately affect African Americans compared to whites. The cases and research discussed in depth in the following chapters will demonstrate the panoply of ways African Americans are denied their full and equal voting rights in the 21st century.

II. LATINOS

Latinos comprise approximately 17 percent of the U.S. population and are the nation’s largest minority group. As explained below, however, voter participation rates for Latinos—despite recent increases—continue to lag behind those of other groups. A leading Latino organization points out that “[m]ore than 100 years of virtually unchecked discrimination at the polls against Latino U.S. citizens gave birth to this situation, and a number of factors have sustained it.”
As detailed below, Latinos have historically faced discrimination in voting. This discrimination has come through formal and informal methods such as state-sanctioned violence and intimidation, racially targeted voter challenges, and English-only elections. Other persistent forms of discrimination include discrimination in the redistricting process, the use of at-large elections to dilute the Latino vote, and the failure to comply with the VRA's language assistance requirements to ensure equal access for Spanish-speaking voters, among others.

**History and Background**

The history of Latinos in the United States, like the group itself, is quite diverse. It is not an overgeneralization, however, to say that Latinos, as a whole, have faced a history of discrimination and exclusion in the United States, some of which continues to the present day and has contributed to the existing disparities in electoral participation and opportunity.

Mexican Americans and Puerto Ricans are the two largest Latino heritage groups and those with the longest history in the United States. Mexican Americans were present in what is now the Southwest of the United States even prior the U.S. border expansion to include this territory in the 1840s. With the 1845 annexation of Texas and the 1848 Treaty of Guadalupe Hidalgo, a great part of Northern Mexico became part of the United States, and the Mexican citizens living in that territory became U.S. citizens. Similarly, the United States acquired control of Puerto Rico in 1898, and Puerto Ricans were granted U.S. citizenship in 1917, after which hundreds of thousands of Puerto Ricans migrated to the continental United States. Despite these formal grants of citizenship, however, both Puerto Ricans and Mexican Americans experienced acts of discrimination and obstacles to their full integration as equal citizens of the United States. Other Latino heritage groups with a more recent history in the United States have similarly faced barriers to equality under the law.

Mexican Americans throughout the Southwest have been the target of discrimination including unlawful deportations, state-sanctioned violence, segregation in schooling, and exclusion from juries. In the watershed case of *Hernandez v. Texas* in 1954, the first in which the Supreme Court recognized that Mexican Americans were entitled to equal protection under the Fourteenth Amendment, Hernandez challenged a Jim Crow practice in Texas that denied Mexican Americans the opportunity to serve on trial or grand juries. The Supreme Court recognized that Hernandez proved that persons of Mexican descent constituted a separate class, stating:
The participation of persons of Mexican descent in business and community groups was shown to be slight. Until very recent times, children of Mexican descent were required to attend a segregated school for the first four grades. At least one restaurant in town prominently displayed a sign announcing ‘No Mexicans Served.’ On the courthouse grounds at the time of the hearing, there were two men’s toilets, one unmarked, and the other marked ‘Colored Men’ and ‘Hombres Aquí’ (‘Men Here’).

Early Discrimination in Voting

This widespread discrimination against Mexican Americans also manifested itself in the electoral process. The Texas Rangers, for example, who utilized their position as law enforcement agents to terrorize the Mexican American community through “lynchings, burning houses, executions in front of family members and murder,” also specifically discouraged Mexican Americans from voting.65 Texas further excluded Mexican Americans through its white primaries, lauded for “eliminating the Mexican voter as a factor in nominating county candidates,” and the imposition of a poll tax.66

Literacy tests were another tool used throughout the Southwest and in New York to block the Latino vote.67 New York, for example, instituted its English literacy test in 1922,68 just five years after Puerto Ricans were granted citizenship and New York City experienced an influx of Puerto Ricans.69 Later, in the 1920s, 1930s, and 1940s as Latino populations rose in the Southwest, Latino voters were the target of further intimidation efforts to keep them away from the polls.70 Operation Eagle Eye, for example, deployed volunteers in Arizona to “question[] would-be Latino voters about their residence and ability to read and understand English.”71

Continued Discrimination into the Second Half of the 20th Century

Although, as mentioned, the VRA was originally designed with African Americans’ voting rights in mind, the 1965 Act included an important provision for some Latinos: Section 4(e). Section 4(e) provides that the right to vote cannot be denied to U.S. citizens who completed the sixth grade in an American public school where instruction was conducted primarily in a language other than English.72 The provision was instrumental to the protection of Puerto Rican voting rights in that it invalidated the English literacy tests that had been implemented to block Puerto Ricans’ access to the polls.73 This protection, however, was resisted by New York State, which challenged it all the way to the Supreme Court. In Katzenbach v. Morgan,74 the Supreme Court rejected the challenge, holding that Section 4(e) was constitutional. Eventually, Section 4(e) was to pave the way for more expansive provisions protecting language minority voters.

In the hearings leading up to the reauthorization of the Voting Rights Act in 1975 and 1982, witnesses testified that the discrimination methods used against African Americans in the South were similarly being used against Latinos in the Southwest.75 Some of these methods
included "intimidation, capricious changes in voting rules, English-language registration and voting requirements, lengthy residential requirements, and the manipulation of the Mexican American vote by non-Mexican American political leaders." After finding that voting discrimination against citizens with limited English proficiency was "pervasive and national in scope," Congress in 1975 expanded the protections of the VRA to specific language minorities, including those with Spanish heritage. In doing so, it sought to address a "racialized inequity that was purposefully directed at [Mexican-American voters] that turned on their racial/ethnic characteristics and not only on their language minority status." Importantly, Congress found that English-only elections in jurisdictions where more than 5 percent of the voting age citizens were a minority language group constituted a "test or device" under the Voting Rights Act, and hence were prohibited.

