

Current Conditions of Voting Rights Discrimination

# California

A Report Prepared by

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for submission by The Leadership Conference on Civil and Human Rights

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Senate Committee on the Judiciary  
PROTECTING A PRECIOUS, ALMOST SACRED RIGHT: THE JOHN R.  
LEWIS VOTING RIGHTS ADVANCEMENT ACT

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## **2021 REPORT ON VOTING RIGHTS IN CALIFORNIA**

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## **About States United Action**

[States United Action](#) is a nonpartisan section 501(c)(4) nonprofit organization with a mission to protect our elections and our democracy. States United Action advocates for policies that protect election integrity, hold democracy violators accountable, and prevent political violence that threatens to undermine the will of the American people, and amplifies the voices of state leaders and law enforcement leaders who share these values.

## I. Introduction

This report reviews the overall trends regarding minority voter participation and discrimination against minority groups in California. We evaluate the impact of the Supreme Court's decision in *Shelby County v. Holder* and review California's election laws and their impact on minority voter participation. The report supplements and updates the still-relevant foundational report [VOTING RIGHTS IN CALIFORNIA, 1982-2006](#), by Renew the VRA.Org, published in 2006.

Our supplemental report reveals that 15 years later, despite continued gains in minority voter participation since 2006, there remain obstacles to full voter participation of minority voters in California. Recent elections have seen increases in voter turnout both statewide, including among some minority groups, and in some of the jurisdictions previously subject to preclearance under Section 5 of the Voting Rights Act (VRA). The evidence we review demonstrates the benefits that preclearance provided to the four counties that had been subject to Section 5 prior to *Shelby*. Yet significant concerns persist, including about whether the increased turnout statewide by Latinos signals greater participation by Latino voters in the electoral system or just a matter of population growth. In addition, members of minority communities have been elected in increasing numbers but still at a level lower than those groups' percentage of the overall population. The expansion of California election laws that make voter registration and voting easier, such as the expansion of mail ballot delivery, motor voter registration, same day registration, early voting and the use of vote centers, appears to have eased access to the polls for many Californians, particularly as evidenced by greatly increased voter participation in the 2020 election. Yet the inequality of the increased turnout is also evident inasmuch as the increase in Latino and Asian American turnout lags behind state turnout. Additionally, instances of racially polarized voting stubbornly persist as do significant language access issues. Certain voting procedures still result in the dilution of minority participation, with continued litigation under the VRA and the California Voting Rights Act (CVRA) that we analyze in depth.

While California has made meaningful strides towards the eradication of voting discrimination and violations of voting laws, this does not signal an end to the need for federal legislation protecting these rights. It demonstrates the opposite. As the largest and most diverse state in the nation, California faces particular challenges ensuring voting rights for its diverse and multilingual

electorate. The federal Voting Rights Act of 1965, in conjunction with the California Voting Rights Act, has been the cornerstone of voting rights protections in California and a vital ingredient for the recent successes in the state in terms of minority participation and the election of minority community members to local and state offices.

## II. Impact of *Shelby County v. Holder* in California

In 2013, the U.S. Supreme Court in *Shelby County v. Holder* issued a 5-4 decision authored by Chief Justice Roberts holding that certain provisions of the Voting Rights Act of 1965 were unconstitutional.<sup>1</sup> The majority found that the formula used to determine which jurisdictions were subject to preclearance under Section 5 of the VRA was outdated and that there was insufficient evidence showing pervasive discrimination in the covered jurisdictions to justify the continuation of the preclearance requirements.

Prior to the Supreme Court's decision in *Shelby*, there were four counties in California that had been subject to the pre-clearance requirements under Section 5 of the Voting Rights Act: Monterey, Kings, Yuba, and Merced.<sup>2</sup> Most of these counties have a large percentage of minority residents relative to their overall populations<sup>3</sup> and had instances of very low voter turnout. As

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<sup>1</sup> Section 4 provided for a formula that determined which jurisdictions were subject to coverage under certain provisions of the VRA, and Section 5 provided that the covered jurisdiction as determined under the formula used in Section 4 were required to submit changes to their voting procedures to the U.S. Department of Justice for approval. This was known as "preclearance." Under the coverage formula in Section 4, several states in the South as well as certain jurisdictions in other states, including California, were subject to the preclearance procedures in Section 5.

<sup>2</sup> 28 C.F.R. Part 51, Appendix. Merced eventually was removed from the preclearance requirement in 2012 and some localities within Yuba County also received a so-called "bail out" from preclearance, leaving Kings, Yuba, and Monterey Counties, or parts thereof, as the jurisdictions within California under Section 5 of the VRA as of 2013. See Seth Nidever, *Kings still punished under Voting Rights Act*, THESENTINEL (Aug. 18, 2012), [https://hanfordsentinel.com/news/local/kings-still-punished-under-voting-rights-act/article\\_cb8df624-e8d3-11e1-8efd-001a4bcf887a.html](https://hanfordsentinel.com/news/local/kings-still-punished-under-voting-rights-act/article_cb8df624-e8d3-11e1-8efd-001a4bcf887a.html); see also David Bienick, *Yuba, Monterey, Kings counties may no longer need election oversight*, KCRA 3 (June 25, 2013, 10:46 PM), <https://www.kcra.com/article/yuba-monterey-kings-counties-may-no-longer-need-elections-oversight-1/6405805#>.

<sup>3</sup> For example, although Kings County is the 33rd largest county of California's 58 counties in terms of overall population, the percentage of Hispanic residents rates Kings County the 8th highest in California and the percentage of African American residents rates it the 9th highest. Monterey County has the 5th highest percentage of Hispanic residents by county in California. See *Kings County, California*

described in later sections of this report, during the period of preclearance some of these covered jurisdictions elected an increased number of minority candidates and there was evidence of increased turnout of some minority groups.

Several studies have shown that since *Shelby* there has been a drop in minority participation across elections in many of the jurisdictions nationally that had been subject to Section 5 preclearance.<sup>4</sup> There do not appear to be any available studies specifically focused on the effects of *Shelby* in terms of minority voting in the four California counties previously subject to preclearance. There is some evidence of increased participation statewide by Latino voters in the 2016 and 2020 presidential elections,<sup>5</sup> and some of the formerly covered jurisdictions saw increases in voter turnout during this same time, particularly in the 2020 election,<sup>6</sup> as well as the election of a more diverse field of officeholders.<sup>7</sup> But there is also evidence of a widening and concerning gap between the turnout for the total population and turnout for minority voters. The Center for Inclusive Democracy found that “Latinos and Asian Americans also experienced a significant

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*Demographics*, BIGGEST US CITIES, <https://www.biggestuscities.com/demographics/ca/kings-county#:~:text=Size%20Demographics%20%20%20%20%20%20,28th%20%20%20239.1%20%20%2087.4%20> (last visited Aug. 31, 2021).

<sup>4</sup> *Impacts of the Voting Rights Act and the Supreme Court’s Shelby Ruling*, Harvard Kennedy School (Oct. 26, 2018), <https://www.hks.harvard.edu/research-insights/policy-topics/politics/impacts-voting-rights-act-and-supreme-courts-shelby-ruling>; Coryn Grange, Peter Miller, & Kevin Morris, *Racial Turnout Gap Grew in Jurisdictions Previously Covered by the Voting Rights Act*, Brennan Center for Justice (Aug. 20, 2021), available at <https://www.brennancenter.org/our-work/research-reports/racial-turnout-gap-grew-jurisdictions-previously-covered-voting-rights>.

<sup>5</sup> Kate Irby, ‘Trump effect:’ California Latino voters showed up in force in 2018. Will they do it again?, MCCLATCHY (Jan. 30, 2019, 12:14 PM), <https://www.mcclatchydc.com/news/politics-government/election/article225181845.html>; *Latinos and the 2016 Presidential Election Turnout*, LATINO CMTY FOUND. (Dec. 13, 2016), <https://latinocf.org/latinos-2016-presidential-election-turnout/>.

<sup>6</sup> *Monterey County voters make 2020 a historic year for local elections*, SALINAS CALIFORNIAN (Nov. 5, 2020), <https://www.msn.com/en-us/news/politics/monterey-county-election-updates-56-of-registered-monterey-county-voters-have-cast-their-ballots/ar-BB1aFjlt>; Shawn Jansen, *2020 Election update: Merced County sets voter turnout record; Los Banos has new mayor*, MERCED SUN-STAR (Nov. 25, 2020, 1:29 PM), <https://www.mercedsunstar.com/news/politics-government/election/article247416160.html>.

<sup>7</sup> Jonathan Whitaker, *Diversity wins in vote for new Merced leaders*, MERCED CNTY TIMES (Nov. 14, 2020), <https://mercedcountytimes.com/diversity-wins-after-2020-vote-for-new-merced-leaders/>.

increase in their eligible voter turnout rate compared to the prior presidential general election. However, this increase was not as high as the increase seen in turnout for the total population.”<sup>8</sup>

### **III. Pre-2006 Voting Discrimination in California**

As we have noted, this report supplements the 2006 report [VOTING RIGHTS IN CALIFORNIA, 1982-2006](#), by Renew the VRA.Org (2006 Report). The 2006 Report provided an extensive assessment of discrimination against minority voters and minority voting strength in California from 1982 to 2006. It identified specific instances of voter discrimination in California, including relating to the four jurisdictions that were subject to preclearance under Section 5 of the VRA, and detailed patterns of racially polarized voting in California. The 2006 Report concluded that voting discrimination was still “a persistent hallmark of California electoral politics that ha[d] prevented minority communities from completely achieving an equal opportunity to participate in the political process and elect candidates of their choice despite electoral gains by minority communities.”<sup>9</sup> The 2006 Report emphasized the continuing need for both preclearance as well as language-access issues relating to Section 203 of the VRA.

### **IV. Voting Discrimination in California Since 2006**

#### **A. Statistical Analysis Regarding Voting Issues in California**

##### **i. Current Demographics of California**

Based upon data from the 2020 Census, California had a population of 39,538,223 in 2020, making it the most populous state in the Union as well as the largest majority-minority state.<sup>10</sup> The

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<sup>8</sup> See NOVEMBER 2020 GENERAL ELECTION: LATINO AND ASIAN-AMERICAN VOTE, USC PRICE SCH. OF PUB. POL’Y & CTR FOR INCLUSIVE DEMOCRACY (Mar. 2021), *available at* <https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/t/6065611a7e8307754de70763/1617256731383/USC+CID+California%E2%80%99s+Latino+and+Asian-American+Vote+-+2020+General+Election+FACT+SHEET.pdf>.

<sup>9</sup> See *generally* VOTING RIGHTS IN CALIFORNIA 1982-2006, RENEWTHEVRA.ORG (2006).

