

University of Michigan Journal of Law Reform

Volume 38

2005

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Recommended Citation

Brenda Fathy Abdelall, *Not Enough of a Minority?: Arab Americans and the Language Assistance Provisions (Section 203) of the Voting Rights Act*, 38 U. MICH. J. L. REFORM 911 (2005).

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NOT ENOUGH OF A MINORITY?: ARAB AMERICANS AND THE LANGUAGE ASSISTANCE PROVISIONS (SECTION 203) OF THE VOTING RIGHTS ACT

Brenda Fathy Abdelall*

With the Voting Rights Act set to expire in 2007, debate has ensued regarding the protections it provides for minority groups. Section 203 of the Act protects language minorities, but under these protections, only four minority groups are afforded bilingual access to voting materials. This Note argues that the Act is imperative to the protection of minority voters, especially those belonging to a language minority group. This Note further argues that not only should the Voting Rights Act be renewed, but § 203 should be revised to include Arab Americans. The Note focuses on the Arab American community because it is one language minority group that is not protected under the Voting Rights Act. Furthermore, there are several barriers to bilingual access under § 203. This Note explores these barriers and advocates revision of § 203 so that all language minorities may be afforded the full protections of the Voting Rights Act.

INTRODUCTION

Although Arab Americans are making strides in the American political process,¹ discrimination against Arab Americans is present in the electoral process. Like African Americans and Asian Americans, Arab Americans are subject to subconscious racism, purposeful hatred, institutional discrimination and invidious stereotypes.² Because Arab Americans make up a smaller political constituency than some other minority groups, their electoral woes are magnified. Arab Americans are not afforded bilingual access to voting materials,³ which results in hardship for many Arab Americans attempting to use the electoral process. In 2000, nearly 24.4%

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1. With political figures such as Spencer Abraham, Nick Rahall, and Darrell Issa, Arab Americans are beginning to make a mark in American politics.

2. Troy M. Yoshino, *Still Keeping the Faith?: Asian Pacific Americans, Ballot Initiatives, and the Lessons of Negotiated Rulemaking*, 6 *ASIAN L.J.* 1, 2 (1999). See generally *After 9/11, an Assault on Civil Liberties*, *TRIAL*, Oct. 2003, at 56 (describing the additional hardships faced by Arab Americans after September 11, 2001).

3. The term "voting materials" includes registration or voting notices, forms, instructions, ballots, assistance and other materials related to the electoral process.

of the total Arab American population claimed to speak English “less than well” in their homes.⁴ Aside from those Arab Americans who have been found to speak English “less than well,” those who claim to speak “well” may still not understand an English-only ballot.

The Voting Rights Act of 1965⁵ is the cornerstone of federal regulation that seeks to protect minorities who have been historically excluded from the electoral process. The Act protects both groups and individual voters. However, the Voting Rights Act limits its protections to particular minority groups, effectively shutting the door to groups that are not explicitly mentioned in the provisions, including Arab Americans.⁶

In the mid-1970s, Congress found that certain language minority groups with limited English proficiency faced a serious barrier to political participation.⁷ Such citizens were found to have low voter participation rates.⁸ In order to protect these language minority groups, Congress enacted § 203 of the Voting Rights Act, which created bilingual assistance in the electoral process.⁹ These minority language provisions were enacted in 1975 and were last amended in 1992.¹⁰ These provisions state that “no covered State or political subdivision shall provide voting materials only in the English language”¹¹ where more than 5% of its citizens or 10,000 members of a single language minority group have limited English proficiency and have a higher illiteracy rate than the national rate.¹² However, language minority groups are specifically defined in § 203 to include only Asian Americans, Alaskan Natives, Native Americans and those of Hispanic heritage.¹³ Arabic was not included as a minority language, effectively denying Arab Americans the right to bilingual assistance while voting.

Section 203 of the Voting Rights Act was first enacted to specifically address language discrimination in the electoral process.¹⁴ Congress found that language minority group citizens have un-

4. ANGELA BRITTINGHAM & G. PATRICIA DE LA CRUZ, *WE THE PEOPLE OF ARAB ANCESTRY IN THE UNITED STATES* 10 (U.S. Census Bureau, U.S. Dep’t of Commerce, Pub. No. Censr-21, 2005).

5. 42 U.S.C. §§ 1971, 1973 to 1973bb-1 (2000).

6. See H.R. REP. NO. 94-196, at 88 (1975).

7. See *id.* at 17.

8. See S. REP. NO. 102-315, at 4 (1992).

9. Pub. L. No. 94-73, Title II, sec. 203, § 4(f), 89 Stat. 400, 401-02 (1975) (codified as amended at 42 U.S.C. § 1973aa-1a (2000)).

10. Pub. L. No. 102-344, § 2, 106 Stat. 921 (1992) (codified as amended at 42 U.S.C. § 1973aa-1a (2000)).

11. 42 U.S.C. § 1973aa-1a(b)(1) (2000).

12. 42 U.S.C. § 1973aa-1a(b)(2)(A) (2000).

13. 42 U.S.C. § 1973aa-1a(e) (2000).

14. S. REP. NO. 102-315, at 4 (1992).

equal educational opportunities resulting in high illiteracy rates and low voting participation rates.¹⁵ Furthermore, Congress found that these language minorities often experience physical, economic and political intimidation.¹⁶

The history behind the enactment of § 203 suggests that the protections of the Voting Rights Act may be extended to include other language minority groups, including Arab Americans. The historical and demographic evidence that provided the basis for the inclusion of the four recognized language minority groups is markedly similar to that of Arab Americans. At the time § 203 was enacted, there was no evidence presented regarding discrimination against Arab Americans. However, Congress expressly stated that the lack of evidence does not preclude groups from presenting evidence of discrimination in order to seek relief.¹⁷

The Voting Rights Act should address the hurdles faced by Arab Americans by protecting those with limited-English proficiency and providing access to bilingual voting materials. In 2007, the Voting Rights Act and the subsequent language minority provisions will expire,¹⁸ thus providing an opportunity to assess the effectiveness and potential expansion of § 203. While it is unrealistic to assume that the mere availability of bilingual services will suddenly increase voter participation by people who have traditionally been shut out by the electoral process,¹⁹ it is imperative to preserve the individual and collective right to vote for all language minority citizens, including Arab Americans.

This Note seeks to explore the possibility of adding Arab Americans as a federally recognized language minority group. Part I will focus on the history of the minority language provisions of the Voting Rights Act. The intent of the legislature can be determined by looking at the *Congressional Record* from 1975, as well as from the subsequent extensions of § 203 in 1982 and 1992. Once the reasons for including the specific minority language groups are clear, it will become apparent that the Arab American community should be afforded protection and assistance in the electoral process. Part II explains why the Arab American community should qualify as a

15. 42 U.S.C. § 1973aa-1a(a) (2000).

16. H.R. REP. NO. 94-196, at 40 (1975).

17. H.R. REP. NO. 94-196, at 30 (1975).

18. 42 U.S.C. § 1973aa-1a(a) (b) (1) (2000).

19. See *Minority Language Provisions of the Voting Rights Act: Hearing before the Subcomm. on Civil and Constitutional Rights, 96th Cong. 3* (1980) (statement of Max L. Friedersdorf, Chairman, Federal Election Commission).

federally recognized language minority group. Part III highlights the deficiencies of § 203 and suggests possible reforms.