In recent decades, Latinos have also experienced discrimination in the redistricting process. In *White v. Regester*, for example, the Supreme Court struck down a redistricting plan for the Texas State House of Representatives. In invalidating the plan, the district court noted that in Bexar County, "cultural incompatibility… conjoined with the poll tax and the most restrictive voter registration procedures in the nation ha[d] operated to effectively deny Mexican-Americans access to the political processes in Texas even longer than the Blacks were formally denied access by the white primary."
Similarly, in a 1990 decision in the case of Garza v. County of Los Angeles, a federal judge declared that, when drawing the district lines after the 1980 census, the Los Angeles County Board of Supervisors had intentionally violated the rights of Latino citizens, in violation of Section 2 of the Voting Rights Act and the Fourteenth Amendment, by intentionally dividing a geographically compact area of Latinos for several rounds of redistricting after a Latino candidate almost won election in 1958. To remedy this violation, the court ordered the district to redraw its district lines, resulting in the creation of a majority-Latino district that resulted in the election of Gloria Molina, the first Latino Los Angeles county supervisor in modern history.

**Geography**

As can be seen from Map 2, there continue to be significant concentrations of Latinos in the Southwest, but the population has grown tremendously including in major cities and smaller industrial cities. Arizona, California, Florida, Illinois, New Jersey, New Mexico, New York, and Texas contain three-quarters (74 percent) of the nation’s Latino population. This is down from 79 percent in 2000 and 84 percent in 1990. As a reflection of the increasing dispersal of the Latino population, 23 states have at least one jurisdiction that meets the minimum population thresholds and are hence covered under Section 203 of the VRA for the Spanish language, which requires them to provide election materials in Spanish and Spanish-language assistance at polling places.
Participation

Large turnout disparities exist between white and Latino populations, including Mexican Americans and Puerto Ricans. Among citizens, the Hispanic voter turnout rate in the 2012 presidential election was 48.0 percent, while the turnout rate for white voters was 64.1 percent. The socioeconomic differences between Latinos and other groups help to explain this disparity. A study seeking to understand why turnout differs between Latinos and other groups analyzed the factors impacting voter participation. Using data contained in the U.S. Census Bureau's Current Population Survey, the researchers ran two statistical models. The first used only racial-ethnic and national-origin factors, while the second tested the impact of socioeconomic variables including age, education, family income, and residential stability. The researchers found that “virtually all of the overall Latino group differences disappear when socioeconomic variables are taken into account.” Education, age, and income are the demographic factors most strongly related to voter turnout and Mexican Americans and Puerto Ricans are at a disadvantage compared with Anglos on each of those indicators.

Courts have repeatedly noted the relationship between discrimination and social inequality. A U.S. Senate Judiciary Committee report accompanying the 1982 amendments to Section 2 of the VRA identified several factors for courts to use when assessing whether a violation exists. One of these factors is “the extent to which members of the minority group … bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process.” As the Supreme Court explained in Thornburg v. Gingles, “political participation...tends to be depressed where minority group members suffer effects of prior discrimination such as inferior education, poor employment opportunities, and low incomes.” Between 1982 and 2005, in 13 reported successful Section 2 cases involving Latinos, courts found that discrimination in these other areas did inhibit Latinos’ ability to effectively participate in the political process.

The ongoing discriminatory efforts discussed below—including voter intimidation, discriminatory redistricting, attempts to dilute the Latino vote, and the denial of language assistance—combine with this history of prior discrimination to further suppress Latino participation.
Elected Officials

The last 15-20 years have seen some improvement in Latino electoral opportunity. Data from the National Association of Latino Elected Officials shows that in 1996, 180 Latinos held elected office at the state or federal level. By 2009, that number had increased to 277, and it climbed to 320 by 2013. Though this trajectory is impressive, its significance should not be exaggerated. A separate statistical analysis shows that it continues to be difficult for a Latino candidate to get elected in a jurisdiction without a Latino majority:

Hispanic voters are now more likely to elect Latino candidates in the majority-minority districts that have been created [for them] than they were in 1992 (at least with regard to state senate and congressional districts) ... [but] like African American representatives, the vast majority of Latino representatives are elected from majority-minority districts. The percentage of districts with non-Hispanic majorities represented by Latino legislators has risen since 1992, but, like the increase in the number of African American representatives elected from majority-nonblack districts, this increase has been small. Moreover, a number of the Latino representatives elected from districts with non-Latino majorities won in districts where blacks and Latinos together formed a majority—although the share of Latino victories in districts characterized by black-and-Hispanic majorities is lower than the share of African American victories in such districts.

Types of Discrimination

Voting barriers for Latino voters have continued to the present day, not only in jurisdictions where they have historically had a strong presence, but also in places where the community has just recently started to grow. Historical—and ongoing—types of discrimination include voter intimidation, discriminatory redistricting, the use of at-large elections to dilute the Latino vote, and the denial of language assistance. Additionally, Latino voters have encountered other modern-day voting restrictions that present significant challenges in exercising their right to vote.

Between January 1995 and June 2014, 29 of the denials of preclearance under Section 5 of the VRA have concerned Latino voting rights. Additionally, over half of the successful cases filed during this time period under Section 2 of the VRA have involved Latino voters (96 out of 171). Out of these cases affecting Latino voters, 82 involved a successful challenge to the use of at-large methods of election and seven successfully challenged a redistricting plan.

Sanchez v. Colorado, which was decided in 1996 by the Tenth Circuit, was a classic case of Latino vote dilution. The Latino plaintiffs in the case challenged a state legislative
redistricting plan that did not provide for a majority Latino district (House District 60) in the San Luis Valley. A consulting firm hired by the Colorado Reapportionment Commission found that there was racially polarized voting and it was “necessary to create districts that are more heavily Hispanic in the San Luis Valley than elsewhere in the state because of the degree of racially polarized voting found in this area of the state.” Nonetheless, the commission’s apportionment of District 60 resulted in a district where Latinos comprised only 42.4 percent of the voting age population. Other factors also painted a picture of the hostility faced by the Latino community in the area. For example, the Anglo incumbent for the District 60 House seat had referred to Latinos as “wetbacks,” and plaintiffs testified about problems such as: the placing of voter registration branches “in Anglo homes, where Hispanics would feel uncomfortable entering… the appointment of all Anglo election judges,” and missing Latino voters from the registration rolls. Importantly, since the District 60 house seat was drawn in 1940, it had only been held by Anglos. The court ultimately held that the configuration of District 60 diluted the Latino vote and remanded the case back to the district court, with directions that the court order the State of Colorado to implement a remedial plan that would include a Latino-majority district centered in the San Luis Valley.

