



# **PROTECTING EQUAL ACCESS IN A DIVERSE DEMOCRACY: VOTING RIGHTS IN THE GOLDEN STATE**

**A REPORT BY THE NATIONAL COMMISSION  
ON VOTING RIGHTS**



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Photo Credit: Andria Lo

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JUNE 2014

## A MESSAGE FROM THE SILICON VALLEY COMMUNITY FOUNDATION

*1 Implementation of same-day registration is pending certification that the state has a statewide voter registration database that complies with the Help America Vote Act.*

California, to paraphrase poet and native Californian Robert Frost, often takes the road less travelled. Indeed, on the issue of voting rights, the state has led the way in numerous ways, including the passage of the California Voting Rights Act in 2001, which has made it easier to address racial discrimination in voting. In 2012, California also joined a minority of states in making it easier for eligible citizens to register to vote by implementing online voter registration and passing same-day registration.<sup>1</sup> And yet our work is not over. As made clear during the **California Statewide Hearing before the National Commission on Voting Rights** (“**California Hearing**”), barriers to equal representation and equal access to the ballot continue to exist in California.

The hearing before the **National Commission on Voting Rights (“NCVR”)**, held on January 30, 2014 at UC Hastings College of the Law in San Francisco, brought together over 100 voters, activists, and voting rights advocates who testified about continued barriers to equal participation in our democratic process for voters in California. As discussed in more detail in this report, voters with disabilities and with limited English proficiency continue to encounter acute problems at the polls, racial minority communities face challenges to equal representation, and felon disenfranchisement laws disproportionately affect communities of color.

The San Francisco event was the fourth in a series of nationwide hearings, led by the Lawyers’ Committee for Civil Rights Under Law, scheduled through the spring to collect testimony about voting discrimination and election administration challenges and successes. Over the past few years, many states have

enacted restrictive voting laws that make it more difficult for citizens to vote; while many others continue to grapple with recurring election administration challenges and some have proposed reforms to expand access. Additionally, in June 2013, the Supreme Court’s decision in *Shelby County v. Holder* stripped away a key Voting Rights Act protection against voting discrimination. The goal of the NCVR is to document both what continues to keep voters from the ballot box as well as efforts to increase access.

Our place in history will be defined not only by who we include, but also by who we exclude from our political process. As we continue to make progress, we must continue to remove barriers to equal representation and equal access to the ballot for all eligible citizens. The **NCVR** plays a crucial role in this regard. By documenting the record of voting discrimination and election administration challenges that voters face, not only in California, but across all 50 states, the fact-finding commission will paint a clear picture of the current landscape of voting rights in the United States.

The **Silicon Valley Community Foundation** firmly believes that our right to vote, one of our most fundamental rights, should be protected on equal terms for all. As such, we are proud to support the efforts of the **NCVR**. Lastly, we commend the many witnesses who testified at the **California Hearing**. Their expertise, personal experiences, and insight into the California voting process are invaluable contributions to the pursuit of justice and equality in our democratic process.



## BACKGROUND

The National Commission on Voting Rights (NCVR), organized by the Lawyers' Committee for Civil Rights Under Law on behalf of the civil rights community, has been holding hearings across the country to document the record of discrimination and election administration problems that prevent individuals from fully exercising their right to vote.

Composed of an independent nonpartisan panel of academics, civil rights leaders, former legislators, and former Justice Department officials, the NCVR is a successor to the 2005 National Commission on the Voting Rights Act ("NCVRA"), which examined the record of discrimination in voting since the 1982 reauthorization of the Voting Rights Act. The Lawyers' Committee reconvened the NCVR after the June 2013 Supreme Court decision in *Shelby County v. Holder*, which effectively nullified Section 5, a key protection under the Voting Rights Act ("VRA"). The loss of Section 5 left voters in key jurisdictions throughout the United States, including several in California, without a key protection against racial discrimination in voting. The NCVR is reviewing the recent record of voting discrimination; the impact of restrictive voting laws on historically disenfranchised voters; the consequences of improper election administration; and reforms being proposed to overcome barriers to the ballot.

To document the state of voting rights in California, the NCVR, along with a nonpartisan coalition of California civil rights organizations, including the Lawyers' Committee for Civil Rights of the San Francisco Bay Area (LCCR), organized the California Statewide Hearing, which took place on January 30, 2014 at University of California, Hastings College of the Law.

The panel receiving testimony was comprised of **National Commissioner Dolores Huerta**, President of the Dolores Huerta Foundation, and **California Guest Commissioners:**

**Kathay Feng**, Executive Director of California Common Cause; **Alice A. Huffman**, President of the California-Hawaii State Conference of the NAACP; and **Cruz R. Reynoso**, (ret.) Justice of the California Supreme Court and Professor at U.C. Davis School of Law. Fourteen expert witnesses and 26 members of the public presented testimony to the Commission on issues including minority representation, language access, accessibility for voters with disabilities, and the disenfranchisement of individuals with felony convictions. This report contains highlights from the testimony.

Overall, the NCVR is conducting 25 hearings, including statewide hearings in all of the states previously covered by Section 5 and regional hearings covering the remaining states. Information from the hearings and state-specific documentary research will be compiled into two comprehensive reports (one on voting discrimination and the other on election administration) which will be issued in the summer and fall of 2014. These reports will be available to anyone seeking information about barriers in our election system as well as recommendations on how to improve the voting process.

*At bottom, Calif. Guest Commissioners: Kathay Feng, Executive Director of California Common Cause; Dolores Huerta, National Commissioner and President of the Dolores Huerta Foundation; Cruz R. Reynoso, (ret.) Justice of the California Supreme Court and Professor at U.C. Davis School of Law; and Alice A. Huffman, President of the California-Hawaii State Conference of the NAACP.*



## BRIEF HISTORY OF KEY VOTING CASES AND LEGISLATION IN CALIFORNIA

### 1965

The Voting Rights Act of 1965 was passed and signed into law.