I. LANGUAGE MINORITY PROVISIONS

Certain hardships faced by language minority groups helped spur the enactment of § 203 of the Voting Rights Act. Congress heard evidence in 1975, 1982, and 1992 regarding various forms of discrimination against the four recognized language minority groups: American Indian, Asian American, Alaskan Natives and those of Hispanic heritage. When § 203 was originally enacted, Congress was primarily concerned with educational disparities faced by the Hispanic American community.²⁰ However, as the bilingual assistance provisions evolved, Congress became increasingly concerned with statistics of poverty, illiteracy, and histories of past and present discrimination against the included minority language groups.²¹

A. Enactment and Congressional Intent

The Voting Rights Act of 1965 was strengthened in 1975 when the minority language provisions were added. As President Gerald R. Ford stated upon signing the minority language provisions into law, “[t]he right to vote is at the very foundation of our American system, and nothing must interfere with this very precious right.”²² Section 203 of the Voting Rights Act recognizes that large numbers of non-English speaking citizens are effectively excluded from the democratic process.²³ Essentially, § 203 is a tool by which “the rights of limited English proficient voters are preserved and the barriers to their equal, effective participation are removed.”²⁴

20. *Voting Rights Act of 1965 Amendments: Hearing on H.R. 6219 Before the Subcomm. on Civil and Constitutional Rights, 94th Cong.* 603 (1975).

21. *See generally* S. REP. NO. 102-315 (1992); S. REP. NO. 97-417 (1982); S. REP. NO. 94-295 (1975); H.R. REP. NO. 94-196 (1975).

22. President's Message Regarding the Voting Rights Extension, 11 WEEKLY COMP. PRES. DOC. 837 (July 1, 1975).

23. *See* Monique L. Dixon, *Minority Disenfranchisement During the 2000 General Election: A Blast from the Past or a Blueprint for Reform*, 11 TEMP. POL. & CIV. RTS. L. REV. 311, 315 (2002).

24. S. REP. NO. 102-315, at 5 (1992) (quoting Representative José Serrano).

All qualified voters under the Fourteenth Amendment have the right to vote.²⁵ The courts and Congress have struck down literacy tests and state actions that condition the right to vote upon a person's ability to understand English. With the passing of the Voting Rights Act in 1965, Congress specifically prohibited states from using literacy tests.²⁶ In *Katzenbach v. Morgan*, the Court upheld the congressional ban upon states to condition the right to vote upon a person's ability to speak and/or read English.²⁷ In *Katzenbach*, the issue revolved around the state of New York's right to condition its citizens to be able to read and write English as a prerequisite to vote.²⁸ New York's requirement conflicted with Congress's mandate that citizens educated in Puerto Rico may not have their right to vote conditioned upon their literacy.²⁹ The Supreme Court thus upheld the constitutionality of the congressional provision while striking down the state's ability to restrict one's right to vote. The Court concluded in *Oregon v. Mitchell* that Congress could legitimately find that the use of literacy tests in the United States had the inevitable effect of denying the vote to racial minorities whose inability to pass such tests was the consequence of previous governmental discrimination in education.³⁰ Citizens who are unable to effectively participate in an election because of their limited proficiency in English are denied the franchise, just as surely as they would be if literacy tests were administered.³¹

Congress has broadly defined the constitutionally protected right to vote.³² In *Garza v. Smith*,³³ the court rejected a narrow definition of the "right to vote" and instead stated that it "includes the right to be informed as to which mark on the ballot, or lever on

25. U.S. CONST. amend. XIV, § 2.

26. 42 U.S.C. § 1971(a)(2)(c) (2005).

27. *Katzenbach v. Morgan*, 384 U.S. 641, 654–57 (1966).

28. *Id.*

29. See 42 U.S.C. § 1973b(e) (2000) ("Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language."); *Katzenbach*, 384 U.S. at 656.

30. *Oregon v. Mitchell*, 400 U.S. 112, 118 (1970).

31. S. REP. NO. 102-315, at 5 (1992); see also *Voting Rights Act of 1965 Amendments: Hearing on H.R. 6219 Before the Subcomm. on Civil and Constitutional Rights*, 94th Cong. 603 (1975) (testimony of Jack John Olivero, Chairman of the Board of Directors and Acting Executive Director, Puerto Rican Legal Defense and Education Fund, Inc.) ("In a sense, if you cannot read what is in English, it tests the ability to read that language and it could be used as a device to keep you from voting.").

32. See *Arroyo v. Tucker*, 372 F. Supp. 764, 767 (E.D. Pa. 1974).

33. *Garza v. Smith*, 320 F. Supp. 131 (W.D. Tex. 1970).

the voting machine, will effectuate the voter's political choice."³⁴ The *Garza* court found a denial of Equal Protection exists when illiterates are denied assistance with voting.³⁵ According to the *Garza* court, an illiterate voter will cast an empty vote if he does not have "the right to be informed of the effect that a given physical act of voting will produce."³⁶ Voting is not merely about physical access to a voting booth; rather, the right to vote is the right to an "effective" vote.³⁷ Similarly, the Eastern District of Louisiana emphasized this notion by finding that a state statute denying voting assistance to illiterates was in conflict with the Voting Rights Act of 1965.³⁸ The court stated, "[w]e cannot impute to Congress the self-defeating notion that an illiterate has the right [to] pull the lever of a voting machine, but not the right to know for whom he pulls the lever."³⁹

Courts transferred legal principles and conclusions from cases involving illiterate voters to cases where non-English citizens were unable to understand the ballot and other election materials. In *Puerto Rican Organization for Political Action v. Kusper*, the Seventh Circuit elaborated upon this line of reasoning and stated, "[i]f a person who cannot read English is entitled to oral assistance . . . so a Spanish-speaking Puerto Rican is entitled to assistance in the language he can read or understand."⁴⁰ Later, in 1974, this doctrine was reaffirmed in *Arroyo v. Tucker* where the right to vote was found to mean much more than the mechanics of marking a ballot or pulling a lever for language minority communities.⁴¹ The court found that the plaintiffs, who were non-English speaking Puerto Ricans, were unable to cast an "informed" or "effective" vote due to their inability to comprehend the ballot and other registration and election forms.⁴² The materials, which were provided in English only, were found to constitute a device that conditioned the right to vote on the voter's ability to read, write, understand or interpret any matter in the English language.⁴³ In the same year as *Arroyo*, the Southern District of New York found that English-only elections deprived Spanish speaking citizens of rights protected by the Vot-

34. *Id.* at 136.

35. *Id.* at 139.

36. *Id.* at 137.

37. *Puerto Rican Org. for Political Action v. Kusper*, 490 F.2d 575, 579 (7th Cir. 1973) (citing *United States v. Post*, 297 F. Supp. 46 (W.D. La. 1969)).

38. *United States v. Louisiana*, 265 F. Supp. 703 (E.D. La. 1966).

39. *Id.* at 708.

40. *Kusper*, 490 F.2d at 580.

41. *Arroyo v. Tucker*, 372 F. Supp. 764, 767 (E.D. Pa. 1974).

42. *Id.*

43. *Id.*

ing Rights Act. In *Torres v. Sachs*, the court stated, “[i]t is simply fundamental that voting instructions and ballots, in addition to any other material which forms part of the official communication to registered voters prior to an election, must be in Spanish as well as English, if the vote of Spanish-speaking citizens is not to be seriously impaired.”⁴⁴

Congress used these cases to pave the way for the 1975 amendments to the Voting Rights Act and the enactment of § 203. The right to vote essentially evolved into the right of minority language groups to have assistance with their votes. The inability of citizens among language minority groups to comprehend the ballot and other voting related materials prevented those individuals from casting an effective vote.⁴⁵ Congress found that there was a strong link between limited English proficiency and low voter participation.⁴⁶

Furthermore, Congress declared that in order to enforce the Fourteenth and Fifteenth Amendments to the United States Constitution,⁴⁷ it was necessary to eliminate such discrimination by prohibiting these practices and by prescribing remedial devices.⁴⁸ The Court has emphasized that the right to vote is “a fundamental political right,”⁴⁹ and the “protection of the Constitution extends to all, to those who speak other languages as well as those born with English on the tongue.”⁵⁰ Similarly, the members of Congress have also determined that “in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.”⁵¹

Section 203 of the Voting Rights Act allows for bilingual ballots and other voting materials at polling sites in particular areas of the country.⁵² The Voting Rights Act requires the applicable state, or the political subdivision, to provide any form of “registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots” in the language of the relevant minority groups, as well as in

44. *Torres v. Sachs*, 381 F. Supp. 309, 312 (S.D.N.Y. 1974).

