

WHEN THE VOTING RIGHTS ACT BECAME UN-AMERICAN: THE MISGUIDED VILIFICATION OF SECTION 203

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America is commonly referred to as a nation of immigrants.¹ In spite of this fact, this country has a long history of anti-immigrant sentiments. New waves of immigrants have often been met with negative responses, including concerted efforts to restrict their access. One example is a 1924 law introducing a quota system that established a ceiling for Southern and Eastern Europeans.² The Asian American community has direct experience with the lengths to which America will go to limit access to its borders in light of many different statutes that restricted entry and/or citizenship to every Asian ethnic group at some point in its history.³

Today, there is resurgence in anti-immigrant sentiments. It is growing at a rapid rate in response to the nation's changing demographics and the immigration debate occurring at the local, state, and federal levels. For example, "more than 550 bills relating to illegal immigration were introduced in statehouses this year, and at least 77 were enacted."⁴ Anti-immigrant groups, such as the Arizona-based Minuteman Civil Defense Corps and The American Border Patrol (civilian volunteer groups that patrol the border and turn immigrants crossing the U.S.-Mexican border over to authorities), are

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1. See, e.g., JOHN F. KENNEDY, A NATION OF IMMIGRANTS 84 (1964).

2. Arian Campo-Flores, *America's Divide*, NEWSWEEK, Apr. 10, 2006, at 28, available at <http://www.msnbc.msn.com/id/12115520/site/newsweek>.

3. Beginning in 1790, Asian Americans were ineligible for citizenship and restrictions to citizenship and entry to America continued to exist until the last fifty years. See, e.g., Naturalization Act of March 26, 1790, ch. 3, 1 Stat. 103 (1790) (repealed 1795); Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, 58-61, repealed by ch. 344, § 1, 57 Stat. 600 (1943) (prohibiting immigration of Chinese laborers); Immigration Act of 1917, ch. 29, 39 Stat. 874, 874-98 (repealed 1952) (banning immigration from almost all countries in the Asia-Pacific region); Phillipine Independence Act of 1934 (Tydings-McDuffie Act), ch. 84, 48 Stat. 456, 462 (amended 1946) (imposing annual quota of fifty Filipino immigrants); Immigration and Nationality Act of 1965 (Hart-Celler Act), Pub. L. No. 89-236, 79 Stat. 911 (1965) (abolishing national-origin quotas restricting access of Asians).

4. Erik Schelzig, *States' Immigration Bills May Be Moot*, AZ. DAILY STAR, Aug. 20, 2006, <http://www.azstarnet.com/news/142934>. Nearly thirty municipalities across the nation have proposed or introduced legislation punishing businesses who employ undocumented immigrants and landlords who rent to undocumented immigrants. Daniel Patrick Sheehan & Kevin Penton, *Group Sues Pa. City Over Anti-immigrant Law*, THE MORNING CALL (Allentown, Pa.), Aug. 15, 2006, <http://www.montereyherald.com/mld/montereyherald/news/nation/15282611.htm>.

also seeing a surge in popularity, with growing memberships and donations for their efforts to restrict immigration.⁵ The Internet is now being harnessed as a vigilante tool.⁶ Additionally, hate crimes have been on the rise, particularly those against Latinos, and these crimes have been linked to the national immigration debate.⁷ Despite claims by anti-immigration groups and hate groups that their problem is with “illegal immigrants” (i.e., undocumented persons), the actions of many have proven that such groups have a problem with all immigrants, or all persons who are perceived to be immigrants, or foreigners—as determined by the color of their skin or the accent in their speech.⁸ In a national poll of legal immigrants from Latin America, Asia, Africa, and Europe, who now number around 14 million Americans, a majority felt the anti-immigrant sentiment was growing in America and that anti-immigrant sentiment had detrimentally affected their families.⁹

The anti-immigrant sentiment has become so impassioned that all things that people associate with immigrants, rightly or wrongly, are being attacked. So was the case with the recent reauthorization of the Voting Rights Act of 1965,¹⁰ often called the “crown jewel” of the nation’s civil rights laws.¹¹ Despite the fact that the Voting Rights Act of 1965 applies only to

5. Rachel Uranga, *Anti-Illegal-Immigrant Groups Multiply*, DAILY NEWS, Aug. 12, 2006, at N1.

6. Examples of such websites include: Arizona Border Watch, <http://www.azborderwatch.us/> (last visited Dec. 12, 2006) (conducting routine patrols and monitoring of the borders and reporting any suspicious activity to the proper authorities by private citizens); Minuteman Project, <http://www.minutemanproject.com/> (last visited Dec. 12, 2006) (an organization devoted to reducing illegal immigration by deterring illegal crossings of the United States–Mexico and United States–Canada border through monitoring the borders and alerting the United States Border Patrol to the presence of unauthorized crossers and engaging in political protest and other forms of activism); and Minuteman Civil Defense Corps, <http://www.minutemanhq.com/hq/> (last visited Dec. 12, 2006) (private citizens dedicated to personally preventing illegal crossings of the U.S. border).

7. See Kevin Johnson, *Center Ties Hate Crimes to Border Debate*, USA TODAY, May 17, 2006, at 3A; Anti-Defamation League, *Extremists Declare ‘Open Season’ on Immigrants: Hispanics Target of Incitement and Violence* (2006), http://www.adl.org/main_extremism/immigration_extremists.htm (“While white supremacists have for many years attempted to exploit rising anti-immigration sentiments in the U.S., the level and intensity of their attacks against Hispanics has reached dangerous new highs, with right-wing extremists joining anti-immigration groups, distributing anti-immigrant propaganda and holding frequent anti-immigration rallies and protests.”); Tyler Lewis, *Report: Hate Violence and Rhetoric on the Rise against Latinos*, May 17, 2006, <http://www.civilrights.org/issues/hate/details.cfm?id=43360>.

8. Alonso Heredin, Op-Ed., *Anti-Immigrant Law Codifies Intolerance*, COURIER POST, Aug. 9, 2006, <http://www.courierpostonline.com/apps/pbcs.dll/article?AID=/20060809/COLUMNISTS27/608090334>. During the public portion of a committee meeting in Riverside, New Jersey, proponents of a law to persecute undocumented persons claimed that they did not reject all immigrants, rather only those who were undocumented. *Id.* However, these same people booed other citizens who attempted to speak at that same meeting in opposition to the law, making it difficult for their views to be heard. *Id.* Worse yet, a Latina citizen was greeted with “[t]hese chairs are for whites only,” when she tried to sit down next to English-speaking women. *Id.* (internal quotation marks omitted).

9. NEW AMERICA MEDIA, *LEGAL IMMIGRANTS: A VOICE OF REASON IN THE IMMIGRATION DEBATE 3* (2006), http://media.newamericamedia.org/images/polls/imm_poll/Immigration_exec_summary.pdf.

10. Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109–246, 120 Stat. 577.