### 1970

Voting Rights Act Amended—Monterey County and Yuba County become subject to preclearance under Section 5.

*Castro v. State of California*—Lawsuit successfully challenged a provision in the California Constitution that conditioned the right to vote on the voters' ability to read the English language. The U.S. Supreme Court ruled provision unconstitutional under the Equal Protection Clause of the 14th Amendment.

### 1974

*Richardson v. Ramirez*—

Lawsuit challenged the disenfranchisement of individuals who had been formerly convicted of felonies and had completed their sentences. The California Supreme Court held that the state's felon disenfranchisement law violated the Equal Protection Clause of the 14th Amendment. The U.S. Supreme Court, however, ruled that the law was constitutional.

### 1975

Voting Rights Act Amended—Language minority provision added. Kings County and Merced County become subject to preclearance under Section 5.

### 1976

Section 5 Objection to Yuba County's failure to provide bilingual absentee and regular ballots and candidate qualification statements. The objection was withdrawn after Yuba County amended its procedures.

### 1988

*Gomez v. Watsonville*—Successful challenge to Watsonville's at-large mayoral and city council election system under Section 2 of the Voting Rights Act. Watsonville ordered to implement a voting plan compliant with the Voting Rights Act.

**1991**

*Garza v. County of Los Angeles*—Successful challenge against intentional dilution of the Latino vote in Los Angeles County. County becomes subject to preclearance under Section 3(c) of the Voting Rights Act.

**1992**

Section 5 Objection to redistricting plan (board of supervisors) Merced County.

**1993**

Section 5 Objection to redistricting plan (board of supervisors) Monterey County.

**1999**

*Lopez v. Monterey*— Lawsuit alleged that the Voting Rights Act's preclearance requirement applied to voting changes mandated by a non-covered state if the voting change had an effect on a covered jurisdiction within the state. As a result, the Court held that Monterey County was required to seek Section 5 preclearance for changes mandated under California state law.

**1994**

California State laws were passed requiring jurisdictions to provide language assistance in election precincts where the Secretary of State determines that the number of limited English speaking, voting-age residents from a group reaches 3% of the total voting-age residents in a precinct.

**2000**

*United States v. Upper San Gabriel Valley Municipal Water District*—The United States alleged that the Upper San Gabriel Valley Municipal Water District's districting plan diluted Latino voting strength under Section 2 of the Voting Rights Act. While the lawsuit was pending, the District adopted a new district plan that increased Latino voting strength, thus the lawsuit was dismissed.

**2000**

*United States v. City of Santa Paula, CA*— Lawsuit alleged that the city's at-large election system diluted Latino voting strength under Section 2 of the Voting Rights Act. While litigation was pending, the parties entered into a settlement agreement where the city agreed to place three district election options on the ballot, removing the city's at-large election system.

**2001**

California Voting Rights Act enacted.

## 2004

*Sanchez v. City of Modesto*—The California Voting Rights Act upheld by Supreme Court of California.

## 2011

Criminal Justice Realignment Act enacted—The act was designed to reduce overcrowding in state prisons by sentencing people convicted of low-level, non-violent, non-serious crimes to county jails or alternative treatment programs, such as Post Release Community Supervision and mandatory supervision.

## 2013

*Shelby County v. Holder*—Lawsuit challenged the constitutionality of Section 5, the pre-clearance provision, of the Voting Rights Act. The Supreme Court of the United States ruled that Section 4(b), the formula used to determine which jurisdictions must seek pre-clearance, was unconstitutional. The ruling effectively rendered Section 5 of the VRA inoperable.

## 2014

*Michael Scott, et al. v. Debra Bowen*—Lawsuit in Alameda County Superior Court that successfully challenged Sec. of State Debra Bowen's enforcement of the Criminal Justice Realignment Act. The ruling effectively restored the voting rights of tens of thousands of people on Post Release Community Supervision and mandatory supervision under the California Criminal Justice Realignment Act.

## 2011

*United States v. Alameda County*—Lawsuit alleged that Alameda County violated Section 203 of the Voting Rights Act by failing to provide translated election-related materials for Spanish and Chinese-speaking citizens. The parties entered a consent decree, requiring the County to provide bilingual language assistance at the polls and election-related materials and information in Spanish and Chinese and newly covered languages as determined by the Census Bureau.

# VOTING RIGHTS AND REPRESENTATION OF MINORITY COMMUNITIES

**“THERE IS A PERCEPTION BY SOME INSIDE AND OUTSIDE OF CALIFORNIA THAT SOMEHOW THIS STATE IS A PROGRESSIVE ISLAND, NOT SUSCEPTIBLE TO THE KINDS OF DISCRIMINATORY PATTERNS THAT WE SEE IN OTHER PARTS OF THE COUNTRY.”**

THOMAS A. SAENZ, MALDEF

## DECREASED PROTECTIONS AFTER THE LOSS OF SECTION 5 OF THE VOTING RIGHTS ACT

Summarizing the impact of the nullification of Section 5, Robert Rubin, a leading voting rights attorney testified, “California voters have not only benefited from Section 5’s protections, but they are harmed by its dismantlement.” Prior to the Supreme Court’s decision in *Shelby County v. Holder* three California counties—Yuba County, Monterey County and Kings County—were subject to Section 5 review by the federal government (or the District Court of the District of Columbia alternatively) before implementing any changes to their voting laws and procedures. This ensured review was intended to prevent the implementation of voting changes that could have the effect of denying the right to vote on account of race, color, or membership in a language minority group.