45. H.R. REP. NO. 102-655, at 5 (1992).

46. *Id.*

47. 42 U.S.C. § 1973aa-1a (2000).

48. *Id.*

49. *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

50. *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923).

51. 42 U.S.C. § 1973b(f)(1) (2000).

52. 42 U.S.C. § 1973aa-1a(b)(2)(A) (2000).

English.⁵³ However, these provisions only apply to the qualified language minorities specified by Congress in § 203.⁵⁴

B. What is a "Language Minority Group?"

The term "language minority group" is defined exclusively as persons who are American Indian, Asian American, Alaskan Native or of Hispanic heritage.⁵⁵ This leaves numerous language minority groups out in the cold. For example, Yiddish-speaking Hasidic Jews in New York and native Arabic speakers in Dearborn, Michigan are not protected by the Voting Rights Act's prohibition on vote dilution and are also not protected by the Language Assistance Provisions.⁵⁶ However, it was not the intention of Congress to preclude other language minorities from protection under the Voting Rights Act. In 1975, when the minority language provisions were first enacted, Congress expressly stated that no other language minorities were included because no information was disclosed regarding evidence of voting discrimination.⁵⁷ The inclusion of particular minority groups was based upon evidence presented at the time the bill was drafted. This leaves open the possibility that with sufficient demonstration of discrimination, educational disparities, and illiteracy statistics, other language minority groups, like Arab Americans, could be included as a language minority group.

In assessing which language minority groups to include, Congress reviewed evidence of educational inequalities, high illiteracy rates, and low voting participation.⁵⁸ Before the Voting Rights Act was expanded in 1975, there was testimony before the Committee on the Judiciary giving examples of barriers to registration and voting faced by language minority group citizens in the voting process.⁵⁹ The testimony included information regarding the language barriers that manifested into disproportionate effects on non-English speaking citizens in the electoral process.⁶⁰ Many citizens of language minority groups were newcomers to an organized

53. 42 U.S.C. § 1973aa-1a(c) (2000).

54. See generally 42 U.S.C. § 1973aa-1a (2000).

55. 42 U.S.C. § 1973aa-1a(e) (2000).

56. Pamela S. Karlan, *Our Separatism? Voting Rights as an American Nationalities Policy*, 1995 U. CHI. LEGAL F. 83, 86.

57. H.R. REP. NO. 94-196, at 23, 30 (1975).

58. H.R. REP. NO. 94-196, at 16 (1975).

59. *Id.*

60. *Id.*

system of politics by virtue of total exclusion from the political process in their home countries. These minority language communities were further excluded from the electoral process due to a history of discrimination in American judicial decisions and legislative acts.⁶¹

The majority of testimony in 1975 related to Spanish-speaking citizens. In 1975, Congress heard little testimony regarding the actual definition of "language minority group."⁶² Many dissenting members of Congress were concerned with the lack of conclusive evidence regarding discrimination towards the included language minority groups.⁶³ Congress focused heavily on the Hispanic American community, particularly Mexican Americans in Texas. However, there is little evidence on the record that explains the rationale for the inclusion of American Indians, Alaskan Natives, and Asian Americans. The Senate Report briefly mentions the educational disparities amongst the Asian American and Alaska Native communities.⁶⁴ However, the evidence on record is far from the substantial documentation claimed by Congress.⁶⁵ The congressional hearings in 1975 included numerous references to the Hispanic American community, some references to the American Indian population, only one reference to Asian Americans and no evidence submitted regarding Alaskan natives.⁶⁶

1. *Inclusion of Hispanic Americans*—The 1975 record demonstrates a long history of discrimination against the Hispanic American community. Congress found evidence that Mexican Americans had been discriminated against in a form similar to the form of discrimination practiced against Blacks in the South.⁶⁷ At the time, Texas enacted arguably the most restrictive voter registration procedures in the nation. In place of the poll tax, these procedures seriously affected the Mexican American community.⁶⁸ Congress felt that these cultural and language impediments "effectively deny Mexican Americans access to the political processes in

61. See H.R. REP. NO. 94-196 (1975).

62. *Id.* at 87.

63. *Id.* at 66.

64. See generally S. REP. NO. 102-315 (1992).

65. *Contra* S. REP. NO. 94-295, at 31 (1975) ("Persons of Spanish heritage was the group most severely affected by discriminatory practices, while the documentation concerning Asian Americans, American Indians and Alaskan Natives was substantial.")

66. H.R. REP. NO. 94-196, at 87 (1975).

67. *Id.* at 17.

68. See *Graves v. Barnes*, 343 F. Supp. 704, 731 (W.D. Tex. 1972), *aff'd in part, rev'd in part sub nom. White v. Register* 412 U.S. 755 (1973); see also *League of United Latin Am. Citizens v. Clements*, 999 F.2d 831 (5th Cir. 1993).

Texas even longer than the Blacks were formally denied access by the white primary."⁶⁹

Congress also found that Hispanic Americans faced severe educational disparities.⁷⁰ Congress found the use of English-only elections excluded those with limited English proficiency from the electoral process. In 1975, for all citizens of Hispanic heritage over 25 years old, more than 18.9% failed to complete five years of school, compared to 5.5% of the total population.⁷¹ The United States Commission on Civil Rights on Mexican American Education concluded that the practices of Mexican American education "reflect a systemic failure of the educational process, which not only ignores the educational needs of Chicano students but also suppresses their culture and stifles their hopes and ambitions. In a very real sense, the Chicano is the excluded student."⁷²

When the Voting Rights Act was amended in 1982, Congress found that Hispanic Americans continued to face the same disparities.⁷³ Congress also noted the successes of the implementation of the minority language provisions for the Hispanic community. It found that 23% of those surveyed had received assistance from a bilingual poll worker, and 24% of the Hispanic Americans surveyed used a bilingual ballot in the 1980 election.⁷⁴ More importantly, the survey revealed that 32% stated that they would be less likely to vote if the assistance were unavailable.⁷⁵ Congress renewed the minority language provisions in 1982, despite the fact that the record was mainly focused on the Hispanic American community.

In 1992, congressional records elaborated upon the numerous disparities that the Hispanic American community faced. The educational disparities that existed in 1975 persisted in 1982 and 1992; the high school completion rate for Hispanic students dropped three percentage points during this period.⁷⁶ These educational shortcomings translated into low educational attainment which translated into limited English proficiency among Latino citizens.⁷⁷ Congress attributed this finding to a "legacy of discriminatory edu-

69. H.R. REP. NO. 94-196, at 17 (1975) (citing *Graves*, 343 F. Supp. 731).

70. S. REP. NO. 102-315, at 4 (1992).

71. H.R. REP. NO. 94-196, at 20 (1975) (citing *United States Summary*, in CENSUS OF POPULATION: 1974, GENERAL SOCIAL AND ECONOMIC CHARACTERISTICS 386).

72. *Id.* (citing U.S. COMM'N ON CIVIL RIGHTS, REPORT III, THE EXCLUDED STUDENT, MEXICAN AMERICAN EDUCATION STUDY 23 (1972)).

73. See S. REP. NO. 97-417, at 66 (1982).

74. *Id.*

75. *Id.*

76. S. REP. NO. 102-315, at 4 (1992) (quoting Gloria Molina, a member of the Board of Supervisors of Los Angeles County).

77. *Id.*

cational opportunities.⁷⁸ In 1990, nearly 25% of Hispanic families fell below the poverty line, while the national rate was 9.5% for non-Hispanics.⁷⁹ Hispanics were also earning much less than the average household.⁸⁰

For the Hispanic American community, the combination of facts and strong evidence regarding poverty levels, educational disparities, illiteracy, and past discrimination contributed to their inclusion in the minority language provisions.