<sup>10</sup> See *2020 Census Data*, <https://www.census.gov/library/stories/state-by-state/california-population-change-between-census-decade.html> (last visited Sept. 16, 2021). It should be noted that there remains uncertainty as to whether the 2020 Census undercounted the population in California, particularly minority groups, due to the effects of the COVID-19 pandemic as well as political rhetoric in connection with the 2020 election. See, e.g., Les Dunseith, *UCLA research pinpoints where 2020 census undercounts were most likely in L.A. County*, UCLA NEWSROOM (Aug. 19, 2021),

population grew at approximately 6% from the 2010 Census, primarily based upon increases in those identifying as Hispanic origin or Asian.<sup>11</sup> More particularly, those identifying as Hispanic now constitute 39.4% of the general population of California, and those identifying as Asian, either alone or in combination with other identities, now constitute 17.8% of California's overall population.<sup>12</sup> California remains a relatively young state, with over 22% of the population under age 18 and less than 15% of the population over 65.<sup>13</sup>

ii. Information Regarding Turnout by Demographics

Despite the changing demographics of California, there are indications that, statewide, minority turnout still lags. Latinos<sup>14</sup> and Asian Americans continue to be among the fastest growing communities in the state but continue to have the lowest voter turnout.<sup>15</sup> This includes the 2020 election, which featured increased turnout among most demographic groups but during which Latinos and Asian Americans experienced a lower increase in turnout than the general population.<sup>16</sup>

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<https://newsroom.ucla.edu/releases/2020-census-undercounts-los-angeles-county>; Christian Spencer, *Census controversy brewing over 'systemic undercount' of Latinos*, THE HILL (Apr. 28, 2021), <https://thehill.com/changing-america/respect/accessibility/550697-census-controversy-brewing-over-systemic-undercount-of->; *but see* Michael Wines, *Despite Many Obstacles, the 2020 Census Gets a Cautious Thumbs-Up*, N.Y. TIMES (Sept. 14, 2021), <https://www.nytimes.com/2021/09/14/us/census-analysis-apportionment.html>.

<sup>11</sup> *2020 Census Data*, U.S. CENSUS BUREAU, <https://www.census.gov/library/stories/state-by-state/california-population-change-between-census-decade.html> (last visited Sept. 16, 2021).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Maria Luisa Arredondo, *Latino Population Growth Outpacing Latino Voter Turnout in California*, CA FWD (June 4, 2013), <https://cafwd.org/news/latino-population-growth-outpacing-latino-voter-turnout-in-california/>.

<sup>15</sup> Andrea Briseno & Phillip Reese, *California Latino population grew in last decade while number of whites fell, census shows*, THE SACRAMENTO BEE (Aug. 24, 2021), <https://www.sacbee.com/news/politics-government/capitol-alert/article253446644.html#:~:text=From%202010%20to%202020%2C%20the%20number%20of%20Latinos,there%20are%20about%2015.6%20million%20Latinos%20in%20California> (noting the Latino population grew 11% higher than the statewide average and the Asian population grew 25% higher).

<sup>16</sup> *See November 2020 General Election: Latino and Asian-American Vote*, USC PRICE SCH. OF PUB. POL'Y & CTR FOR INCLUSIVE DEMOCRACY (Mar. 2021), *available at* <https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/t/6065611a7e8307754de70763/161725>

According to Census data, Latino registration and turnout has increased for each presidential election from 2008 to 2020. Specifically, Latino registration increased by 54% during this time period, and Latino turnout, among those eligible, increased by 53%.

*California- Voter Registration and Turnout From 2008 to 2020<sup>17</sup>*

Election	Latino VAP	Total	Latino CVAP	Total	Latino Registered	Total	Latino Turnout
2008	8,859		5,193		3,263		2,961
2012	9,935		6,510		3,684		3,157
2016	10,221		7,092		3,882		3,345
2020	11,165		8,305		5,014		4,539
Increase 2008-2020	26%		60%		54%		53%

A similar trend of overall increase in registration and turnout is seen for Asian American voters. According to Census data, voter registration for Asian Americans grew by 64% from 2008 to 2020 and voter turnout grew by 76%.

*California- Voter Registration and Turnout From 2008 to 2020<sup>18</sup>*

	Asian VAP	Total	Asian CVAP	Total	Asian Registered	Total	Asian Turnout
2008	3,473		2,562		1,522		1,343
2012	3,915		2,839		1,645		1,380
2016	4,838		3,585		2,080		1,859
2020	5,072		3,958		2,491		2,370

6731383/USC+CID+California%E2%80%99s+Latino+and+Asian-American+Vote+-+2020+General+Election+FACT+SHEET.pdf.

<sup>17</sup> Data on reported voting and registration is collected by the U.S. Census Bureau in the Current Population Survey. See *Voting and Registration in the Election of November 2020*, U.S. CENSUS BUREAU (Apr. 2021), <https://www.census.gov/topics/public-sector/voting/data/tables.html>. Figures are in the thousands except for percentages.

<sup>18</sup> Data on reported voting and registration is collected by the U.S. Census Bureau in the Current Population Survey. See *Voting and Registration in the Election of November 2020*, U.S. CENSUS BUREAU (Apr. 2021), <https://www.census.gov/topics/public-sector/voting/data/tables.html>. Figures are in the thousands except for percentages.

Increase 2008-2020                      46%                      54%                      64%                      76%

While Latino and Asian American voters have increased in both registration and turnout, they are still far behind the total population. This is evident when looking at the most recent election. In the 2020 presidential election, 55% of eligible Latino voters cast their ballot as did 60% of eligible Asian American voters. Overall, California experienced a 65% turnout among eligible voters, much higher than the turnout rates for both Latino voters and Asian American voters. When looking across other demographic groups, Latino and Asian American voters fall even farther behind. In the 2020 presidential election, white voters turned out at the highest rates, with 75% of eligible voters casting a ballot, and Black voters also exceeded Latino and Asian American voters with 64% of eligible Black voters casting a ballot. “Latinos and Asian Americans continue to be underrepresented in California’s voting electorate compared to their share of the state’s eligible voter population (adult citizens).”<sup>19</sup> As discussed below, these two demographics also saw higher instances of rejection of vote-by-mail, as well as continuing problems with language access issues.

### iii.      Minority Office Holding

California has continued to elect more officeholders from minority groups since the 2006 Report, although the number of minority office holders is still disproportionately low in comparison with those groups’ percentages of the overall population. For example, a 2019 report by the National Association of Latino Elected and Appointed Officials (NALEO) Education Fund counted 1,640 Latino elected officials in California, including 48 at the federal or state level,<sup>20</sup> which is an increase from past levels. Nonetheless, the approximately 30 members of the California Latino Legislative Caucus<sup>21</sup> constitute only 25% of California legislators while those identifying as Hispanic in California comprise nearly 40% of the general population. Similarly, reports indicate

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<sup>19</sup> See *November 2020 General Election: Latino and Asian-American Vote*, USC PRICE SCH. OF PUB. POL’Y & CTR FOR INCLUSIVE DEMOCRACY (Mar. 2021), available at <https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/t/6065611a7e8307754de70763/161725>

<sup>20</sup> See NALEO 2019 NATIONAL DIRECTORY OF LATINO ELECTED OFFICIALS, NAT’L ASS’N OF LATINO ELECTED AND APPOINTED OFFICIALS EDUC. FUND 8 (2019), available at [https://naleo.org/wp-content/uploads/2019/12/2019\\_National\\_Directory\\_of\\_Latino\\_Elected\\_Officials.pdf](https://naleo.org/wp-content/uploads/2019/12/2019_National_Directory_of_Latino_Elected_Officials.pdf).

<sup>21</sup> See *Member Directory*, CAL. LATINO LEGIS. CAUCUS, <https://latinocaucus.legislature.ca.gov/member-directory> (last visited Sept. 19, 2021).

that the number of Asian and Pacific Islander office holders has increased over the years.<sup>22</sup> One publication counted approximately 393 members of the Asian and Pacific Islander community elected to offices statewide in California, including 14 members of that community elected to the state legislature.<sup>23</sup> This constitutes approximately 11% of the elected members of the state legislature. In contrast, as noted above, those identifying as Asian, either alone or in combination with other races, are 17.8% of California's overall population.

#### iv. Application of Section 203 to California

The last publication of states and political subdivisions covered by Section 203 according to the Census Bureau was in December 2016.<sup>24</sup> Based on that publication, the entire state of California was required to provide language assistance for Spanish speakers, and several counties also were required to provide access and assistance in one or more Asian languages as well as American Indian languages under Section 203. This includes the addition of two jurisdictions between 2002 and 2015, so that 27 political jurisdictions in California are covered by Section 203.<sup>25</sup> Further, several jurisdictions were newly required in 2016 to provide language assistance for additional language groups, predominantly Asian languages.<sup>26</sup>

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<sup>22</sup> Agnes Constante, *In California, Asian Americans find growing political power*, NBC NEWS (Aug. 19, 2018), <https://www.nbcnews.com/news/asian-america/california-asian-americans-find-growing-political-power-n866611>; Ricardo Vazquez, *Number of Asian American public officials has reached historic levels, UCLA study shows*, UCLA NEWSROOM (June 2, 2014), available at <https://newsroom.ucla.edu/releases/number-of-asian-american-public-officials-has-reached-historic-levels-ucla-study-shows>; see also *California Asian Pacific Islander Legislative Caucus Membership*, <https://apicaucus.legislature.ca.gov/california-asian-pacific-islander-legislative-caucus> (visited Sept. 16, 2021).

<sup>23</sup> See *AAPI Current Elected Officials*, ASIAN PACIFIC AMERICAN INST. FOR CONG. STUDIES, <https://www.apaics.org/aapi-current-elected-officials> (last visited Sept. 16, 2021).

<sup>24</sup> UNITED STATES OF AMERICA, SECTION 203 DETERMINATIONS EFF. DECEMBER 2016, U.S. CENSUS BUREAU, available at <https://www2.census.gov/programs-surveys/decennial/rdo/reference-maps/2016/8c-section203map2016.pdf> (last visited Sept. 16, 2021).

<sup>25</sup> *Section 203 Determinations Table*, U.S. CENSUS BUREAU (Dec. 5, 2016), <https://www.census.gov/data/tables/2016/dec/rdo/section-203-determinations.html>.

<sup>26</sup> *Id.*

California:	
State Coverage .....	Hispanic.
Alameda County .....	Chinese (including Taiwanese).
Alameda County .....	Filipino.
Alameda County .....	Hispanic.
Alameda County .....	Vietnamese.
Colusa County .....	Hispanic.
Contra Costa County .....	Chinese (including Taiwanese).
Contra Costa County .....	Hispanic.
Del Norte County .....	American Indian (All other American Indian Tribes).
Fresno County .....	Hispanic.
Glenn County .....	Hispanic.
Imperial County .....	Hispanic.
Kern County .....	Hispanic.
Kings County .....	Hispanic.
Los Angeles County .....	Cambodian.
Los Angeles County .....	Chinese (including Taiwanese).
Los Angeles County .....	Filipino.
Los Angeles County .....	Hispanic.
Los Angeles County .....	Korean.
Los Angeles County .....	Vietnamese.
Madera County .....	Hispanic.
Merced County .....	Hispanic.
Monterey County .....	Hispanic.
Orange County .....	Chinese (including Taiwanese).
Orange County .....	Hispanic.
Orange County .....	Korean.
Orange County .....	Vietnamese.
Riverside County .....	Hispanic.
Sacramento County .....	Chinese (including Taiwanese).
Sacramento County .....	Hispanic.
San Benito County .....	Hispanic.
San Bernardino County .....	Hispanic.
San Diego County .....	American Indian (All other American Indian Tribes).
San Diego County .....	Chinese (including Taiwanese).
San Diego County .....	Filipino.
San Diego County .....	Hispanic.
San Diego County .....	Vietnamese.
San Francisco County .....	Chinese (including Taiwanese).
San Francisco County .....	Hispanic.
San Joaquin County .....	Hispanic.
San Mateo County .....	Chinese (including Taiwanese).
San Mateo County .....	Hispanic.
Santa Barbara County .....	Hispanic.
Santa Clara County .....	Chinese (including Taiwanese).
Santa Clara County .....	Filipino.
Santa Clara County .....	Hispanic.
Santa Clara County .....	Vietnamese.
Stanislaus County .....	Hispanic.
Tulare County .....	Hispanic.
Ventura County .....	Hispanic.