As recently as 2002, the United States Department of Justice objected to a change from a district-based to an at-large method of election in the Chualar Union Elementary School District in Monterey County. The objection letter from the Department of Justice stated that the circumstances implied that the change was

at least in part motivated by discriminatory animus and the change would have undermined the strength of minority voters in the County by making it more difficult for them to elect their candidates of choice. In 2003, a recall election in Monterey County was also stopped by the courts because the polling precincts had been consolidated, making it more difficult for minority voters to participate.

Rubin elaborated that these cases highlight the strategic advantage of Section 5: “oftentimes these changes, subject to Section 5, happen at the last minute. And because the burden is placed on the jurisdiction to justify those changes, it...keeps those discriminatory practices from going into effect until they’ve been pre-cleared by the Justice Department.” Without Section 5, it will be extremely difficult to challenge discriminatory voting changes before these go into effect.



*At left, Robert Rubin, voting rights attorney.*

*Jerry Elster testified about barriers to voting faced by incarcerated and formerly incarcerated individuals*



### **ADDITIONAL SAFEGUARDS NEEDED WHEN GROUPS VOTE ALONG RACIAL LINES**

Section 5 was also a key protection in jurisdictions where communities vote along racial lines, a concept known as “racially polarized voting.” Witness Eugene Lee of Asian Americans Advancing Justice—Los Angeles (“AAAJ”), testified that “Asian American communities in California... face racially polarized voting, which when coupled with certain election structures, creates the potential for dilution of Asian American voting strength.” For example, at-large election systems, as opposed to district-based, make it considerably more difficult for Asian Americans and other minority voters to accumulate enough support to elect their candidates of choice when racially polarized voting exists.

Political Scientist Matt A. Barreto, working with AAJC, conducted a study of 13 elections in San Gabriel Valley and in South Bay regions of Los Angeles County between the years of 2002 and 2010 that determined there is racially polarized voting in California. “[I]n all elections Asian American voters demonstrated cohesive voting patterns in favor of Asian American candidates. Non-Asian Americans tended to vote against the candidates preferred by Asian American voters; in ten of the elections, non-Asian Americans gave less than 50% of their vote to

candidates preferred by Asian Americans.” Section 5 pre-clearance, Lee stated, can prevent voting changes that would result in obstacles for equal representation of minority communities, particularly in areas with racially polarized voting, such as those detailed above.

**“[I]N THE JUNE 2010 DEMOCRATIC PRIMARY ELECTION FOR THE ATTORNEY GENERAL RACE, LOOKING WITHIN THE BOUNDARIES OF ASSEMBLY DISTRICT 53 LOCATED IN THE SOUTH BAY, THE CANDIDATE SUPPORTED BY AN ESTIMATED 83% OF ASIAN AMERICAN VOTERS RECEIVED SUPPORT FROM ONLY AN ESTIMATED 4% OF NON-ASIAN AMERICAN VOTERS.”**

**EUGENE LEE  
ASIAN AMERICANS ADVANCING JUSTICE,  
LOS ANGELES**

Although voters will continue to have Section 2 of the VRA, this section is insufficient to protect voting rights for minority communities, particularly in the minority community. While Section 2 prohibits voting practices with the purpose or result of discriminating against members of a racial or minority language group, in redistricting cases it requires that these communities comprise over 50% of a proposed district in order to bring a case against unlawful vote dilution and discrimination. As described by Lee, for Asian American communities, Section 2 is an “elusive safeguard against vote dilution. This is because in many areas of the state, Asian American communities are sizable but not sufficiently large and geographically compact to form a majority of a hypothetical district. If forced to rely on Section 2 alone, Asian American communities face a significantly greater uphill battle in asserting challenges to at-large election systems and unfairly drawn districts.”

## PROTECTING MINORITIES IN THE REDISTRICTING PROCESS

In an unprecedented measure in 2008, California created the California Citizens Redistricting Commission (“Redistricting Commission”), a body charged with overseeing the redistricting process for congressional districts, state senate and assembly districts, as well as Board of Equalization districts. The Commission was comprised of fourteen citizen volunteers: five registered Democrats, five registered Republicans and four voters who identified neither party. In drawing district lines, in addition to other criteria, the Commission must comply with the Voting Rights Act to ensure that minorities have an equal opportunity to elect representatives of their choice.

The NCVR received positive testimony regarding the drawing of congressional districts by the Redistricting Commission. Sean Dugar of the National Association for the Advancement of Colored People (“NAACP”), testified that the Redistricting Commission “took a traditionally African American district held by then Assembly member Mike Davis,

and converted it to a 47% African American, 42% Latino and 3% Asian-Pacific Islander district.” By doing so, summarized Dugar, the Redistricting Commission allowed the Asian-Pacific Islander community to have more influence in the district, while also allowing the African American community to have more influence in a separate district.

Local redistricting, however, continues to be a local process outside of the reach of the Redistricting Commission. Thomas Saenz of MALDEF testified about problems with the redistricting of county boards of supervisors after the 2010 Census. Saenz identified 10 out of the state’s 58 counties, that “failed to draw a Latino majority supervisorial district even though there was evidence before them of the ability to do so and the existence of racially polarized voting.” According to Saenz, these counties with growing Latino populations continue to lag behind in the creation of Latino majority districts, as illustrated below:

### **Counties that should have drawn their first Latino majority district, but failed to do so:**

- » Orange County
- » Santa Barbara County

### **Counties that should have drawn their second Latino majority district, but failed to do so:**

- » Los Angeles County
- » Ventura County
- » San Bernardino County
- » Riverside County
- » Kern County
- » Tulare County
- » Fresno County

### **Counties that should have drawn their third Latino majority district, but failed to do so:**

- » Monterey County (formerly a Section 5 jurisdiction)