11. Allan J. Lichtman & J. Gerald Hebert, *A General Theory of Vote Dilution*, 6 LA RAZA L.J. 1, 2 (1993).

U.S. citizens and their right to vote, opponents attacked Section 203, the language assistance provision, as being un-American. The Section 203 debate became conflated with the immigration debate and that of the necessity for America to have an “official” or “national” language.¹² Of course, the issues are not the same because Section 203 language assistance only applies to citizens. Nevertheless, many opponents of language assistance for voters relied on the mistaken belief that citizens who do not speak English proficiently are somehow less American and unworthy of the right to vote. An attempt to vilify Section 203 as promoting “un-American” ideals followed.¹³ Ultimately, their arguments were revealed as nothing more than ideological nattering. Section 203 was reauthorized for another twenty-five years but not without a fight. This Essay will provide, first, an overview of Section 203, secondly, its past reauthorizations, thirdly, the attempts by Section 203 opponents to dismantle or weaken this provision, fourthly, why such opponents ultimately failed, and lastly, the role coalition played in the successful reauthorization of Section 203.

I. OVERVIEW OF SECTION 203

The Voting Rights Act of 1965 was enacted against the backdrop of the violence and intolerance against peaceful civil rights activists that in many ways culminated on the Edmund Pettus Bridge in Selma, Alabama, on Bloody Sunday. Recognizing the historic and current discrimination and ongoing systematic exclusion from voting for African-Americans in the South, the Voting Rights Act was designed to eradicate discrimination in, and barriers to, voting for African-Americans. Ten years later, during the 1975 reauthorization of the Voting Rights Act, Congress recognized that certain minority citizens who did not speak English proficiently and who had experienced historical discrimination were also being systematically disenfranchised and broadened the protections of the Voting Rights Act on

12. During the same period of the Voting Rights Act reauthorization debate, the Senate, on May 18, 2006, passed Senator Inhofe’s (R. Okla.) amendment to the Senate immigration bill that declares English the “national” language by a vote of 63-34, with 3 not voting. Comprehensive Immigration Reform Act of 2006, S. 2611, 109th Cong., 152 CONG. REC. D508 (daily ed. May 18, 2006) (indicating the vote count on Senator Inhofe’s amendment). While the amendment does not directly affect Section 203, it was quite clear the same rationale used to support the amendment was used to oppose Section 203 of the Voting Rights Act. During the debate on the amendment, Senator Graham (R. S.C.) asked, “What does it mean to be an American?” 152 CONG. REC. S4739 (daily ed. May 18, 2006) (statement of Sen. Graham). Disturbed by the demonstrators “in the streets with Mexican flags” in support of good comprehensive immigration reform, Senator Graham stated that he was “not going to sit on the sidelines and watch [these] demonstrations that destroy national unity We all know if they don’t become proficient in English, they will never achieve their own individual value and will be hurting our country.” *Id.* Clearly, to Senator Graham, one who was not fluent or proficient in English was not an American. Implicit in their arguments is the notion that if one is not a good American, then one does not deserve the same rights as those who are. *See id.*; *see also* Suzanne Gamboa, *Chances of Voting Rights Act Renewal Dim*, SACRAMENTO BEE, July 12, 2006, <http://www.sacbee.com/24hour/politics/story/3328445p12257768c.html> (providing additional commentary on election assistance in languages other than English).

13. Tom Curry, *Get Rid of the Foreign-Language Ballot?*, MSNBC, June 29, 2006, <http://www.msnbc.msn.com/id/13597931/>.

their behalf by enacting Section 203.¹⁴ In particular, Congress sought to protect the voting rights of Latinos, Asian Americans, American Indians, and Alaska Natives finding:

[T]hrough the use of various practices and procedures, citizens of [the four covered groups] have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them resulting in high illiteracy and low voting participation.¹⁵

In enacting Section 203, Congress intended to remedy racial discrimination in the voting process, education, and other facets of life that result in the disenfranchisement of language minorities.

Section 203 requires covered jurisdictions to provide language assistance during the electoral process, thereby removing the language barrier to voting for their covered language minorities. Section 203 only applies to Asian American, Latino, American Indian or Alaska Native voters. A jurisdiction is covered under Section 203 for a particular language if it meets two criteria. First, there needs to be a critical mass of limited English proficient voting-age citizens of a particular language minority. For the purpose of Section 203, a critical mass is defined as more than 10,000, more than five percent of all voting-age citizens, *or* more than five percent of all reservation residents on an Indian reservation. The second criterion is that the critical mass of the particular language minority group must have an illiteracy rate higher than the national illiteracy rate.¹⁶ Once covered, the jurisdiction is obligated to provide “any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the elec-

14. H.R. REP. NO. 109-478, at 9-10 (2006) (“In doing so, Congress ‘documented a systematic pattern of voting discrimination and exclusion against minority group citizens who are from environments in which the dominant language is other than English,’ and ‘[b]ased on the extensive evidentiary record demonstrating the prevalence of voting discrimination and high illiteracy rates among language minorities, the [relevant] Subcommittee acted to broaden its special coverage to new geographic areas in order to ensure protection of the voting rights of language minority citizens.’”) (footnote omitted) (quoting H.R. REP. NO. 94-196, at 7, 16 (1975)). In 1975, Congress also enacted Section 4(f)(4) in response to its finding of pervasive voting discrimination against citizens of language minorities that was national in scope. Recognizing that these language minority citizens came from environments with non-English dominant languages and that these citizens have been denied equal educational opportunities, Congress found that English-only elections excluded language minority citizens from participating in the electoral process, which were aggravated by acts of physical, economic, and political intimidation in many areas of the country. Section 4(f)(4) has its own trigger formula that included redefining “test or device” within the Section 5/preclearance context to include English-only elections. This means that Section 4(f)(4) covered jurisdictions must get preclearance, or prior approval, from the Department of Justice or the U.S. District Court of the District of Columbia prior to implementation of any voting changes. Additionally, Section 4(f)(4) jurisdictions are required to provide the same language assistance as required under Section 203 for their covered languages. 42 U.S.C. § 1973b(f) (2006).

15. 42 U.S.C. § 1973aa-1a(a).

16. *Id.* § 1973aa-1a(b)(2). The Director of the Census Bureau makes these determinations, which are effective upon publication in the Federal Register. The Director’s determinations are not subject to review in any court. *Id.* § 1973aa-1a(b)(4).

toral process, including ballots” in the covered language as well as in English.¹⁷ Guidelines issued by the Department of Justice (DOJ) clarifies that Section 203 compliance requires materials and assistance be provided in a way “designed to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities” throughout all stages of the electoral process.¹⁸

Section 203 has been successful in increasing the civic engagement of Latino, Asian American, American Indian, and Alaska Native citizens, with higher voter registration and turnout levels from each previous enactment or reauthorization period.¹⁹ Increases in voter registration and turnout can be directly linked to Section 203 compliance. For example, the efficacy of Section 203 can be seen in Harris County, Texas. After entering into a Memorandum of Agreement with the DOJ, Harris County saw the doubling of Vietnamese voter turnout, which resulted in the first Vietnamese candidate in history to be elected to the Texas legislature, defeating the incumbent chair of the Appropriations Committee by 16 votes out of the 40,000 cast.²⁰ The increased civic engagement of these groups has also led to increased political representation by candidates of choice. In recent years, more than 5,200 Latinos and almost 350 Asian Americans have been elected to office.²¹ Additionally, Native American candidates, who have traditionally been unrepresented, are being elected to local school boards, county commissions, and State legislatures in ever-increasing numbers.²²

II. REAUTHORIZATIONS OF SECTION 203

Prior to the 2006 reauthorization process, Section 203 was reauthorized in 1982 and 1992. In 1992, Congress found that Latinos, Asian Americans, American Indians, and Alaska Natives continued to experience educational inequities and high illiteracy rates resulting in low voting participation.²³ In addition to extending Section 203 for fifteen more years, Congress also expanded the coverage formula, originally only a five percent trigger, in order to reach segments of the language minority population that were not numerous enough to be covered by the original Section 203 trigger.²⁴ One such segment included language minority citizens located in large urban cities.

