



Asian Americans and Election Reform

An Update on the Help America Vote Act (HAVA)

Asian American Legal Defense and Education Fund, April 2003

Asian Americans and The Help America Vote Act (HAVA)

Because of the 2000 Presidential election debacle in Florida and similar problems in the 2002 midterm elections, Congress passed the Help America Vote Act (HAVA) last December. This new law will make significant changes to voting across the country. This review explains certain provisions of the new law as they relate to Asian Americans and makes recommendations as states begin implementation of HAVA's new requirements.

Overview of HAVA

HAVA establishes a series of voting requirements, minimum voting standards, and new federal programs:

All states must provide voters with:

- opportunities to cast provisional ballots;
- access for persons with disabilities;
- voting information, such as sample ballots, voting instructions, and a statement of voter's rights;
- opportunities for voters to verify their selections, correct any errors, and notice if they overvote (i.e., vote for more than one candidate for a single office) before they cast their ballots; and
- procedures to make complaints when voting problems arise.

The law compels states to:

- require identification and verify new voters;
- create new statewide computerized voter lists;
- eliminate punch card voting systems;
- train poll workers in the law's new requirements; and
- include check-off boxes for U.S. citizenship and being 18 years of age on all mail-in voter registration forms.

The law also:

- creates a new federal Election Assistance Commission to study problems and make recommendations for improvements;
- establishes federal programs to expand poll worker recruitment; and
- provides federal money for states to implement HAVA's new provisions and to improve the administration of elections.

► New Identification Requirements

HAVA creates new identification requirements for first time voters. This includes the verification of all new voters through drivers' license numbers or the last four digits of Social Security numbers. These provisions may disproportionately affect new citizens and young adults. State implementation of HAVA should minimize the impact of these new requirements.

(See page 2 inside)

► Language Access to the Vote

Some jurisdictions already provide translated voting materials, such as ballots, voting machine instructions, and voter registration forms, and interpreters at polling sites to assist limited-English proficient voters. HAVA does not expand the requirement to provide bilingual ballots, but the statute has two provisions that may encourage expanded language assistance. *(See page 3 inside)*

► Monitoring for Compliance

In some states HAVA will help many Asian Americans vote. In others, it may discourage racial, ethnic, and language minorities from voting. Community groups should monitor elections to ensure that these new requirements, and all other election procedures, are not discriminatory. Problems should be reported to the U.S. Department of Justice, which is responsible for enforcing HAVA and the Voting Rights Act, local election officials, and AALDEF.

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► New Identification Requirements ◀

► Verification of All New Voters

HAVA requires that all new voters provide their drivers' license numbers or the last four digits of their Social Security numbers for verification of their names and dates of birth. For voters who do not have these, the state will assign unique numbers to identify those individuals.

Flaws in the databases of state motor vehicles offices or Social Security Administration will make matching records with voter registration forms difficult, because the information may not always be identical.

Processing voter registration forms submitted by Asian Americans is already inadequate. Family surnames are often reserved with first names. Some Asian Americans use Anglicized names in addition to their Chinese names. This new verification requirement will make it especially difficult for voters who do not have drivers' licenses or social security numbers.

The right to vote is so important that new voters should be permitted to provide other documents or forms of identification if they do not give or do not have drivers' license numbers or the last four digits of their Social Security numbers.

► Expanded Poll Worker Recruitment

HAVA creates a new national college program to expand poll worker recruitment. Bilingual poll workers can provide voters with language assistance in jurisdictions that do not translate voting materials. Community groups can encourage the targeted recruitment of minority and bilingual applicants for poll worker positions.

► State Implementation of HAVA

In order for states to receive federal money, a committee must develop and submit a plan to implement the new requirements of HAVA. These task forces must have citizen participation and accept public input. This is an opportunity for community groups to advocate for these recommendations and other election reforms.

► ID of New Voters who Register by Mail

HAVA requires all new voters who register by mail to present either a "current and valid photo identification; or ... a utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter." A copy can be included with their mailed-in voter registration form or presented in person when they come to the polls. This is not required if voters submit either their drivers' license numbers or the last four digits of Social Security numbers, and their names and dates of birth match.

States should narrowly apply this new ID provision only to voters who register by mail. This provision should not apply to those who register in person or whose voter registration forms were personally delivered. Thus, if a group conducts a voter registration drive and delivers completed voter registration forms to the local registrar, these new voters should not be required to show identification when they vote.

However, some states may be more restrictive and apply this ID requirement to all voters or all new voters regardless of whether they register in person or by mail. Advocates should monitor carefully how these ID requirements are implemented.

States should also accept many forms of photo-identification and government documents. For example, student IDs, Medicaid/Medicare cards, Section 8 (public housing) rent statements, and naturalization certificates are not mentioned in the statute but should be allowed. Also, personal mail delivered by the U.S. Postal Service could also be used to establish voters' names and addresses.

There is a serious potential for discriminatory application. Although ID is not currently required to vote in New York, AALDEF found in the 2001 elections that poll workers improperly required more than 300 Asian American voters to show identification in order to vote. States must carefully train poll workers in these new provisions so that citizens do not lose their right to vote.

Other resources on HAVA are available from:

Dēmos: www.demos-usa.org

Leadership Conf. on Civil Rights: www.civilrights.org

League of Women Voters: www.lwv.org

NY Public Interest Research Group: www.nypirg.org

► Language Access to the Vote ◀

► Mandatory Language Assistance

Mandatory language assistance in HAVA refers to the Language Assistance Provisions (Section 203) of the Voting Rights Act. HAVA does not expand the languages or jurisdictions already covered under the Voting Rights Act.

