



ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

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January 3, 2014

ATTN: NVRA Federal Form Comments
U.S. Election Assistance Commission
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

Re: EAC-2013-0004, Public Submission

Dear Commissioners,

The Asian American Legal Defense and Education Fund (AALDEF) is a 40-year-old national civil rights organization based in New York City that promotes and protects the civil rights of Asian Americans through litigation, legal advocacy, and community education. AALDEF submits this statement to oppose any effort to modify state-specific instructions on the National Mail Voter Registration Form (Federal Form) which would require additional proof of citizenship beyond that already required by the Federal Form.

AALDEF submitted an amicus brief to the Supreme Court in *Arizona v. ITCA*, challenging Arizona's Proposition 200, which required additional proof of citizenship for voter registration and was ultimately struck down by the Court.¹ AALDEF has also monitored elections through annual multilingual exit poll surveys since 1988. In 2012, AALDEF dispatched over 850 attorneys, law students, and community volunteers to 127 poll sites in 14 states to document voter problems on Election Day.²

The Asian American Population

Asian Americans are the country's fastest growing minority group estimated to number more than eighteen million.³ They also constitute the largest segment of new immigrants to the United States. Though Asian Americans aim to participate in the electoral franchise, they are often unfamiliar with the American political process, or their participation is met with resistance. Asian Americans have had to overcome many barriers in order to exercise their right to vote – especially in 2012.

¹ 133 S. Ct. 2247 (2013)

² Asian American Legal Defense and Education Fund, *Asian American Access to Democracy in the 2012 Elections* (2013), available at <http://aaldef.org/Access%20to%20Democracy%20Report%202012.pdf>

³ U.S. CENSUS BUREAU, OVERVIEW OF RACE AND HISPANIC ORIGIN: 2010, at 7 (2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

Congress enacted the National Voter Registration Act (NVRA) to promote voter registration and to specifically eliminate state-imposed voting requirements that disproportionately harmed voter participation by racial minorities. Adding state-specific instructions on the Federal Form to require additional documentary proof of citizenship for only 3 states would complicate a relatively simple process, create confusion, especially in immigrant and limited English proficient (LEP) communities and provide a barrier to voting to communities that already have to navigate around numerous obstacles in order to vote, as documented in AALDEF's report.⁴ Allowing Arizona, Georgia and Kansas to impose state-specific additional requirements is directly inapposite to the spirit and the very purpose of the NVRA, thus their request should again be denied.

Legislative Intent of the NVRA and the Federal Form

The legislative history of the NVRA makes clear that allowing a State to require documentary proof of citizenship is contrary to the purpose of the NVRA. Before the NVRA was passed by Congress, the Senate passed an amendment to the NVRA that provided, “[n]othing in this Act shall prevent a State from requiring presentation of documentation relating to citizenship.”⁵ The amendment was ultimately rejected on the basis that the amendment “is not necessary or consistent with the purposes of the Act.”⁶ In short, the NVRA was enacted with the intent of ameliorating voter registration for federal elections. Congress aimed to create uniformity in the voter registration process to avoid discriminatory practices by States and local voting officials, which are furthered by States’ arduous proof-of-citizenship requirements.

The request by Arizona, Georgia and Kansas are at odds with the purpose and legislative history of the federal statute. Congress enacted the NVRA “to establish procedures that [would] increase the number of eligible citizens who register to vote in elections for Federal office” and “to protect the integrity of the electoral process,” among other things.⁷ The NVRA makes plain that “the right of citizens of the United States to vote is a fundamental right,” and “discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups including racial minorities.”⁸ In particular, the House Report for the NVRA states that impediments to voting—such as the poll tax and literacy tests—were eliminated by the enactment of the Voting Rights Act of 1965, “but left a complicated maze of local laws and procedures, in some cases as restrictive as the outlawed practices, through which eligible citizens had to navigate in order to exercise their right to vote.”⁹ Thus, according to the House Report, “[t]he unfinished business of registration reform [was] to reduce these obstacles to voting to the absolute minimum while maintaining the integrity of the electoral process.”¹⁰

⁴ Asian American Legal Defense and Education Fund, *Asian American Access to Democracy in the 2012 Elections* (2013), available at <http://aaldef.org/Access%20to%20Democracy%20Report%202012.pdf>

⁵ 139 Cong. Rec. S2897-04 (daily ed. Mar. 16, 1993).