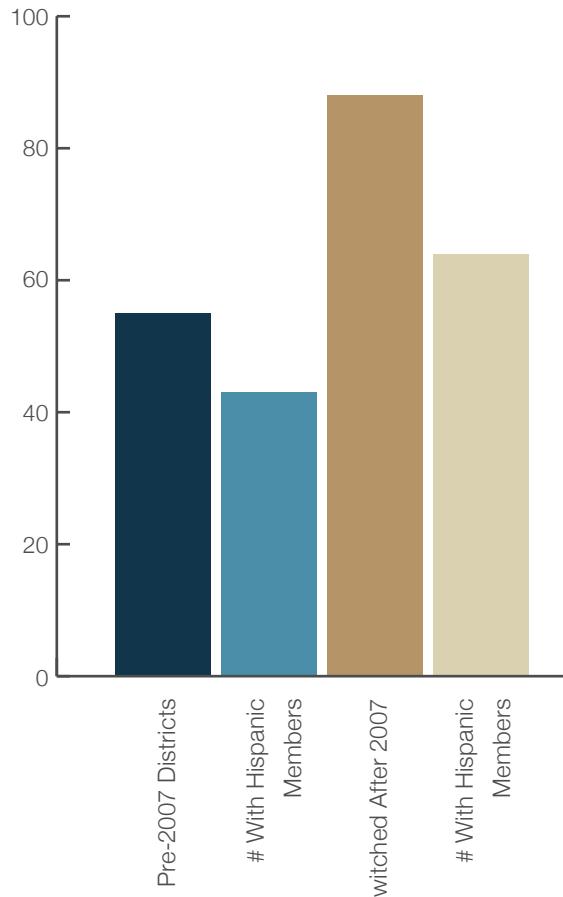
The failure to draw these Latino majority districts can result in barriers to equal representation.

## BEST PRACTICE: THE ROLE OF THE CALIFORNIA VOTING RIGHTS ACT IN PROTECTING MINORITY VOTING RIGHTS

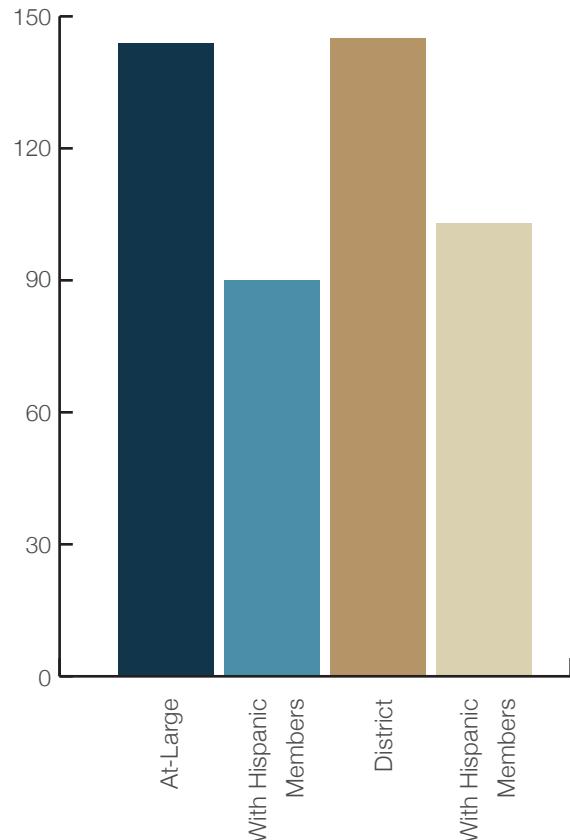
The California Voting Rights Act of 2001 (“CVRA”), prohibits vote dilution caused by racial polarization in systems that utilize at-large elections. At the hearing, this state-based protection was widely praised. For example, Morgan Kousser, Professor at the California Institute of Technology, presented testimony based on an ongoing study of K-12 school

districts. According to Kousser, the CVRA has revolutionized the K-12 School District Elections Systems throughout California: Since the passage of the CVRA, the number of school districts that have adopted district based elections has increased. This increase is significant because districts where Latinos make up 40% or less of the population are more likely to elect Latinos to their school boards when the members are elected by district instead of at-large. **As a result, the increase in district based elections has led to an increase in Latinos on the school boards.**

**HISPANIC SCHOOL BOARD MEMBERS IN DISTRICT VERSUS AT-LARGE DISTRICTS (SOURCE: MORGAN KOUSSER)**



**NUMBER OF SCHOOL BOARDS WITH DISTRICT ELECTION SYSTEMS BEFORE AND AFTER 2007, WHEN THE CVRA WAS FOUND CONSTITUTIONAL BY THE CALIFORNIA SUPREME COURT (SOURCE: MORGAN KOUSSER)**



## EQUAL ACCESS TO THE POLITICAL PROCESS

**VOTERS WITH LIMITED ENGLISH PROFICIENCY AND VOTERS WITH DISABILITIES FACE PARTICULAR CHALLENGES IN EXERCISING THEIR FUNDAMENTAL RIGHT TO VOTE. A LACK OF PROPER TRAINING OR PLANNING BY ELECTION OFFICIALS AND LIMITED LEGAL PROTECTIONS CAN ULTIMATELY LEAD TO THE DISENFRANCHISEMENT OF ELIGIBLE CITIZENS.**

### LANGUAGE ACCESS RESULTS IN INCREASED VOTER PARTICIPATION

In the last two decades, California's limited English proficiency ("LEP") population has grown substantially. Importantly, many LEP Californians are U.S. citizens entitled to equal access to the democratic process. While there have been gains in equal access, voters who do not speak English continue to face barriers to participation.

According to witnesses Mindy Romero of the California Civic Engagement Project at the U.C. Davis Center for Regional Change and Deana Kitamura of Asian Americans Advancing Justice—Los Angeles, **there is an association between access to language materials and assistance at the polls and voter participation rates.** Mindy Romero stated that, research has demonstrated that for "Latino citizens who speak little English... access to Spanish ballots increases election turnout and influences election outcomes" and **structural barriers such as lack of language access are a main contributor to lower registration rates for naturalized citizens.** Deana Kitamura testified that "[in] San Diego County, [for example,] once the county adopted a comprehensive program, voter registration increased by 20% in the Filipino American

community and increased by 40% in the Vietnamese American community." Similarly, the provision of comprehensive language assistance under Federal law has increased voter registration and turnout for Asian American communities.