17. *Id.* § 1973aa-1a(c). Of course, when the covered language is oral or unwritten, then the covered jurisdiction is only required to furnish oral instructions, assistance, or other information relating to registration and voting. *Id.*

18. Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 C.F.R. § 55.2 (1999).

19. H.R. REP. NO. 109-478, at 18-19. For example, the House Committee report notes that the number of registered Latino voters grew from 7.6 million in 2000 to 9 million in 2004 and, in certain cases, Native American voter turnout has increased by more than 50% to 150%. *Id.* at 19-20.

20. *Id.* at 19.

21. *Id.*

22. *Id.* at 20.

23. *Id.* at 11.

24. *Id.*

Because a significant number of language minority citizens located in large cities were not covered under the original formula of a five percent trigger, Congress established a numerical coverage threshold of 10,000 to ensure that the substantial numbers of language minority citizens in large cities would receive language assistance.²⁵ Additionally, recognizing that American Indians and Alaska Natives, as intended beneficiaries of the language assistance provisions, often resided in communities that straddled a number of different counties, Congress decided to make the five percent trigger applicable to entire reservations regardless of how many counties they fell across.²⁶ This was of particular importance because the non-Native American population in the various counties would normally dilute the Native American population, thereby making it difficult for their community to qualify for Section 203 protections under the original five percent trigger, even when there was a great need.

The 2006 Voting Rights Act reauthorization bill extends Section 203 until 2032.²⁷ In extending Section 203, Congress reiterated findings from the previous reauthorizations and noted that the covered language groups continued to suffer from discrimination in voting and to experience barriers to voting because of limited English proficiency and high illiteracy rates.²⁸

The House Judiciary Committee received evidence of discriminatory tactics and efforts on the part of local officials to keep covered language minority citizens from registering and casting effective ballots from many different jurisdictions.²⁹ For example, in a number of states, language minority citizens were subject to harassment by others who challenged their citizenship status solely on the basis of their surnames or ethnicity.³⁰ These acts occurred in Georgia against Latino voters and against Latino and Asian American voters in Alabama.³¹ In Bayou La Batre, Alabama, for instance, an Asian American candidate was running for a city council seat against a Caucasian incumbent. During the primaries, supporters of the incumbent challenged the right to vote of only Asian American voters in an attempt to suppress Asian American voting. After an investigation, the DOJ found that the challenges were racially motivated and precluded the challengers from continuing such practices during the general election. The Asian American candidate ultimately won the city council seat.³²

High levels of limited English proficiency among the covered language minority groups, including thirty-nine percent of Asian Americans and

25. *Id.*

26. *Id.*

27. Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577, 581.

28. H.R. REP. NO. 109-478, at 45.

29. *Id.*

30. *Id.*

31. *Id.*

32. DeWayne Wickham, *Why Renew Voting Rights Act? Alabama Town Provides Answer*, USA TODAY, Feb. 22, 2006, at 13A, available at http://www.usatoday.com/news/opinion/editorials/2006-02-22-forum-voting-act_x.htm.

forty-three percent of Latino Americans in California, also factored into the extension of Section 203.³³ The Committee received testimony that these high levels of limited English proficiency are exacerbated by unequal educational opportunities experienced by the covered language minority groups as evidenced by court decisions finding educational discrimination against these groups and lower rates of educational attainment.³⁴ Of particular significance was the discrimination experienced by covered language minority group students who were also English language learners, which lead to unequal educational treatment and opportunities as compared to their English-speaking counterparts.³⁵ Finally, the Committee noted that these problems were compounded by noncompliance by some covered Section 203 jurisdictions, thereby further creating barriers to voting, necessitating the reauthorization of Section 203.³⁶

III. ANTI-SECTION 203 AMENDMENTS OFFERED DURING THE 2006 REAUTHORIZATION PROCESS

Although ultimately successful in reauthorizing Section 203 for twenty-five years, during the process itself, there was never a guarantee that Congress would succeed in reauthorizing this provision.³⁷ During the congress-

33. H.R. REP. NO. 109-478, at 46.

34. *Id.* at 50.

35. *Id.* at 51.

36. *Id.* at 52.

37. While 1992 ultimately saw the victory of a renewed and strengthened Section 203, this victory did not come easily or lightly. In 1992, Congress saw attempts to weaken or repeal Section 203 through the offering of seven substantive amendments, five in the House and two in the Senate. *See* Voting Rights Language Assistance Act of 1992, H.R. 4312, H. Amend. 746, 102d Cong., 138 CONG. REC. H6596 (daily ed. July 24, 1992) (extending for five years Section 203, deleting the provisions in the bill which expand the number of counties required to provide bilingual assistance, and extending the application of the provisions to Indian reservations); Voting Rights Language Assistance Act of 1992, H.R. 4312, H. Amend. 747, 102d Cong., 138 CONG. REC. H6604 (daily ed. July 24, 1992) (requiring the Federal government to compensate counties and states for all costs incurred in the implementation of Section 203); Voting Rights Language Assistance Act of 1992, H.R. 4312, H. Amend. 748, 102d Cong., 138 CONG. REC. H6604 (daily ed. July 24, 1992) (exempting voting units from the requirement of Section 203 where the number of voters affected is fewer than 100); Voting Rights Language Assistance Act of 1992, H.R. 4312, H. Amend. 749, 102d Cong., 138 CONG. REC. H6604 (daily ed. July 24, 1992) (requiring that only U.S. citizens could request and receive bilingual voting assistance); Voting Rights Language Assistance Act of 1992, H.R. 4312, H. Amend. 750, 102d Cong., 138 CONG. REC. H6608 (daily ed. July 24, 1992) (deleting language that expands the number of counties that are required to provide bilingual voting assistance); Voting Rights Language Assistance Act of 1992, H.R. 4312, S. Amend. 2911, 102d Cong., 138 CONG. REC. S11,804 (daily ed. Aug. 6, 1992) (modifying the application of the bilingual voting requirements and requiring certain studies); Voting Rights Language Assistance Act of 1992, H.R. 4312, S. Amend. No. 2915, 102d Cong., 138 CONG. REC. S11,804 (daily ed. Aug. 6, 1992) (requiring federal funding for the costs of compliance). Again, in 1996, Section 203 was in jeopardy when the House Judiciary Committee passed a bill to repeal Section 203. Bilingual Voting Requirements Repeal Act of 1996, H.R. 351, 104th Cong. (1995). The dissenting view to the accompanying House Committee report made clear that the supporters of the repeal were concerned with immigrants, despite the fact that only citizens were impacted by Section 203. H.R. REP. NO. 104-728, at 29 (1996). Interestingly enough, anti-immigrant sentiments were also running high in 1996 when the U.S. Congress passed three major bills limiting the rights of immigrants: Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (grouping provisions impacting immigrants with those designed to curb terrorism); Illegal Immigration Reform and Immigrant Responsibility Act of

sional hearings, the House Judiciary Subcommittee on the Constitution and the Senate Judiciary Committee heard from witnesses who opposed Section 203, arguing that it should be allowed to expire.³⁸ While some of their arguments were couched in legal or practicality terms, much of their “concern” was actually directed at immigrants.³⁹ This became more apparent as some congressmen decided to take up those same arguments and attack Section 203 during the legislative process. A number of amendments were offered, and the ensuing debate clearly illustrated how anti-immigrant sentiments colored a provision of the “crown jewel” of the nation’s civil rights laws that simply assist U.S. citizens in voting.