## B. Voting Rights Legal Landscape in California

### i. Objections, Declaratory Judgments or Bail-Ins in California Under Sections 5 and 3(c) of the Voting Rights Act prior to 2013

As discussed in the 2006 Report, prior to the *Shelby* decision, the Section 5 preclearance requirement had a tangible impact on covered jurisdictions in California. The preclearance requirements allowed county residents to hold county supervisors accountable for transparent and accurate representation. Thanks to a Section 5 enforcement action, local voters elected the first

Latino to the Monterey County Board of Supervisors in more than a century.<sup>27</sup> Similar results occurred in Merced County where a new redistricting plan that received Section 5 approval resulted in the election of a Latina supervisor.<sup>28</sup> Both of these examples demonstrate how the Section 5 preclearance requirements allowed for meaningful changes in political representation on a local level.

One enforcement judicial action occurred after 2006 and before the *Shelby* decision in 2013.<sup>29</sup> In *Lopez v. Merced County, California*, the plaintiffs, a group of Hispanic, Spanish-speaking voters, challenged a series of annexations, detachments, consolidations and/or formations to cities and special districts in Merced County, which at the time was a covered jurisdiction under the Act.<sup>30</sup> The plaintiffs alleged these moves unlawfully denied them their voting rights in part based on race and language because the county did not obtain either administrative or judicial preclearance as required under Section 5.<sup>31</sup> While the defendants had not yet received preclearance approval for the annexations and other boundary changes, all defendants had submitted preclearance requests.<sup>32</sup> When the approvals finally were processed, the court ultimately dismissed the case as moot because the defendants had, in fact, complied with the Section 5 requirements even if they did so later than desired.<sup>33</sup>

When looking at the other enforcement route—administrative preclearance through the U.S. Attorney General’s office—the Attorney General did not file an objection action against a California covered political subdivision after 2002.<sup>34</sup> The DOJ was active with other states, such as Alabama and Georgia, both of which received objection notices to their submissions as recently

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<sup>27</sup> VOTING RIGHTS IN CALIFORNIA 1982-2006, RENEWTHEVRA.ORG 10 (2006).

<sup>28</sup> *Id.* at 12.

<sup>29</sup> *Lopez v. Merced County, California*, 473 F. Supp. 2d 1072 (E.D. Cal. 2007).

<sup>30</sup> *Id.* at 1074, 1076.

<sup>31</sup> *Id.* at 1074.

<sup>32</sup> *Id.* at 1077.

<sup>33</sup> *Lopez v. Merced County, California*, No. 06-CV-01526-OWW-DLB (E.D. Cal. June 8, 2007).

<sup>34</sup> *Voting Determination Letters for California*, U.S. DEP’T OF JUST., <https://www.justice.gov/crt/voting-determination-letters-california> (last updated Aug. 7, 2015).

as 2008 and 2012 respectively.<sup>35</sup> While there may not have been objection notices in California after 2002, that is not to say that California did not engage in preclearance submission in the roughly ten years before *Shelby* came about. For example, in the roughly six months leading up to the *Shelby* decision, California counties filed 33 preclearance notices for Section 5 approval.<sup>36</sup>

ii. New Laws in California Regarding Voting Rights.

The California state legislature has worked to dramatically increase voting opportunities and engagement for eligible citizens. While some state statutes have strengthened and even bolstered federal law, other laws have resulted in unequal benefits for some minority communities. When looking across demographics, as seen in the 2020 presidential election, California’s new laws have not resulted in equal improvements for voter turnout for Latinos or Asian Americans.

California enacted the California Voting Rights Act in 2002,<sup>37</sup> and over the years has added provisions strengthening that important law that supplement and, in some cases, surpass the VRA in terms of protecting the rights of California voters.<sup>38</sup> For example, in 2016, the legislature added

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<sup>35</sup> *Voting Determination Letters for Alabama*, U.S. DEP’T OF JUST., <https://www.justice.gov/crt/voting-determination-letters-alabama> (last updated May 18, 2020); *Voting Determination Letters for Alabama*, U.S. DEP’T OF JUST., <https://www.justice.gov/crt/voting-determination-letters-georgia> (last updated Aug. 7, 2015).

<sup>36</sup> *See Notices of Section 5 Activity under the Voting Rights Act of 1965, As Amended*, U.S. DEP’T OF JUST., <https://www.justice.gov/crt/notices-section-5-activity-under-voting-rights-act-1965-amended> (last updated Aug 6, 2015) (reviewing the individual notice submissions from January to June 2013).

<sup>37</sup> The California Voting Rights Act recently survived a constitutional challenge brought in federal court, with the Ninth Circuit Court of Appeals affirming a lower court’s decision that the Act did not violate the Equal Protection Clause of the 14<sup>th</sup> Amendment, and the United States Supreme Court declining to review the Ninth Circuit’s decision. *Federal Appeals Court Dismisses Challenge to California Voting Rights Act*, THE LATINO LEGAL VOICE FOR CIVIL RIGHTS IN AMERICA (Dec. 19, 2019), <https://www.maldef.org/2019/12/federal-appeals-court-dismisses-challenge-to-the-california-voting-rights-act/>; Maria Dinezo, *High Court Leaves in Place California Election Boundaries*, COURTHOUSE NEWS SERVICE (May 26, 2020), <https://www.courthousenews.com/supreme-court-denies-petition-to-hear-california-voting-rights-act-challenge/>.

<sup>38</sup> “While modeled after the federal Voting Rights Act of 1965 (“FVRA”), the CVRA lowers the threshold required to establish a voting rights violation. For example, unlike the FVRA, a protected class does not have to be geographically compact or concentrated to allege a violation of CVRA. Moreover, proof of intent on the part of the voters or elected officials to discriminate against a protected class is not required. The CVRA also eliminates the “totality of circumstances” test set forth in the FVRA, precluding introduction of other evidence as to why preferred candidates of the protected class lost elections. The deletion of the totality of circumstances factors makes CVRA litigation purely a statistical exercise.” THE CALIFORNIA VOTING RIGHTS ACT. RECENT LEGISLATION & LITIGATION OUTCOMES,

provisions to the CVRA that allowed municipalities to transition to district-based voting by ordinance without necessitating approval by a costly ballot measure.<sup>39</sup> The legislature also created safe-harbor provisions to encourage municipalities and jurisdictions to adopt district-based voting in response to complaints of voter dilution caused through at-large voting systems.<sup>40</sup>

Additionally, in 2018, California joined five states and the District of Columbia in implementing automatic voter registration (AVR). AVR expands voter registration by allowing eligible voters to seamlessly register to vote when they apply or renew their state identification or driver's license, or update their address, essentially, "[w]hen eligible voters visit a government office, such as a state's department of motor vehicles, they are automatically registered to vote unless they decline."<sup>41</sup> Further, the state extended voter registration through election day to allow voters who faced registration challenges to still participate.<sup>42</sup> The state also expanded early voting at specific locations, with early voting beginning 29 days before the election and ending the day before the election.<sup>43</sup> Such an expansion in the time frame of voting allows individuals more flexibility when determining their voting availability. The idea behind such measures is that by decreasing

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LEAGUE OF CALIFORNIA CITIES 3 (2018) (citing Cal. Elec. Code § 14026(e), §§ 14028(b)-(d)), available at <https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2018/Spring-Conference-2018/5-2018-Spring;-Aziz-Johnson-Markman-California-Vot.aspx>.

<sup>39</sup> CAL. GOV'T CODE § 34886.

<sup>40</sup> CAL. ELEC. CODE § 10010. Effective 2017, a person challenging a jurisdiction's electoral system as violating the CVRA must give notice to a jurisdiction of a potential violation of CVRA, after which the jurisdiction has a certain time period to respond as well as to propose changes to their electoral system. *Id.* at § 10010(e). This includes provisions requiring the jurisdiction to hold public hearings on the matter to seek input on changes to the electoral system. *Id.* at § 10010(a).

<sup>41</sup> Wendy Weiser and Max Feldman, *The State of Voting 2018*, BRENNAN CTR. FOR JUS. (June 5, 2018), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_State\\_of\\_Voting\\_2018.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_State_of_Voting_2018.pdf).

<sup>42</sup> John Myers, *More eligible Californians voted in November's election than any time since 1952*, L.A. TIMES (Dec. 11, 2020, 4:54 PM), <https://www.latimes.com/california/story/2020-12-11/record-turnout-california-november-2020-election>; see John Myers, *Californians can register to vote on election day at any polling place under new law*, L.A. TIMES (Oct. 8, 2019, 8:33 PM), <https://www.latimes.com/california/story/2019-10-08/californians-register-to-vote-any-polling-place-2020-new-law> (noting that roughly six million Californians at the time were not registered to vote despite being eligible meaning laws like this can have significant impacts on races at all levels, most importantly the local level).

<sup>43</sup> *State Laws Governing Early Voting*, NAT'L CONF. OF STATE LEGS. (June 11, 2021), <https://www.ncsl.org/research/elections-and-campaigns/early-voting-in-state-elections.aspx>.

potential barriers to voting registration, more voters will register and in turn there will be greater voter engagement.

Another significant change in California election law is the adoption of the Voter's Choice Act (VCA) in 2016. The new law "modernizes elections in California by allowing counties to conduct elections under a model which provides greater flexibility and convenience for voters."<sup>44</sup> The law requires that every active registered voter receive a ballot in the mail, expands in-person early voting and allows voters to cast their ballot at any voting location in their county. Voters also have the option to return their ballot at a drop box or by mail.<sup>45</sup> The California Secretary of State's report to the State Legislature on the VCA's implementation during the November 2018 General Election found that while turnout in VCA counties was higher than non-VCA counties, preliminary data on race and ethnicity showed that white voters turned out at the highest rates (75.3%) and Latino voters turned out at lower rates (61.8%). Additionally, even though voters had the option to mail back their ballots, 48% of ballots were dropped off, while 43% were returned by mail.<sup>46</sup> Five counties adopted the VCA in the 2018 election cycle representing 6.96% of the state's registered voters, and 15 counties adopted the model for the 2020 election cycle, representing over half of the electorate. However, due to the COVID-19 pandemic, only the 2020 Primary Election was held under the Voter's Choice Act model; counties had a slightly modified VCA model for the 2020 General Election.

The most recent and notable change to California election law came in the form of expanding the state's mail ballot delivery program in light of the COVID-19 pandemic. California sent every active registered voter a ballot by mail for the 2020 General Election, regardless of whether they requested one.<sup>47</sup> To further support voters during the pandemic, the state extended the cutoff date

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<sup>44</sup> *California Voter's Choice Act*, CAL. SEC'Y OF STATE, <https://www.sos.ca.gov/elections/voters-choice-act> (last visited Oct. 6, 2021).

<sup>45</sup> CALIFORNIA VOTER'S CHOICE ACT QUICK FACTS, CAL. SEC'Y OF STATE 1 (2021), *available at* <https://elections.cdn.sos.ca.gov/vca/vca-quickfacts.pdf>.

<sup>46</sup> CALIFORNIA VOTER'S CHOICE ACT NOVEMBER 6, 2018 GENERAL ELECTION REPORT, CTR FOR ELECTION INNOVATION & RSCH 40 (2018), *available at* <https://elections.cdn.sos.ca.gov/vca/2020/vca-november-2018-general-election-report.pdf>.