**BETWEEN 1990 AND 2010, THE LEP POPULATION IN CALIFORNIA GREW 56% AND LEP VOTERS MAKE UP 11% OF CALIFORNIA'S TOTAL CITIZEN VOTING AGE POPULATION.**

*At right, Su Fang Gao, 80, testified in Cantonese about the need for staffing polling sites with workers who speak Chinese languages.*



**Since a large percentage of Latinos and Asians in California have limited English proficiency and are linguistically isolated, unequal access to the ballot for LEP voters can have an impact along ethnic lines. As shown in the graph below, provided by witness Mindy Romero:**

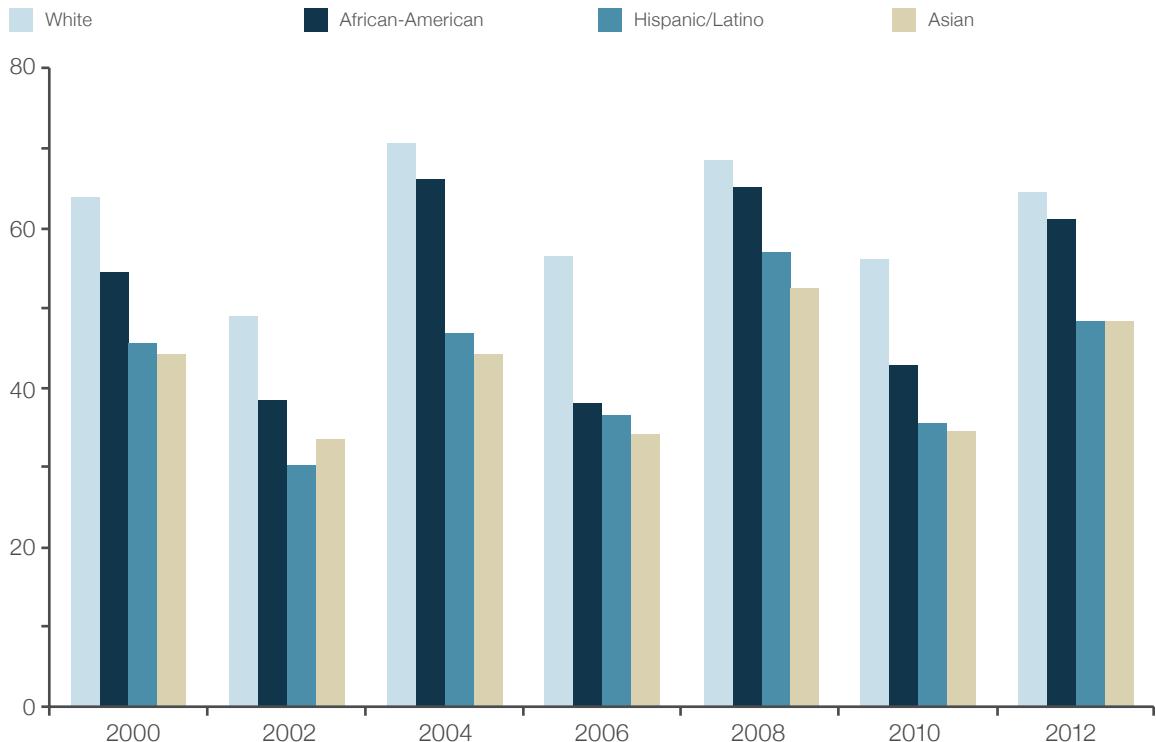
- » Overall turnout in California was only 57.5% for the 2012 election
- » For non-Latino white eligible voters, turnout was 64.3%
- » For Latino and Asian eligible voters, turnout was only 48.5% and 48.6%, respectively—almost ten percentage points lower than the overall turnout and almost sixteen percentage points lower than the white voter turnout.

Access to the polls for LEP voters is a possible factor for the great disparity in turnout. In the next few decades, as the proportion of Latinos and Asians in California is projected to increase, it will be crucial to ensure that new eligible non-white voters become actual voters.

## **“46.5% OF CALIFORNIA’S NATURALIZED CITIZENS HAVE LIMITED ENGLISH PROFICIENCY.”**

**MICHELLE ROMERO  
DIRECTOR OF THE GREENLINING INSTITUTE’S CLAIMING OUR DEMOCRACY PROGRAM**

**CALIFORNIA ELIGIBLE VOTER TURNOUT: 2000–2012  
GENERAL ELECTIONS  
PERCENTAGE VOTED OF CITIZEN VOTING AGE POPULATION**



## SOME COUNTIES CONTINUE TO IGNORE LANGUAGE ACCESS LAWS

Although there are legal protections to ensure that language minority voters have equal access to the ballot, as described by witnesses before the NCVR, compliance, legal protections, and implementation practices need to be improved.

Certain jurisdictions in California are required to provide language assistance under sections 4(f)(4) and 203 of the Voting Rights Act. Section 203 was enacted to allow voters who speak Spanish, Asian, Native American, and Alaskan Native languages, as well as those voters who do not have a good command of the English language, to have access to information and to vote in their language of choice. The Census Bureau applies a formula to determine which language groups are covered in particular jurisdictions.<sup>2</sup> Covered jurisdictions must provide all voting information, such as registration or voting notices, forms, instructions, polling site assistance, and ballots in the applicable minority group language. In addition to the federal law protections, California law requires certain jurisdictions to provide language assistance.<sup>3</sup>

Many jurisdictions strive to improve their language assistance at the polls. For example, Neal Kelley, Registrar of Voters for Orange County, testified about the County's provision of election services in 9 languages, including Spanish, Chinese, Tagalog, Japanese, Khmer, Korean, Vietnamese, and Hindi. Orange County's comprehensive language access program employs procedures to ensure that language translations are accurate, updated, and that they reach the target communities. However, as reported by the witnesses to the NCVR, problems persist.