During the markup of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 (VRARAA) in the House Judiciary Committee on May 10, 2006, two amendments against Section 203 were offered by Representative Steve King (R. Iowa). The first amendment would have struck the reauthorization of Section 203, allowing Section 203 to expire in 2007, and the second King amendment would have shortened the reauthorization period of Section 203 from twenty-five years to merely six years, allowing Section 203 to expire in 2013 rather than 2032.⁴⁰ The first amendment failed by a vote of 26 to 9.⁴¹ Similarly, the second amendment failed by a vote of 24 to 10.⁴²

1996, Pub. L. No. 104-208, 110 Stat. 3009 (expanding and cutting down on avenues for immigrants to legalize their status); and Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, 2260 (ending many forms of cash and medical assistance for most legal immigrants and other low-income individuals).

38. See *Voting Rights Act: Section 203—Bilingual Election Requirements, Part II: Hearing on H.R. 9 Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 67-75 (2005) (statement of K.C. McAlpin, Executive Director, ProEnglish); *Voting Rights Act: Section 203—Bilingual Election Requirements (Part I), Hearing Before the Subcomm. on the Constitution of the Comm. on the Judiciary*, 109th Cong. 24-33 (2005) (statement of Linda Chavez, President, One Nation Indivisible); *Continuing Need for Section 203’s Provisions for Limited English Proficient Voters: Hearing on S. 2703 Before the S. Comm. on the Judiciary*, 109th Cong. (2006), <http://judiciary.senate.gov/hearing.cfm?id=1930> (statement of Mauro E. Mujica, Chairman of the Board, U.S. English, Inc.); *id.* (statement of Peter N. Kirsanow); *id.* (statement of Linda Chavez, President, One Nation Indivisible).

39. For example, one argument proffered is that it is costly for jurisdictions to comply with Section 203. This is simply false and is used as a way to deflect from the ideological, anti-immigrant tenor of their opposition. Where Section 203 is implemented properly, language assistance accounts for only a small fraction of total election costs. For example, a 2005 study of election officials in the thirty-one states covered by Section 203 found that, among other things, over a majority of jurisdictions incurred no additional costs for either oral or written language assistance. This research also concluded that, after controlling for factors such as population size and classification of costs, the average percentage of total election costs attributable to language assistance is 2.9% for oral assistance and substantially below the 7.6% for written assistance as reported by the GAO in its 1984 study. These averages are nearly equal to or below the original costs reported by GAO based on the 1984 elections and relied upon by Congress to extend Section 203 in 1992 and are lower than the averages from the 1997 GAO study. When jurisdictions effectively provide language assistance (such as hiring bilingual poll workers at no extra cost than monolingual poll workers and working with local community-based organizations who are trusted by the covered language minority communities to publicize the assistance), then the costs are minimal. See *Voting Rights Act: Section 203—Bilingual Election Requirements (Part II), Hearing Before the Subcomm. on the Constitution of the Comm. on the Judiciary*, 109th Cong. 78-85 (2005) (statement of Dr. James Thomas Tucker, Adjunct Professor, Barrett Honors College at Arizona State University).

40. H.R. REP. NO. 109-478, at 85-86.

41. *Id.*

42. *Id.* at 86-87.

The next test of Section 203's viability against the misplaced anti-immigrant sentiments came on June 28, 2006, during the House floor debate on the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2007, via an amendment offered by Representative Cliff Stearns (R. Fla.).⁴³ Representative Stearns's amendment would have dictated that none of the funds allocated to the DOJ under this appropriation bill could be used to enforce Section 203.⁴⁴ That is, the DOJ could no longer require jurisdictions who were failing to comply with the federal statute to provide language assistance to its covered language minority voters. The measure was designed to kill language assistance even before the renewal vote. The amendment was defeated by a vote of 254 to 167, with eleven not voting.⁴⁵

On July 13, 2006, Representative King again offered his amendment to strike the reauthorization of Section 203 during the House floor debate on the VRARAA.⁴⁶ This amendment would have allowed Section 203 to expire August 2007.⁴⁷ Once again, Representative King's amendment was defeated by a vote of 238 to 185, with nine members not voting.⁴⁸

The final test occurred during the markup of the VRARAA by the Senate Judiciary Committee on July 19, 2006. During markup, Senator Coburn (R. Okla.) offered an amendment that would have weakened Section 203 by providing that persons who state that they speak English "well" in response to the Census Bureau's inquiry would not be considered limited English proficient under Section 203.⁴⁹ Senator Coburn's amendment would thereby change the well-entrenched and well-reasoned definition of "limited English

43. Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2007, H.R. 5672, 109th Cong., 152 CONG. REC. H4743 (daily ed. June 28, 2006) (amendment offered by Rep. Stearns to forbid use of appropriations funds for Section 203 enforcement by the Department of Justice, which failed by a vote of 167-254).

44. *Id.*

45. 152 CONG. REC. H4774-75 (daily ed. June 28, 2006) (Roll Call Vote No. 340).

46. Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, H.R. 9, 109th Cong., 152 CONG. REC. H5191 (daily ed. July 13, 2006) (enacted without amendment as Pub. L. No. 109-246, 120 Stat. 577) (amendment offered during the House floor debate by Rep. King, which failed by a vote of 185-238).

47. *Id.*

48. 152 CONG. REC. H5205-06 (daily ed. July 13, 2006) (Roll Call Vote No. 372).

49. S. REP. NO. 109-295, at 4 (2006); *see also* Seth Stern, *Voting Rights Extension Advances*, CONG. Q. TODAY, July 19, 2006, 2006 WLNR 12762704. While Coburn's amendment is seemingly innocuous, his amendment was as anti-Section 203 as a straight denial of reauthorization. Analysis of the Census Bureau's 2002 Voting Rights Determination File, which was used to make the Section 203 determinations, showed that weakening the definition of LEP to those who speak English less than very well or less than well would result in reducing the number of covered jurisdictions by more than two-thirds. Coverage for Spanish would be drastically reduced, including the loss of statewide coverage for Spanish in three states, denying language assistance to over 2 million U.S. citizens, the loss of all but one county out of thirty-three counties currently covered for Spanish in New Mexico, the reduction from all fifty-eight counties covered for Spanish to only ten in California, and finally, the reduction from 254 Spanish-covered counties to just twenty-three in Texas. Over half of all Alaska Native and American Indian voters would no longer be able to receive language assistance. Finally, the coverage for Asian American language would be reduced by over 60%, including the elimination entirely of any coverage for Filipinos and Japanese. These data were shared with members on the Hill during the debate, and it was made clear that this amendment would be severely debilitating for language minority communities and eradication, in effect, of Section 203.

proficient” and narrow the trigger for language assistance to voters.⁵⁰ Coburn’s amendment was rejected by voice vote.⁵¹