Additional Section 2 cases have included claims such as discriminatory challenges to individuals’ voting rights. A recent example is United States v. Long County, Georgia, a 2006 lawsuit filed against the County for unlawfully targeting Latino voters. Long County had experienced a dramatic increase (460 percent) in its Latino population between 1990 and 2000, and in 2000, the community made up 8.4 percent of the County’s population. In the 2004 election, the right to vote of 45 Latino residents was challenged on the grounds that they were not U.S. citizens. Even though none of these challenges were actually supported, the County required all 45 Latino residents to attend a hearing and prove their U.S. citizenship. Other non-Latino residents whose right to vote had been challenged on other grounds, however, were not required to attend such a hearing. In 2006, the federal court entered a consent decree requiring the County to (1) notify the 45 Latino voters that the challenges to their right to vote were unsubstantiated, (2) implement uniform voter challenge procedures, and (3) properly train their election officials and poll workers.
At the NCVR regional hearing in New York City, Juan Cartagena, President & General Counsel of Latino Justice PRLDEF, (far right) said “[W]e consistently treat citizens in this country as if they have to earn and re-earn their right to vote. We don’t treat it as a right. […] [That] explains why so many of us who are eligible to vote and have registered to vote have to re-approve that we are eligible to vote again, and again. […] It is time that we treat the vote as a right in a democracy.” PHOTO CREDIT: CHRIS FIELDS

Another example of targeted challenges against Latinos took place in Atkinson County, Georgia. In 2004, 95 Latino registered voters—78 percent of all Latino voters in the county—had their right to vote challenged on the basis of their citizenship. Like in Long County, the challenged voters were forced to appear at the county courthouse to defend their voting rights.111 However, “after county attorney Russ Gillis began the hearing, it didn’t take him long to get to his point. The challenges were dismissed because they were ‘legally insufficient because they’re based solely on race,’ he said to the courtroom.”

Jurisdictions’ failure to provide the necessary and often required language assistance is also a persistent problem for Latino voters. Out of the 58 successful language assistance cases and pre-litigation settlements filed between January 1995 and June 2014, 46 of them (79 percent) were brought on behalf of Spanish-speaking voters. As discussed above, English-only elections were historically utilized to keep Spanish-speaking voters form the polls. Today, as some jurisdictions throughout the United States fail to adequately comply with federal requirements for language assistance, Spanish-speaking voters continue to be denied full, meaningful, and equal access to the polls. As discussed in more detail in Chapter 7, the provision of language assistance at the polls has been shown to positively impact voter participation in Latino communities.

According to the Pew Hispanic Center, Latinos “will account for 40% of the growth in the eligible electorate in the U.S. between now and 2030, at which time 40 million Hispanics will be eligible to vote, up from 23.7 million now.”113 Whether these new eligible voters become actual voters will depend, in large part, on the legal protections in place to ensure that access to all aspects of voting is free of discrimination and unnecessary barriers. As the Latino electorate continues to grow, it is more imperative than ever that access to the ballot is not encumbered by racial discrimination.
III. NATIVE AMERICANS

Although they inhabited what is now the United States long before white settlers arrived, Native Americans have only relatively recently been given the right to vote under the laws of the United States and still struggle to achieve full participation in the political process. While the Voting Rights Act applies to Native Americans, relatively little voting rights litigation was brought on behalf of Native Americans until fairly recently. But when such litigation has been brought, “courts have invariably found patterns of widespread discrimination against Indians in the political process.”

History and Background

As President Richard Nixon said in 1970,

The First Americans—the Indians—are the most deprived and most isolated minority group in our nation. On virtually every scale of measurement—employment, income, education, health—the condition of the Indian people ranks at the bottom. This condition is the heritage of centuries of injustice. From the time of their first contact with European settlers, the American Indians have been oppressed and brutalized, deprived of their ancestral lands and denied the opportunity to control their own destiny.

Discrimination against Native Americans in voting can be traced back to at least 150 years ago—to a time when Native Americans were deemed not to be citizens of the United States and the policy of the federal government was the “eventual assimilation of the Indian population” and the “gradual extinction of Indian reservations and Indian tribes.” Throughout the 1800s, Native-American tribes were forcibly removed from their lands to reservations, where they were to end their nomadic way of life and, as President Andrew Jackson put it, “cast off their savage habits and become an interesting, civilized, and Christian community.” The intentional extermination of the buffalo that Native Americans needed to survive—an estimated 15 million buffalo were killed between 1872 and 1883—forced Native Americans into dependency upon the United States and kept them confined to the reservations. Sacred Native-American rituals and practices were outlawed, and the government attempted to “detribalize” young Native Americans by sending them to federally supervised schools in which students were forbidden to speak their native languages or practice Native-American traditions. The adoption of a land allotment system proved another “efficient device for separating Indians from their land and pauperizing them.” While some treaties provided that Native Americans could become citizens of the United States, the naturalization process was often so demanding that few Native Americans could undertake it. And those Native Americans who were not citizens had no federally protected right to vote and thus had no power to influence the laws passed by Congress to control their affairs.
Congress extended citizenship—including the federally protected equal right to vote—to all Native Americans in 1924, yet a systemic denial of the right to vote continued.¹²⁴ For example:

- In 1925, the Alaska Territorial Legislature enacted a literacy law that required “voters in territorial elections be able to read and write the English language.” When Alaska’s constitution became operative in 1959, it included an English literacy requirement as a qualification for voting; the requirement was not repealed until 1970.¹²⁵