2. *Inclusion of Asian Americans*—The history of the inclusion of the Asian American community in the minority language provisions is vastly different than that of the Hispanic American community. In 1975, congressional records only briefly stated that the Asian American community had suffered from a long history of exclusion from American politics and from a long history of discriminatory congressional and judicial acts.⁸¹ The only mention of Asian Americans in the House of Representatives' records was in the context of the language disability in education being particularly egregious and its deterrent effect on the electoral process.⁸² Congress cited the Supreme Court decision in *Lau v. Nichols*.⁸³ The Court found that the failure of San Francisco schools to provide language instruction to Chinese citizens effectively denied the students the right to participate in the public educational system.⁸⁴ Using this line of reasoning, Congress determined that if Asian Americans were excluded in the classroom, then they were essentially excluded in the political process.⁸⁵ This same case was cited in the 1982 renewal of the provisions without any further elaboration regarding the inclusion of Asian Americans.⁸⁶

It was not until 1992 that Congress mentioned the history of discrimination against Asian Americans in the most basic forms of participation in America. Asian Americans have a history of exclusion from land ownership, immigration, employment, and naturalization. Their history of discrimination warranted their

78. H.R. REP. NO. 102-655, at 6 (1992).

79. S. REP. NO. 102-315, at 5 (1992).

80. *Id.*

81. *Id.* Discrimination against Asian Americans and immigrants is particularly noted in judicial history. See *Korematsu v. United States*, 323 U.S. 214 (1944); *Hirabayashi v. United States*, 320 U.S. 81 (1943); *Yu Cong Eng v. Trinidad*, 271 U.S. 500 (1926); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

82. H.R. REP. NO. 94-196, at 20 (1975).

83. S. REP. NO. 102-315, at 6 (1992) (citing *Lau v. Nichols*, 414 U.S. 563 (1974)).

84. *Lau*, 414 U.S. at 565-69.

85. See generally H.R. REP. NO. 94-176, at 21 (1975).

86. See generally S. REP. NO. 97-417 (1982).

inclusion in the renewal of the minority language provisions.⁸⁷ The Geary Act of 1892⁸⁸ and the Chinese Exclusion Act of 1882⁸⁹ are just two examples of discriminatory legislation that Chinese immigrants were confronted with in the United States. Both of these Acts effectively denied citizenship rights to any Chinese person or person of Chinese descent.⁹⁰ The denial of citizenship rights to those of Chinese heritage effectively excluded the entire community from voting and the electoral process. Foreign-born Asians were not permitted to be naturalized until 1952, and Congress found that this denial of citizenship was effectively a denial of the right to vote.⁹¹ In 1982, Congress found that the historic prohibition against citizenship for Asian Americans had a particularly devastating impact on elderly people of Chinese heritage, who were previously denied equal educational and socio-economic opportunities.⁹²

Additionally, the 1990 Census found that large numbers of Asian Americans did not speak English well.⁹³ Amongst different ethnicities within the Asian American community, the numbers ranged from 69% to 23% of specific populations that did not speak English well.⁹⁴ In 1992, the Committee on the Judiciary noted that 70% of the Asian American population "was born outside the United States and has limited English proficiency."⁹⁵ The Committee then tied low proficiency rates to educational disparities.⁹⁶ The data regarding the English proficiency of the Asian American community is important, as it was not mentioned prior to 1992. Similarly, there was no mention of the poverty figures related to Asian Americans. Therefore, Congress's decision to include Asian Americans under § 203 was based solely on the history of exclusion for citizenship and other limited demographic information.

3. *Inclusion of Native Americans and Alaskan Natives*—Alaskan Natives and Native Americans were not mentioned in the congressional reports until the 1982 renewal of the minority lan-

87. S. REP. NO. 102-315, at 5 (1992).

88. Geary Act of 1892, ch. 60, 27 Stat. 25 (repealed 1943).

89. Chinese Exclusion Act of 1892, ch. 126, 22 Stat. 58 (repealed 1943).

90. Geary Act of 1892, ch. 60, 27 Stat. 25 (repealed 1943) ("[A]ll laws now in force prohibiting and regulating the coming into this country of Chinese persons and persons of Chinese descent are hereby continued in force.").

91. S. REP. NO. 102-315, at 6 (1992).

92. S. REP. NO. 97-417, at 65-66 (1982) (quoting *House Hearings* 1497 (statement of Henry Der, Executive Director, Chinese for Affirmative Action)).

93. S. REP. NO. 102-315, at 6 (1992).

94. *Id.*

95. H.R. REP. NO. 102-655, at 6 (1992).

96. *Id.* (quoting UNITED STATES COMMISSION ON CIVIL RIGHTS, CIVIL RIGHTS ISSUES FACING ASIAN AMERICANS IN THE 1990S 99 (1992)).

guage provisions. The Senate report mentioned the case of *Hootch v. Alaska State-Operated School System*,⁹⁷ in which the plaintiffs challenged the practice of providing public secondary schools in urban areas that were located far away from Alaskan native communities.⁹⁸ This case was used by the Senate to demonstrate that non-native children have access to public secondary schools whereas it was not readily available to Alaskan native children.⁹⁹

This is an example of discrimination in the form of an educational disparity, as was similarly found among the Hispanic Americans. However, there is no other evidence mentioned in congressional records regarding past discrimination, nor demographic information regarding the Alaskan native community. In one of the dissenting arguments, one Congressional Member submitted a letter from the Office of the Governor in Alaska.¹⁰⁰ The letter pled for a withdrawal of Alaskan natives from protection under § 203 because of the difficulty in the implementation of bilingual ballots.¹⁰¹ The letter argued withdrawal was necessary because there were nearly twenty dialects of Alaskan Native languages, many of which were oral languages only, with one being spoken by only three people.¹⁰²

It is surprising to note that during the original enactment of the minority language provisions, there is no documented evidence as to what the legislators intended by including the Native American community. During the congressional hearings that took place prior to the enactment of § 203, there were approximately sixteen references to Native Americans, but nothing was mentioned in the final Judiciary Report.¹⁰³ In 1982, congressional records recounted evidence of American Indians not being accorded citizenship rights until 1924, and not receiving the right to vote in federal elections until 1960.¹⁰⁴ This is the same argument that was used by Congress in support of the inclusion of Asian Americans: a history of discrimination in the process of naturalization and citizenship. Furthermore, it was found that in some areas, as many as 60–70% of Native Americans are not fluent in English.¹⁰⁵

97. *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793 (Ala. 1975).

98. *Id.*

99. S. REP. NO. 97-417 (1982).

100. *Id.*

101. H.R. REP. NO. 94-196, at 93 (1975).

102. *Id.*

103. H.R. REP. NO. 94-196, at 87 n.15 (1975).

104. S. REP. NO. 97-417, at 66 (1982).

105. *Id.*

4. *Continued Inclusion of All Existing Language Minority Groups*— In 1992, Asian Americans, Hispanics, American Indians and Alaska Natives were still found to suffer from various forms of discrimination and other disparities. The Senate Report in 1992 detailed each of the four language minority groups and demonstrated how they continue to experience “educational inequities, high illiteracy rates and low voting participation.”¹⁰⁶ Therefore, what began in 1975 as a rough sketch of disparities faced by Mexican Americans in Texas, transformed into a detailed record in 1992 of a conglomeration of different congressional and Census findings.

The underlying commitment by Congress throughout the history of the minority language provisions is the right of language minority citizens to cast an effective vote. Using this rationale, it is possible for other language minority communities to be included. Early in the history of § 203, there was vehement disagreement within Congress regarding the inclusion of the particular minority language groups.¹⁰⁷ Many members of Congress felt that there was little reasoning behind why particular minority groups were included and why others were not. One dissenting member to the passage of § 203 stated, “[i]f a new and additional remedy is to be established, relief should be afforded to all national origin groups or to none.”¹⁰⁸ While this is an extreme view, the impetus to the argument is noteworthy. As originally enacted in 1975, § 203 included language minority groups who presented any sort of evidence of discrimination or disparities, as well as some language minority groups that presented no such evidence. There is no clear reasoning behind the inclusion of some groups and not others. Therefore, it is possible for Arab Americans to be afforded protection under § 203 upon demonstration of evidence of discrimination, disparities as well as other demographic information.