The main argument offered against Section 203 and in support of these amendments to strike or weaken Section 203 centered on anti-immigrant sentiments. The conflation of the issues was intentional. Despite empty gestures stating that the debate was not about immigration, supporters of these amendments made it clear time and time again that their opposition to language assistance revolved around the concepts of the need for “assimilation” of immigrants and the “divisiveness and balkanization”⁵² of different languages of immigrants. Representative Stearns himself stated that his amendment to preclude any Section 203 enforcement and thereby allow jurisdictions to fail to provide language assistance was about assimilation and that in his opinion, “[S]ection 203 of the Voting Rights Act would exacerbate isolation and segregation.”⁵³ During the debate on the Stearns amendment, Representative Rohrabacher (R. Cal.) reiterated Representative Stearns’s comments by stating that, “In every other country of the world where we have permitted and they have actually promoted bilingualism, it has led to divisiveness and balkanization of countries and hatred between peoples.”⁵⁴ He claimed that English has “created the unity of our country that is made up of so many different ethnic groups, so many different races, so many different religions” and that “[w]e are, in fact, doing a great disservice to those least fortunate people and those immigrants who come to our country by not encouraging them, by not giving them the incentive to learn English. It is a crime against those people and against their children.”⁵⁵ More than once, opponents espoused an elitist view that a true American would know how to speak English.⁵⁶ Representative Steve King went so far

50. While Coburn’s amendment may seem logical in a purely colloquial context, it is flawed because of its failure to recognize legal precedent and strong methodological reasons for the current definition of limited-English proficient, that is, all persons who speak English less than very well. The Census Bureau has determined that most respondents overestimate their English proficiency and therefore, those who answer other than “very well” are deemed LEP. *See* H.R. REP. NO. 102-655, at 8 (1992), *as reprinted in* 1992 U.S.C.C.A.N. 766, 772. The Census Bureau noted that research showed that those who reported speaking a non-English language at home and speaking English “very well” performed as well on tests using English written materials as English-only speakers. PAUL SIEGEL ET AL., U.S. CENSUS BUREAU, LANGUAGE USE AND LINGUISTIC ISOLATION: HISTORICAL DATA AND METHODOLOGICAL ISSUES 2 (Feb. 12, 2001) (paper prepared for the session on Language Differences and Linguistic Isolation at the FCSM Statistical Policy Seminar, Bethesda, Md., Nov. 8-9, 2000), *available at* <http://www.census.gov/population/socdemo/language/li-final.pdf>. However, those who reported speaking a non-English language at home and responded as speaking English “well,” “not well,” and “not at all” performed worse on the test. *Id.* The Census Bureau believed that those respondents could be labeled as LEP and that “[t]hey may require materials and instructions in another language in order to vote or secure basic services.” *Id.*

51. S. REP. NO. 109-295, at 4 (2006); *see also* Stern, *supra* note 49.

52. 152 CONG. REC. H4746 (daily ed. June 28, 2006) (statement by Rep. Rohrabacher).

53. *Id.* at H4744 (statement of Rep. Stearns).

54. *Id.* at H4746 (statement of Rep. Rohrabacher).

55. *Id.*

56. Representative Smith (R. Texas) stated, “[I]f you were born in America, you should know English [and if] you are a naturalized citizen, you should have passed an English proficiency test.” H.R. REP. NO. 109-478, at 137 (2006). This of course ignores the fact that because the United States encourages people who have been here for a long time and who have been contributing to society to be civi-

as to imply that a naturalized citizen utilizing language assistance provided under Section 203 is somehow acting fraudulently.⁵⁷ Furthermore, Representative Steve King made it clear that he believed that voters who did not learn English were not real Americans because they would not understand the culture and thus should not be allowed to choose the “next leader in the free world.”⁵⁸

In the end, despite all the posturing by opponents to Section 203 that their concern was not about immigrants, it became clear that their purpose of blocking reauthorization of Section 203 centered almost exclusively on immigrants and naturalized citizens. During the House floor debate on the VRARAA, Representative Ginny Brown-Waite’s (R. Fla.) comments highlighted Section 203 opponents’ attitude that those benefiting from the language assistance provided by Section 203 are all foreigners who entered this country and refuse to learn to speak English and that the provision of language assistance to these immigrants tears at the fabric of this nation.⁵⁹ Representative Istook (R. Okla.) summed up the anti-immigrant sentiments best during the House floor debate on the VRARAA where he expressed that being limited-English proficient is to be un-American.⁶⁰

IV. ARGUMENTS MADE IN SUPPORT OF SECTION 203

Supporters of the reauthorization of the Voting Rights Act and of Section 203 relied on the realities and the ideals of this country to expose the fallacy of opponents’ arguments. First, supporters noted the importance of English in everyday life as well as the fact that immigrants are well aware

cally engaged, certain persons are exempt from English literacy requirements when applying for citizenship, such as the elderly who have resided in the United States for a lengthy period of time, the physically or developmentally disabled, and certain Hmong veterans who helped to save American lives during the Vietnam War and came to the United States as refugees.

57. “So one would presume that if you are a naturalized citizen and you ask for a ballot in a language other than English, that you somehow circumvented the standards that are in Federal statute.” 152 CONG. REC. H4746 (daily ed. June 28, 2006) (statement of Rep. King).

58. H.R. REP. NO. 109-478, at 138. “[I]f you cannot understand the ballot in English, and you can’t learn to understand the ballot in English, even though you can bring someone into the polling booth, how does a voter determine their judgment on how they make a selection on perhaps who would be the next leader in the free world. If you can’t understand the language, then how do you understand the culture, how do you make that evaluation.” *Id.*; see also *Lou Dobbs Tonight: Amnesty for Millions; Mexican President Vicente Fox Visits California; Raid on Congress; Steve King Interview; Senate Adds Provision to Consult Mexico on Fence* (CNN television broadcast May 25, 2006) (transcript available at <http://transcripts.cnn.com/TRANSCRIPTS/0605/25/ldt.01.html>).

59. Representative Ginny Brown-Waite stated:

“To become a citizen today you must demonstrate that you can speak English. These requirements have encouraged new immigrants to learn our language and become part of our society. We must return to this tradition to reunite our society and erase the divide between new citizens and those with two, three, and more generations in this great Nation.”

152 CONG. REC. H5194 (daily ed. July 13, 2006) (statement of Rep. Ginny Brown-Waite); see also *id.* at H5196 (statement of Rep. Garrett (R. N.J.)) (stating that Section 203 provides “a disincentive for new citizens to assimilate into this country”).

60. “To become an American citizen, we require people to read, write and speak in English. That is to help them to assimilate in our melting pot, truly to become Americans.” *Id.* at H5194 (statement of Rep. Istook).

of the importance of learning English. In fact, immigrants have a strong desire and incentive to do so. As Representative Sensenbrenner (R. Wis.), Chairman of the House Judiciary Committee and sponsor of the VRARAA, said, "I believe that one of the cornerstones of American society is the ability to speak English. English is the language of commerce in this country, and I believe every citizen should strive to become proficient in the English language."⁶¹ However, even in his support for the proposition that Americans be fluent in the English language, Representative Sensenbrenner recognized that "effectively denying them their right to cast ballots that they cannot comprehend will not advance this goal, but will frustrate it."⁶² During the Senate debate, Senator Dodd (D. Conn.) acknowledged that "all Americans who are voting should learn to speak the English language [and that it] should be our goal that all American citizens who vote should be able to understand an English language ballot."⁶³ Senator Dodd was quick to point out that citizens who are limited English proficient are in the process of learning English and may speak only one language as they are learning English, which "makes them no less deserving, if they are citizens, of the basic rights and liberties which all Americans should expect and are entitled to."⁶⁴ Finally, Representative Serrano (D. N.Y.) highlighted the desire of many limited English proficient persons to learn English:

I have never met any immigrant, much less one who became a citizen, who did not want to learn English or understand that learning English is their key to the American dream. In my city of New York, there are not enough English as a second language courses to go around for all the folks who want to take them.⁶⁵

Supporters also emphasized that Section 203 does not apply to immigrants, but rather only to U.S. citizens, both native-born citizens who for various reasons have not yet become fluent in English as well as naturalized citizens who were once immigrants and are aware of the importance of learning English but who have also not yet become fluent in English.⁶⁶ As

61. *Id.* at H5192 (statement of Rep. Sensenbrenner).

