

# CHALLENGES to Fair Elections



## Ballot Access for Language Minority Voters and People with Disabilities

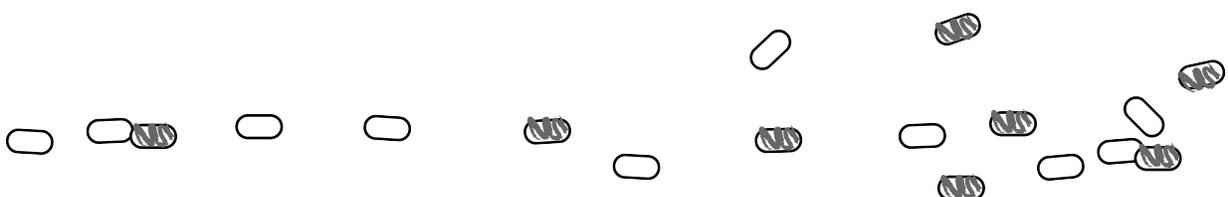
A properly functioning democracy encourages all eligible citizens to participate in elections. Our nation's commitment to this goal has resulted in landmark laws to assure that access to voting is available to all, including persons with disabilities and U.S. citizens who may have limited proficiency in English.<sup>1</sup> Vast numbers of eligible voters depend on enforcement of these laws to protect their right to vote, yet even as we approach the third major election cycle of the 21<sup>st</sup> century, it is clear that we still have a long way to go in assuring that all citizens enjoy access to the ballot.

### Where to Watch

**Alabama, California, and New York** already have been sued by advocates for the disabled and/or the U.S. Justice Department because of their failure to meet HAVA's requirements for disability-accessible voting machines for the 2006 elections. **Massachusetts** was not expected to be in compliance for the September primaries and possibly not for the November general election.

**Boston and Springfield, MA** remain under consent decrees allowing the Department of Justice to monitor elections for compliance with the language assistance provisions of the Voting Rights Act. The Asian American Legal Defense and Education Fund plans to monitor complaints about language-minority discrimination in eight states in 2006 (**NY, NJ, PA, VA, MA, MI, IL, and MD**).

**Three Texas counties** (Hale, Ector and Harris County) have been the subject of consent decrees or written agreements with the Justice Department requiring compliance with the language-minority provisions of the Voting Rights Act and monitoring of their treatment of Hispanic or Asian American citizens, and the Mexican American Legal Defense and Educational Fund reports that "Texas leads the nation in several categories of voting discrimination."<sup>2</sup>