### IN THE LAST DECADE, FOUR SECTION 203 ENFORCEMENT LAWSUITS HAVE BEEN BROUGHT BY THE DEPARTMENT OF JUSTICE AGAINST JURISDICTIONS FOR FAILURE TO COMPLY WITH LANGUAGE REQUIREMENTS: SAN DIEGO COUNTY (2004), THE CITY OF ROSEMEAD (2005), THE CITY OF WALNUT (2007), AND ALAMEDA COUNTY (2011).

Additionally, poll monitoring and research has demonstrated that the following problems continue to be common in some polling places throughout the state:

#### Problems with translated materials

- » Low visibility or no display of translated materials at poll sites
- » Lack of poll worker awareness about the availability of translated materials
- » Poorly translated directional signs to guide voters to polling sites
- » Translated materials that do not make sense

#### Problems with bilingual assistance

- » No signs letting voters know that language assistance is available
- » Lack of bilingual poll workers
- » Failure of poll workers to proactively approach voters needing language assistance

Language assistance is essential to LEP voter participation. For example, Deana Kitamura testified that during the 2008 Los Angeles election, 30% of Chinese American voters, 33% of Filipino American voters, 50% of Vietnamese American voters, and 60% Korean American voters relied on some type of language assistance. Similar exit polling in 2004 showed that 62% of Vietnamese American voters used some form of language assistance.

<sup>2</sup> There are two threshold numbers: the number of limited English speaking, voting-age citizens from the group must be either (1) at least 5% of the total voting-age citizens in the jurisdiction or (2) at least 10,000 in number. The U.S. government does an analysis every 5 years to determine which jurisdictions reach the threshold numbers and for which language groups.

<sup>3</sup> The Secretary of State must find a need exists when the number of limited English speaking, voting-age residents from a group reaches 3% of the total voting-age residents in a precinct. This determination is made every 4 years.



Pictured from L to R: Deanna Kitamura, Senior Staff Attorney, Democracy Project at Asian Americans Advancing Justice, Los Angeles; Mindy Romero of the California Civic Engagement Project at the U.C. Davis Center for Regional Change, and Neal Kelley, Registrar of Voters for Orange County.

## CALIFORNIA'S ENGLISH ONLY INITIATIVE PROCESS RESTRICTS ACCESS

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*4 In Padilla v. Lever, a case litigated by MALDEF, the court determined that the scope of the Federal Voting Rights Act provisions were limited to “voting materials” provided by the government, which it did not find to include recall petition materials.*

A major barrier identified by witness Michelle Romero of the Greenlining Institute's Claiming Our Democracy Program is California's English-only initiative process. California's ballot initiative process, established in 1911, plays a crucial role in determining policy in California. However, language access requirements in Federal and State law have not been found to apply to the initiative, referendum, or recall process.<sup>4</sup>

The English-only process excludes LEP voters from the process to determine which initiatives make it on the ballot. Additionally, it subjects LEP voters to manipulation by unscrupulous paid signature gatherers who misinterpret or deliberately lie about the substance of the initiative the LEP voter is being asked to support. As shown in the chart below, according to Michelle Romero, California's LEP communities are highly concentrated in counties critical to qualifying ballot measures, including Los Angeles County, where all initiatives that have made it on to the ballot have been circulated, and counties in the San Francisco Bay area and the Inland Empire, which see a lot of initiative activity.

**“VOTERS ARE MISLED THROUGH THE USE OF NONTRANSLATED MATERIALS INTO SIGNING PETITIONS THAT THEY DID NOT AGREE WITH.”**

**THOMAS SAENZ**  
**PRESIDENT AND GENERAL COUNSEL**  
**OF THE MEXICAN AMERICAN LEGAL DEFENSE**  
**AND EDUCATIONAL FUND (“MALDEF”)**

MALDEF represented challengers to a recall position that was circulated in English in a district with a large number LEP voters. A number of people signed the petition after being told that they were signing in support of something else. Ultimately, the petition resulted in the recall of a school board member who appeared to have the support of the Latino community in that district.

**HIGH CONCENTRATION OF LIMITED ENGLISH PROFICIENCY VOTERS IN CRITICAL BALLOT INITIATIVE COUNTIES (SOURCE: MICHELLE ROMERO, CITING THE AMERICAN COMMUNITY SURVEY 2009-2011 – YEAR ESTIMATES)**

RANK	COUNTY	TOTAL CVAP	TOTAL LEP CVAP	LEP SHARE OF TOTAL CVAP
1	Los Angeles County	5,691,739	966,559	17.0%
2	Orange County	1,855,568	239,896	12.9%
3	San Diego County	2,026,532	184,462	9.1%
4	Santa Clara County	1,068,326	159,007	14.9%
5	San Bernardino County	1,220,091	121,491	10.0%
6	Riverside County	1,323,838	118,326	8.9%
7	Alameda County	963,416	117,267	12.2%
8	San Francisco County	594,178	109,198	18.4%
9	Sacramento County	936,263	73,875	7.9%
10	San Mateo County	456,007	58,227	12.8%

CVAP: Citizen Voting Age Population; LEP: Limited English Proficiency



*At right, Fred Nisen, staff attorney with Disability Rights California*

## VOTERS WITH DISABILITIES FACE ACCESS BARRIERS

Voters with disabilities in California experience an array of barriers to equal access to the ballot that make it considerably more difficult, or sometimes impossible, to participate in the electoral process. The Help America Vote Act and the Americans with Disabilities Act provide that the voting process must be accessible, private, and independent; however, barriers exist throughout the voting process, including unequal access to voter education materials, voter registration, and at the polls.