62. *Id.*

63. 152 CONG. REC. S7998 (daily ed. July 20, 2006) (statement of Sen. Dodd); *see also* H.R. REP. NO. 109-478, at 142. During the markup of H.R. 9, Representative Linda Sanchez (D. Cal.) stated, "[I]t is certainly the case that that would be the goal that everybody born in the U.S. would speak English fluently." *Id.*

64. 152 CONG. REC. S7998 (statement of Sen. Dodd); *see also* H.R. REP. NO. 109-478, at 145. During the markup of H.R. 9, Representative Wexler (D. Fla.) stated:

"I think we would all agree that the teaching and learning of English is a goal that, hopefully, all Americans would pursue with vigor. But what we are talking about is voting. We are not talking about how we are preparing people for economic life. We are not talking about how we are preparing people for the job market."

Id.

65. 152 CONG. REC. H5173 (daily ed. July 13, 2006) (statement of Rep. Serrano).

66. Representative Pelosi reminded everyone that "our laws and our Constitution draws no distinction between American citizens born here or not," before going on to note that "three-quarters of those who are covered by the language assistance provision are native-born United States citizens [and the]

Representative Crowley (D. N.Y.) noted, “Let’s be crystal clear, we are not talking about undocumented residents. These are citizens of the United States. Many of whom have voted you and me into the office that we hold today.”⁶⁷ Fairness dictates that Section 203 language assistance should be provided since, as Representative Jackson-Lee (D. Tex.) noted:

Section 203 removes barriers to voting faced by tax paying American citizens: Citizens who do not speak English well enough to participate in the election process. Tax-paying citizens should not be penalized for needing assistance to exercise their fundamental right to vote. Language minority citizens are required to pay taxes and serve in the military without regard to their level of English proficiency. If they can shoulder those burdens of citizenship, they should be able to share in the benefits of voting with appropriate assistance to exercise the vote.⁶⁸

Supporters also noted that the complexity of ballots today further warrants the reauthorization of Section 203. As Representative Conyers (D. Mich.) stated, “It is hard enough for us English speakers to figure out what is on these ballots, much less to ask people who are very new and still assimilating to the language. Sure, they speak English, but they need help.”⁶⁹ Making the situation worse is the fact that “there is typically a higher level of proficiency required to vote in English than there is to pass the citizenship test in English.”⁷⁰ Even after enduring long wait times to enroll in English as a second language literacy classes, it still takes citizens several years to even obtain a fundamental understanding of the English language.⁷¹

rest are naturalized U.S. citizens.” 152 CONG. REC. H4747 (daily ed. June 28, 2006) (statement of Rep. Pelosi).

67. *Id.* at H4748 (statement of Rep. Crowley); *see also id.* at H4744 (statement of Rep. Diaz-Balart) (“We are talking about American citizens and only about American citizens.”). During the markup of H.R. 9, Representative Watt noted, “This really is not about immigration; this is about citizens.” H.R. REP. NO. 109-478, at 148. *See also* 152 CONG. REC. H4744 (daily ed. June 28, 2006) (statement of Rep. Stearns); 152 CONG. REC. H4745 (daily ed. June 28, 2006) (statement of Rep. Jackson-Lee) (“[T]he focus of the debate has gone awry. You are right. It is not an immigration issue. It is a citizen issue.”).

68. 152 CONG. REC. H4745 (daily ed. June 28, 2006) (statement of Rep. Jackson-Lee).

69. 152 CONG. REC. H5147 (daily ed. July 13, 2006) (statement of Rep. Conyers). Representative Roybal-Allard (D. Cal.) also noted how “[v]oting instructions and ballot information can be confusing even for the native-born, fluent in English.” *Id.* at H5167 (statement of Rep. Roybal-Allard).

70. H.R. REP. NO. 109-478, at 142 (comments from Rep. Sanchez). Representative Sanchez went on to state:

And if you ask me how I know that, it is because both of my parents are naturalized citizens. My mother is an elementary school teacher, so she is very proficient in English. In fact, she teaches it to young students. But she often prefers her election materials in Spanish because many of the complexities and subtleties of the vast ballot initiatives that California sees in every election cycle with their double negatives, sometimes triple negative languages are very difficult for her to understand.

Id.

71. *See* 152 CONG. REC. H5192 (statement of Rep. Sensenbrenner). Representative Jackson-Lee also noted that “[a]dults who want to learn English must endure long waiting periods to enroll in English Second Language (ESL) literacy centers: The lack of funding to expand the number of ESL centers around the country leaves minority citizens unable to enroll in classes for several years.” 152 CONG.

Completion of literacy classes is often not enough to understand complex ballots.⁷² Representative Schiff (D. Cal.) echoed these sentiments by noting how confusing elections can be on voters, particularly limited English proficient voters:

We don't make our elections easy on voters. In a State where 135 candidates ran for governor 3 years ago, it should be no surprise that during the 2004 general election the California voter guidebook was nearly 200 pages. This guide includes information on candidates and ballot measures and helps voters prepare for the election.

Looking at the book when it arrived in the mail, I was able to predict the stories I would hear from my constituents. But it wasn't just those with limited English skills. Countless native English speakers shared with me how confusing the voting was and how difficult to decipher 200 pages of content in preparation for voting. I can only imagine that it would be nearly impossible for a voter with limited or no English. Yet these citizens, too, have the right to vote. Thankfully, due to the VRA in my district, our polling sites provide language assistance voters for Chinese, Filipino, Japanese, Vietnamese, and Latino voters.⁷³

To further exacerbate the situation, there has been continuing educational discrimination since Section 203 was enacted in 1975. Representative Jackson-Lee of Texas noted:

Since 1975, there have been more than 24 education discrimination cases filed on behalf of [English language learners] in 15 states: Fourteen of the States in which education discrimination lawsuits have been brought are covered by language assistance provisions. Since 1992, 10 cases have been filed.⁷⁴

In response to the claim that voters who do not speak English fluently have no business voting and choosing the leader of the free world, supporters of Section 203 noted that those arguments sounded suspiciously like arguments used for the implementation of literacy tests back in the days of Jim Crow laws. Literacy tests were historically used in this country "on the

REC. H4745 (daily ed. June 28, 2006) (statement of Rep. Jackson-Lee).

72. 152 CONG. REC. H5192 (daily ed. July 13, 2006) (statement of Rep. Sensenbrenner). Representative Serrano noted that "[p]ersistent inequalities in our education systems see to it that even those who speak, read and write English in their everyday lives are not always equipped to deal with often complex ballot instructions." *Id.* at H5173 (statement of Rep. Serrano).