- Into the 1940s Idaho, Maine, Mississippi, New Mexico, and Washington prohibited “Indians not taxed” from voting, even though they allowed whites who did not pay taxes the right to vote.¹²⁶

- Arizona denied Native Americans living on reservations the right to vote because they were “under guardianship” of the federal government. This policy remained in place until 1948.¹²⁷

- Utah denied Native Americans living on reservations the right to vote because, under state law, they were considered non-residents. The Utah Supreme Court upheld this law, and only after the United States Supreme Court agreed to review the case did the state legislature repeal it in 1957.¹²⁸

- In Colorado, Native Americans residing on reservations were not permitted to vote until 1970.¹²⁹

These abuses were a major impetus for Congress’s extension of the Voting Rights Act to language minorities, including Native Americans, in 1975.¹³⁰
Geography

As can be seen in Map 3, the American Indian and Alaska Native population is concentrated in states such as Alaska, Arizona, Montana, New Mexico, North Dakota, Oklahoma, and South Dakota.\textsuperscript{131} They are a small share of the population, but in certain counties they make up a significant portion—if not a majority—of the population. In a handful of states Native Americans have sufficient numbers and potential voting power to affect election outcomes, for example in recent races for U.S. Senate in Alaska and Montana.\textsuperscript{132}

Participation

Although the U.S. Census does not publish as much data on voting by Native Americans as it publishes regarding voting by whites and other groups, analyses show Native-American voting rates are among the lowest of all racial and ethnic groups in the United States. Courts have consistently found participation differentials, and census data from the 2008 and 2012 presidential elections show a differential on a national basis. In the 2008 election, 47.5 percent of American Indian and Alaska Native citizens of voting age voted, while 66.1 percent of non-Hispanic white citizens of voting age voted.\textsuperscript{133} Similarly, in the 2012 election, 46.6
percent of American Indian and Alaska Native citizens of voting age reported voting, compared to 64 percent of non-Hispanic white citizens of voting age.\textsuperscript{134}

Courts charged with addressing voting discrimination against Native Americans have acknowledged that low political participation is one of the effects of past discrimination.\textsuperscript{135} One of the legacies of the discrimination faced by Native Americans is a severely depressed socioeconomic status—in every socioeconomic factor reported in the census, Native Americans today lag far behind their white counterparts.\textsuperscript{136} Disparities in socioeconomic status are causally connected to Native Americans’ depressed level of political participation.\textsuperscript{137} These disparities combine with “the pervasive myth that Indians care only about politics on the reservation, and the lack of VRA enforcement” to create an environment in which many Native-American communities still, de facto, lack the right to vote.\textsuperscript{138} Harassment, intimidation, and misinformation further thwart Native Americans’ efforts to register and vote, despite the protections of the VRA.\textsuperscript{139}

**Elected Officials**

Though the numbers are slowly increasing, it has proven very difficult for Native Americans to get elected to high office. They have been most successful in state legislatures: there are currently 75 American Indian, Alaska Native, and Native Hawaiian state legislators in 17 states.\textsuperscript{140} In 2012 there were no Native-American members of the U.S. Senate and two Native-American members of the U.S. House of Representatives.\textsuperscript{141}

**Types of Discrimination**

Since 1973, there have been more than 30 successful challenges to redistricting schemes and methods of election that dilute Native-American voting power.\textsuperscript{141a} Between January 1995 and June 2014 there were 18 successful cases brought by or on behalf of Native-American plaintiffs under Section 2 of the VRA (not including language assistance cases). Over half of those cases involved at-large methods of election; three of the cases involved redistricting plans.

Also between January 1995 and June 2014, there were five successful cases brought by Native Americans or on behalf of Native Americans by DOJ under the VRA’s language assistance provisions concerning bilingual election assistance; the languages involved were Keresan, Lakota, Navajo, and Yup’ik.\textsuperscript{142} A recent case from Alaska is illustrative. Prior to the 2008 election, plaintiffs sued Alaska for failure to provide translated election materials and language assistance at polling places to thousands of Yup’ik-speaking voters in the Bethel Census Area. The court in *Nick v. Bethel* granted the plaintiffs a preliminary injunction requiring the state to provide language assistance to Yup’ik voters, including translators, sample ballots in Yup’ik, pre-election publicity in Yup’ik, and a Yup’ik glossary of election terms.
for the 2008 primary and general election. In 2010, the parties entered into a settlement requiring the state to provide bilingual election materials, outreach workers, and notices of election in all subsequent elections as long as the Bethel Census Area remains subject to the language provisions of the VRA.

There also have been several cases involving blatant interference with Native Americans registering and voting. Incidents have included:

- Refusal by election registrars to provide registration forms to groups involved in registering American Indians and Alaska Natives;
- Purging Native Americans from voter registration lists;
- Baseless charges of voter fraud against American Indians and Alaska Natives; and
- Failure to provide sufficient polling places in Native-American communities.

“Over 60 percent of [the population of Dewey County] lives in Eagle Butte, which is more than 40 miles from the county seat in Timber Lake. […] Many voters […] do not own reliable vehicles, or do not have the financial resources to make a trip to early vote. Although tribal elections are synched with state and federal elections, polling locations are typically located in different communities. So for many tribal members, voting in both tribal elections […], state, and federal elections means travelling to two different communities to vote.”

—Julie Garreau, of the Cheyenne River Sioux Tribe, former South Dakota State Senate candidate. (NCVR Rapid City Hearing)
Case Study
South Dakota

South Dakota, which has a Native-American population that is 8.9 percent of the state’s total population and had two counties that were covered jurisdictions under Section 5 of the VRA, provides examples of many of the types of discrimination that Native Americans have faced in voting. Even after the VRA was expanded in 1975 to incorporate language minorities, including Native Americans, South Dakota persistently engaged in discriminatory conduct—using a broad range of tactics—that limited the voting rights of Native Americans. Whether simply denying counties with large Native-American populations the ability to form a government, or redistricting after a Native-American candidate won a primary, or diluting the Native vote through malapportionment or packing, the actions of officials in South Dakota exemplify the various forms of voting discrimination faced by Native Americans across the country.