<sup>47</sup> Jeremy White, *California enacts November mail-ballot law—with surprising GOP support*, POLITICO (June 18, 2020, 1:10 PM), <https://www.politico.com/states/california/story/2020/06/18/california-lawmakers-pass-november-mail-ballot-bill-with-surprising-gop-support-1293679>.

for receiving ballots and allowed for those ballots postmarked by election day and received within 17 days of the election to count as valid.<sup>48</sup> These changes had a dramatic impact on the state voting process, as more than 87% of California voters cast a ballot via the mail-in method in the 2020 general election, and overall the state had a historic turnout of 71% of eligible voters casting a ballot.<sup>49</sup> (However, it is important to note that while there was an increase in vote-by-mail use, Latino voters had a higher use of in-person voting compared to the general population.<sup>50</sup>) The success of these laws in increasing voter access motivated further action: The Governor recently signed a bill making permanent the emergency safety measures and ensuring that active registered voters in California receive a ballot in the mail for all future elections.<sup>51</sup> Additionally, the new law allows ballots received no later than seven days after election day to count.<sup>52</sup>

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<sup>48</sup> John Myers, *More eligible Californians voted in November's election than any time since 1952*, L.A. TIMES (Dec. 11, 2020, 4:54 PM), <https://www.latimes.com/california/story/2020-12-11/record-turnout-california-november-2020-election>.

<sup>49</sup> Reid Wilson, *California governor extends all-mail voting through a potential recall*, THE HILL (Feb. 22, 2021), <https://www.msn.com/en-us/news/politics/california-governor-extends-all-mail-voting-through-a-potential-recall/ar-BB1dUk30>; *Historical Voter Registration and Participation in Statewide General Elections 1910-2020*, CAL. SEC<sup>Y</sup> OF STATE, <https://www.sos.ca.gov/elections/statistics> (last visited Aug. 25, 2021).

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*See generally* CALIFORNIA'S CHANGING ELECTORATE: A 2020 POSTELECTION ANALYSIS OF VOTING BEHAVIOR, CTR OF INCLUSIVE DEMOCRACY (2021), *available at* <https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/t/612dd3632b33f91f9853933f/1630393191825/USC+CID+2020+GENERAL+ELECTION+RESEARCH+REPORT+8-27-21+WEBSITE+RELEASE.pdf>. (“In California, Asian-American voters (40.1%; 729,303 ballots) sent their VBM ballots through the mail at higher rates than Latino voters (30.1%; 1,256,219 ballots) and all voters (33.5%; 5,772,616 ballots). Latino voters voted in person (15.9%, 663,921 ballots) and by dropping off their VBM ballot at a voting location (19.5%; 814,045 ballots) at higher rates than Asian-American voters (8.7%; 159,078 ballots and 12.9%; 234,158 ballots respectively) and all voters (12.6%; 2,167,488 ballots and 16.4%; 2,822,061 ballots respectively). Asian-American voters (38.3%; 696,086 ballots) had similar drop box use rates as the general population (37.6%; 6,474,134 ballots), while Latino voters had lower drop box use rates at 34.6% (1,445,456 ballots).”)

<sup>51</sup> *Governor Newsom Signs Landmark Elections Legislation Making Vote-by-Mail Ballots Permanent for Every Registered Voter, Strengthening Elections Integrity*, OFF. OF GOVERNOR GAVIN NEWSOM (Sept. 27, 2021), <https://www.gov.ca.gov/2021/09/27/governor-newsom-signs-landmark-elections-legislation-making-vote-by-mail-ballots-permanent-for-every-registered-voter-strengthening-elections-integrity/>.

<sup>52</sup> CAL. ELEC. CODE § 3000.5.

In Colorado, where vote-by-mail has been used widely since at least 2013, Stanford University researchers found that mail ballot delivery programs have positive effects among voters aged 30 and younger, voters without a high school diploma, voters with less wealth, and minority voters. The Stanford political scientists looked *inter alia* at election results from elections conducted through mail ballot delivery, and found that this model makes it easier for eligible individuals to vote and increases electoral participation.<sup>53</sup> For those voters without transportation, childcare, time off from work, or financial means to drive to polling places and wait in line, mail-in voting has offered a tangible answer to increase voter engagement across all communities in the state.<sup>54</sup> Similarly, a September 2020 study by the Public Policy Institute of California found increases in turnout in the 2018 and 2020 primary elections in California in those counties that enacted reforms under the VCA, including increases in turnout for both in-person and through mail ballot delivery.<sup>55</sup> That same study also indicated, however, that turnout was not consistent across all demographic groups over both elections, as “young people showed stronger turnout under the VCA in 2018 but lower turnout in 2020, while by-mail Latinos and Asian Americans saw turnout decline in 2018 but increase in 2020.”<sup>56</sup>

California enacted further laws to support the growing use of mail-in ballot voting in the state. In addition to sending mail-in ballots to every eligible voter, election officials are also required to deliver all supplies necessary for the use and return of the ballot, including prepaid postage and an

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<sup>53</sup> See Melissa DeWitte, *Stanford scholars find no partisan advantage of mail-in, absentee voting but other challenges lie ahead*, STANFORD NEWS (Sept. 3, 2020), <https://news.stanford.edu/2020/09/03/examining-effects-challenges-mail-in-voting/> (“Colorado’s experience demonstrates that all-mail voting is not only safer than in-person voting but also better for democratic representation, with all age, income, race, occupational and education groups benefitting from its introduction.”).

<sup>54</sup> All preliminary at the time of this report, indications are that the September 14, 2021 recall election also saw relatively high turnout for an off-cycle election, including millions of votes cast by mail. See Nate Cohn, *With polls still open in California, millions of votes have been received so far*, THE N.Y. TIMES (Sept. 14, 2021), available at <https://www.nytimes.com/2021/09/14/us/elections/recall-election-democratic-voter-turnout.html?>

<sup>55</sup> HOW GREATER VOTE-BY-MAIL INFLUENCES CALIFORNIA VOTER TURNOUT, PUB. POL’Y INSTIT. OF CAL. (2020), available at <https://www.ppic.org/wp-content/uploads/how-greater-vote-by-mail-influences-california-voter-turnout-september-2020.pdf>.

<sup>56</sup> *Id.* The authors of the report concluded that “[t]hough their turnout is not consistently lower, the potential for lower turnout in these groups suggests they should receive more outreach as well.” *Id.* at 10.

identification envelope.<sup>57</sup> Individuals can track their mail-in ballots and receive information about their ballot through a state run system, increasing transparency of the voting process and reassuring voters that their votes are counted.<sup>58</sup> Election officials are also not allowed to exclude ballots solely because of a missing or mismatched signature.<sup>59</sup> Instead election officials are required to send voters a signature verification statement and provide voters the opportunity to provide a corrected signature.<sup>60</sup> With these new laws, California lawmakers have aimed to expand access, increase transparency, and decrease barriers that otherwise have hindered or prevented individuals from all communities from voting.

However, the future continuation of this trend of easing access to the ballot in California is not a foregone conclusion. Prior to the 2020 election, lawmakers from Orange County proposed legislation in the California State Assembly that would have required county courts to provide juror information to local elections boards with the intent to potentially purge voter rolls based on the information received from the county courts.<sup>61</sup> The putative reason for the proposed legislation was to prevent “voter fraud” despite the absence of evidence that fraud was occurring in connection with California elections. This proposed law is one example of why overarching voting rights legislation is still vitally important in all states. Even with the additional measures put in place, there are still tangible threats to voting rights that need both state and federal protection.

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<sup>57</sup> Samantha Solomon, *California’s new voting laws, explained*, ABC 10 (Dec. 12, 2018, 1:19 PM), <https://www.abc10.com/article/news/politics/elections/californias-new-voting-laws-explained/103-623207200>.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> CAL. ELEC. CODE § 3019.

<sup>61</sup> Brooke Staggs, *New bill takes aim at voter fraud; raises concern about voter suppression*, THE ORANGE CNTY REG. (Feb. 27, 2020, 5:57 PM), <https://www.ocregister.com/2020/02/27/new-bill-takes-aim-at-voter-fraud-raises-concerns-about-voter-suppression/>.

iii. Court findings regarding voting rights in California.

Outside of Section 5 enforcement actions and litigation, other provisions of the VRA and the CVRA consistently present plaintiffs with the vehicle to remedy voting rights violations. Indeed, in California, activity under the CVRA regarding voter dilution remains prevalent.<sup>62</sup>

(a) *Voter Discrimination and Dilution Litigation*

In *Luna v. County of Kern*, plaintiffs alleged that the county's 2011 redistricting plan violated Section 2 of the Voting Rights Act because it impermissibly diluted the Latino vote in Kern County by depriving Latino voters of a second district in which they would constitute a majority of eligible voters and elect a candidate of their choice.<sup>63</sup> At trial, Stanford University historian Albert Camarillo explained the history of racism in Kern County, which included extensive influence from the Ku Klux Klan and numerous atrocities that Latinos, Blacks, and other individuals of color faced.<sup>64</sup> The court agreed with the plaintiffs and found that the county's redistricting plan deprived Latino voters equal opportunity to elect representatives of their choice and equal opportunity in the voting process, violating Section 2 of the Act.<sup>65</sup> This lawsuit, which was settled in 2018 and was the first in California since 2001 to claim a VRA violation, shows the importance of providing individuals an avenue to seek redress.<sup>66</sup>

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<sup>62</sup> See generally THE CALIFORNIA VOTING RIGHTS ACT. RECENT LEGISLATION & LITIGATION OUTCOMES, LEAGUE OF CAL. CITIES (2018), available at <https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2018/Spring-Conference-2018/5-2018-Spring;-Aziz-Johnson-Markman-California-Vot.aspx>.

<sup>63</sup> *Luna v. County of Kern*, 291 F. Supp. 3d 1088, 1104 (E.D. Cal. 2018).

<sup>64</sup> *Luna v. County of Kern: MALDEF and Latino Voters Achieve Landmark Victory*, MALDEF (Mar. 26, 2019), <https://www.maldef.org/2019/03/kern-country-voting-rights/#:~:text=LUNA%20V.%20COUNTY%20OF%20KERN%3A%20MALDEF%20AND%20LATINO,rigged%20political%20system%20to%20exploit%20Latinos%20for%20decades>.

<sup>65</sup> *Luna*, 291 F. Supp. 3d at 1044.

<sup>66</sup> *Luna v. County of Kern: MALDEF and Latino Voters Achieve Landmark Victory*, MALDEF (Mar. 26, 2019), <https://www.maldef.org/2019/03/kern-country-voting-rights/#:~:text=LUNA%20V.%20COUNTY%20OF%20KERN%3A%20MALDEF%20AND%20LATINO,rigged%20political%20system%20to%20exploit%20Latinos%20for%20decades>.

In addition to cases alleging violations of the VRA,<sup>67</sup> California also saw numerous cases alleging violations of the CVRA since the 2006 Report. Many of these cases deal with the election systems themselves and the disadvantages they place on minority voters.<sup>68</sup> In *Jauregui v. City of Palmdale*, plaintiffs claimed that Palmdale’s at-large election of city council members resulted in racially polarized voting, diluting the votes of Latino and Black residents and denying them effective political participation in elections to the city council.<sup>69</sup> “Plaintiffs’ expert and defendant’s expert studied the [council] and mayoral election results for [defendant] since 2000. During that period, only one Latino candidate was elected and no African-American candidates were elected. [T]he one Latino candidate was elected in 2001, and none since. The failure of minority candidates to be elected to office does not by itself establish the presence of racially polarized voting. However, the regression analysis undertaken by both experts nevertheless established a clear history of a difference between choice of candidates preferred by the protected class in the choice of the non-protected class.”<sup>70</sup> The trial court found that such a system and the resulting dilution effects violated California law, and the court preliminarily enjoined the city from holding an upcoming at-large election.<sup>71</sup>

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<sup>67</sup> In a pre- *Shelby County v. Holder* decision, the plaintiff in *Wooten v. City of Stockton* alleged that the City of Stockton, as a political subdivision of San Joaquin County, California, altered its voting practices and procedures after 1968, without first obtaining “preclearance” from the federal government in violation of the VRA. On summary judgment, the Court held that neither San Joaquin County nor the City of Stockton were covered jurisdictions subject to the preclearance provisions of section 5, and that plaintiff’s claim that defendant failed to comply with section 5 failed as a matter of law. See *Wooten v. City of Stockton*, No. CIVS062789FCDEFBPS, 2008 WL 364609, at \*3 (E.D. Cal. Feb. 11, 2008), *report and recommendation adopted*, No. CIV-S-06-2789FCDEFBP, 2008 WL 595884 (E.D. Cal. Mar. 3, 2008).

