



## **ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND**

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### COMPLAINT

Dear Philadelphia Commission on Human Relations:

We are writing as legal counsel on behalf of Boat People SOS-Delaware Valley ("BPSOS") and Hong Nguyen to allege a violation of the Fair Practices Ordinance ("FPO") by the Philadelphia City Commissioners ("Commissioners"), an administrative body of the Philadelphia City government located at Philadelphia City Hall, Rms 130-134, Philadelphia, PA 19107.

BPSOS is a national organization with the mission to empower, equip, and organize the Vietnamese American community. The Delaware Valley Regional Branch of BPSOS serves limited English-proficient ("LEP") Asian-American voters in Philadelphia and is located at 600 Washington Avenue, Suite 184U-A, Philadelphia, PA 19147. Hong Nguyen is a LEP American citizen residing at 2627 S 61<sup>st</sup> Street, Philadelphia, PA 19142. Ms. Nguyen is a registered voter in Philadelphia County.

The Commissioners are responsible for administering elections from the local to federal levels in Philadelphia County. This responsibility includes, among other things: reaching out to, educating, and registering voters; ensuring the right of each voter to vote at the polls or via absentee ballot; preparing ballots and other election-related materials; operating poll site locations; hiring and training poll workers; and canvassing and certifying the vote.

The FPO protects anyone who lives in, works in, or visits Philadelphia from unlawful public accommodations discrimination; practices made unlawful by the FPO include national origin discrimination in the provision of city services. The Commissioners have violated the FPO by discriminating against LEP Asian American voters in its administration of elections, a city service.

The Philadelphia Commission on Human Relations ("PCHR") recognizes that discrimination on the basis of language can constitute national origin discrimination. Naturalized voters who were born in an Asian country and who have limited English proficiency ("LEP") compose a substantial segment of Philadelphia's voting population. The Commissioners have repeatedly discriminated against these voters by failing and refusing to provide adequate Asian language assistance in the form of interpreters or translated voter registration forms, ballots, instruction forms, and exterior signage during elections. In doing so, the Commissioners have effectively conditioned the right and ability to cast a free and informed ballot on English fluency, in violation of the FPO's prohibition against discrimination on the basis of language.

Asian LEP voters had their access to voting interfered with most recently in the November 5, 2013 general elections, although this discrimination has occurred on numerous occasions spanning back in time. The documented history of the Commissioners' effective denial and abridgement of Asian LEP voters' right to vote establishes that the Asian LEP voters in Philadelphia will continue to experience unlawful public accommodations discrimination without an order of relief from the PCHR.

## A. The Requirements of the FPO

The Fair Practices Ordinance protects against public accommodations discrimination on the basis of national origin, and defines “public accommodations” to include city services. The administration of elections is a “service” provided by the Philadelphia City Commissioners, a city department.<sup>1</sup> The Commissioners may therefore not discriminate on the basis of national origin in its administration of elections.

The PCHR has recognized that national origin discrimination encompasses discrimination on the basis of language, and is thereby actionable under the FPO.<sup>2</sup> A significant number of voters in Philadelphia are foreign-born, naturalized citizens hailing from various nations in Asia, including Cambodia, China, Korea, and Vietnam.<sup>3</sup>

**Table 1**

<b>U.S. Census Data (2011)<sup>4</sup></b>			
<b>Asians in Philadelphia</b>	<b>Number</b>	<b>Percentage of overall Asian population in Philadelphia</b>	<b>Percentage of overall population in Philadelphia</b>
Foreign-born and naturalized	32,972	48.72% (of foreign-born Asians in Philadelphia) 33.25% (of all Asians in Philadelphia)	34.54% (of foreign-born, naturalized citizens in Philadelphia) 2.15% (of total Philadelphia population)
Speak English “less than very well”	46,890 (over the age of 5)	50.3%	3.1%

Although these individuals may have been required to have some level of limited English proficiency to pass the naturalization test, they may nevertheless not have a sufficient grasp of the English language in order to fully comprehend and navigate what can be a complicated and unintuitive voting process.<sup>5</sup> LEP Asian American voters may face serious difficulties, for

<sup>1</sup> See *City Commissioner’s Office*, CITY OF PHILA., <http://www.phila.gov/commissioners/index.html> (last visited Jul. 2, 2013).