VOTE DENIAL BASED ON RESIDENCE IN AN “UNORGANIZED” COUNTY

In 1975, a federal court of appeals in Little Thunder v. South Dakota found that the State’s prohibition on residents of “unorganized” Counties voting for county government officials violated the Equal Protection Clause of the Fourteenth Amendment.146 “Organized” counties all had a full complement of elected county officials who administered the affairs of the county (i.e., county commissioners, judges, auditor, sheriff, etc.).147 The “unorganized” counties did not elect their own county officials but, rather, were attached to an adjoining county for purposes of government and administration. The residents of unorganized counties, however, could not vote for the county officials in the county to which theirs was attached.148 Those residents, therefore, were not able to vote for most of the elected county officials who governed them.149 The residents of the “unorganized” counties—Todd, Shannon, and Washabaugh—were overwhelmingly Native American.150

Even after the residents of Todd, Shannon, and Washabaugh counties were granted the right to vote for the elected officials who conducted the affairs of their counties, they were still denied the right to run for those offices. The United States challenged the denial of the right of residents of Shannon County to run for the county offices of Fall River County that governed Shannon County in United States v. South Dakota.151 The justification offered for this restriction was that “the great majority of Shannon County voters reside on the Pine Ridge Indian Reservation and hence have little, if any, interest in the county government of either Shannon or Fall River County,” and “a personal stake in the government insufficient to insure responsible exercise of their duties.”152 The United States Court of Appeals for the Eighth Circuit found this justification insufficient and held that the practice violated the Equal Protection Clause of the Fourteenth Amendment and required that residents of Shannon County be allowed to run for the offices in question in Fall River County.153
DISTRICT BOUNDARIES DRAWN TO INCLUDE ONLY LAND OWNED BY NON-NATIVE AMERICANS

In 1999, the United States sued Day County, South Dakota, for denying Indians the right to vote in a sanitary district. In 1993, officials in Day County created a sanitary district near Enemy Swim Lake, but the district boundaries included only 13 percent of the land around the lake, all of which was owned by non-Native Americans. The County intentionally excluded the remaining land around the lake, which was owned by the Sisseton-Wahpeton Sioux Tribe and about 200 of the tribe’s members. Thus, “all of the voters in the district were white.” The case settled, and both the County and the district admitted that the boundaries unlawfully denied Native-American citizens the right to vote and agreed to a new plan that included the Native-owned land.

MID-DECADE REDISTRICTING TO ELIMINATE A MAJORITY-MINORITY DISTRICT

In 2000, in Emery v. Hunt, voters in South Dakota successfully challenged the state legislature’s attempt to abolish a majority Native-American single-member state house district. A 1991 apportionment provided that each of the State’s 35 districts would be entitled to one senate member and two house members elected on an at-large basis, with the exception of two single-member house districts—District 28A and District 28B—that were explicitly drawn to protect minority voting rights. Native Americans comprised 60 percent of the voting age population (VAP) of District 28A, which included the Cheyenne River Sioux Reservation and portions of the Standing Rock Sioux Reservation, but less than 4 percent of the VAP of District 28B. After a Native American won a Democratic primary in District 28A, the legislature adopted a mid-census plan that replaced District 28A and District 28B with a single majority-white multi-member house district.

Members of the Cheyenne River Sioux Tribe sought relief under both the South Dakota Constitution and Section 2 of the Voting Rights Act. The U.S. District Court for the District of South Dakota certified the state law question to the South Dakota Supreme Court, which held that the state legislature had “acted beyond its constitutional limits.” The South Dakota Constitution mandated apportionment in 1991 and every 10 years thereafter, and a 1995 memorandum by the South Dakota Legislative Research Council confirmed that, in the absence of a successful legal challenge, no redistricting could take place before 2001. The 1991 plan was reinstated, and Tom Van Norman became the first Native American from the Cheyenne River Sioux Indian Reservation to be elected to the South Dakota state legislature.

REFUSAL TO COMPLY WITH PRECLEARANCE REQUIREMENT OF SECTION 5 OF THE VRA

Shannon County and Todd County, South Dakota, home to the Pine Ridge and Rosebud Indian Reservations respectively, were covered by Section 5 of the VRA as a result of the 1975 amendments to the Act. Thus, any voting changes affecting those counties—including statewide changes—should have been submitted to the DOJ or the U.S. District Court for
the District of Columbia for preclearance. From 1976 to 2002, South Dakota enacted over 600 statutes and regulations that affected elections or voting in Shannon and Todd counties, yet fewer than 10 were submitted for preclearance. Some of the changes that were enacted without being submitted for preclearance that had the potential to dilute Native-American voting strength were authorization for municipalities to enact numbered place systems, which prevent single-shot voting, and a majority-vote requirement for primary races for the U.S. Senate, the U.S. House of Representatives, and governor (see Chapter 5 for more detail about these tactics).

In August 2002, members of the Oglala and Rosebud Sioux Tribes in Shannon and Todd counties filed suit against South Dakota seeking to force it to submit the more-than 600 voting changes for preclearance. The court entered a consent order in December 2002 in which the State admitted that it had failed to obtain preclearance for all of the voting changes it was required to preclear under Section 5. The State was immediately enjoined from implementing the statutes discussed above regarding a numbered seat requirement and majority-vote requirement, and required to develop a plan to submit all un-precleared voting changes in order to “promptly bring the State into full compliance with its obligations under Section 5.” The State made its first submission under the consent order in April 2003; it took approximately three years to complete the process of submitting the un-precleared voting changes.