73. H.R. REP. NO. 109-478, at 147 (comments from Rep. Schiff).

74. 152 CONG. REC. H4745 (daily ed. June 28, 2006) (statement of Rep. Jackson-Lee). Representative Jackson-Lee went on to note that "[t]hese disparities increase the likelihood that ELLs will achieve lower test scores and drop out of school, ultimately, leading to lower voter registration and turnout." *Id.*

grounds that only people who we thought were literate in the English language should be able to vote.”⁷⁵ Representative Nadler (D. N.Y.) noted that, “The same arguments used to justify literacy tests in prior years are now being recycled to exclude American citizens with limited English proficiency.”⁷⁶ He went on to implore his colleagues “not to allow a small group to drag this Nation back to the days of Jim Crow voting. If we are to be a beacon of democracy to the world, then we must stand by our own values.”⁷⁷

Furthermore, Representative King’s arguments are false because a lack of fluency in English does not mean a lack of information and knowledge about an election. Representative Nadler responded to this contention by exclaiming:

[Representative King] asks how are [limited English proficient voters] supposed to know how to vote. We publish newspapers in this country in something like 300 different languages. You don’t have to read, as much as I hate to say it, The Washington Post or New York Times to know what you are doing. There are plenty of foreign language [newspapers] in Spanish, Russian and Chinese, and God knows [that] in this country [they] do as good a job at reporting⁷⁸

Senator Akaka (D. Haw.) drove home this point in stating that: “Asian Americans who came as refugees are the most likely to face language barriers. For example, 67 percent of Vietnamese Americans over 18 are limited English proficient. They follow the news closely, but often by accessing newspapers and other media in their native languages.”⁷⁹

Finally, Section 203 is needed to continue to eradicate voting barriers for language minority citizens. First, there are the continuing cases of voting discrimination against language minority citizens. Representative Payne (D. N.J.) described how:

75. H.R. REP. NO. 109-478, at 138 (comments by Rep. Nadler).

76. 152 CONG. REC. H5150 (daily ed. July 13, 2006) (statement of Rep. Nadler); *see also id.* at H5195 (statement of Rep. Harman (D. Cal.)) (“By 1975, poverty, poor education, and institutionalized discrimination had combined to turn English-only ballots into a de facto literacy test.”); 152 CONG. REC. S8008 (daily ed. July 20, 2006) (statement of Sen. Leahy) (“These Americans are trying to vote but many of them are struggling with the English language due to disparities in education and the incremental process of learning. We can and we must reauthorize these provisions to make sure there is no literacy test at the polling place.”); 152 CONG. REC. H5196 (daily ed. July 13, 2006) (statement of Rep. Gonzalez (D. Tex.)) (referring to Rep. King’s amendment not to reauthorize Section 203 as a return to the “[t]he good old days of literacy tests”).

77. 152 CONG. REC. H5150 (daily ed. July 13, 2006) (statement of Rep. Nadler). Representative Pelosi (D. Cal.) also noted that “[t]he arguments of the opponents of Section 203 are suspiciously similar to the arguments once employed for literacy tests to disenfranchise African American voters. I had hoped we had passed that period in our country’s history when such tests were widely used. We cannot permit the use of these tests once again.” 152 CONG. REC. H4747 (daily ed. June 28, 2006) (statement of Rep. Pelosi).

78. H.R. REP. NO. 109-478, at 138 (comments by Rep. Nadler).

79. 152 CONG. REC. S8001 (daily ed. July 20, 2006) (statement of Sen. Akaka).

In 1999, the Department of Justice's Civil Rights Division found that Passaic County, New Jersey, was discriminating against Latino voters by denying equal access to the electoral process. The Civil Rights Division entered into a consent decree with the County of Passaic, and now the elections are monitored by the Federal observers. A three-judge panel of the U.S. District Court of New Jersey appointed an independent elections monitor to ensure that the county complies with the court orders. The monitor assisted the county in its efforts to comply with the court's orders.⁸⁰

During the House floor debate on the VRARAA, Representative Wasserman Schultz (D. Fla.) described how:

Osceola County [Florida] was purposefully denying voter registration and assistance opportunities to Spanish language voters, including a large Puerto Rican population. The Department of Justice sued and secured a consent decree requiring the county to comply with Federal law. In July 2002, Osceola County became covered by section 203 of the Voting Rights Act. However, the county continued to neglect its duties under Federal law. The Federal court found just two weeks ago that there is considerable evidence to suggest that the county's institution and maintenance of an at-large voting system was motivated by a desire to dilute the vote of an emerging Hispanic population.

Now, we are not talking about something that happened 40 years ago. This is just a few weeks ago now, in 2006.⁸¹

Section 203 helps language minority citizens increase their civic participation and break through the barriers created by language and election officials who take advantage of language barriers to disenfranchise language minority voters.⁸² The hearing record showed that "if you provide the assistance, the voter participation will go up. If you remove the assistance, the voter participation will go down."⁸³ Because Section 203 applies only "when there is a critical mass of voters in that district . . . [large] enough to affect an election and enough where encouraging or discouraging voter

80. 152 CONG. REC. H5196 (daily ed. July 13, 2006) (statement of Rep. Payne).

81. *Id.* at H5197 (statement of Rep. Schultz).

82. *Id.* at H5196 (statement of Rep. Honda). Representative Honda went on to assert: "It is well documented that language assistance is needed and used by voters. For instance, the U.S. DOJ has reported that in one year, registration rates among Spanish and Filipino-speaking American citizens grew by 21 percent and registration among Vietnamese-speaking American citizens increased over 37 percent after San Diego County started providing language assistance."

Id.

83. H.R. REP. NO. 109-478, at 136 (comments by Rep. Scott (D. Va.)).

turnout might reasonably affect the outcome,”⁸⁴ it was clear that Section 203 needed to be reauthorized.

After the dust settled following the debate on Section 203, Representative Meek’s (D. N.Y.) poignant comments during the House floor debate on the VRARAA summed up why the reauthorization of Section 203 prevailed: “The language in section 203 is not about coddling immigrants, and [King’s] amendment shouldn’t be about punishing new citizens for having to learn a second language under fire. Section 203 is about making sure that a fundamental right, the right to vote, is without obstacle.”⁸⁵

V. COALITION’S ROLE IN THE SUCCESSFUL REAUTHORIZATION OF SECTION 203—AN INSIDER’S VIEW

Anti-immigrant sentiments played a strong role in attempts by opponents to have Section 203 struck from the renewal process, or at least weakened to the point of futility. While the facts and the ideals of this country were on the side of supporters to language assistance, what played the most crucial role in the success to renew Section 203 was ultimately the strength and unity of coalitions.

As the attorney working on the Voting Rights Act reauthorization for the Asian American Justice Center, I observed firsthand the tremendous impact that the civil rights community coalition had on this matter. I had the pleasure of working with some of the most dedicated and intelligent advocates, including those from the American Civil Liberties Union, Lawyer’s Committee for Civil Rights Under Law, Leadership Conference on Civil Rights, Mexican American Legal Defense and Educational Fund, the NAACP Legal and Educational Defense Fund, Inc., and National Association of Latino Elected and Appointed Officials, among many others. When the reauthorization discussion began two years ago, civil rights activists gathered to discuss and strategize on what the community hoped to see at the end of the reauthorization process. It became abundantly clear from the outset that everyone had the same understanding—the Voting Rights Act was an important tool for all minorities to combat voting discrimination and to empower minority communities. To that end, everyone wanted to reauthorize a strong and vibrant Voting Rights Act.