<sup>2</sup> See *Public Accommodations Discrimination*, PHILA. COMM’N ON HUM. REL., CITY OF PHILA., <http://www.phila.gov/HumanRelations/DiscriminationAndEnforcement/WhatIsDiscrimination/Pages/PublicAccommodationsDiscrimination.aspx> (last visited Jul. 2, 2013); see also *Hearing on Bill 110050, Bill 110060, & Res. 110063 Before the Comm. on Law & Govt.*, 2011 City Council, Reg. Sess. 34-35 (Phila. 2011) (statement of Rue Landau, Exec. Dir., Phila. Hum. Rel. Comm’n).

<sup>3</sup> See *infra* Table 1.

<sup>4</sup> Data taken or extrapolated from *2011 American Community Survey 1-Year Estimates: Selected Population Profile in the United States*, U.S. CENSUS BUREAU, <http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (last visited Jul. 16, 2013) (narrowed as needed by geography and race).

<sup>5</sup> See *infra* Table 2; compare 8 U.S.C. § 1423(a)(1) (only requiring that an individual be able to understand “words in ordinary usage” and “read or write simple words and phrases” in English in order to pass the language requirement for U.S. naturalization), and 2013 Primary Sample Ballot, Phila. City Commissioner’s Office,

example, in finding the correct polling site, understanding the ballot, knowing how to operate the voting machine, and understanding how to correct a ballot; they may even be discouraged from attempting to vote at all. Furthermore, they may not have any family members who understand the voting process and are able to translate for them.<sup>6</sup> These LEP Asian American voters thus need language assistance to meaningfully participate in elections.

**Table 2**

<b>Results from Exit Polling of Asian Voters During the 2012 Philadelphia General Elections<sup>7</sup></b>	
<b>Number Surveyed</b>	193
<b>Naturalized, Foreign-Born</b>	78%
<b>First-Time Voter</b>	28%
<b>Limited English-Proficient</b>	57%
-Chinese	74%
-Vietnamese	67%
-Korean	56%
-Cambodian	33%

The Commissioners, however, have refused to provide LEP Asian American voters with much-needed language assistance. The FPO defines discrimination as “[a]ny direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived...national origin...”<sup>8</sup> Although the Commissioners have not explicitly denied the right to vote to Asian language minority groups, it has severely hindered the exercise of this right by effectively conditioning it on English fluency, thereby indirectly excluding and restricting the votes of qualified individuals. The Commissioners have therefore engaged in national origin discrimination by failing to provide language assistance to voters who share the “linguistic characteristics of a national origin group” such as Cambodian-, Chinese-, Korean-, or Vietnamese-born LEP Americans.

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<http://phillyelection.com/sballot7.pdf> (containing complex or election-specific terms such as “Controller,” “Ward,” and “District Attorney”).

<sup>6</sup> See, e.g., *2011 American Community Survey 1-Year Estimates: No One Age 14 and Over Speaks English Only or Speaks English “Very Well” (Philadelphia County)*, U.S. CENSUS BUREAU, <http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (use sidebar on left to narrow selections by “Topic” (People→Language→English Usage) and “Geographies” (County→Pennsylvania→Philadelphia County)) (last visited Jul.16, 2013) (27% of households in Philadelphia speaking an Asian language had no member fluent in English over the age of 14).

<sup>7</sup> Letter from Glenn D. Magpantay, Democracy Program Dir., Asian Am. Legal Def. & Educ. Fund (AALDEF), & Nancy Nguyen, Branch Manager, Boat People SOS, Inc. – Del. Valley, to Anthony Clark, City Comm’n Chair, Philadelphia City Commissioner’s Office, et al. (Feb. 4, 2013) (on file with AALDEF).

<sup>8</sup> Fair Practices Ordinance: Prohibitions Against Unlawful Discrimination (“FPO”), PHILA., PA., CODE ch. 9-1100, § 9-1102(e) (2011).

## **B. Documented Instances of Unlawful Discrimination**

### ***November 5, 2013 General Elections***

The Asian American Legal Defense and Education Fund (“AALDEF”) received complaints of serious language assistance problems similar to those found in prior elections listed below. This indicates the Commissioners’ persistent and ongoing practice of unlawful discrimination by continually refusing to provide adequate languages assistance for LEP Asian American voters in Philadelphia elections.