<sup>68</sup> See *Higginson v. Becerra*, 363 F.Supp.3d 1118 (S.D.Cal. 2019) (finding there was no racial gerrymandering despite plaintiff’s complaint that the city of Poway adopting by-district elections diluted the ability of Latinos to elect candidates of their choice and influence elections); *see also Yumori-Kaku v. City of Santa Clara*, 273 Cal. Rptr. 3d 437 (Cal. Ct. App. 2020) (holding that at-large elections for Santa Clara violated the California Voting Rights Act because it denied Asian American residents the ability to elect their preferred candidates).

<sup>69</sup> *Jauregui v. City of Palmdale*, 266 Cal.App.4th 781 (Cal. Ct. App. 2014).

<sup>70</sup> *Id.* at 790.

<sup>71</sup> *See id.* at 791 (“Plaintiffs’ evidence established that racially polarized voting occurred in the city council elections.”).

In *Le v. City of Santa Ana*, the plaintiff brought an action for declaratory and injunctive relief against the City of Santa Ana for violation of the CVRA. The plaintiff alleged that because of the racially polarized voting in Santa Ana elections, the City's at-large method electoral system prevented Asian American voters from electing their candidates of choice and influencing the outcome of City elections.<sup>72</sup> The plaintiff argued that although Asian Americans in Santa Ana made up approximately 11% of the population and 17.2% of the citizen voting age population, no Asian American served on Santa Ana's City Council.<sup>73</sup> The plaintiff further argued that the overall absence of any Asian American representatives on the City Council, even though prior Asian American candidates were the preferred candidate of Asian American voters, revealed the Asian American community's lack of meaningful access to the political process in Santa Ana.<sup>74</sup> The plaintiff sought declaratory relief that the defendants' imposition or application of an at-large method of election to elect its City Council violated the CVRA and that the adoption of an alternative election system that complied with the CVRA was required to remedy the violation.<sup>75</sup> The plaintiff further sought injunctive relief: 1) prohibiting the defendants from imposing or applying the current at-large method of election to elect the City Council, as well as declaring and/or certifying the results of such an at-large election; and 2) mandating that the defendants imposed and/or applied a district-based election system, including the adoption of fairly constituted districts that did not dilute or abridge Asian American voting strength or otherwise discriminate against Asian Americans, or other alternative relief tailored to remedy the defendants' violation of the CVRA.<sup>76</sup> In October 2018, the parties entered into a settlement agreement.<sup>77</sup> The settlement agreement required the city defendants to adopt a by-district electoral map, which they did on December 4, 2018 through a city ordinance.<sup>78</sup> Further, due to the lawsuit and subsequent

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<sup>72</sup> Complaint at 1-2, *Theresa Le v. City of Santa Ana and Maria D. Huzar*, Case No. 30-2018-00988425-CU-CR-CJC 2 (Cal. Super. Ct. Apr. 25, 2018).

<sup>73</sup> *Id.* at 2.

<sup>74</sup> *Id.* at 2.

<sup>75</sup> *Id.* at 11.

<sup>76</sup> *Id.*

<sup>77</sup> Joint Stipulation at 1, *Theresa Le v. City of Santa Ana and Maria D. Huzar*, Case No. 30-2018-00988425-CU-CR-CJC 2 (Cal. Super. Ct. Dec. 18, 2018).

<sup>78</sup> *Id.*

settlement, the first by-district elections for council seats took place in November 2020 for half of the city wards, resulting in the election of an Asian American councilmember.<sup>79</sup> By-district elections will take place in the remaining city wards in November 2022.<sup>80</sup>

*Pico Neighborhood Association v. City of Santa Monica* also addressed the question of whether at-large elections in that city violated the CVRA.<sup>81</sup> In this case the plaintiffs claim that the city enacted an at-large election system to intentionally dilute Latino voting power and to deny Latinos effective political participation in city council elections, preventing Latino residents from electing candidates of their choice or influencing election outcomes.<sup>82</sup> Expert witnesses for both the plaintiffs and defendants revealed “a consistent pattern of racially polarized voting.”<sup>83</sup> The court noted that “[i]n most elections where the choice is available, Latino voters strongly prefer a Latino candidate running for Defendant’s city council, but despite that support, the preferred Latino candidate loses.”<sup>84</sup> While the trial court found for the plaintiffs that these actions violated both the CVRA and the California Constitution, the Court of Appeals reversed the trial court’s decision.<sup>85</sup> The Court of Appeals found that an at-large voting system did not dilute Latino votes because the result with a district-based and at-large based voting system would be the same because there is

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<sup>79</sup> *City Ward Map Re-Boundary Process and Information*, THE CITY OF SANTA ANA, <https://www.santa-ana.org/cc/ward-map-re-boundary> (last visited Oct. 7, 2021); *Councilmember Thai Viet Phan*, THE CITY OF SANTA ANA, <https://www.santa-ana.org/mayor-and-city-council/thai-viet-phan> (last visited Oct. 7, 2021).

<sup>80</sup> *City Ward Map Re-Boundary Process and Information*, THE CITY OF SANTA ANA, <https://www.santa-ana.org/cc/ward-map-re-boundary> (last visited Oct. 7, 2021).

<sup>81</sup> *Pico Neighborhood Ass’n v. City of Santa Monica*, 265 Cal. Rptr. 3d 530 (Cal. Ct. App. 2020).

<sup>82</sup> *Pico Neighborhood Ass’n*, 265 Cal. Rptr. 3d at 533-34; Brief for the UCLA Voting Rights Project as Amicus Curiae, p. 16-17, *Pico Neighborhood Association v. City of Santa Monica*, No. S263972 (June 11, 2021). “Evidence of racially polarized voting is sufficient to prove vote dilution because the existence of racially polarized voting in a political subdivision demonstrates harm that is contemporaneously occurring to the minority group. Evidence of racial polarization in voting reveals that minority votes and/or the ability of the minority to influence elections are being diluted. If minority voters in an at-large system—of any race or ethnicity—are trying to elect their candidates of choice or influence the outcome of elections through cohesive voting patterns, but the majority voting population bloc votes against their choice, that is evidence of vote dilution.”

<sup>83</sup> *Pico Neighborhood Ass’n*, 265 Cal. Rptr. 3d at 541.

<sup>84</sup> Sam Catanzaro, Judge Orders Santa Monica to Switch to District Elections, WESTSIDETODAY.COM (Feb. 18, 2019), <https://westsidetoday.com/2019/02/18/santa-monica-crva-ruling/>.

<sup>85</sup> *Pico Neighborhood Ass’n*, 265 Cal. Rptr. 3d at 556.

not a big enough percentage of Latino voters either way to determine the outcome of the election.<sup>86</sup> As this report goes to publication, the parties await a decision from the California Supreme Court after the Court granted review in late 2020.<sup>87</sup>

Most recently, in December 2020, a California appellate court unanimously affirmed a trial court decision finding that the City of Santa Clara’s at-large voting procedure did violate the CVRA. In *Yumori-Kaku et al. v. City of Santa Clara*, the Superior Court found that system violated voting rights laws by diluting minority votes and ordered the City to replace its at-large City Council election system with six single-member districts.<sup>88</sup> The appellate court affirmed the Superior Court’s findings of statistical evidence of racially polarized voting and rejected Santa Clara’s arguments, including that the CVRA violated the U.S. and California Constitutions.<sup>89</sup>

## *(b) Language Access*

### *1. Litigation*

Section 203 of the VRA requires that certain jurisdictions provide language assistance to language minority groups so they have adequate access to the ballot. Since the reauthorization of the VRA in 2006, there have been three cases brought by the DOJ to enforce Section 203 in California.

In 2011, the DOJ filed a Section 203 complaint against Alameda County for failing to implement an effective language assistance program for Spanish and Chinese-speaking voters, including the

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<sup>86</sup> *Id.* at 555-56.

<sup>87</sup> *Pico Neighborhood Ass’n v. City of Santa Monica*, 270 Cal. Rptr. 3d 45 (Cal. 2020); Petitioner’s Opening Brief, p. 72-73, No. S263972. Plaintiffs argue in their brief to the California Supreme Court that the California Voting Rights Act prompted immense progress in wiping out discriminatory at-large voting schemes, but the Court of Appeals’ decision threatens to erase that progress. “This case presents the Court with its first and best opportunity to make crystal clear what the CVRA stands for and requires—that no at-large system may deny the rights of minority voters through racially polarized voting when there is an alternative election system that will allow these voters to elect candidates of their choice or to influence the outcome of the elections.”

<sup>88</sup> Carolyn Schuk, *CVRA Appeal: Santa Clara’s Challenge To Voting Rights Law Loses, Court Upholds Established Precedent*, THE SILICON VALLEY VOICE (Dec. 30, 2020, 3:08 PM), <https://www.svvoice.com/cvra-appeal-santa-claras-challenge-to-voting-rights-law-loses-court-upholds-established-precedent/>.

<sup>89</sup> *Yumori-Kaku v. City of Santa Clara*, JUSTIA, <https://law.justia.com/cases/california/court-of-appeal/2020/h046105.html> (last visited Sept. 1, 2021).

failure to hire, train and properly assign qualified bilingual poll workers, and to translate and disseminate all written election material and information.<sup>90</sup> Alameda County had been continuously covered under Section 203 for Spanish and Chinese languages since 1992. The resulting consent decree required the County to provide more robust language assistance in Spanish and Chinese, as well as any new languages that become covered under Section 203.<sup>91</sup> The consent decree included federal observers to monitor future elections.

In 2010, the DOJ filed a complaint against Riverside County alleging Section 203 noncompliance for the failure to implement an effective language assistance program for Latino voters.<sup>92</sup> A memorandum of agreement was filed at the same time as the complaint, which provided for translation and dissemination of translated election-related materials, language assistance in Spanish throughout the election process, including at the poll sites on election days, federal observers, a program coordinator and outreach to, and engagement of, community groups, among other requirements.<sup>93</sup> On April 30, 2010, the three-judge panel entered an order granting the joint motion for extension of time for defendants to answer the complaint and authorizing federal observers to monitor Riverside County elections through March 31, 2013.<sup>94</sup>

In 2007, the DOJ filed a Section 203 complaint against the City of Walnut, California for the failure to translate election materials, provide language assistance, and publicize the availability of language assistance for Limited English Proficiency (LEP) Chinese and Korean voters.<sup>95</sup> The court entered a consent decree that provided for: 1) translation of election-related materials; 2) dissemination of minority language information; 3) oral language assistance, including at poll sites

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<sup>90</sup> Complaint, *United States v. Alameda County*, CA 3 (N.D. Cal. 2011), *available at* [https://www.justice.gov/crt/about/vot/sec\\_203/documents/alameda\\_comp11.pdf](https://www.justice.gov/crt/about/vot/sec_203/documents/alameda_comp11.pdf).

<sup>91</sup> *Id.*

<sup>92</sup> Complaint, *United States v. Riverside County*, CA (C.D. Cal. 2010), *available at* [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/riverside\\_comp.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/riverside_comp.pdf).