II. THE ARAB AMERICAN COMMUNITY

Applying the rationales used to classify Hispanics, Asian, Alaskan Natives and Native Americans as language minorities, Arab Americans should also be protected by § 203. Arab Americans face many of the same obstacles as the included language minorities: history of discrimination in obtaining citizenship, ongoing targets of hate crimes, discrimination in housing, education, and employment, as

106. S. REP. NO. 102-315, at 4 (1992).

107. H.R. REP. NO. 94-196, at 87 (1975).

108. *Id.*

well as having significant percentages of the community living in poverty.¹⁰⁹

A. Past Discrimination Against Arab Americans

As with other language minority groups, Arab Americans have a distinct historical presence in American society. Arabs began immigrating to the United States in large waves in the 1880s.¹¹⁰ Arab Americans suffered from discrimination in the naturalization and citizenship process much like Asian Americans and Native Americans.¹¹¹ Arab immigrants in the late 1800s and early 1900s were considered Asian. The United States authorities claimed that Arabs had no right to naturalization and citizenship because they were allegedly Asian and did not belong to the White race.¹¹²

Numerous circuit court opinions were issued in the early 1900s regarding the precise meaning of “free white persons” under the Naturalization Act of 1790.¹¹³ The Nationality Code enumerated the classes of people who are eligible for citizenship in the United States.¹¹⁴ In *United States v. Balsara*,¹¹⁵ the circuit court grappled with the district court’s opinion that Congress “intended it to include only white persons . . . whose emigrants had contributed to the building up . . . of the community of people which declared itself [the United States].”¹¹⁶ The district court feared that if Balsara, an Indian, was granted citizenship, then the same reasoning would extend to grant citizenship to Arabs, among others. The court did not believe that this was the intent of Congress.¹¹⁷

It was not until 1910 that courts began to recognize some Arabs as being Caucasian thus allowing them full naturalization and citizenship rights. The court in *In re Najour* held that Congress intended classifications to be based upon race and not upon the

109. See discussion *infra* Part II.A–B.

110. Michael W. Suleiman, *The Arab Immigrant Experience*, in *ARABS IN AMERICA* (Michael W. Suleiman ed., 1999), available at http://arabworld.nitle.org/texts.php?module_id=9&reading_id=33&print=1 (on file with the University of Michigan Journal of Law Reform).

111. *Id.*

112. Suleiman, *supra* note 110.

113. Naturalization Act of 1790, ch. 3, 1 Stat. 103 (repealed 1795).

114. 8 U.S.C. § 703 (1941) (repealed 1952).

115. *United States v. Balsara*, 180 F. 694 (2d Cir. 1910).

116. *In re Balsara*, 171 F. 294, 294–95 (S.D.N.Y. 1909), *aff'd*, 180 F. 694.

117. *Id.* at 295.

fairness or darkness of ones complexion.¹¹⁸ The court cited a work which classified Syrians as “part of the Caucasian or white race.”¹¹⁹ In 1915, another court stated that Syrians “were so closely related to Europeans that they could be considered ‘white persons.’”¹²⁰

Despite these judicial declarations in the early part of the century, the status of Arabs regarding citizenship was not settled by the courts.¹²¹ In 1942, a native of Yemen was denied citizenship because the courts found that he was “an Arabian of Arabian blood from remote ancestry.”¹²² He was denied citizenship due to his Arab ancestry.¹²³ While rendering its decision, the court stated that “when one seeking citizenship is in fact clearly not white of skin a strong burden of proof devolves upon him to establish that he is a white person within the meaning of the act.”¹²⁴ Because Hassan was not “white of skin” and found to be Arab, the court rested its decision on the grounds that “Arabs as a class are not white and therefore not eligible for citizenship.”¹²⁵ This is clearly discriminatory treatment by the judicial system where Arabs, like Hassan, were denied citizenship due to the color of their skin and their national origin.

This plight of Arab immigrants is very similar to that of the Asian immigrant community and Native Americans. As both communities struggled to gain identity in the United States, they found themselves fighting congressional acts that barred them from becoming full-fledged Americans. Through the denial of citizenship, these communities were effectively shut out of one of the cornerstones of the American democracy: the American political process. The 1992 amendments to the Voting Rights Act found that for Asian Americans “the denial of citizenship meant the denial of the right to vote,”¹²⁶ which warranted their inclusion as a minority language group. Therefore, Arab Americans should be afforded inclusion as a federally recognized minority language group based on the history of discrimination in the naturalization and citizenship process. Although Arab Americans are no longer expressly

118. *In re Najour*, 174 F. 735 (N.D. Ga. 1909); see also *Balsara*, 180 F. at 695 (granting citizenship because though *Balsara* was from India, he came from a Parsee settlement “distinct from the Hindus as are the English who dwell in India,” and thus was considered White).

119. *Id.* at 735–36 (referencing A.H. KEANE, *THE WORLD’S PEOPLES: A POPULAR ACCOUNT OF THEIR BODILY AND MENTAL CHARACTERS, BELIEFS, TRADITIONS, POLITICAL AND SOCIAL INSTITUTIONS* (1908)).

120. Suleiman, *supra* note 110.

121. *In re Hassan*, 48 F. Supp. 843, 845 (E.D. Mich. 1942).

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. S. REP. NO. 102-315, at 6 (1992).

denied citizenship based on their race and national origin, the community faces other forms of discriminatory treatment by American society.

B. Recent Acts of Discrimination Against Arab Americans

Since September 11, 2001, Arab Americans have been a particular target of discrimination, harassment and intimidation. Arab Americans frequently face discrimination in employment, housing, immigration and even in the educational system. Immediately following September 11, the Department of Justice, the Federal Bureau of Investigations (FBI) and the Immigration and Naturalization Service (INS) began the process of questioning thousands of people whom they felt may have information about or connection to the terrorist attacks.¹²⁷ It was later found that the process of selecting the individuals for questioning and/or detainment was based mostly on their nationality.¹²⁸ As the evidence suggests, there is reason to believe the fear of government reprisal among the Arab American community is widespread, and continues to this day.

Furthermore, in the one year period after September 11, 2001, there were over 700 charges of ethnic and religious discrimination in the workplace under Title VII.¹²⁹ There have also been over sixty claims of airline discrimination against Arab Americans, or those perceived to be Arab.¹³⁰ Some passengers were expelled by airline personnel from the plane while others complained of extreme security screenings, including requiring some women to remove their headscarves.¹³¹ Children in schools have additionally been subject to acts of violence in schools and universities.¹³² Additionally, some twenty-three customers at public stores have been denied service or discriminated against due to their Arab ethnicity.¹³³ The

127. CESAR MUNOZ ACEBES, HUMAN RIGHTS WATCH: UNITED STATES, PRESUMPTION OF GUILT: HUMAN RIGHTS ABUSES OF POST-SEPTEMBER 11TH DETAINEES 4, 9-10 (2002).

128. *See id.* at 12.

129. AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE, ADC FACT SHEET: THE CONDITION OF ARAB AMERICANS POST-9/11 1 (2002) [hereinafter ADC FACT SHEET]. Please note that these statistics include Muslims who may not be Arab American.

130. *Id.* More claims may have been filed since publication.

131. *Id.*

132. ADC FACT SHEET, *supra* note 129.

133. *Id.*

passage and enforcement of the Patriot Act,¹³⁴ as an example of discriminatory legislation, raises concerns among the Arab American community and civil libertarian groups.

