

STATEMENT OF JERRY VATTAMALA
STAFF ATTORNEY
ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND
TO THE NEW YORK CITY DISTRICTING COMMISSION

Public Hearing, January 14, 2013
LaGuardia Community College, Little Theatre
31-10 Thompson Avenue, Queens, NY 11101

Good evening. My name is Jerry Vattamala, and I am a staff attorney of the Asian American Legal Defense and Education Fund. AALDEF is a 39-year-old New York-based national organization that protects and promotes the civil rights of Asian Americans through litigation, advocacy, community education, and organizing.

This past year, in coalition with LatinoJustice PRLDEF, National Institute for Latino Policy, and the Center for Law and Social Justice-Medgar Evers College, we developed a Unity Map for New York congressional, state senate, state assembly and New York City Council. The Unity Map for New York City Council was submitted to the Districting Commission on August 30, 2012 and is the only full 51-district citywide proposal that has been submitted to the Commission. The Unity Map complies with all legal requirements, including one person one vote, the Voting Rights Act, and all requirements of the City Charter.

The New York City Charter explicitly lists the criteria to be considered in redistricting, prioritized in list order. The first priority is keeping districts within a 10 percent deviation. The second priority requires this Commission to ensure the fair and effective representation of the racial and language minority groups in New York City which are protected by the Voting Rights Act.¹ The racial and language minority groups protected by the Voting Rights Act are African Americans, Latinos and Asian Americans.² The Charter then requires this Commission to keep intact neighborhoods and communities with established ties of common interest and association, whether racial, economic, ethnic or religious.³ The Commission is required to ensure that Asian Americans will have a full and fair opportunity to elect candidates of their choice, in accordance with the Voting Rights Act of 1965⁴ and the New York City Charter.

The Commission has stated that the reason certain Asian American neighborhoods could not be kept whole as illustrated in the Unity Map, was because the surrounding communities of common interest had to be protected, which resulted in the Asian

¹N.Y. CITY CHARTER, ch. 2-A, Section 52(1)(b) (2004).

² Native Americans are also protected by the Voting Rights Act, however New York City does not have a significant population of Native Americans.

³N.Y. CITY CHARTER, ch. 2-A, Section 52(1)(c) (2004).

⁴ 42 U.S.C. § 1973(b).

American communities being divided, specifically in Bensonhurst, Brooklyn and Bayside, Queens. The Commission has followed a procedure that violates the Charter by reversing the prioritized redistricting criteria, specifically reversing items 2 and 3 on the priority list. Asian Americans are a racial and language minority group protected by the Voting Rights Act, and must first be ensured fair and effective representation, before the Commission considers the surrounding communities of common interest.⁵ The Unity Map was submitted by advocates from all of the racial and language minority groups protected by the federal Voting Rights Act and per the mandates of the Charter, the Unity Map should be considered and implemented first, ensuring fair and effective representation to these protected groups, before the Commission considered the surrounding communities of common interest.

We are disappointed that the Commission's revised map, released on December 4, 2012, failed to take into account the statements made by numerous advocates and community residents during the first and second round of public hearings in August and October 2012. At the Manhattan, Brooklyn and Queens hearings, Asian Americans repeatedly pointed out the changing demographics of their communities and urged the Commission to keep Asian American neighborhoods together within single districts wherever possible. Those statements were not reflected in the preliminary and revised drafts.

QUEENS

- 1- Bayside (Districts 19 and 23) – Bayside continues to be divided between districts 19 and 23 despite numerous community groups and residents testifying that Bayside should be whole in district 19, as illustrated in the Unity Map.

The Commission violated the Charter by first considering the surrounding communities of common interest before ensuring fair and effective representation to Asian Americans in Bayside. District 19, and Bayside in particular was the center of a racially charged city council race between an Asian American and a white candidate in 2009. Asian Americans were assaulted, intimidated, had property destroyed and were disenfranchised at poll sites. AALDEF documented these incidents and submitted a letter to the Department of Justice (“DOJ”). The Asian American candidate lost the election by a very narrow margin.