<sup>93</sup> Memorandum of Agreement, *United States v. Riverside County*, CA (C.D. Cal. 2010), *available at* [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/riverside\\_moa2.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/riverside_moa2.pdf).

<sup>94</sup> Order, *United States v. Riverside County*, CA (C.D. Cal. 2010), *available at* [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/riverside\\_order.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/riverside_order.pdf).

<sup>95</sup> Complaint, *United States v. City of Walnut*, CA (C.D. Ca. 2007), *available at* [https://www.justice.gov/crt/about/vot/sec\\_203/documents/walnut\\_comp.php](https://www.justice.gov/crt/about/vot/sec_203/documents/walnut_comp.php).

on election days; 4) the hiring of a program coordinator for each language; and 5) the creation of an advisory committee per language for LEP Chinese and Korean voters.<sup>96</sup> The consent decree further provided for the development of plans to provide assistance to other language groups in accordance with the agreement, specified specific poll worker training requirements and a mechanism to address complaints about poll workers, and the appointment of federal observers.<sup>97</sup>

A notable case during this time period related to language access in California came in 2019 in *Asian Americans Advancing Justice-Los Angeles v. Padilla*.<sup>98</sup> The plaintiffs claimed that the California Secretary of State improperly conflated the state threshold requirement for language assistance for minority voters with the federal threshold which improperly denied thousands of residents language assistance during voting and in turn violated California election code.<sup>99</sup> The plaintiffs further alleged that the Secretary of State only applied language assistance to certain precincts where the threshold was met, rather than county-wide which resulted in “the denial of language assistance to an estimated 80,141 Californians” that were eligible for assistance under state law.<sup>100</sup> The plaintiffs also claimed that referencing the VRA when determining the definition of “single language minority” was improper as the federal definition is both under- and over-inclusive and would exclude multiple minority groups from assistance.<sup>101</sup>

While both the trial court and Court of Appeals found that the precinct-based focus of language determination was consistent with the statutory framework, the Secretary was found ultimately to have erred when imputing federal requirements onto state requirements.<sup>102</sup> Because state law does

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<sup>96</sup> Consent Decree, *United States v. City of Walnut, CA* (C.D. Ca. 2007), *available at* [https://www.justice.gov/crt/about/vot/sec\\_203/documents/walnut\\_cd.php](https://www.justice.gov/crt/about/vot/sec_203/documents/walnut_cd.php).

<sup>97</sup> *Id.*

<sup>98</sup> *Asian Americans Advancing Justice-Los Angeles v. Padilla*, 41 Cal.App.5th 850 (Cal. Ct. App. 2019).

<sup>99</sup> *See id.* at 854, 858. Under California election law, the Secretary of State determines the number of eligible voters in each county and precinct who are members of a single language minority and who need language assistance in voting. If this number equals or is above three percent, the Secretary of State needs to provide language assistance materials, which include a facsimile copy of the ballot with the instructions and measures printed in the applicable language in the specific affected polling places, and a copy of the ballot made available to voters for reference when casting their own ballot.

<sup>100</sup> *Id.* at 860.

<sup>101</sup> *Id.* at 860-61.

<sup>102</sup> *Id.* at 870-71.

not define “single language minority,” “language minorities,” or “language minority groups,” the Secretary properly referenced the federal Act’s definitional language according to the court.<sup>103</sup> The problem was that in addition to referencing the language requirements from the VRA, the Secretary also applied the 5% federal percentage threshold for precinct language assistance to certain precincts or counties instead of the 3% state percentage threshold, confusing the definitional language and the coverage requirements.<sup>104</sup> The court found that by grounding the threshold determination in the VRA’s language, the Secretary violated state law by not following the clear directive of the California statute and erred in the coverage determinations, declining thousands of Californians language coverage in the process.<sup>105</sup> The ruling expanded coverage to 14 Asian languages that had not been covered under state or federal law.<sup>106</sup>

In *Heredia v. Santa Clara County.*, the plaintiffs alleged that the promotion of an initiative to limit development violated Section 203 of the VRA because the initiative was not presented to the public in Spanish, Chinese, Vietnamese, and Tagalog.<sup>107</sup> Plaintiffs moved for a preliminary injunction.<sup>108</sup> The District Court recognized that Section 203 was passed to remedy the exclusion of citizens of language minorities from participation in the electoral process.<sup>109</sup> However, the Court ultimately

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<sup>103</sup> *Id.* at 871-75.

<sup>104</sup> *See id.* at 876-77. California’s statutory percentage threshold for language assistance is 3% of eligible voters in a county or precinct, while the federal requirements are 5%.

<sup>105</sup> *Id.* at 877.

<sup>106</sup> *Court Rules to Expand Language Access for California’s Limited-English Proficient Voters*, ASIAN AMERICANS ADVANCING JUST.-ASIAN LAW CAUCUS (Nov. 4, 2019), [https://www.advancingjustice-alc.org/news\\_and\\_media/court-rules-to-expand-language-access-for-californias-limited-english-proficient-voters/](https://www.advancingjustice-alc.org/news_and_media/court-rules-to-expand-language-access-for-californias-limited-english-proficient-voters/).

<sup>107</sup> *Heredia v. Santa Clara Cty.*, No. C-06-04718 RMW, 2006 WL 2547816 at \*2 (N.D. Cal. Sept. 1, 2006).

<sup>108</sup> *Id.*

<sup>109</sup> *See id.* at fn. 4 (“Plaintiffs Kirk and Stone lack standing to pursue claims under section 203. For a plaintiff to have standing, “the [Supreme] Court has required that the plaintiff’s complaint fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.” *Smelt v. County of Orange*, 447 F.3d 673, 683 (9th Cir. 2006) (internal quotation marks omitted). Congress described the problem it sought to remedy with section 203 as “citizens of language minorities have been effectively excluded from participation in the electoral process.” 42 U.S.C. § 1973aa-1a(a). Section 203 was designed to include non-English-speakers in the electoral process. Kirk and Stone are (presumably English-speaking) landowners, and their allegations of harm center on restrictions the initiative, if passed,

opined that it was not likely that plaintiffs would demonstrate a likelihood of success on the merits of their claim because it was not likely that the promotion of the private initiative would be found to involve “registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process provided by Santa Clara County within the meaning of Section 203.”<sup>110</sup> The court denied the injunction and reasoned that although the plaintiffs demonstrated some threat of irreparable harm in that two of the plaintiffs would be illegally excluded from the electoral process if the initiative was subject to the VRA, the balance of hardships favored the defendants.<sup>111</sup> Specifically, if the court incorrectly enjoined the defendants from including the initiative on the ballot, the County would incur additional expenses of reprinting the election materials and notifying voters of the change.<sup>112</sup> Further the public interest did not favor an injunction because if the court incorrectly enjoined defendants from including the initiative, the Court would have improperly interfered with the voting rights of Santa Clara County voters.<sup>113</sup>

In *Padilla v. Lever*, the Ninth Circuit considered whether recall petitions violated the VRA when they were provided only in English.<sup>114</sup> The court held that the recall petitions circulated by proponents of the recall were not subject to the VRA’s requirements because they were not “provided” by Orange County or the State.<sup>115</sup> The court reasoned that although those who circulated recall petitions had an incentive to gather as many signatures as they could, they were under no legal duty to do so, just as they were under no legal duty to launch a recall process in the first place. Further, since the VRA created no duty to present a petition to the plaintiffs in the first place, it was difficult to reason why the VRA would require the petition to be translated into other languages. Finally, the court opined that, “a translation requirement is very likely to have a chilling effect on the petition process itself. If translation is required in Orange County, recall petitions

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would place on development of land they own. Their interests are not those Congress sought to protect when passing section 203.”).

<sup>110</sup> *Id.* at \*2.

<sup>111</sup> *Id.* at \*3.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Padilla v. Lever*, 463 F.3d 1046, 1049 (9th Cir. 2006).

<sup>115</sup> *Id.* at 1050.

will have to be printed, at a minimum, in English, Spanish, Vietnamese, Korean and Chinese. There is no provision in state law or the Voting Rights Act requiring the County to bear the costs; printing of recall petitions is done at the expense of the proponents, as in the present case. The expense and trouble of fulfilling the translation requirements are likely to deter proponents who otherwise would launch petitions. When that happens, then application of § 1973aa-1a will have had a perverse effect: it will have prevented, rather than promoted, participation in the electoral process.”<sup>116</sup>

Relying on the Ninth Circuit’s decision in *Padilla v. Lever*, the District Court in *In re County of Monterey Initiative Matter*, held that although Monterey County was subject to the VRA and required to provide voting materials in English and Spanish, the citizen-sponsored petitions at issue in Monterey County were not required to be in Spanish and English.<sup>117</sup> The Court reasoned that the referendums at issue were privately initiated, drafted, and circulated by its proponents and thus not subject to Section 203’s language requirements for states or political subdivisions.<sup>118</sup>

## 2. *Failure to Provide Language Assistance*

Extensive engagement with elected officials and poll monitoring operations in California have shown that the failure to adequately provide language assistance is an ongoing problem, even when it does not give rise to litigation.

For example, in the months leading up to the November 2020 election, Arabic-speaking residents of Fresno County voiced their concerns about their ability to vote when the county does not provide Arabic language voting materials.<sup>119</sup> Despite multiple letters from the Council on American-Islamic Relations and the American Civil Liberties Union of Northern California outlining the need for these materials, county and state officials noted that they could not provide the materials

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<sup>116</sup> *Id.* at 1053.

<sup>117</sup> *In re Cty. of Monterey Initiative Matter*, No. C 06-01407 JW, 2007 WL 9811086, at \*1 (N.D. Cal. Mar. 29, 2007).

<sup>118</sup> *Id.* at \*7-9.

<sup>119</sup> Crensencio Rodriguez-Delgado, *Should Fresno County allow Arabic-language voting information on the 2020 ballot?*, THE FRESNO BEE (Aug. 19, 2020, 2:19 PM), <https://www.fresnobee.com/news/local/article244934427.html>.

in 2020.<sup>120</sup> Currently, only one California county requires Arabic language voting materials, even though the state has the largest Arab American population in the country according to the Census Bureau.<sup>121</sup> Despite the potential for adding these materials in the future, the status quo has resulted in many Arabic-speaking voters lacking the necessary support to cast their ballots.

Additionally, during the November 2010 election, Asian American advocacy groups conducted a poll monitoring project to assess the VRA compliance of four counties: Alameda County, San Francisco County, San Mateo County, and Santa Clara County. They found that the compliance varied across the counties, with San Francisco County having the best performance of the four, and Alameda County having the greatest difficulties. And while the report found that the Bay Area counties were making strides to improve their language assistance programs, each county still encountered problems and challenges in ensuring their LEP voters had unfettered access to the ballot. For example, while San Francisco developed a promising language assistance program through active planning, recruitment of bilingual workers, and poll worker trainings, it still experienced language access related problems at poll sites with large numbers of Chinese American voters such as physically inaccessible poll sites and failure to provide provisional ballots. San Mateo and Alameda Counties both experienced challenges related to a limited number of bilingual poll workers, failure of existing bilingual poll workers to make their presence and assistance readily known, and failure to provide translated materials at polling locations. Santa Clara County was the only county of the four required to provide language assistance in four languages (Spanish, Chinese, Vietnamese and Tagalog). While they made a concerted effort to meet their requirements, such as providing a large number of bilingual poll workers, there were

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*Id.*

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*California, YALLA COUNT ME IN!*, <https://yallacountmein.org/states/california#:~:text=The%20Census%20Bureau%20estimates%20the%20statewide%20Arab%20American,to%20California%20came%20from%20Iraq%2C%20Egypt%20and%20Syria>. (last accessed Oct. 6, 2021).

still areas of improvement noted, such as ensuring the display of multilingual materials at poll sites and providing more visible and prominent indications of language assistance availability.<sup>122</sup>

A national poll monitoring project conducted by Asian Americans Advancing Justice for the 2012 election found that there continued to be problems with the provision of language assistance, even as improvements were being made in counties across California.<sup>123</sup> The poll monitoring report found a number of problems across the state including the below.