Under Section 203, certain counties must translate ballots, voter registration forms, voting instructions, *and all other* voting materials, and provide interpreters to assist limited-English proficient voters. Voters also have the right to choose someone to bring into the voting booth to help them vote.

This is required when the census reports that a county has 5% or more than 10,000 voting-age (over 18 years old) citizens who speak the same Hispanic, Asian, or Native American language, have limited English proficiency, and, as a group, have a higher illiteracy rate than the national illiteracy rate.

There have been many problems in implementation of these provisions. For example:

- poll workers have not provided voters with translated materials or allowed them to receive oral interpretation;
- translated materials have been missing or hidden;
- materials have been mistranslated (For example in 2000, New York ballots reversed the Chinese translations of the party headings so Democratic candidates were listed as Republicans and vice versa.); and
- too few interpreters were assigned to polling sites or interpreters spoke the wrong language or dialect.

Although HAVA does not add new counties or languages, state implementation of HAVA could address some of these deficiencies.

HAVA requires states to create grievance procedures and an “appropriate remedy” for voters whose rights have been violated. Since HAVA incorporates Section 203 of the Voting Rights Act, it could provide recourse for voters who are denied language assistance.

Lastly, HAVA requires accessibility for voters with disabilities. In counties covered under the Voting Rights Act, voting machines for the disabled must also be able to accommodate limited-English proficient disabled voters. Anything written or displayed in English must also be displayed in the required Asian languages. Audio voting for the blind must be multilingual. This may greatly help senior citizens, who have complained that Chinese characters on the ballots are too small to read.

► Voluntary Assistance

HAVA provides federal money for election improvements, which may include improving accessibility for “individuals with limited proficiency in the English language.” This is not a specific obligation, and states have broad discretion in whether to use the money for translating materials and providing interpreters or some other purpose altogether. If states opt to translate materials, states also decide which materials to translate and where to provide them. Because there are no specific requirements, local advocacy is necessary.

Where assistance is not required under the Voting Rights Act, a state may develop an alternative methodology to determine which languages and places to provide language assistance. This would change periodically depending on the size and growth of the language minority group, rate of citizenship, and level of English proficiency. Once languages and localities are identified, all voting materials should be translated, including the ballot.

Asian Language Coverage Under Section 203 of the Voting Rights Act Based on Census 2000

Alaska

Kodiak Island Borough: Filipino

California

Alameda: Chinese

Los Angeles: Chinese, Japanese,
Korean, Filipino, Vietnamese

Orange: Chinese, Korean, Vietnamese

San Diego: Filipino

San Francisco: Chinese

San Mateo: Chinese

Santa Clara: Chinese, Filipino, Vietnamese

Hawai'i

Honolulu: Chinese, Filipino, Japanese

Maui: Filipino

Illinois

Cook: Chinese

New York

Kings (Brooklyn): Chinese

New York (Manhattan): Chinese

Queens: Chinese, Korean

Texas

Harris: Vietnamese

Washington

King: Chinese

Voluntary Language Assistance (continued)

Another option is to translate only certain materials and make them available statewide. Because HAVA systematizes many voting operations, voter information – including registration forms, voting instructions, nonpartisan election guides, and voters’ rights flyers – can be easily provided in various languages. This would minimize costs because such materials would only need to be translated once in order to be used across the state.

Additionally, because HAVA mandates access for voters with disabilities, some jurisdictions may use federal funds to purchase new voting machines. Some of these, like ATM-like touch screens, can easily accommodate various languages. Advocates should ensure new voting machines have multiple language capability.

Although HAVA does not expand language assistance already required under the Voting Rights Act, HAVA can be a tool for states to voluntarily provide such assistance, thereby enabling many more eligible Asian Americans vote.

About AALDEF

Founded in 1974, AALDEF is the first organization on the East Coast to protect and promote the civil rights of Asian Americans through litigation, legal advocacy, and community education. AALDEF's program priorities include immigrants' rights, economic justice for workers, the elimination of anti-Asian violence and police misconduct, voting rights and civic participation, and language rights.

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► **New Provisional Ballots**

Many Asian Americans have not been allowed to vote because their names were missing from the list of registered voters. In 2001, more than 200 Asian American voters in New York complained of this problem. Occasionally, their first names and surnames were simply inverted in the voter rolls.

HAVA requires that provisional ballots be offered to voters who believe they are registered, but some deficiency prevents them from voting. If their names do not appear on the list of registered voters on election day, voters can still cast provisional ballots. Afterwards, if those voters are eligible to vote, their ballots must be counted.

The *counting* of ballots, however, is left to state law. Some states have extremely restrictive requirements. For example, in New York, if voters cast provisional ballots (known as “affidavit ballots”), they must be at their exact polling sites *and* election districts and there must be no stray marks on the ballot envelopes. Otherwise, the ballot is not counted.

State implementation of HAVA is an opportunity to change state laws so that all ballots, cast by eligible voters, are counted. For instance, if voters are at the wrong polling sites or election districts, but they are still in the congressional district in which they reside, then their votes for Congress should be counted.

Additionally, advocates should urge that provisional ballots also serve as voter registration forms. Therefore, if there are actual deficiencies in voters’ registrations, and their ballots are not counted, the provisional ballots (or envelopes) can be used to register them for future elections. States like Maryland and Georgia already do this, and other states should follow suit.