This Commission is required to ensure fair and effective representation for Asian Americans before considering the surrounding communities of common interest. Dividing Bayside in half has moved a substantial portion of Asian Americans into district 23, violating the Charter’s mandate of fair and effective representation for racial and language minorities. The violations of federal and local law that occurred in 2009 are exacerbated by moving the Asian American community in Bayside into district 23, preventing this community from electing a candidate of their choice. To comply with the Charter, Bayside must be kept whole in district 19, as illustrated in the Unity Map. AALDEF’s redacted letter to the DOJ and media release are attached for reference.

⁵ N.Y. CITY CHARTER, ch. 2-A, Sections 52(1)(b)(c) (2004)

- 2- Richmond Hill South Ozone Park (Districts 28 and 32) - The South Asian and Indo-Caribbean communities in Richmond Hill/South Ozone Park, Queens have been improved to keep a substantial portion of this community whole in district 28. Many children from the community attend John Adams High School, which is currently located in district 32. The Commission should include John Adams High School in district 28 and extend the western boundary of district 28 westward towards Woodhaven Boulevard to the greatest extent possible.
- 3- Elmhurst/Jackson Heights (Districts 25) - The Commission has kept most of Elmhurst and Jackson Heights whole and in one district, similar to the Unity Map. We are pleased with this configuration and would not like to see adjustments to this district.
- 4- Briarwood and Jamaica Hills (Districts 24 and 29) – Briarwood and Jamaica Hills are one Asian American community of interest that was united in district 24. The Commission divided these neighborhoods between districts 24 and 29 in the latest revision. The Commission should keep these communities of common interest whole and together in district 24.

BROOKLYN

- 5- Bensonhurst (Districts 38, 43, 44 and 47) - The neighborhood of Bensonhurst, Brooklyn, with its fast-growing Asian American population, continues to be divided among four council districts – this configuration is unacceptable and must change. The community defined boundaries of Bensonhurst, as submitted by AALDEF on August 13, 2012 to this Commission, should be kept substantially whole in one district, as demonstrated in the Unity Map, district 47.

The Commission violated the Charter by first considering the surrounding communities of common interest before ensuring fair and effective representation to Asian Americans in Bensonhurst. The Asian American community in Bensonhurst must first be afforded fair and effective representation before the Commission considers the surrounding communities of interest, as per the mandates of the Charter.

- 6- Sunset Park (District 38) – The Commission improved district 38 by including more of the community defined neighborhood of Sunset Park, specifically including all of the 8th Avenue commercial corridor. District 38 is similar to the Unity Map configuration and we do not suggest adjustments to this district.

MANHATTAN

- 7- Chinatown and the Lower East Side (Districts 1 and 2) - In Lower Manhattan, Districts 1 and 2, which were created in 1991 as Asian- and Latino-opportunity districts, are now both predominantly white districts. District 1 is 45% white, and

the Asian American population has dropped to 36%. District 2 is now 57% white, with only 20% Latino and 11% Asian American residents. It is possible to create an Asian-Latino coalition district to preserve minority representation in Lower Manhattan in the coming decade--without pitting incumbents against each other--but this has not be considered. Numerous community activists and residents from both Chinatown and the Lower East Side testified that the two neighborhoods were one community of interest and should be united in one districts. The Unity Map illustrates how this configuration can be achieved.

Once again, we urge the Commission to take a closer look at the 51-district Unity Map that AALDEF has submitted with its partners LatinoJustice PRLDEF, National Institute for Latino Policy, and Center for Law and Social Justice-Medgar Evers College, which reflects the changing demographics of New York City. We urge the Commission to ensure that Asian Americans have a full and fair opportunity to elect candidates of choice, in accordance with the Voting Rights Act and to ensure fair and effective representation to New York City's racial and language minorities protected by the Voting Rights Act, as required by the City Charter.