## **The Facts:**

- There are more than 56 million American citizens with disabilities,<sup>3</sup> approximately 40 million of whom are of voting age.<sup>4</sup> Yet a 2001 GAO study found that only 16 percent of polling places were fully accessible to people with disabilities.<sup>5</sup> This is despite a federal law enacted in 1984 that requires all polling places for federal elections to be accessible to elderly voters and voters with disabilities.<sup>6</sup>
- Even where polling places are accessible, citizens with disabilities may be unable to vote independently and privately, because some states have failed to comply with federal requirements to provide fully accessible voting equipment for all elections after January 1, 2006.<sup>7</sup> For example, if the proper voting equipment is not available, blind voters and persons with manual disabilities must disclose their voting choices to someone who can assist them in filling out their ballots.
- The language-assistance requirements of the Voting Rights Act cover jurisdictions with over 60 million voting-age citizens,<sup>8</sup> yet many citizens continue to face denial of their basic rights to language assistance in voting. In the most recent federal elections, a survey showed that 70 percent of Texas counties covered by the language-assistance requirements of the Voting Rights Act were not complying with requirements to provide election materials in Spanish. At the same time, in Texas, there are still many Mexican Americans, as well as other racial minorities, who have limited English proficiency, often as a result of educational discrimination. In 2000, the U.S. Census reported that 473,099 Latino *native born citizens* of voting age in Texas were limited English proficient.<sup>9</sup>
- These problems extend to the East Coast as well. The U.S. Department of Justice has sued the cities of Boston, Lawrence and Springfield, Massachusetts in recent years, and is currently investigating the city of Lowell as well, because of their noncompliance with Voting Rights Act requirements for language assistance to Hispanic and Asian American citizens.<sup>10</sup>
- In Boston in particular, the Vietnamese community complained of being denied the right even to cast a provisional ballot at some polling places, while Chinese community groups reported complaints that poll workers improperly coerced the ballot choices of Chinese-speaking voters. The lawsuit filed by the Department of Justice alleged that the city denied limited-English speakers the right to vote by improperly influencing, coercing, or ignoring the ballot choices of Hispanic and Asian American voters, failing to meet requirements for providing election materials translated into Spanish, and not providing enough bilingual workers at the polls.<sup>11</sup> Boston entered into a consent decree requiring monitoring and compliance.<sup>12</sup>
- Incidents of harassment and discrimination toward Asian American voters in New York in recent years include a Queens county poll site coordinator saying, "I'll talk to [Asian voters] the way they talk to me when I call to order Chinese food," and then saying random English phrases in a mock Chinese accent; and a Kings County poll site coordinator demonstrating how to tell "the difference between Chinese and Japanese" by slanting her eyes up and down.<sup>13</sup>
- Congress enacted the language assistance provisions of the Voting Rights Act during the early 1970s after finding that English-only elections effectively blocked many Latino, Native American, Asian American and Alaska Native citizens from voting. The record of continuing discrimination and lack of access experienced by language minorities in U.S. elections convinced Congress this year to renew the language assistance provisions of the Voting Rights Act for another 25 years.

America cannot fulfill the promise of a truly inclusive democracy when many of our citizens are denied the basic tools they need to access the polling place or understand the ballots they will cast on Election Day. We need strong enforcement of the laws that Congress has enacted to protect these rights.

## References

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- 1 Provisions protecting the voting rights of language minorities are set forth in Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a and Section 4(f)(4) of the Voting Rights Act, 42 U.S.C. § 1973b(f)(4). Provisions protecting the voting rights of persons with disabilities are set forth in the Voting Accessibility for the Elderly and Handicapped Act (VAEHA), 42 U.S.C. § 1973ee *et seq.*; the Help America Vote Act, 42 U.S.C. § 15481; and the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134.
- 2 Texas Report, *supra* n. 4, at 3, 37-39.
- 3 <http://www.aapd-dc.org/dvpmain/pollaccess/accesspolls.html>
- 4 <http://www.aapd-dc.org/dvpmain/VoterEd/votehistory.html>
- 5 Government Accounting Office, Voters With Disabilities: Access to Polling Places and Alternative Voting Methods, October 2001, at 7.
- 6 The Voting Accessibility for the Elderly and Handicapped Act (VAEHA), 42 U.S.C. § 1973ee *et seq.*
- 7 The Help America Vote Act, 42 U.S.C. § 15481.
- 8 United State Election Assistance Commission, 2004 Election Day Survey.
- 9 Nina Perales, Luis Fibueroa, and Criselda G. Rivas, Voting Rights in Texas, 1982-2006 (June 2006) [hereafter, "Texas Report"] (available at <http://www.maldef.org/pdf/TexasVRA.pdf#search=%22hale%20county%20voting%20bilingual%20assistance%20discrimination%22>)
- 10 Stephanie Ebbert, "Lowell voting problems probed," Boston Globe, March 19, 2006.
- 11 Donovan Slack, "To build vote bias case, U.S. sought reports," Boston Globe, August 2, 2005.
- 12 Andrea Estes, "Polling places to usher in new era," Boston Globe, September 27, 2005.
- 13 Testimony of Margaret Fung, Executive Director Asian American Legal Defense and Education Fund, Before the U.S. Senate Committee on the Judiciary, Hearing on the Voting Rights Act: Continuing Need for Section 203's Provisions for Limited English Proficient Voters, June 13, 2006, at 4.



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