These types of ethnic intimidation and harassment are reminiscent of the way Asian Americans, Hispanic Americans and even African Americans were historically treated in the United States. Such minority groups must overcome the effects of discrimination as well as any efforts that have been made to minimize the impact of their political participation.¹³⁵ In 1975, Congress looked into the various ways that the Mexican American community mirrored the way African Americans in the South were treated.¹³⁶ They found that beyond the disparate treatment in education, minority language groups have long been the target of discrimination in every facet of life.¹³⁷ Congress based its opinion on reports and hearings which documented discrimination in the areas of housing, administration of justice and employment.¹³⁸ While the experience of each community is unique, it is easy to draw parallels between the disparate treatment of African Americans and Mexican Americans to the experiences of Arab Americans. As the above discussion asserts, Arab Americans have and continue to face discrimination in every aspect of our society.

As mentioned previously, Congress has recognized that discrimination has a devastating impact upon a minority language group's voting age citizens, particularly the elderly members whom are still scarred by past memories of discrimination.¹³⁹ In the 1999 mayoral election in Hamtramck, Michigan, more than forty dark skinned or Arab American citizens had their votes challenged.¹⁴⁰ The election observers were part of the group "Concerned Citizens for a Better Hamtramck." As election day challengers, they forced Arab Americans and anyone who was perceived to be Arab to take

134. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001) (codified in scattered sections of the U.S. Code).

135. H.R. REP. NO. 94-176, at 16-17 (1975).

136. *Id.* at 21.

137. *Id.*

138. *Id.*

139. S. REP. NO. 102-315, at 6 (1992).

140. Christopher M. Singer, *U.S. Justice Sues City, Clerk Over '99 Election—Hamtramck Accused of Violating the 1965 Voting Rights Act*, DETROIT NEWS, April 5, 2000, available at <http://www.detnews.com/2000/Detroit/0004/11/s04-30559.htm> (on file with the University of Michigan Journal of Law Reform); see also Press Release, U.S. Dep't of Justice, City of Hamtramck, Michigan to Revamp Election Procedures to Prevent Voter Discrimination under Justice Department Settlement (Aug. 4, 2000), available at <http://www.usdoj.gov/opa/pr/2000/August/456cr.htm> [hereinafter Press Release] (on file with the University of Michigan Journal of Law Reform).

a citizenship oath prior to being permitted to vote. This restriction was not placed upon any White voter. The Department of Justice reached an agreement with the City of Hamtramck to ensure that future election officials will understand the proper grounds for challenges, and that ethnic intimidation will not be permitted.¹⁴¹ It is these types of incidents that Congress recognized as devastating upon a minority language community in the electoral process.¹⁴²

The combination of past and present discrimination in various facets of American society warrants the inclusion of Arab Americans in § 203. Invidious discrimination is omnipresent regardless of race or national origin and all victims should be afforded appropriate remedies. The discrimination faced by Arab Americans closely mirrors that of the Asian American and Native Americans faced in the naturalization process. In housing, employment and other facets of American society, Arab Americans have been confronted with bigotry and prejudice.¹⁴³ As the Arab American community struggles to establish and to maintain its identity in American society, its participation in the electoral system is important and worthy of protection. Inclusion in the minority language provisions of the Voting Rights Act is just one step to remedy past discrimination against the community.

C. Other Factors that Warrant Inclusion of Arab Americans

Beyond the history of discrimination, statistical data regarding the Arab American community demonstrates similarities with other minority language groups. The recent 2000 Census found that 1,189,731 individuals claimed to have either Arab ancestry alone or in combination with another ancestry.¹⁴⁴ Those that were considered to have Arab ancestry claimed on their Census report to be from an Arabic-speaking country or to have Arab heritage.¹⁴⁵ They

141. Press Release, *supra* note 140; see also *Hussain v. City of Hamtramck*, No. 02-238790-CZ (Wayne County Cir. Ct. 2004) (on file with the University of Michigan Journal of Law Reform).

142. See generally H.R. REP. NO. 94-176 (1975).

143. ADC FACT SHEET, *supra* note 129.

144. U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, PUB. NO. CENSR-21, THE ARAB POPULATION: 2000 3 (2003) [hereinafter ARAB POPULATION: 2000].

145. *Id.* Arabs were defined as those from Lebanon, Syria, Egypt, Morocco, Iraq, Yemen, Algeria, Saudi Arabia, Tunisia, Kuwait, Libya, and Berbers, as well as other groups whose population was less than 1000 in the year 2000, such as Emiratis, Omani, Qatari, Bahraini, Alhuceman, Bedoian and Rio de Oro. This is important to note because the statistics of the

were found to be more bilingual than the average American. Only 18% of the total United States population speaks a language other than English at home. By contrast, 69% of Arab Americans speak Arabic at home.¹⁴⁶

Bilingualism presents a dichotomy when it comes to the electoral process. While maintaining cultural identity, many of those who speak Arabic at home do not speak English well. Among the total Arab American population, nearly 24.4% of Arab Americans claimed in 2000 to speak English "less than well" in their homes.¹⁴⁷ Essentially, of the 614,582 Arabs who claimed to speak Arabic in their homes, 211,185 stated that they spoke English "less than very well."¹⁴⁸ Because 8.1% of the total American population claims to speak English "less than well," this demonstrates an English proficiency problem within the Arab American community. Furthermore, the Director of Census determined that those voting age citizens who indicate that they speak English "well" often times do not speak English "adequately enough to participate in the electoral process."¹⁴⁹

There are presumably many more Arab Americans that do not speak English well enough to understand the ballot than the numbers reflected by the above-referenced Census data. This is due to serious flaws with the collection of data by the Census Bureau. The question regarding English proficiency is only asked on the long form of the Census, which is only received by one in six individuals.¹⁵⁰ In addition, it has been determined by the Census Bureau that most respondents over-estimate their English proficiency.¹⁵¹ A study in 1990 found that members of language minority communities who had claimed to speak English "very well" failed the study.¹⁵² Therefore, it is possible that Arab Americans who claim to speak English "very well" may actually be in need of language assistance while voting. If there are Arab Americans who have limited English proficiency and who cannot understand the ballot, then they clearly cannot cast an effective vote. This data illustrates the need

Census thus indicate that all those who come from Arab speaking countries identify with the Arabic language.

146. ARAB POPULATION: 2000, *supra* note 144, at 10.

147. *Id.*

148. U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, PUB. NO. C2KBR-29, LANGUAGE USE AND ENGLISH SPEAKING ABILITY: 2000 4 (2003).

149. S. REP. NO. 102-315, at 22 (1992).

150. See U.S. Census Bureau, *The American Community Survey—New Road Map to America's Future*, available at <http://www.census.gov/dmd/www/dropin11.htm> [hereinafter *Census Road Map*] (on file with the University of Michigan Journal of Law Reform).

151. H.R. REP. NO. 102-655, at 8 (1992).

152. S. REP. NO. 102-315, at 10 (1992).

for protection under § 203 of the Voting Rights Act for Arab Americans.

Additionally, a higher proportion of Arab Americans live in poverty than the general population.¹⁵³ In 2000, 16.7% of the Arab American population lived in poverty as compared to only 12.4% of the general population.¹⁵⁴ This data is similar to Asian Americans and Hispanic Americans, where 12.5% and 29.7%, respectively, live in poverty.¹⁵⁵ Therefore, the Arab Americans living in poverty are similar to other language minority groups living in poverty. This data should also warrant inclusion of Arab Americans as a minority language group.

On a positive note, Arab Americans are registered to vote in higher numbers than many other language minority groups. In 2000, a poll demonstrated that nearly 88.5% of Arab Americans were registered to vote.¹⁵⁶ Despite what sounds like a high figure, in locations such as Michigan with over 450,000 Arab Americans, only 150,000–160,000 are registered to vote.¹⁵⁷ Furthermore, there is no significant data on the percentage of Arab Americans that actually do vote and take part in the electoral process. Once an individual is registered, there is no guarantee that they will easily cast a ballot.¹⁵⁸ Therefore, although Arab Americans may be registered to vote in higher numbers, there is no data regarding the actual number that vote.