June 15, 2010

Chris Herren
Chief, Voting Section
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

**Re: Racial Discrimination Against Asian Americans in New York City Council
Race for 19th District, Fall 2009**

Dear Mr. Herren:

The Asian American Legal Defense and Education Fund (AALDEF) is writing to complain about discrimination against Asian American voters during the 2009 New York City Council Race in District 19 in violation of the federal Voting Rights Act.¹ Election officials applied state and federal election procedures in a racially discriminatory manner to the disadvantage of Korean American voters. Asian and non-Asian supporters for a Korean American candidate were harassed, physically threatened, and assaulted. Political campaigners made racial appeals to white voters. Korean American voters were intentionally targeted and hindered from accessing language assistance mandated under section 203 of the Voting Rights Act.

Moreover, AALDEF has monitored several elections in New York City over the years and has found numerous violations of the language assistance provisions of the Voting Rights Act and Help America Vote Act, as well as other barriers hindering Asian American voters. AALDEF has previously litigated a case against the New York City Board of Elections in *Chinatown Voter Education Alliance v. Ravitz* and settled the suit with a new language assistance program and 203 compliance plan.

Included in this letter are details describing the discrimination against Korean American voters and the harassment and assault of Asian and non-Asian supporters of the Korean American candidate who ran in the City Council Race for District 19. Sworn statements from the victims of these incidents, previous complaint letters sent to the New York City Board of Elections, and other relevant sources are attached at the end of this letter. An index describing each attachment is included.

These incidents have limited the ability of Asian Americans to equally participate in the electoral franchise as is guaranteed by the Voting Rights Act. They also have the effect of deterring Asian Americans from voting in future elections. We, therefore, urge the U.S. Department of Justice to commence an investigation and appoint federal observers to deter future discriminatory conduct and intimidation in New York City Council District 19 in Queens, NY.

¹ 42 U.S.C. Section 1973(a) states that “no voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color...”

I. Background

A. The District

The 19th District of the New York City Council covers northeast Queens and includes the neighborhoods of Auburndale, Bayside, Bay Terrace, Beechhurst, College Point, Flushing North, Malba, Robinwood, Whitestone, and parts of Douglaston and Little Neck. Though the population in this district is predominantly white, the Asian American population has grown substantially over the years, particularly the Korean American population. In District 19, 61% is white, 25% is Asian and Pacific Islander, 12% is Latino, and 1% is African American.²

Population of District 19	
Race	Percentage of Population
White	61%
Asian and Pacific Islander	25%
Latino	12%
African American	1%
Other	1%

Queens County is covered under section 203 of the Voting Rights Act and is required to provide language assistance in Korean and Chinese. The New York City Board of Elections provides language assistance – which includes bilingual ballots, translated language materials, and interpreters – at 23 poll sites both in Korean and Chinese, 1 poll site only in Korean, and 1 poll site only in Chinese. There are approximately 3,800 Korean American voters registered in District 19 who are limited English proficient.³

During the 2008 Presidential Elections, AALDEF surveyed Korean American voters at 2 poll sites in District 19 and found that 63% were limited English proficient. Twenty-four percent (24%) preferred to vote with the assistance of an interpreter or use of translated materials. In the 2009 Elections, 78% of Korean American voters at St. Andrews Church, a poll site in City Council District 19, were limited English proficient and 34% preferred to vote with the help of an interpreter or language materials.

The majority of registered voters in District 19 are enrolled as Democrats (53%) with 22% registered as Republicans and 21% unaffiliated with any party.⁴

B. Political Profile and Candidates for Office

Kevin Kim was the Deputy Director of Community Affairs for Congressman Gary L. Ackerman (D-Queens/L.I.) until the end of January 2010. He is Korean American and grew up in Bay Terrace, Queens. He ran for the New York City Council seat for District 19 in 2009. He won

² Citizens Union Foundation. <<http://www.gothamgazette.com/city/district/19>>.

³ New York City Board of Elections. (“NYC BOE”). “Facility EDAD LEP – Queens – General Election 2010 – 11/02/2010”.

⁴ NYC BOE. “Council District Summary Report as of 04/01/2010”.

<<http://www.vote.nyc.ny.us/pdf/documents/boe/EnrollmentTotals/2010/CouncilDistrictSummary.pdf>>.

the Democratic Primary on September 15, 2009. He lost against the Republican candidate Dan Halloran on November 3, 2009. Halloran is white.