### ***May 21, 2013 Primary Elections***

On May 13, 2013, AALDEF met with Philadelphia elections officials – among whom included Robert Aversa, Fred Voigt, Timothy Dowling, and Al Schmidt – to discuss language assistance for LEP Asian American voters in Philadelphia. Elections officials assured AALDEF that all poll sites would be supplied with a blue instruction card explaining how to access the Telephone Interpreter Service (“Language Line”), so that LEP Asian Americans who did not have access to an on-site interpreter could receive language assistance by following the instructions provided on the card. However, none of the fourteen poll sites to which AALDEF sent observers displayed the blue Language Line card, and none of the election judges at these poll sites knew how to utilize the Language Line service.

- No blue Language Line card was displayed at the following poll sites:
  - Chinese Christian Church & Center, 225 N. 10th Street, Philadelphia, PA 19107
  - South Philadelphia High School, 2101 S. Broad St., Philadelphia, PA 19148
  - John H. Taggart School, 400 W. Porter St., Philadelphia, PA 19148
  - Chi Movement Arts Center, 1316 S. 9th St., Philadelphia, PA 19147
  - William P. Roche American Legion Post 21, 6400 Paschall Ave., Philadelphia, PA 19142
  - Olney High School, 100 W. Duncannon Ave., Philadelphia, PA 19120
  - Lowell Elementary School, 450 W. Nedro Ave., Philadelphia, PA 19120
  - St. Helena School, 6101 N. 5th St., Philadelphia, PA 19120
  - Phillip Murray House, 6300 Old York Rd., Philadelphia, PA 19141
- South Philadelphia Branch Library, 1700 S. Broad St., Philadelphia, PA 19148
  - Election judge located and displayed the blue Language Line card only upon request. There was only one copy of the blue Language Line card, and the election judge decided to display the English-language side of the card rather than the translated side of the card.
- Phillip Murray House, 6300 Old York Rd., Philadelphia, PA 19141
  - Poll workers stated that there are many LEP Korean American voters who reside in the building and vote at this poll site. Although there is usually a Korean interpreter available to assist voters at this site, there was no interpreter provided for this particular election. This caused some LEP Korean American voters to be turned away, and created long delays for all voters.
  - There was no blue Language Line card displayed, and poll workers were unfamiliar with how to utilize the service.

- St. George Greek Orthodox Church, 256 8th St., Philadelphia, PA 19107
  - Poll workers stated that this site usually receives some LEP Chinese- and Vietnamese-American voters from the 850 Locust St. Senior Center, but there were no interpreters for the Mandarin- and Vietnamese-speaking voters.
  - No blue Language Line card was displayed.
- Santore Southwark Library, 928 S. 7th St., Philadelphia, PA 19147
  - The judge of elections, Michael Crumbly, stated that there is generally a Vietnamese interpreter who assists many LEP Vietnamese-American voters at this site. However, the Vietnamese interpreter was not present at the poll site for this election.
  - No blue Language Line card was displayed.
- St. Maron's Church, 1013 Ellsworth St., 19147
  - The interpreter that usually assists LEP Chinese American voters was not present because he had to work.
  - No blue Language Line card was displayed.
- Thomas Jefferson Alumni Hall, 1020 Locust St., Philadelphia, PA 19107
  - The one Chinese interpreter assigned to the site, who was observed to have assisted at least thirty LEP Chinese American voters, is inadequate to meet the language assistance needs of the large number of LEP Chinese American voters who vote at this poll site. More than one Chinese interpreter should be assigned to this poll site for busier elections, and election materials should be translated into Chinese.
  - No blue Language Line card was displayed.