Non-profit organizations, such as the Arab American Institute, and the Arab Community Center for Economic and Social Services (ACCESS), have put significant resources into registering Arab Americans to vote.¹⁵⁹ However, what is done on a local level, by local officials, has the most impact upon the ability of these minorities to vote and the effectiveness of that vote.¹⁶⁰ For the 2004

153. See BRITTINGHAM & DE LA CRUZ, *supra* note 4, at 16.

154. *Id.*

155. U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CURRENT POPULATION SURVEY, ANNUAL SOCIAL AND ECONOMIC SUPPLEMENTS, HISTORICAL POVERTY TABLES tbl.3 (2004), available at <http://www.census.gov/hhes/poverty/histpov/hstpov3.html> (on file with the University of Michigan Journal of Law Reform).

156. ARAB AMERICAN INSTITUTE, FACTS ON ARAB AMERICAN VOTERS (2002), available at <http://www.aaiusa.org/PDF/AAvoters.pdf> (on file with the University of Michigan Journal of Law Reform).

157. Natalie Y. Moore, *GOP, Dems Lay Plans to Woo Arab-Americans—Parties See Group as Key in 2004*, DETROIT NEWS, July 24, 2003, at 1C (citing a Zogby International Poll).

158. S. REP. NO. 94-295, at 25–26 (1975).

159. ARAB AMERICAN INSTITUTE, GOTV EFFORTS (2004), available at http://www.aaiusa.org/PDF/gotv_effort_2004.pdf (on file with the University of Michigan Journal of Law Reform).

160. See S. REP. NO. 94-295, at 25–26 (1975).

elections, the Michigan Democratic Party, in conjunction with the Arab American Institute, launched the first ever Arabic ballot initiative.¹⁶¹ The Michigan Democratic Party made ballots available in both Spanish and Arabic for all members attending the state caucus. There was no requirement by the party to prove limited English proficiency; rather the materials were provided by the common courtesy of the Michigan Democratic Party. The Arab American Institute worked closely with the Michigan Democratic Party to translate the ballots and to have them readily available for anyone who required assistance.¹⁶² Such local activity and outreach efforts, by both national organizations and state officials, are a step in the right direction.

For some language minority citizens, outright exclusion and intimidation at the polls have a lasting effect. Essentially, it is believed that “memories of past discourtesies or physical abuse may compound the problem” for many language minority voters.¹⁶³ Therefore, incidents like that in Hamtramck, Michigan may leave a black mark on the collective memory of the local Arab American community. One possible way to remedy the effects of discrimination is through outreach by state and local officials towards registering and encouraging the Arab American community to take part in the electoral process. It is crucial that more states take initiatives to reach out and provide election materials in Arabic until Arab Americans are federally recognized as a minority language group.

III. PROBLEMS WITH § 203 AND POTENTIAL REFORM OF THE MINORITY LANGUAGE PROVISIONS

A history of discrimination, socio-economic disparities and demographics are the determinations used to classify which language minority groups are afforded protection under § 203. Once Congress has determined which minority language groups warrant protection, § 203 is triggered only when there is a large enough population of that particular group in one location. However,

161. Press Release, Mich. Democratic Party, MDP Unveils February 7th Caucus Procedures (Sept. 17, 2003), available at <http://www.mi-democrats.com/press/2003pr/Caucus-DSP.pdf> (on file with the University of Michigan Journal of Law Reform).

162. Press Release, The Arab Am. Inst., Arab American Institute Announces Absentee Ballot Campaign for Democratic Caucus (Jan. 12, 2004), available at <http://www.aaiusa.org/pr/release01-12-04.htm> (on file with the University of Michigan Journal of Law Reform).

163. S. REP. NO. 94-295, at 26 (1975).

§ 203 should protect all members who need language assistance within a language minority group. This triggering mechanism presents a serious problem with the effectiveness of § 203. Furthermore, dissenting Congressional Members who argued against the provisions were concerned with the administrative costs and efficacy of § 203. There are other means and resources that may offset some of these concerns.

A. Problems with the Triggering Mechanism of § 203

The minority language provisions currently do not afford sufficient protection to all language minorities, even for the four federally recognized minority language groups. This is due to the triggering mechanism that is mandated for § 203 coverage which makes it extremely difficult for language minority groups to gain access to bilingual assistance. In order for a state and political subdivision to be subject to the requirements of § 203, the Director of Census must determine that:

[] more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient; [] more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient; [] in the case of a political subdivision that contains all or any part of an Indian reservation, more than 5 percent of the American Indian or Alaska Native citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient; [] the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate.¹⁶⁴

It is clear from the requirements that § 203 does not cover all citizens that are part of a language minority group. However, the minority language provision only provides remedies for those citizens living in ghettos and effectively denies relief to those minority language citizens that live in the greater society where they number less than five percent.¹⁶⁵ The trigger mechanism for § 203 makes it

164. 42 U.S.C. § 1973aa-1a(b)(2)(A) (2000).

165. H.R. REP. NO. 94-196, at 87 (1975).

extremely difficult for many voting populations to gain protection where the community speaks a variety of language dialects. Additionally, if the community is smaller than 10,000 or if they are not residentially concentrated, then § 203 does not protect those members of the language minority.¹⁶⁶ The requirement that the illiteracy rate for a language minority group be higher than the national illiteracy rate compounds the problem and is essentially counterintuitive to congressional intent. Basically, limited English proficient citizens are not afforded protection unless a substantial number of members of their community are also illiterate. By enacting § 203, Congress intended to provide protection to language minorities, and it does not logically follow to impose such strict qualification requirements.

When the Voting Rights Act was reauthorized in 1975 with the added § 203 provisions, the only requirement for language minorities was that they constitute five percent of the voting age population. However, there was little discussion as to the rationality behind the five percent determination. It was duly noted by many dissenting Congressional Members that the five percent trigger was arbitrary and that it would exclude large numbers of citizens who happened to be members of particular jurisdictions where the minority language population did not rise to the five percent mark.¹⁶⁷ To further compound the problem, Congress in 1982 added the provision that not only does the minority language community have to exceed five percent of the voting age population, but that the members be of limited English proficiency. This requirement led to a decrease in the number of covered jurisdictions. There were 369 covered counties prior to 1982 and after the revision to § 203, only 197 counties were afforded protection.¹⁶⁸

This problem was supposedly remedied by the 1992 amendments to the provisions which added the numerical trigger of 10,000 persons. It was found that in certain metropolitan areas, some language minority citizens failed to reach the five percent trigger as imposed by the original 1975 provision. For example, in 1990, there were over 87,000 Hispanic Americans with limited English proficiency in Cook County, Illinois. However, they only constituted 2.5% of the voting age population.¹⁶⁹ Without the 10,000 trigger, Cook County would fall beyond the scope of § 203,

166. See, e.g., Yoshino *supra* note 2, at 3 (explaining that Asian Pacific Americans have difficulty meeting these requirements of the 1992 Amendments due to their small population, lack of concentration, and diversity of languages).

167. H.R. REP. NO. 94-196, at 87 (1975).

168. H.R. REP. NO. 102-655, at 7 (1992).

169. S. REP. NO. 102-315, at 16 (1992).

and thousands of Hispanic Americans would have been excluded from the electoral process.

The Department of Justice supported an amendment to add a 20,000 person numerical trigger; however Congress decided to lower the amount to 10,000.¹⁷⁰ There was evidence on the record that with a 20,000 benchmark, nearly 355,000 language minority citizens would be excluded and thus unable to have “the language assistance they need for a meaningful exercise of the franchise.”¹⁷¹ The Senate stated that by lowering the trigger to 10,000, over 860,000 language minority citizens in thirty-four counties would be protected by § 203.¹⁷² Alternative coverage was provided for Native Americans on the basis that the coverage requirements of five percent and 10,000 people did not take into account the “unique history and demography of Native Americans.”¹⁷³ Congress clearly realized that by setting a numerical trigger too high, language minorities would be excluded, and it was their intent to have § 203 encompass as many jurisdictions as possible.