“PACKING” MINORITIES INTO A DISTRICT

As discussed in Chapter 5, one method of diluting a minority group’s voting power is to “pack” the minorities into as few districts as possible. In 2006, a federal appeals court found in Bone Shirt v. Hazeltine that South Dakota’s 2001 legislative redistricting plan violated Section 2 of the VRA by packing one district with Native Americans at the expense of allowing Native Americans the opportunity to elect a candidate of their choice in two separate districts. As discussed above, South Dakota’s legislative plan has 35 districts, with each district electing two members of the State House of Representatives at-large and one member of the state Senate. The exception was District 28, which was divided into two single-member districts (28A and 28B). In the plan at issue, there were only two Native American-majority districts: Districts 27 and 28A. District 27 had a 90 percent Native-American population. District 26 was adjacent to District 27 and had only a 30 percent Native-American population. Under the plaintiffs’ proposed plan, District 26 would be split into 26A and 26B for the State House of Representatives, and Native Americans would comprise over 65 percent of the voting age population in District 27 and over 74 percent of the voting age population in District 26A. When the district court found that the State’s plan violated Section 2, it ordered the State to submit a remedial plan, but the State refused to do so. The district court adopted the plaintiffs’ remedial plan, and the appeals court affirmed.
TWO FORMS OF VOTE DILUTION: MALAPPORTIONMENT AND THE CREATION OF NEW DISTRICTS

As discussed in Chapter 5, when districts are malapportioned it can impermissibly dilute the voting strength of a minority group. In 2005, the U.S. District Court for the District of South Dakota ruled that county commissioner districts in Charles Mix County “are malapportioned in violation of the one-person-one-vote standard of the Equal Protection Clause.” Native Americans made up 29.5 percent of the population of Charles Mix County, which was governed by a three-member County Commission elected from three single-member districts. While the ideal district size—one where all districts have the same population—was 3,117, district populations ranged from 2,850 persons to 3,443 persons (a deviation of 19 percent from equally apportioned districts). In response to a lawsuit brought by four members of the Yankton Sioux Tribe, the county justified the malapportionment by pointing to its policy against splitting townships, towns, or cities when creating voting precincts. When evidence demonstrated that it would be possible to draw districts with a total deviation of less than 10 persons without splitting a single township, town, or city, the court ruled the apportionment unconstitutional and ordered that the districts be redrawn. The county then adopted a plan that created one majority-Native American district out of three, and in 2006 that district elected a tribal member to represent it on the Commission. Although the court had ruled on the malapportionment claim, the plaintiffs’ other claims were pending, and the parties entered into a consent decree in December 2007 under which the County became subject to preclearance until 2024 under the provisions of Section 3(c) of the VRA. Shortly after the court ruled in the plaintiffs’ favor on the malapportionment claim, however, voters circulated a petition to increase the number of commissioners from three to five—a change that would have again diluted Native-American representation. They obtained enough signatures to get the proposal on the ballot, and county voters approved the measure in November 2006. “The county . . . redrew its districts in early 2007, creating [only] one majority-[Native American] district out of five, thus diluting [Native-American] voting strength.” But pursuant to the consent decree, the County submitted the plan to DOJ for preclearance. DOJ interposed an objection to the five-member plan, noting that Charles Mix County and the State of South Dakota have a history of voting discrimination against Native Americans and that support for the effort to change the number of county commissioners increased dramatically following a Native-American candidate’s success in the June 2006 Democratic primary election. As a result of that denial of preclearance, the three-member plan remains in effect today.
UNEQUAL ACCESS TO EARLY VOTING SITES AND LATE REGISTRATION

South Dakota also provides an example of how expanding access to the ballot often does not benefit all groups equally. As discussed in detail in Chapter 6, in *Brooks v. Gant*, Native Americans in Shannon County, South Dakota, sought equal access to early voting and late registration sites.193 The site for early voting and late registration was a great distance from where most Native Americans in Shannon County lived; that distance, combined with limited access to vehicles and high rates of poverty, essentially meant that most Native Americans could vote only on Election Day and most non-Native Americans could vote—and register late—for 46 days before Election Day. The plaintiffs in *Brooks* sought to have a satellite office for early voting established on the reservation. The case settled when South Dakota officials and county defendants agreed to provide early voting at the satellite locations proposed by the plaintiffs through the year 2018.
**IV. ASIAN AMERICANS**

Asian Americans have long been denied the right to vote through restrictive naturalization laws and social and economic discrimination. Although they are currently the fastest-growing minority group in the United States, Asian Americans are underrepresented in almost every measure of political participation, from ballot boxes to the hallowed halls of government. Ongoing discrimination, low rates of political participation and representation, and unmet language assistance needs continue to impede Asian-American enfranchisement and justify the need for continued protection under the Voting Rights Act.

**History and Background**

Throughout U.S. history, Asians have been the target of discriminatory laws aimed at political and economic disenfranchisement. Foreign-born Asians had long been excluded from American political life due to citizenship restrictions based on race and national origin. One of the most powerful barriers to citizenship was the U.S. Naturalization Act of 1790, which specified that only “free white person[s]” were eligible to become naturalized citizens. While the 1870 Naturalization Act extended citizenship rights to individuals “of African descent,” courts continued to deny immigrants of Asian descent naturalization privileges. In 1878, the U.S. Court of Appeals for the Ninth Circuit interpreted the Act to bar Chinese naturalization because Chinese immigrants, as “Mongolians,” were not “white person[s]” within the meaning of the term in the statute, and thus not eligible for U.S. citizenship. In 1923, the Supreme Court reached a similar holding in *United States v. Bhagat Singh Thind*, when it determined that Thind, an Indian national, was “Caucasian” but not “white” within the meaning of the Act; he was therefore ineligible to become a naturalized citizen.

Asians were often victims of violence and scapegoating as nativist movements gained popularity, leading to widespread denial of social, political, and economic rights. Immigrant communities were targeted by discriminatory laws and regulations that placed restrictions on property and business ownership. One scholar noted,

> For example, a “miner’s tax” had to be paid by any foreigner (miner or not) who lived in a mining district, targeting the Chinese in effect if not by name. Similarly, commutation taxes required ship owners to post a $500 bond (or a payment of $5 to $50 per passenger) on each Chinese immigrant coming into the country, and more for mentally ill or disabled passengers. The 1862 Chinese police tax, designed to discourage Chinese immigration, forced all Chinese laborers to pay $2.50 per month.