⁶ H.R. Rep. No. 103-66, at 23-24 (1993) (Conf. Rep.)

⁷ 42 U.S.C. § 1973gg(b).

⁸ *See id.* § 1973gg(a).

⁹ H.R. Rep. No. 103-9, at 3 (1993), reprinted in 1993 U.S.C.C.A.N. 105, 106-7.

¹⁰ H.R. Rep. No. 103-9, at 3 (1993), reprinted in 1993 U.S.C.C.A.N. 105, 107.

Indeed, those testifying before the Congress have confirmed that “. . . registration procedures in the United States were not uniform, were [discriminatory] and, in some cases, were interpreted in such a manner as to deny eligible citizens their right to vote.”¹¹

It is important to note that minority communities, including Asian American citizens, were instrumental in drafting the NVRA, given its end goal and purpose of increasing ballot access and voter participation for all citizens. Specifically, AALDEF participated in the comment period and hearings related to the law.

Likewise, in an attempt to further eliminate barriers to registration, in 2010, the EAC translated the Federal Form into 5 Asian languages: Chinese, Japanese, Korean, Tagalog and Vietnamese.¹² Many Asian American prefer to use the Federal Form because they are translated into Asian languages, particularly in states that do not translate their state voter registration forms.

The results from our poll monitoring project show that many Asian American voters are registering and voting for the first time, are LEP, foreign-born and are unfamiliar with the voting process. Altering the Federal Form would unnecessarily complicate the registration process for LEP Asian Americans and other immigrant groups and frustrate the very purpose of the Federal Form.

Arizona, Georgia, and Kansas, in Particular, Have Histories of Explicit Anti-Asian Discrimination.

The true intent of the requested state-specific alterations to the Federal Form is to disenfranchise eligible citizens from voting and participating in the electoral franchise. Indeed, the states who have requested the alteration all have histories of discriminating against Asian Americans and minorities.

Arizona had an anti-miscegenation law that barred Asians from marrying whites. Asian Americans could not own property because of Alien Land Laws. During World War II, Arizona housed an internment camp of Japanese and Japanese Americans. Arizona’s more recent anti-immigrant and anti-affirmative action laws have disproportionately impacted its growing Asian American population.

Kansas’s Alien Land Law was only repealed in 2002. Georgia had its own anti-miscegenation law and recent anti-immigration legislation bars many young people from attending college. Given such racist histories, laws that limit voting must be suspect as efforts to disenfranchise Asian Americans.

The laws give election workers the excuse to target Asian American voters. In the last election, the AALDEF ran a 14-state multilingual Election Protection effort. 249 voters were

¹¹ H.R. Rep. No. 103-9, at 4 (1993), *reprinted in* 1993 U.S.C.C.A.N. 105, 108.

¹² See United States EAC Voter Accessibility, http://www.eac.gov/voter_resourcevotings/_accessibility.aspx; see also Glenn Magpantay, AALDEF Commends EAC for Translated Voter Registration Forms (Mar. 11, 2010), <http://aaldef.org/press-releases/press-release/post.html>.

inappropriately required to prove their U.S. citizenship before they could vote.¹³ In Georgia alone, the Asian American Legal Advocacy Center discovered that 282 voter registration applications were not processed because additional proof of citizenship was required.¹⁴

Arizona, Kansas and Georgia are Outliers that Cannot Prove a Need for the Requested Requirement

The states requesting state-specific alterations to the Federal Form have not produced documentary evidence of non-citizens registering to vote, quite simply, because it does not happen. The penalty for falsely attesting to U.S. citizenship on the Federal Form is deportation. Arizona, Kansas and Georgia are requesting the alteration, and have not carried their burden of proof to support their justification for their request. These states have created a phantom problem and offered a solution that will yield the result that they desire – immigrant and minority voter disenfranchisement.

Additional documentary proof of citizenship is not a common requirement. Forty-five other states and the District of Columbia do not require voters to present documentary proof of U.S. citizenship in order to register to vote. Only five states have attempted to require proof of citizenship, and only three of those five states are requesting that the requirement be added to the Federal Form.