The triggering mechanism of § 203 is inconsistent with congressional intent. Essentially, the purpose of § 203 is to protect individual members within a language minority group that need bilingual assistance while voting: it was not the intent of Congress to protect only those members of a language minority group that are part of a large community. When the trigger was set at 10,000, it was for the purpose of providing bilingual assistance to a greater number of communities. Protection of a language minority group should not be conditioned upon an individual member’s location in a jurisdiction with a substantial number of other members from that same minority group. This precludes an individual’s ability to cast an effective vote. The trigger mechanism excludes individuals in need of bilingual assistance from their constitutionally protected right to vote.

If the Arab American community were to be federally recognized as a language minority group today, only five locations would qualify for language assistance in Arabic: Dearborn, MI; New York, NY; Los Angeles, CA; Chicago, IL and Houston, TX.¹⁷⁴ However, there are six other cities that have an Arab population exceeding

170. *Id.* at 17.

171. *Id.*

172. *Id.*

173. H.R. REP. NO. 102-655, at 9 (1992).

174. *See* ARAB POPULATION: 2000, *supra* note 144, at 7.

two percent of their total population, including Sterling Heights, MI; Jersey City, NJ; and Allentown, PA.¹⁷⁵

Additionally, the determination of who has limited English proficiency is severely flawed. It is based upon information included in the long form distributed by the Census. As previously mentioned, only one in six individuals receive the long form while the rest receive the short form that does not ask questions regarding literacy, English proficiency, or other languages spoken in the home.¹⁷⁶ Therefore, there is a strong possibility that more citizens within a language minority group than originally thought do not speak English well enough to cast an effective ballot or take part in the electoral process.

Even if Arab Americans were afforded protection, the way § 203 stands today, thousands of Arab Americans would be excluded from the electoral process. The triggering mechanism of § 203 affects all language minority communities adversely. It is imperative that in order for the purpose of § 203 to be effective, and to preserve the right of every citizen to cast an effective vote, reform of the § 203 trigger is necessary. Admittedly, removing the triggering mechanism would raise many administrative and other concerns. However, it is important to preserve § 203's intent to protect members of language minority groups.

B. Potential Reform of § 203 of the Voting Rights Act

The supposedly remedial 10,000 person trigger clearly does not cover all language minority citizens. The mere presence of a triggering mechanism is essentially contradictory to the essence of § 203. Congressional intent was to protect language minority citizens who have the right to cast an "effective" vote and to remedy past discrimination. Recalling § 2 of the Voting Rights Act, it expressly states:

No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.¹⁷⁷

175. See *id.* at 5.

176. See Census Road Map, *supra* note 150.

177. 42 U.S.C. § 1973 (2000).

If the individual right to vote for all citizens is to be protected, then a numerical trigger should be removed, and any assistance requested by any voting citizen should be granted. The current version of § 203 protects hundreds of thousands of language minorities, but it also excludes thousands. The individuals not granted access to a bilingual ballot are therefore unable to exercise their right to vote. It is imperative that the Voting Rights Act continues to provide protection for language minorities and expand its definition to include other language minority groups, such as Arab Americans.

One alternative to the elimination of § 203's trigger would be to lower the number to 10,000 members of a language minority in a state rather than in a smaller political subdivision. Otherwise, hundreds of thousands of language minority citizens are excluded from the essence of American democracy—the right to vote. If § 203 lowered the trigger to encompass states whose total population included at least 10,000 of a particular language minority, then twenty-four states would afford coverage to Arab Americans, with five states being very close to having reached a 10,000 minimum.¹⁷⁸ While this alternative still excludes many, it is one way to potentially broaden the coverage of § 203.

Providing protection under § 203 is contingent upon sufficient demonstration of past discrimination and socio-economic disparities. Without this limitation, a potential slippery slope could arise where hundreds of languages spoken in the United States would be protected under the Act, thereby causing great administrative difficulty. Therefore, it is crucial to include only those groups in which sufficient evidence is presented to warrant inclusion as a federally recognized language minority group. It is additionally cost-effective to limit the number of language minority groups to those who have sufficiently demonstrated the necessary elements that warrant inclusion.

The elimination of the 10,000 person or five percent trigger mechanisms of § 203 is feared by many state officials because it will lead to increased costs. However, in 1992, Congress found that § 203 would cost the federal government only one million dollars.¹⁷⁹ Congress has difficulties in distinguishing the costs associated with providing bilingual assistance and other general election costs.¹⁸⁰ On a local level, one location provided bilingual

178. See ARAB POPULATION: 2000, *supra* note 144, at 7.

179. H.R. REP. NO. 102-655, at 12 (1992).

180. *Id.*

assistance in Spanish and Chinese and the costs only accounted for 5% of the total cost of the election, and only 0.038% of the total city and county budget.¹⁸¹ It is not unreasonably burdensome to provide election materials in more than one language. The costs for providing bilingual language assistance mostly are associated with printing additional information on ballots, notices and forms. State election officials have complained of a lack of time, fiscal constraints and difficulty in assembling demographic information.¹⁸² However, much of the demographic information is already compiled by the Bureau of the Census and provided for free. The United States Election Assistance Commission also provides demographic statistics regarding voter turnout so that election officials can determine minority language group voting patterns.¹⁸³

While there are reasonable fiscal concerns, it should not preclude bilingual assistance for Arab Americans. There are numerous non-profit organizations, such as the Arab American Institute and ACCESS, which provide these resources by request in areas with heavy concentrations of Arab Americans. The federal government would not bear an unnecessarily high burden by including Arab Americans; the cost of not allowing thousands of citizens to cast an effective vote is much higher. Additionally, bilingual assistance in registration could provide an indicator for electoral districts to determine the precise number of citizens that would require bilingual ballots and other voting materials. If a jurisdiction is able to identify early in the registration process the number of citizens in need of bilingual assistance, it would aid in the reduction of costs by eliminating wasteful printing of bilingual voting materials.

CONCLUSION

The Arab American community has sufficient evidence of poverty and limited English proficiency, as well as a history of past and ongoing discrimination. There is a need for protection under § 203 to ensure that members of the Arab American community have an effective opportunity to vote and to make informed voting

181. See S. REP. NO. 102-315, at 15 (1992) (explaining that in 1990, San Francisco was required to provide ballots in English, Spanish and Chinese, and managed to spend only \$50,000).

182. *Id.* at 9.

183. See U.S. ELECTION ASSISTANCE COMM'N, VOTER REGISTRATION AND TURNOUT STATISTICS, available at http://www.eac.gov/election_resources.asp?format=none (on file with the University of Michigan Journal of Law Reform).

decisions. Recognition of Arab Americans as a language minority group is one step towards ensuring their right to cast an effective vote.

As of 2002, less than 35% of Asian Americans and Hispanic Americans were registered to vote, and less than 30% of those registered voted in 2002.¹⁸⁴ In comparison, Whites registered and voted in much higher numbers: 70% were registered and 60% voted.¹⁸⁵ It is clear that language minority communities are lagging in participation in the electoral process as compared to their non-minority counterparts.

In order to have all American citizens participate in the democratic process, it is essential to preserve and protect the right to vote for all citizens. Until the numerous disparities suffered by minority language groups are remedied, the bilingual assistance provisions are vital in protecting and ensuring equal access for language minority citizens in casting an effective ballot. Beyond the renewal of § 203 of the Voting Rights Act, it is crucial to extend protection to other language minority groups that demonstrate educational, social and political disparities. Furthermore, reform of the triggering mechanism of § 203 is imperative, as it effectively denies protection to thousands of language minority citizens and goes against congressional intent.

184. U.S. ELECTION ASSISTANCE COMM'N, VOTER REGISTRATION AND TURNOUT BY AGE, GENDER & RACE 2000 (2000), *available at* http://www.eac.gov/election_resources/00demog.htm (on file with the University of Michigan Journal of Law Reform).

185. *Id.*