- Alameda County – Poorly trained poll workers.
- Los Angeles County – Missing bilingual poll workers; missing language signs or translated materials in Khmer and Hindi; incidents of poll workers unnecessarily asking for voters identifications.
- Orange County – Poll workers refusing to provide bilingual materials or indicating none available; missing or hidden translated ballots and voter guides; 31% of precincts targeted had no translated ballots in Vietnamese displayed.
- Sacramento County – Missing or insufficient space to display translated materials.
- San Mateo County – “XX Language spoken here” signs improperly displayed; poll workers refused to display Chinese language materials.
- Santa Clara County – Voters not offered provisional ballots.

More recent elections continue to show this pattern of uneven compliance with language assistance requirements as well as areas of improvement for the different counties in California.

A statewide poll monitoring project for the 2016 general election by Asian Americans Advancing Justice – Asian Law Caucus found that problems with the provisions of language assistance

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<sup>122</sup> See generally STRENGTHENING DEMOCRATIC PARTICIPATION, ASIAN LAW CAUCUS & ASIAN LAW ALLIANCE (2011), available at <https://www.advancingjustice-alc.org/wp-content/uploads/2012/11/PollMonitoringFINAL.pdf>.

<sup>123</sup> See generally VOICES OF DEMOCRACY: ASIAN AMERICANS AND LANGUAGE ACCESS DURING THE 2012 ELECTIONS, ASIAN AMERICANS ADVANCING JUST. (2013), available at <https://futureofcaelections.org/wp-content/uploads/2020/12/Voices-of-Democracy.pdf>.

remain. Specifically, the report found that while Section 203 translated ballots were readily available at most polling locations, “the additional materials LEP voters might need when voting those ballots” were missing. This was especially pronounced for languages covered by state law.<sup>124</sup>

Generally, the problems identified for the 2016 general election that were related to language access included a lack of sufficient bilingual poll workers, missing or poorly displayed translated materials, and missing or poor signage at voting locations directing voters where to go and explaining what their rights are.

Poll monitors visited communities with concentrations of LEP voters and found that election officials were generally successful in recruiting bilingual poll workers, especially for Section 203 languages. There was less success in finding bilingual poll workers for languages covered by the California Elections Code. While only 8.2% of polling places were missing bilingual poll workers under federal law, 62.1% of locations were missing bilingual poll workers in the languages covered under state law.<sup>125</sup> A number of problems were found including:

- Alameda County – Elderly Chinese voters needed language assistance, but none of the poll workers present spoke Chinese.
- Kings County – Poll workers sent those who needed bilingual assistance to another polling place.
- Marin County – A voter needed assistance in Spanish, but none of the poll workers present spoke it, so the voter left with intention of coming back later.

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<sup>124</sup> See VOICES OF DEMOCRACY: THE STATE OF LANGUAGE ACCESS IN CALIFORNIA’S NOVEMBER 2016 ELECTIONS, ASIAN AMERICANS ADVANCING JUST. (July 5, 2017), *available at* [https://www.advancingjustice-alc.org/wp-content/uploads/2017/05/05042017\\_AJ\\_State\\_of\\_Language\\_Report\\_DIGITAL\\_FINAL.pdf](https://www.advancingjustice-alc.org/wp-content/uploads/2017/05/05042017_AJ_State_of_Language_Report_DIGITAL_FINAL.pdf)

<sup>125</sup> *Id.*

- San Mateo County – Poll monitors reported that many voters were Spanish speakers, but there was no bilingual poll worker on site; poll workers said they were trying to get one by 5:00 PM.
- Los Angeles County – The county had mixed success recruiting and placing bilingual poll workers at the precincts it had targeted for language assistance.

While the poll monitoring project found that translated Section 203 ballots were provided consistently, the translated supplementary Section 203 materials were frequently missing. Poll monitors found that materials such as translated copies of the Voter Bill of Rights, state voter guide, and county sample ballots were not available in 21.9% of polling places observed statewide.<sup>126</sup> For example:

- Contra Costa County – Lead poll worker indicated they had translated materials “in the back” and that they would display them when they had more time.
- Fresno County – Poll monitors observed two Spanish speakers not being offered Spanish materials; when poll monitor told voters that they could ask for a Spanish ballot, poll monitor was reprimanded and told she could not talk to voters inside the polling place; one Spanish speaker left frustrated but returned with an assister, the assister was told she could only fill out pink provisional form for voter and that she could not help with ballot.
- Orange County – Due to limited table space, translated election materials were on the floor, still in the packaging; LEP voters would have to bend down and pick up materials off the floor if they needed them.
- Riverside County – Poll monitors reported the location was too small to accommodate proper display of materials.
- San Bernardino County – The location was too small to accommodate proper display of translated materials.

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<sup>126</sup> *Id.*

- San Diego County – Poll workers refused to display some translated materials; poll workers at one location reasoned that they did not have to display translated materials since voters in prior years had not requested them.

Additionally, poll monitors found that there was missing or poor signage at voting locations directing voters in covered languages where to go and explain what their rights are. Below are some examples:

- Contra Costa County – Signage not posted.
- Kings County – Poll workers refused to display multilingual materials when advised.
- Mendocino County – No translated signage to inform voters of the languages in which they could receive assistance.
- Sutter County – Poll inspector informed the poll monitor that the “entire community is aware of the location and there was no reason to place” directional signs.<sup>127</sup>

The poll monitoring project also observed some concerning comments from poll workers discriminating against LEP voters.

- Marin County – Lead poll worker made comments to poll monitors that problems did not occur at the polling place but during the registration process, specifically “they let illegals register to vote” and “they think they can come across the border and vote.”<sup>128</sup>
- Santa Cruz County – A Spanish-speaking voter struggled with an English ballot, so poll monitors approached poll workers about offering Spanish assistance; poll workers refused, saying they cannot profile voters or offer any language assistance unless the voter asks for it.

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<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

- Los Angeles County – One poll worker made a disparaging remark saying that voters should speak some English if they want to vote and should be able to ask for assistance in English.

The next set of Section 203 determinations are scheduled for December 2021. As new jurisdictions and new languages are covered, particularly in a rapidly changing state like California, these issues will continue to impede the ability of LEP voters in California to fully participate in the democratic process.

iv. Consent Decrees & Settlements Regarding Voting Rights in California

Since 2006 there have also been some notable consent decrees and settlements in connection with voting rights in California, primarily in connection with voter dilution and the CVRA. In 2007, plaintiffs in *Avitia, et al. v. Local Healthcare District*,<sup>129</sup> brought a suit under the CVRA. Like Section 2 of the VRA, the CVRA contains a cause of action for vote dilution. However, the CVRA is broader and not as restrained by the recent judicial limits on Section 2. For example, under the CVRA, plaintiffs are not required to demonstrate that the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district. In *Avitia*, the plaintiffs complained that even though 47.3% of the district’s population had been Latino since 2000, there had only been one Latino member of the Tulare Local Healthcare District’s Board of Directors since it was established in 1946. During the litigation, plaintiffs’ expert testified that voting was racially polarized in a number of Healthcare District elections and propositions since 1994. However, the Superior Court expressed concern with plaintiffs’ statistical data, and denied a preliminary injunction on this ground. After substantial litigation, including motions for summary judgment, to compel, and to dismiss, the parties eventually reached a settlement. The parties agreed to put a proposal on the ballot no later than June 2012 for district, or “zone,” elections for the Board of Directors. Upon approval of the proposal, the new plan would go into effect for the November 2012 elections. The court approved this settlement on February 16, 2010.

In 2015, the Mexican American Legal Defense and Educational Fund (MALDEF) sent a demand letter alleging that the Placentia City Council in Orange County, California was in violation of the

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<sup>129</sup> *Avitia, et al. v. Local Healthcare District*, No. 07-224773 (2007).

CVRA due to its practice of using an at-large system for electing city council members. MALDEF alleged that although the city's population was 36% Latino, there were no Latinos on the City Council, and that in the last twenty years, there had only been one Latino member on the Council. In 2016, the parties reached a settlement that required Placentia to convert to district-based elections and adopt a map with traditional districting criteria. The map was also to include one district where Latinos could elect candidates of their choice. In 2018, MALDEF filed a breach of contract action alleging that the City of Placentia had adopted a map that breached the 2016 settlement because the map contained a non-contiguous Latino-majority district, intentionally split up the neighborhoods and communities of interests, and the Latino majority district was not designed to provide Latino voters a meaningful opportunity to elect a candidate of their choice to the City Council.<sup>130</sup> After the parties reached a settlement on July 18, 2019, on July 23, 2019, the City Council approved a new map, which addressed the issues in MALDEF's lawsuit.<sup>131</sup>

Indeed, since the passage of the CVRA, various interest groups and private individuals have used the CVRA to address voter dilution and minority representation in various California municipalities and counties. For example, in April 2021, the City of Santa Clara settled a CVRA lawsuit brought by five Asian Americans in 2017 who alleged that the at-large elections diluted Asian American votes.<sup>132</sup> Prior to the settlement, the Superior Court in 2018 held that the at-large elections in Santa Clara violated the CVRA and required the city to implement six council districts for council elections.<sup>133</sup> The City appealed this decision and lost in December 2020.<sup>134</sup> Thus, as part of the settlement, the City was required to hold an election for voters to choose whether to amend the City's charter and make the six districts permanent.<sup>135</sup> Prior to the 2018 Superior Court

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<sup>130</sup> Joseph v. Aguirre v. City of Placentia, 30-2018-00999734-CU-BC-NJC (2018).

<sup>131</sup> MUTUAL RELEASE AND SETTLEMENT AGREEMENT, MALDEF, *available at* [https://www.maldef.org/wp-content/uploads/2019/07/Placentia-Aguirre-Settlement-Agreement-Fully-Executed-with-Exhibit..\\_.pdf](https://www.maldef.org/wp-content/uploads/2019/07/Placentia-Aguirre-Settlement-Agreement-Fully-Executed-with-Exhibit.._.pdf) (last accessed Sept. 16, 2021).

<sup>132</sup> *Santa Clara Settles Voting Rights Lawsuit After Spending \$6 Million, Four Years on Legal Battles*, THE MERCURY NEWS, <https://www.mercurynews.com/2021/04/23/santa-clara-settles-voting-rights-lawsuit-after-spending-6-million-four-years-on-legal-battles/> (last accessed Sept. 17, 2021).

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

decision, no Asian American had ever been elected to the Santa Clara City Council since the city charter was adopted in 1951.<sup>136</sup> After the lawsuit and the Superior Court decision, at least three Asian Americans were voted into office as council members.<sup>137</sup>

In 2016, Southwest Voter Registration Education Project filed a challenge against the City of Rancho Cucamonga alleging that the city's at-large district voting system violated the CVRA.<sup>138</sup> The city ultimately settled with the plaintiff to place a proposal for a transition to district-based voting before voters, who passed the measure in 2016.<sup>139</sup>

In December 2019, Palm Desert, whose population numbers about 51,700 and is 26% Latino, reached a settlement that required it to create two districts and move to a ranked-choice voting system in response to a CVRA lawsuit by two individuals alleging that the "city's at-large voting system prevented Latino residents from electing candidates of their choice or influencing the outcome of Palm Desert's City Council elections."<sup>140</sup>

Other California cities that faced voter dilution lawsuits under the CVRA and were subsequently required to adopt district-based voting systems pursuant to a settlement agreement including

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<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> Southwest Voter Registration Education Project, et al. v. City of Rancho Cucamonga, San Bernardino Superior Court Case No. CIVDS1603632.