**“ACCESSIBILITY COMPLIANCE [AT POLLING PLACES] VARIES, ON AVERAGE, FROM 30% TO 60% BASED ON OUR EXPERIENCES WORKING AT THE COUNTY LEVEL.”**

**FRED NISEN**  
**DISABILITY RIGHTS CALIFORNIA**

Voter turnout for people with disabilities in California in the 2008 election was 8.1% lower than for people without disabilities. According to Disability Rights California, the lower turn out was a result of barriers faced by voters with disabilities throughout the voting process. These barriers include problems with access to voter registration, obtaining accessible information about upcoming elections, having access to working accessible voting systems, transportation, accessible polling places, and casting their ballot privately and independently.

## TESTIMONY FROM FRED NISEN WITH DISABILITY RIGHTS CALIFORNIA HIGHLIGHTED THE FOLLOWING MAJOR PROBLEMS:

### More outreach and education needed.

Education materials are often written in a way very difficult to read for individuals. Furthermore, at the polls, when poll workers make announcements such as directing voters to stand in a particular line, announcing the time of closing, or other critical information, they often fail to announce it by using other methods of communications such as "signs" or sign language.

### Need for accessible ballots and registration.

Paper ballots are not accessible for voters with visual impairments. Making some elections entirely "vote by mail," without the option of in-person voting denies these voters their right to a secret ballot. To obtain assistance filling out the ballot, they have to communicate their selections to someone else. Centralized voting centers are not sufficient to solve the problem because voters with disabilities might not be able to travel to these centers, which, in comparison to local polling places, are more sparsely distributed. Additionally, as of January 2014, on-line voter registration, which became available in the fall of 2012, was not yet accessible for individuals who use a screen reader.

### Difficulty accessing the polling place.

Many polling places are not accessible, especially in rural areas. There have been reported cases of elevators or inaccessible doors with ramps being locked.

### Inadequate poll worker training.

The failure to dedicate sufficient time to disability issues unintentionally gives poll workers the wrong idea that accessibility is not that important. Additionally, some poll workers do not know how to operate accessible machines or are not familiar with the legal protections for disabled voters.

### Lack of accessible voting machines.

Polling places are only required one accessible voting system and many poll workers do not properly set up the systems or don't know how to use them. Voters often are not aware that accessible machines are available because in some counties poll workers are only trained to offer these machines to those who look like they might need them.

**"I LIVED IN MARIN COUNTY AND THERE IS A POLL PLACE AT THE FIRE HOUSE. THE FIREHOUSE IS ACCESSIBLE, HOWEVER, THE MAIN ROADWAY TO THE FIREHOUSE IS NOT PAVED, SO NO SIDEWALK, SO I COULDN'T GET THERE AFTER WORK ONE DAY. AND IT WAS DARK AND RAINING. IF I TRIED TO TRAVEL IN THE DARK I WOULD PROBABLY GET HIT BY A CAR, SO THEREFORE I COULDN'T VOTE."**

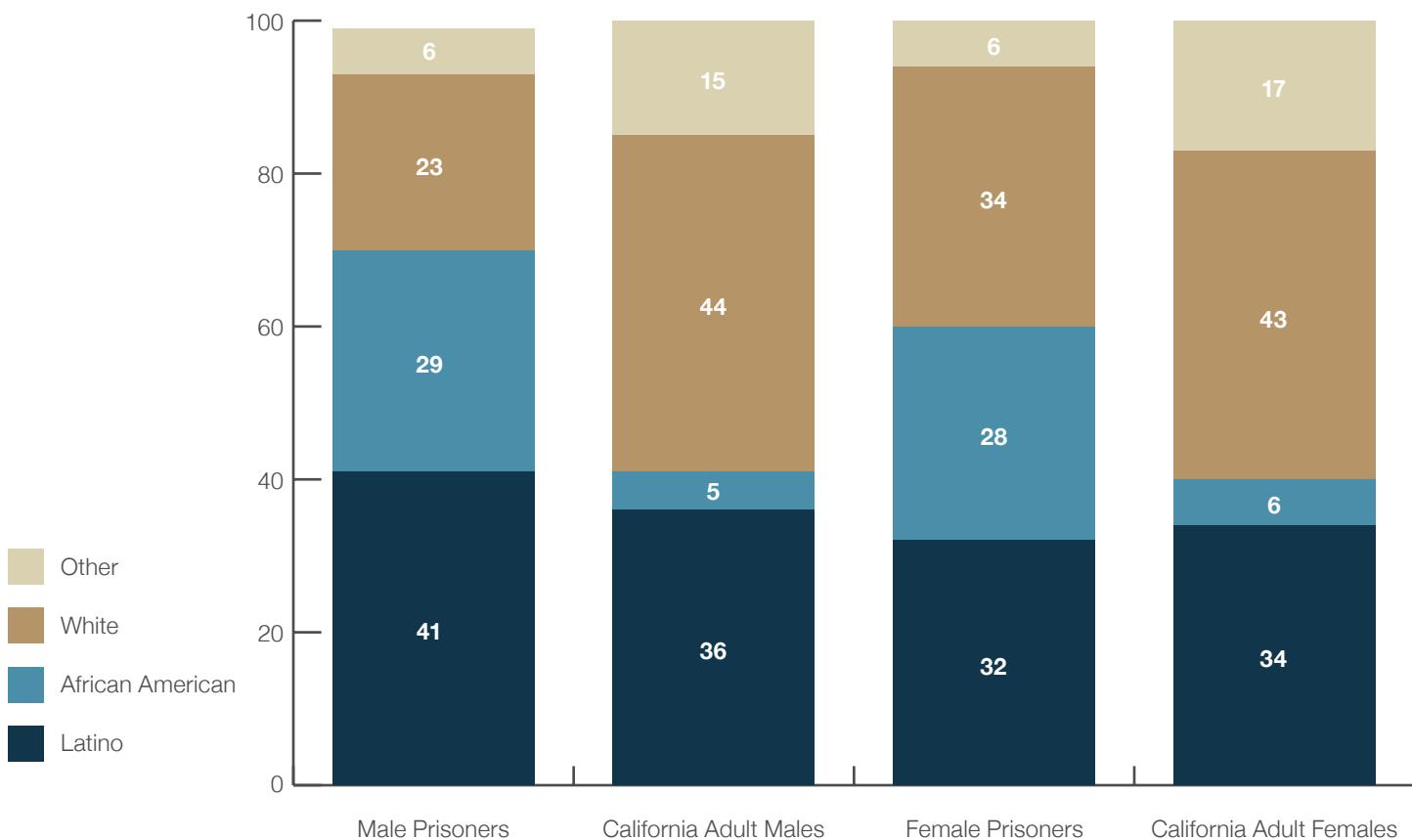
**PETER MENDOZA  
PUBLIC WITNESS TESTIFYING ABOUT  
THE NEED FOR WHEELCHAIR ACCESS**