### ***November 6, 2012 General Elections***

- South Philadelphia Branch Library, 1700 S. Broad St., Philadelphia, PA 19148
  - Nine voters needed interpreters, but none were available in their language. Most of the voters were Vietnamese-American.
  - Lanh Thanh Phan of 1404 Castle Ave. voted by provisional ballot, but experienced difficulty because she did not have an interpreter.
  - Dien Binh Chau of 1514 Moore St. arrived at the South Philadelphia Branch Library poll site to vote and needed language assistance. Poll workers asked a Vietnamese speaker standing outside the poll site to provide assistance to the voter so that Mr. Chau could vote. Asking random, untrained volunteers from the street to serve as interpreters is not an adequate solution, and is problematic to ensuring the quality of language assistance and the integrity of elections.
  - Hanh Van Hoang of 1638 S. 15th St. was initially directed to vote at the South Philadelphia Branch Library. His name was not on the list and there was no interpreter to assist him. The poll workers at the South Philadelphia Branch Library redirected him to another poll site.
- Lowell Elementary School, 450 W. Nedro Ave., Philadelphia, PA 19120
  - Three voters needed interpreters, but none were available in their language. Most of the voters were Cambodian-American.
- Thomas Jefferson Alumni Hall, 1020 Locust St., Philadelphia, PA 19107

- Two voters needed interpreters, but none were available in their language. Most of the voters were Chinese-American.
- Ascension Manor, 970 N. 7th St., Philadelphia, PA 19123
  - Samuel E. Yeck of 911 N. Franklin St., Apt. 408, reported there were no Chinese interpreters to assist the Chinese-speaking voters at this building. Mr. Yeck also suggested that election materials be provided in Chinese to assist the LEP Chinese-speaking voters who vote at this site.
- Chinese Christian Church & Center, 225 N. 10th Street, Philadelphia, PA 19107
  - One voter, Wen Lei Zhao, reported that she observed three LEP Mandarin-speaking voters who did not receive language assistance.
- Long T. Bui of 1904 S. Bancroft St. registered to vote several months before Election Day but never received any notification in the mail. On Election Day, he went to at least 3 different poll sites to try to cast his vote but was unsuccessful. He did not have a Vietnamese-speaking interpreter to help him find his correct poll site, and was ultimately unable to vote.
- Hai Mach of 1902 S. 18th St. went to 3 different poll sites before he was able to vote because he had no help figuring out his correct poll site. Mr. Mach did not have a Vietnamese interpreter.

Although the preceding is a list of the most recent instances of unlawful discrimination perpetrated by the Philadelphia City Commissioners, there are countless other situations during previous elections in which LEP Asian American voters were turned away, unable to vote, or severely hindered in their ability to cast an informed ballot because of their language ability.<sup>9</sup> This documented history of inadequate language assistance, and the resultant difficulties LEP Asian American voters have had during elections, speaks to the discriminatory effect the inaction of the Philadelphia City Commissioners has had and continues to have on the rights of LEP Asian American voters. Furthermore, the Commissioners have decreased the number of Asian-language interpreters employed in each successive election; this suggests that LEP Asian American voters will continue to suffer an increasing amount of discrimination in their access to voting unless the PCHR orders the Commissioners to provide Asian language assistance during elections.

### **C. Remedy Requested**

The Philadelphia Commission on Human Relations is charged with upholding the provisions of the FPO and ensuring “that all persons regardless of...national origin...enjoy the full benefits of citizenship.”<sup>10</sup> The Commissioners’ refusal to provide adequate Asian language assistance during elections infringes on the right of LEP voters of Asian national origin to vote in a free and informed manner, in violation of the FPO.

The FPO empowers the PCHR to order relief for harms suffered as a result of the violation, including “any injunctive or other equitable relief, including extending full, equal, unsegregated public accommodations, advantages and facilities...”<sup>11</sup> Complainants therefore request that the

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<sup>9</sup> See *infra* Appendix.

<sup>10</sup> FPO, § 9-1101(e).

<sup>11</sup> Id. at § 9-1107(1)(a).

PCHR order the Philadelphia City Commissioners to provide Asian-language interpreters, translated voting materials (including registration forms, instructions, ballots, and exterior signage), and/or any other language assistance it deems appropriate and adequate.

Respectfully submitted,

ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

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## APPENDIX

1. AALDEF letter to Philadelphia Election Officials dated July 2, 2013
2. AALDEF letter to Philadelphia Election Officials dated February 4, 2013
3. AALDEF letter to Philadelphia Election Officials dated May 16, 2012
4. AALDEF letter to Philadelphia Election Officials dated August 15, 2011
5. AALDEF letter to Philadelphia Election Officials dated December 13, 2010
6. AALDEF letter to Philadelphia Election Officials dated March 9, 2009
7. AALDEF letter to Philadelphia Election Officials dated July 1, 2008
8. AALDEF letter to Philadelphia Election Officials dated June 20, 2007