Arizona, Kansas and Georgia claim that the requirement is needed to prevent non-citizens from voting in U.S. elections. However, there have been almost no incidents of non-citizens voting in U.S. elections or registering to vote. There are sufficient safeguard that prevent non-citizens from voting in U.S. elections. All voter registration forms have check-off boxes that affirm that the voter registration applicant is a citizen of the United States. In addition, the applicant must swear and sign an oath, under penalty of fines and imprisonment, that he or she is a citizen of the United States. The penalty for a non-citizen to register to vote is deportation. The States have not proffered sufficient evidence to demonstrate any need to alter the Federal Form and their request should therefore be denied.

True Intent of the Requested Requirement

The true intent of the requested alteration by the States can be gleaned from Arizona's implementation of their illegal registration law, Proposition 200, which more negatively impacted naturalized citizens, who were mostly from minority communities, but not native-born citizens, who were overwhelmingly white.

Arizona did not treat all citizens equally under their proposed law, Proposition 200. Indeed, Arizona had different registration requirements for native born citizens and naturalized citizens, illustrating the true intent of their illegal law. Under Proposition 200, native-born citizens could mail copies of their U.S. birth certificates to the county recorder, but naturalized

¹³ Asian American Legal Defense and Education Fund, *Asian American Access to Democracy in the 2012 Elections* (2013) at 14, available at <http://aaldef.org/Access%20to%20Democracy%20Report%202012.pdf>

¹⁴ Asian American Legal Defense and Education Fund, *Asian American Access to Democracy in the 2012 Elections* (2013), at 4, available at <http://aaldef.org/Access%20to%20Democracy%20Report%202012.pdf>

citizens had no such option since they did not possess a United States birth certificate. Instead, to register, a naturalized citizen had to provide a naturalization certificate in person (but not by mail) to the county recorder.¹⁵ Thus, unlike native-born citizens, naturalized citizens who provided their naturalization certificate as a means of proof of citizenship had to appear in person to register to vote. Of the approximately 194,475 Asian Americans living in Arizona, approximately 35.9% are foreign-born naturalized citizens.¹⁶ Thus, almost 40% of the Asian-American community would have encountered the challenges erected by Proposition 200 when attempting to register to vote, as compared to only 5.05% of White Americans in Arizona that are naturalized citizens. The intent of this law is reflected in the disproportionate impact to the respective communities.

Continued Barriers Faced by Asian Americans

AALDEF monitors received more than 300 complaints of voting problems during the 2012 elections. Asian American voters were unlawfully required to prove their citizenship, provide identification to vote, mistreated by hostile or poorly trained poll workers, were denied Asian-language assistance, and had their names missing from or misspelled in the poll books. Asian American voters also faced long lines, machine breakdowns, misdirection to poll sites, and inadequate notification of poll site assignments or changes. Altering the Federal Form to require documentary proof of citizenship would add another hurdle to the gauntlet of barriers already facing the Asian American community and unnecessarily complicate what was intended to be a simple process.

Conclusion

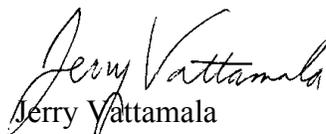
Proof of citizenship requirements violate the NVRA and should not be added to the Federal Form. Congress enacted the NVRA to promote voter registration and to specifically eliminate state-imposed voting requirements that disproportionately harmed voter participation by racial minorities. Indeed, before the NVRA was passed, a Senate committee specifically rejected an amendment that would have allowed states to require documentary evidence of U.S. citizenship. The request by Arizona, Georgia and Kansas is at odds with both the text and legislative history of the NVRA and should be denied.

AALDEF will continue to work with national, state, and local legislators, policy makers, and election officials to ensure full compliance with the National Voter Registration Act, Voting Rights Act and Help America Vote Act and to guarantee that all Americans can exercise their right to vote. We respectfully offer our assistance to the Commission in such a process.

Sincerely,



Glenn D. Magpantay
Director, Democracy Program



Jerry Vattamala
Staff Attorney, Democracy Program

¹⁵ See Ariz. Rev. Stat. § 16-166(F)(4).

¹⁶ See U.S. Census Native and Foreign-Born Populations Data.