## DISENFRANCHISEMENT OF INCARCERATED AND FORMERLY INCARCERATED INDIVIDUALS

### MISINFORMATION ABOUT VOTING RIGHTS PERSISTS

ACCORDING TO THE 2010 CENSUS, AFRICAN AMERICAN AND LATINO MALES OVER THE AGE OF 18 MAKE UP 15% (5,747,255) OF THE POPULATION OF CALIFORNIA. IN 2011, THERE WERE APPROXIMATELY 144,000 INMATES IN THE CALIFORNIA STATE PRISON SYSTEM. AFRICAN AMERICAN AND LATINO MALES MADE UP 70% (APPROXIMATELY 98,000 INMATES) OF THE ADULT MALE PRISON POPULATION.

THREE OUT OF FOUR MALE PRISONERS ARE NONWHITE OR LATINO



California Department of Corrections and Rehabilitation data, 2012; Current Population Survey data, 2012.  
Just the Facts: California's Changing Prison Population, PPIC, 2013

Unlike most states, California automatically restores the voting rights of formerly incarcerated people upon release from prison and completion of parole. However, according to hearing witnesses, **although their voting rights are automatically restored, formerly incarcerated people are under-represented in the California electorate due to misinformation and a failure of education about the regaining their voting rights.** Witness Dorsey Nunn, Executive Director of Legal Services for Prisoners with Children, testified about the lack of information provided to formerly incarcerated people: “I approached people going and coming from Alcoholics Anonymous and Narcotics Anonymous meetings, knowing that people addressing issues of addiction would most likely have a greater chance of having a conviction history. From countless responses from people I was trying to register, I learned many thought they could not vote because they had been convicted of a felony.”

The problem was echoed by witness Manuel La Fontaine, who testified about his experience when he was released from prison: “I remember coming home from incarceration back in 2003. And I was under the assumption I did not have the right to vote because of my felony conviction. It was not until I joined All of Us or None [an advocacy organization that fights for the rights of incarcerated and formerly incarcerated people] that I learned it was a possibility.”

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## SECRETARY OF STATE DEBRA BOWEN DECLARED 60,000 INCARCERATED PEOPLE INELIGIBLE TO VOTE

In 2011, the California State Legislature passed the Criminal Justice Re-Alignment Act (CJRA), which was designed to reduce overcrowding in state prisons by sentencing people convicted of low-level, non-violent, non-serious crimes to county jails or alternative treatment programs, such as mandatory supervision or post-release supervision. As previously mentioned, the voting rights of the formerly incarcerated are restored immediately upon release from prison and discharge from parole. **However, the Secretary of the State of California, Debra Bowen, refused to restore voting rights to people serving alternative sentences under CJRA. In December 2011, Secretary Bowen issued directives to election officials declaring that people who were serving their sentences under community supervision were not eligible to vote. As a result, over 60,000 individuals were denied access to the ballot. In 2014, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area and the ACLU of California filed a lawsuit in the Superior Court of Alameda County successfully challenging the Secretary of State's declaration.**

Witness Nunn testified that people serving sentences in county jails for felony convictions should maintain their right to vote. He argued that the alternative sentencing programs established by the CJRA are, in fact, a form of community supervision that fall neither in the category of being “imprisoned” or on parole. The ruling effectively restored the voting rights of tens of thousands of people on Post Release Community Supervision and mandatory supervision.<sup>5</sup>

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*5 Writ of Mandate, Scott v. Bowen, Alameda Superior Court No. RG14-712570 (June 5, 2014)*

## CONCLUSION

The testimony at the NCVR hearing in San Francisco served as a stark reminder that California voters continue to face challenges when exercising their right to vote.

As highlighted by the witnesses, the CVRA has served as a powerful tool in combating at-large voting schemes in areas where polarized voting exists. However, in the wake of the *Shelby* decision there are serious questions as to whether or not the CVRA affords sufficient protection to communities of color. Additionally, as the population of the state becomes increasingly diverse, there are concerns that Section 2 of the VRA and the CVRA will not offer adequate protection of the voting rights of racial and language minorities.

While vote dilution has suppressed the voting strength of minority communities, lack of language access, language assistance and disability access have created substantial barriers to the ballot for LEP voters and voters with disabilities. Similarly, misinformation about the voting rights of formerly incarcerated people has been a consistent source of confusion. The fundamental right to vote must be protected for all Californians. Participation in the electoral process is central to a democracy and equal access to the ballot is required for meaningful participation.

# ACKNOWLEDGMENTS

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