<sup>139</sup> THE CALIFORNIA VOTING RIGHTS ACT. RECENT LEGISLATION & LITIGATION OUTCOMES, LEAGUE OF CAL. CITIES 11-12 (2018), *available at* <https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2018/Spring-Conference-2018/5-2018-Spring;-Aziz-Johnson-Markman-California-Vot.aspx>. Under the current version of the CVRA, Rancho Cucamonga would not have been required to submit the proposal as a ballot measure but could have enacted an ordinance.

<sup>140</sup> Sherry Barkas, *Lawsuit Seeks Voting Districts In Palm Desert. Other Valley Cities Have Made The Switch, Desert Latest Coachella Valley City Accused Of Violating State Voting Rights Act*, DESERT SUN (June 7, 2019, 4:44 PM), <https://www.desertsun.com/story/news/local/palm-desert/2019/06/07/palm-desert-sued-over-california-voting-rights-act/1387272001/>; Sherry Barkas, *Palm Desert Lawsuit Settlement Includes Two-District Elections; Ranked-Choice Voting System Possible For 2020*, DESERT SUN (Dec. 12, 2019, 5:08 PM), <https://www.desertsun.com/story/news/local/palm-desert/2019/12/12/palm-desert-reaches-california-voting-rights-act-settlement/4410780002/>.

Fullerton, Garden Grove, Buellton, Anaheim, and Morgan Hill.<sup>141</sup> Overall, according to a report prepared for the League of California Cities, as of 2018, “[a]t least 88 cities have made the change to by-district elections and two more, the City of Goleta and the City of Carpinteria, agreed to make the change for 2022,” to remedy potential voter dilution issues under the CVRA.<sup>142</sup> As noted in the report, prior to the CVRA, “only 28 cities employed by-district elections.”<sup>143</sup> Additionally, “[t]hirty two community college districts, over 165 school districts, and at least 12 other special districts have made the change to by-district elections.”<sup>144</sup> Challenges based upon potential voter dilution issues remain very active in California, albeit primarily under the CVRA.<sup>145</sup>

### C. Other Indicia of Voting Discrimination and Voter Suppression

There remain indicia of potential discrimination in California despite the significant strides described above. For example, an analysis of the 2020 general election by the USC Price School of Public Policy, Center for Inclusive Democracy found that Latino voters—as well as young voters, new voters, and previous polling place voters—had higher rates of rejection of their vote-

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<sup>141</sup> *City Of Fullerton Settles Voting Rights Lawsuit*, ACLU SOUTHERN CAL. (July 8, 2015), <https://www.aclusocal.org/en/press-releases/city-fullerton-settles-voting-rights-lawsuit>; SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS, *available at* <https://ggcity.org/city-files/fully-executed-settlement-agreement-montoya.pdf> (last accessed Sept. 17, 2021); SETTLEMENT AGREEMENT AND GENERAL RELEASE, CITY OF BUELLTON, *available at* <https://cityofbuellton.com/government/documents/Settlement%20Agreement%20-%20SVREP.pdf>, (last accessed Sept. 17, 2021); *City of Anaheim Announces Settlement in California Voting Rights Act Case*, CITY OF ANAHEIM (Jan. 8, 2014), <https://www.americantowns.com/news/city-of-anaheim-announces-settlement-in-california-voting-rights-act-case-17596182-anaheim-ca.html>; Michael Moore, *City settles Voting Rights Act lawsuit for \$25K*, THE MORGAN HILLS TIMES (Nov. 22, 2017), <https://morganhilltimes.com/city-settles-voting-rights-act-lawsuit-for-25k/>.

<sup>142</sup> THE CALIFORNIA VOTING RIGHTS ACT. RECENT LEGISLATION & LITIGATION OUTCOMES, LEAGUE OF CAL. CITIES 1 (2018), *available at* <https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2018/Spring-Conference-2018/5-2018-Spring;-Aziz-Johnson-Markman-California-Vot.aspx>.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> MALDEF has threatened legal action in connection with potential voter dilution in the Bueno Park Library District under the CVRA. *See Voting Rights*, MALDEF, <https://www.maldef.org/category/voting-rights/> (last visited Sept. 16, 2021). As noted above, the US Department of Justice does not report any cases raising claims under Section 2 of the Voting Rights Act in California since *United States v. City of Santa Paula, CA* in 2000.

by-mail ballots than the general population.<sup>146</sup> The most common reason attributed to rejection of ballots was a determination of signatures not matching, with Latino and previous polling place voters having the highest rates of ballots being rejected for allegedly non-matching signatures.<sup>147</sup> Asian and Latino voters also saw a greater percentage of their vote-by-mail ballot rejected due to missing signatures.<sup>148</sup> Although further study is warranted to better understand the correlations between race and rejection of ballots, the history of racial discrimination in voting, including involving the Latino population in California, cannot be ignored. Additionally, the evidence indicates that better outreach to historically under-represented communities to educate voters regarding the requirements for vote-by-mail procedures is necessary.<sup>149</sup>

Additionally, potential voter suppression activities still exist. The 2016 poll monitoring project by Asian Americans Advancing Justice California found 41 instances of polling places in counties throughout California where poll workers requested to see identification prior to providing voters a ballot despite the fact that California law does not require identification to obtain a ballot.<sup>150</sup> California law requires a voter to present their identification only in one situation: when the voter is voting for the first time and did not present an identification card when registering to vote. The report found that poll workers justified their actions to protect the “integrity” of the election or used the ID cards as a shortcut to confirm the spelling of the voter’s name or address.<sup>151</sup> This reasoning creates a particularly worrisome trend where only immigrant voters or voters with non-Anglo names may be asked to present an identification card. The result is potential suppression of lawful voters in contravention of California law. There were also failures to comply with

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<sup>146</sup> See CALIFORNIA’S CHANGING ELECTORATE: A 2020 POST ELECTION ANALYSIS OF VOTING BEHAVIOR, EXECUTIVE SUMMARY, USC PRICE SCH. OF PUB. POL’Y & CTR FOR INCLUSIVE DEMOCRACY (2021), available at <https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/t/612c9c13370f78775422fe36/1630313499115/USC+CID+2020+GENERAL+ELECTION+RESEARCH+REPORT+8-27-21+WEBSITE+RELEASE.pdf>.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> See *Voices of Democracy: The State of Language Access in California’s November 2016 Elections*, ASIAN AMERICAN’S ADVANCING JUST. (July 5, 2017), available at [https://www.advancingjustice-alc.org/wp-content/uploads/2017/05/05042017\\_AJ\\_State\\_of\\_Language\\_Report\\_DIGITAL\\_FINAL.pdf](https://www.advancingjustice-alc.org/wp-content/uploads/2017/05/05042017_AJ_State_of_Language_Report_DIGITAL_FINAL.pdf)

<sup>151</sup> *Id.*

Section 203 of the VRA, including in some of the counties that had been previously subject to preclearance under Section 5, and this impacted members of the Asian community.<sup>152</sup>

#### **D. Persistence of Racially Polarized Voting and Racial Appeals in California**

Despite the efforts to increase access to voting, minority voters still face voting challenges in the state. During the 2020 primary elections, some Los Angeles voting locations suffered technical breakdowns and rule changes that resulted in voters waiting for several hours to cast their ballot.<sup>153</sup> The League of United Latin American Citizens (LULAC) denounced the long lines and breakdowns as an assault on Latino voters because these issues disproportionately impacted Latino voters.<sup>154</sup> The National President of LULAC, Domingo Garcia, noted that “Latinos have become the largest minority voting bloc in 2020, and our community is at the heart of the voting base in states like California ... Yet, it is precisely in the largest minority communities around the country—specifically districts where the Latino vote makes the difference—that we are witnessing the biggest barriers for people to vote.”<sup>155</sup>

Additional racial disparities were noted at local levels, including several Native American reservations in Riverside County that had no early vote centers, no ballot drop box locations, or no voting centers at all.<sup>156</sup> Lacking physical access points presents a problem to Indigenous communities specifically as more than half of Native American communities in the U.S. live in rural areas, and in more than 150 Indigenous areas more than a quarter of people do not have access to a car.<sup>157</sup> Natalie Landreth, a senior staff attorney and litigator at the Native American Rights

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<sup>152</sup> *Id.*

<sup>153</sup> See Edwin Rios, *California Voters Face Long Lines, Glitches, and Dysfunctional Voting Machines*, MOTHER JONES (Mar. 3, 2020), <https://www.motherjones.com/2020-elections/2020/03/california-primary-lines-voting-machines/> (reporting lines with up to 3 hour waits).

<sup>154</sup> William Wilder, *Voting Suppression in 2020*, BRENNAN CTR FOR JUST. (Aug. 20, 2021), <https://www.brennancenter.org/our-work/research-reports/voter-suppression-2020>.

<sup>155</sup> Rafael Bernal, *Top Latino group denounces voting irregularities on Super Tuesday*, THE HILL (Mar. 5, 2020, 10:23 AM), <https://thehill.com/latino/486091-top-latino-group-denounces-voting-irregularities-on-super-tuesday>.

<sup>156</sup> William Wilder, *Voting Suppression in 2020*, BRENNAN CTR FOR JUST. (Aug. 20, 2021), <https://www.brennancenter.org/our-work/research-reports/voter-suppression-2020>.

<sup>157</sup> Nzinga Blake, Grace Manthey, & Adriana Aguilar, *Despite record voter turnout, Indigenous communities face different kinds of voter suppression*, ABC 7 EYEWITNESS NEWS (Nov. 11, 2020),

Fund, highlighted how Indigenous communities still face participation challenges, most notably access to voting centers. “Voter suppression in the Native American community looks different than it does elsewhere. What it usually looks like is moving your polling place so far away that you just can’t get there.”<sup>158</sup>

The recent appellate decision in *Yumori-Kaku* and other litigation under both the VRA and the CVRA also illustrates that there remain many instances of polarized voting in California, including in jurisdictions that were not covered by the preclearance requirements of the VRA. Such occurrences potentially implicate provisions of both the VRA and the CVRA, including the use of at-large district elections that dilute minority voting power.

## V. Conclusion

While California has made strides, as this report shows, significant issues remain including in language access and voter dilution. Voter turnout lags for both Asian and Latino populations; vote-by-mail ballots were rejected more frequently for these populations; and, there remain challenges to minority representation. Challenges to discriminatory practices under the VRA and CVRA have been critical tools to combatting discrimination and lack of access to the polls. Though some of those legal challenges have resulted in meaningful change, there is more work to be done to ensure that non-English speakers have access to the ballot, that signature matching is not done in a discriminatory way, and that all populations in the state are represented in government office.

As the most diverse state in the nation, the ability of people of all backgrounds in California to vote and achieve adequate representation is critical. The significant challenges outlined throughout this report underscore the pressing need to have a strong Voting Rights Act. Given continued language assistance issues and California’s broad language diversity, the enforcement of Section 203 in the state continues to be critical. The post-*Shelby* drop in minority representation could be remedied by a new coverage formula that brings key counties back into coverage under Section 5.

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<https://abc7chicago.com/native-american-voter-suppression-indigenous-supreme-court-georgia-2018/7865678/>.

<sup>158</sup> *Id.*

In short, Congress's passage of the John Lewis Voting Rights Advancement Act could have a powerful effect in ensuring access to the vote and representation for all Californians.