Early on during the reauthorization process, we discovered that the reauthorization of Section 203 was not going to be easy. Well, truth be told, we discovered that the reauthorization of the Voting Rights Act generally was not going to be easy. We realized that the fight against Section 203 was going to be particularly onerous due to the anti-immigrant sentiments in the country and the constant undercurrent of English-only mutterings. From the outside, Section 203 was generally seen as a Latino American issue first and

84. *Id.*

85. 152 CONG. REC. H5198 (daily ed. July 13, 2006) (statement of Rep. Meek).

maybe an Asian American issue as an afterthought. Native Americans were all but ignored in the consideration of Section 203 by outsiders and African-Americans were not impacted by Section 203. We heard stories from veterans of the 1982 and 1992 reauthorization processes about opponents of the Voting Rights Act attempting to drive a wedge between Section 203 and Section 5 (preclearance) supporters and thereby trying to split the African-American community from the others (despite the fact that other minority groups also benefit from Section 5). In the early stages of our conversations, the civil rights organizations made clear to one another that we would not be divided—that a strong Section 5 was beneficial to all; likewise, a strong Section 203 was beneficial to all. This decision stood fast and strong against all the ill will generated against both provisions during the reauthorization process—each group was able to intelligently and persuasively discuss all issues surrounding the Voting Rights Act reauthorization. It was this strength and unity that allowed the civil rights community to stay focused and stay the course to the eventual victory of a reauthorized and strengthened Voting Rights Act.

Similarly, this strength and unity played out in Congress as well. In addition to the strong bipartisan support the Voting Rights Act reauthorization received overall, many members on both sides of the aisle stepped up to the plate when it came time to defend Section 203 against its detractors. Most important was the solidarity exhibited by the Tri-Caucus, a coalition of the Congressional Black Caucus (CBC), Congressional Hispanic Caucus (CHC), and the Congressional Asian Pacific American Caucus (CAPAC). In addition to strong showings from CAPAC and CHC, and in particular, Representatives Mike Honda (D. Cal) and Linda Sanchez (D. Cal.), the passion exhibited by CBC members helped secure the fight and victory to save Section 203. In the House markup, during the fight on the Stearns amendment and on the House floor, member after member of the CBC stood up to relate how important Section 203 was to the vitality of this country and to make an impassioned plea to reject all attempts to weaken or strike Section 203.

In particular, the efforts by CBC members during the Stearns amendment stand out as a shining moment of solidarity. Those of us in the civil rights community recognized that the vote on the Stearns amendment would determine the viability of reauthorizing the Voting Rights Act. There is no doubt that the strong showing of the Tri-Caucus helped push us to victory. As Representative Davis (D. Ala. and a CBC member) eloquently stated, Section 203:

[I]s about American citizens. You can't vote unless you are an American citizen. If you are an American citizen, we all have a stake in removing the obvious impediments toward voting, and what do we gain in terms of high ground by objecting to some of

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our fellow citizens having all the tools that they need to translate the choice of the elections?⁸⁶

Bridging the gap for those outsiders who did not understand the coalition within, Representative Jackson-Lee stated during the markup:

I think it is just undermining our Constitution to suggest that your birthright of citizenship—you work all these years to become a citizen, you are of Puerto Rican heritage, you are of other heritage, and you tell them because of age or because of the fact that they came here as adults but that they that have the birthright of citizenship, the same thing that my mother had to go through in the State of Florida, born in the 1920's, speaking the King's English but yet she could not vote, her grandmother could not vote, her mother could not vote because of the fact of the color of her skin; and, whatever English she spoke, these are barriers to voting. This is what brings us to our knees in this country. This is the brutality that John Lewis experienced.⁸⁷

For me, one of the most impacting moments came during the Stearns amendment debate, when Representative John Lewis (D. Ga.) made me really understand the strength of the coalition built around this effort. As an icon of the Voting Rights Act and the civil rights movement, Representative Lewis himself made such moving statements during the Stearns debate that it became clear that Section 203 was a civil rights issue and not just an “immigrant” issue:⁸⁸

[T]he right to vote is precious, almost sacred, and one of the most important blessings of our democracy. The Stearns amendment is an attack on the voting rights of millions of American citizens. It is a modern day literacy test.

This is not about illegal immigration. These are American citizens we are talking about. If the Stearns amendment becomes law, what message are we sending to the Apache, to the Navajo Nation, to the Native Alaskan, to Vietnamese Americans, to Russian Jews, who are all citizens?

86. 152 CONG. REC. H4746 (daily ed. June 28, 2006) (statement of Rep. Davis).

87. H.R. REP. NO. 109-478, at 144 (comments by Rep. Jackson-Lee).

88. Of course, for many civil rights advocates, immigration is a civil rights issue. However, many outside of the movement fail to associate the two and see immigration as a “foreign” issue and civil rights as a domestic one.

These are our neighbors. They are taxpayers. They are Americans. We should be opening up the process to each and every American. Let them come in and participate.

Instead, this amendment will return us to the dark past. I don't think we want to go back as a Nation and as people.⁸⁹

At the end of the day, it was a "coalition" that allowed us to persevere. The Merriam-Webster dictionary defines coalition as a "body formed by the coalescing of orig[inally] distinct elements."⁹⁰ Coalescing is defined as growing together and uniting into a whole.⁹¹ That was certainly the case here. The civil rights community and minority communities across the spectrum grew together and united into a whole that was strong enough to beat back all attempts to destroy a precious piece of history. The coalition that was built is in and of itself a piece of history, the history of the reauthorization of the Voting Rights Act of 2006. Without a doubt, it was my privilege and honor to be a part of such an incredible team effort and a part of history.

VI. CONCLUSION

In closing, anti-immigrant sentiments and the immigration debate were not able to derail the reauthorization of Section 203. Many opponents of language assistance for voters based their arguments on an anti-immigrant rubric. First, seemingly ignoring the fact that Section 203 applies only to citizens, opponents claimed that there is a need for assimilation of immigrants and that that assimilation could only occur with English as the only language of choice. Opponents claimed that providing language assistance to voters was tantamount to directing immigrants that English was not worth learning, and therefore language assistance hurt language minority voters as a disincentive to learn English. Underlying all the arguments made by opponents is the notion that citizens who do not speak English proficiently are somehow less American and unworthy of the right to vote.

Ultimately, rational heads prevailed and relied on the following arguments that centered on the realities and ideals of this country to reauthorize Section 203. Section 203 applies only to U.S. citizens, both native-born citizens who for various reasons have not yet become fluent in English as well as naturalized citizens who have also not yet become fluent in English. Additionally, recognizing the importance of English in everyday life, immigrants have a strong desire and incentive to learn English. The complexity of ballots today further warrants the reauthorization of Section 203. When considered alongside the continuing educational and voting discrimination experienced by covered language minorities since Section 203 was enacted

89. 152 CONG. REC. H4745 (daily ed. June 28, 2006) (statement of Rep. Lewis).

90. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 432 (16th ed. 1971).

91. *Id.*

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in 1975, covered language minorities faced serious obstacles to being able to vote. Section 203 has worked, and continues to work, to eradicate these barriers and was reauthorized as a tool to enfranchise minority voters.