In *Yick Wo v. Hopkins*, the Supreme Court heard an appeal from Yick Wo, a Chinese immigrant who was imprisoned in 1885 for violating a San Francisco ordinance that prohibited the
ownership of laundries constructed from certain building materials without the approval of the Board of Supervisors.\textsuperscript{202} At that time, many laundries were owned by residents of Chinese origin\textsuperscript{203} and requests for approval from Chinese business owners were uniformly denied.\textsuperscript{204} The Court held that the discriminatory enforcement of the law violated the Equal Protection Clause.\textsuperscript{205} In its decision the Court asserted that, “[Voting] is regarded as a fundamental political right, because [it is] preservative of all other rights.”\textsuperscript{206}

Despite this victory, the decision inflamed opposition to the rights of Asian immigrants, leading many Americans to support exclusion.\textsuperscript{207} In the 1944 case of \textit{Korematsu v. United States}, the Supreme Court found that the federal government did not violate equal protection or due process when it excluded U.S. citizens who were of Japanese origin from certain designated military areas within the United States during World War II, which included large regions of the West Coast.\textsuperscript{208} Executive Order 9066,\textsuperscript{209} which was at issue in the \textit{Korematsu} case, also authorized the internment of approximately 120,000 Japanese Americans who had been residing in these areas.\textsuperscript{210}

It was only relatively recently that Asian immigrants were finally granted the ability to naturalize and attain the rights of American citizenship. Prior to 1965, U.S. immigration policy heavily restricted immigration from Asia; the majority of people of Asian descent in the United States during this time were native-born Americans.\textsuperscript{211} It was not until 1943 that Chinese-born residents were first permitted to become citizens.\textsuperscript{212} Asian Indians and Filipinos were permitted to naturalize in 1946.\textsuperscript{213} For Japanese and other Asian ethnic groups, that right came in 1952.\textsuperscript{214}

As immigration from Asia increased, Asian Americans still faced substantial barriers to full enfranchisement. In 1965, the Hart-Celler Act removed immigration restrictions on the basis of national origin.\textsuperscript{215} This led to “unprecedented” immigration to the United States from Asia.\textsuperscript{216} Between 1976 and 1988 the Asian and Pacific Islander population in the United States grew by 107.8 percent.\textsuperscript{217}

The Asian-American communities that emerged often suffered discrimination due to their language minority status. Thus, Asian Americans who were eligible to vote were often prevented from exercising their rights by English literacy and language requirements.\textsuperscript{218} As Representative Edward R. Roybal noted in 1975, Asian Americans “bear[e] the brunt of this exclusionary practice not only at the voting booth but in the classroom as well[,]” where Asian-American students faced profound discrimination.\textsuperscript{219}

When Congress enacted Section 203 of the Voting Rights Act in 1975, jurisdictions were required to provide bilingual voting materials for designated language minorities. Yet areas with significant Asian-American populations with limited English proficiency were only covered under the bilingual assistance provisions in a few jurisdictions because there were few
places where limited English proficient voting age citizens from a particular Asian language comprised at least 5 percent of the citizen voting age population, which was the required threshold.\textsuperscript{220} To help address the problem of excluding large numbers of language-minority voters who did not meet the 5 percent coverage formula originally enacted in 1975, the 1992 Voting Rights Language Assistance Act expanded the coverage formula to include an alternative where a jurisdiction would also be covered if 10,000 voting age citizens from a minority language group were limited English proficient and the other criteria for coverage were satisfied.\textsuperscript{221} This amendment expanded Section 203 coverage to areas such as New York County for Chinese languages and Los Angeles County, where Chinese, Filipino, Japanese, and Korean communities benefitted from the newly offered language assistance.\textsuperscript{222} Though bilingual assistance under Section 203 certainly removed some barriers to Asian-American enfranchisement, Asian Americans have historically had limited success in invoking other protections under the Voting Rights Act.\textsuperscript{223} These difficulties are discussed at greater length below.

Geography

In 1960, there were fewer than 1 million Asian Americans in the United States, less than 0.5 percent of the country’s population.\textsuperscript{224} Asians were 5 percent of the population in 2005 and will be at least 9 percent in 2050.\textsuperscript{225} The Asian population grew by 46 percent from 2000 to
2010, a rate higher than any other group.\textsuperscript{226} This high growth rate is owed mostly to immigration, with 2012 statistics suggesting that 74 percent of Asian adults in the United States are foreign-born.\textsuperscript{227}

As can be seen from Map 4, Asians are concentrated in urban areas, and continue to live mostly on the coasts. New destination cities include Houston, Minneapolis, and Washington, D.C.\textsuperscript{228} Notably, although Asian-American populations are relatively concentrated in urban centers, this population distribution allows Asian Americans to exert relatively little electoral power, even in California, Hawaii, and New York.\textsuperscript{229} For example, while one-third of the Asian-American population resides in California, this population accounts for only 12 percent of California’s total electorate.\textsuperscript{230}

Even at lower levels of jurisdictional granularity, there are only eleven congressional districts in which Asian Americans make up 20% or more of the district’s electorate. Of the eleven congressional districts, all but one are in California or Hawaii. Among municipalities, Asian Americans make up 25% or more of the electorate in seventy-five districts.\textsuperscript{231}

The demographic distribution of Asian Americans has thus limited the group’s electoral impact.\textsuperscript{232}

**Participation**

Compared to other racial minority groups protected by the VRA, Asian Americans have low voter registration and turnout rates, despite being higher up on the education and income scales, indicators usually associated with higher levels of political participation.\textsuperscript{233} In 2008 and 2012, Asian Americans and Latinos voted at roughly the same rate even though other socioeconomic factors would normally suggest that their turnout rate would be higher.\textsuperscript{234} The voting gaps are not uniform across Asian groups—for example, participation rates are fairly high among Japanese Americans and quite low among Chinese Americans.\textsuperscript{235} The ethnic diversity among Asian Americans generally and the range in lengths of residence in the United States make it difficult to pinpoint explanations for Asian American turnout rates.\textsuperscript{236} “[L]imited political power and sustained disadvantages,” minimal availability of aid through “mobilization networks and organizational support,” and “institutional constraints such as haphazard naturalization requirements or tricky registration and voting rules” likely all contribute to low turnout rates.\textsuperscript{237}

Asian-American participation rates are likely also attributable to past and ongoing language discrimination. Asian Americans have long been discriminated against in the form of English-only voting mechanisms, in much the same way that African Americans were at one time effectively prevented from voting by literacy tests and other devices.\textsuperscript{238} Research indicates
that language assistance materials are of substantial importance to Asian-American voters. According to a 2013 report by Asian Americans Advancing Justice, “30 percent of Chinese Americans, 33 percent of Filipino Americans, 50 percent of Vietnamese Americans and 60 percent of Korean Americans in Los Angeles County used some form of language assistance in the 2008 presidential election.” Additionally, according to a 2012 report by Asian & Pacific Islander American (APIA) Vote, more than 1/5 of Asian-American voters surveyed indicated they would be more likely to vote if language assistance was provided.

**Elected Officials**

There are currently 11 Asian-American members of the U.S. House of Representatives, 98 members of state legislatures, and two Asian American governors. Of these officials, most represent jurisdictions in California, Hawaii, and New York, all of which are Asian-American population centers. Although data are scarce, research shows that it becomes increasingly difficult for an Asian-American candidate to get elected the higher the office, indicating that many elected officials may only get elected in those places where there is a high voting concentration of Asian Americans. Data from the 2008 National Asian American Survey shows that 22 percent of Asian Americans are represented by an Asian member of the city council, 17 percent have an Asian state representative and 8 percent have an Asian-American member of Congress. If one excludes California and Hawaii from the data pool, those numbers drop to 10 percent, 5 percent, and 1 percent, respectively.

“[W]e settled a case with San Mateo County […] to change the at-large system there to the district-based system. San Mateo County is over 40 percent Asian and Latino, yet their board of supervisors have been predominantly white for as long as people can remember. Through the settlement process in the California Voting Rights Act, communities will be able to engage in a community-based redistricting process and be able to ensure that Asian-American voters, as one district, [are] able to have meaningful opportunities to vote,” Joanna Cuevas Ingram, an attorney with the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, testified at the NCVR California state hearing.

**Types of Discrimination**

Some of the gap in Asian-American registration and voting may be explained by the fact that a majority of Asian Americans are foreign born and thus are not native English speakers, and may not speak English proficiently. Indeed, the 2006-2008 American Community Survey reported that 75 percent of Asian-American adults speak a language other than English at home. The “rate is 89 percent among foreign-born adults and…31 percent among native-born Asian Americans.”
As is documented in every election cycle by the Asian American Legal Defense and Education Fund (AALDEF), discrimination against Asian Americans persists at the polls. This is particularly true with regard to the failure to provide required language assistance and poll workers who are poorly trained on how to assist predominantly Asian and Asian-language-speaking voters at the polls.

In 2008, AALDEF observers monitored 229 poll sites in 11 targeted states and surveyed 16,665 voters. The organization reported that, “Language assistance, such as interpreters or translated voting materials, if any, was far from adequate. Notwithstanding federal mandates, poll workers were cavalier in providing language assistance to voters. In our survey, 254 Asian American voters complained that there were no interpreters or translated materials available to help them vote.” In one example from that year, AALDEF observers found that in New York City, where language assistance is required by law, a quarter of the Chinese and Korean interpreters needed were absent from the polls. In Boston, the United States DOJ had sued the city under Section 2 of the VRA for discrimination against Chinese interpreters and more than a quarter of Vietnamese voters, and a settlement was reached, applicable through the end of 2008, in which language assistance was mandated. None the less, in the 2008 election the AALDEF survey found 38 percent of respondents in Boston “wished to receive oral language assistance [but] could not find interpreters who spoke their language or dialect.”

According to AALDEF observers, problems continued in 2012, especially with regard to localities newly covered by Section 203 as a result of the 2011 coverage determinations. As discussed in Chapter 7, Bengali ballots were not provided to voters in Queens, New York; interpreters were lacking throughout New York City; and in Hamtramck, Michigan, there were insufficient numbers of Bengali interpreters. In both the 2008 and 2012 elections AALDEF found instances of hostility and rudeness, and occasional outright racist attitudes among poll workers.

From 1995 to 2014, 17 percent of successful challenges to a jurisdiction’s failure to provide adequate bilingual voting assistance involved one or more Asian language. Of these, Chinese was the language most often involved; the other languages involved in at least one case were Bengali, Ilocano, Japanese, Korean, Tagalog, and Vietnamese.

Of those jurisdictions formerly covered under Section 4 of the VRA, relatively few are home to a concentrated Asian-American population. Accordingly, a proportionally small number of Section 5 objections concerned Asian-American voters.

Of the 113 Section 5 preclearance denials during this time period, only three dealt with discrimination against these minority voters. Two of the three objections addressed procedures adopted by Georgia and Texas for verifying the citizenship status of voter registration...
applicants.\textsuperscript{256} This suggests that Asian Americans continue to face additional burdens associated with demonstrating their eligibility to participate in the political process.

As referenced above, Asian Americans also face particular difficulties in bringing successful challenges under Section 2 due to patterns of population distribution.\textsuperscript{257} Because the population of Asian Americans in most jurisdictions is proportionally small, there are not many jurisdictions where Asian Americans could satisfy the first \textit{Gingles} precondition of being able to constitute a voting majority in a geographically compact single-member district, which is necessary for a successful vote dilution challenge under Section 2 of the VRA.\textsuperscript{258}

\section*{V. CONCLUSION}

As discussed above, voting discrimination affecting African Americans, Latinos, Native Americans, and Asian Americans remains a significant issue. In the next two chapters, this report will explore in greater depth the various ways in which voting laws and practices impact the right to vote of these racial and ethnic minorities.