Democratic candidate Kevin Kim's loss in the 2009 Election surprised many because District 19 has a history of electing Democrats. Before Halloran, Democrat Tony Avella held the seat for City Council District 19 for two (2) terms since elected in 2001.

However, in the 2009 Elections, Kevin Kim lost to Dan Halloran 47% to 53%, even though over half the voters in District 19 are registered Democrats and nearly the same voters supported strongly a Democratic candidate for Assembly District 26 in the previous year.

Voters in District 19 show a strong preference for Democratic candidates even in more recent elections. Assembly District 26 is highly congruent with City Council District 19 and also has a consistent history of supporting Democratic candidates. Democrat Assemblywoman Ann Margaret Carrozza has represented Assembly District 26 for seven (7) terms since 1996. In the 2008 General Elections, Carrozza received 67% of votes, defeating Republican candidate Robert Speranza who received only 33%.

II. Incidents of Discrimination in District 19 Race

AALDEF has collected reports from volunteers with Kevin Kim's campaign and voters from City Council District 19 describing incidents of racially motivated misconduct. Two Korean American volunteers for Kevin Kim's campaign were victims of a hate crime by supporters of the white candidate. One of the Kevin Kim volunteers was even physically assaulted with a football and injured. A white volunteer for Kevin Kim's campaign was verbally harassed and threatened by a person wearing an official Metropolitan Transportation Authority uniform for supporting an Asian candidate.

A Korean voter complained to AALDEF that Republican Dan Halloran was at her poll site and intimidated her by yelling at her to leave. AALDEF monitors witnessed and received complaints of Board of Elections Republican Commissioner Judith Stupp intimidating limited English proficient Korean voters and restricting their access to interpreters.

A. Hate Crime Against Two Korean American Volunteers for Kevin Kim's Campaign

On Wednesday, October 14, 2009, a group of white male teenagers, 14 to 15 years old, verbally harassed two Korean American volunteers, [REDACTED] and [REDACTED], who were hanging posters for Kevin Kim's campaign outside a delicatessen at 17-16 Clintonville Street, Whitestone, New York.⁵

Without any provocation from the Kevin Kim volunteers, the group of teenagers began to direct disparaging comments at the two Korean volunteers regarding their ethnicity. They shouted racial slurs calling the two "chinks" and chanting "I hate stupid Asians!" The group of white males began to also yell out "White Power!" and "White Supremacy!" in an act of intimidation.

⁵ Sworn Statement of [REDACTED].

The group possessed Dan Halloran campaign materials. One of the white males approached the Kevin Kim volunteers and threw Halloran flyers into their faces. Another white male continued to make fun of the Korean ethnicity of the volunteers and shouted, "I bet your name is Kim. All you Asians have the same last name."

Then suddenly, one of the white males threw a football into [REDACTED]'s face. [REDACTED] was able to deflect the football with his hand, but he was injured. His hand began to swell and his thumb was jammed. [REDACTED] said to the white male who threw the ball, "What do you think you're doing?" In response, one of the white males mocked [REDACTED]' language ability and said, "He speaks English!"

Another white male approached the volunteers and physically threatened [REDACTED], "I can take you. We can take you." At this point, [REDACTED] and [REDACTED] picked up their things and left. The group of Halloran volunteers began to follow the two down the street. One of them threw the football at [REDACTED] again but missed. [REDACTED] threw the football into a church courtyard. Afterwards the group of white males walked away. [REDACTED] and [REDACTED] walked to a nearby store to treat [REDACTED]' swelling hand with ice.

[REDACTED]. The incident was classified as a hate crime. The Hate Crime Task Force for the NYPD recently closed the investigation of the case.⁶

In an elective franchise, the Voting Rights Act provides that certain acts against a person urging or aiding others to vote are prohibited. Such acts include direct or implied threats, physical assaults, and abusive comments or use of epithets or other disparaging comments directed at a person because of their race, ethnicity, or language minority status or language ability (42 U.S.C. § 1973i).

Both [REDACTED] and [REDACTED] were participating in the electoral franchise trying to urge other voters to vote by putting up posters for Kevin Kim's campaign. The group of white males acted in violation of 42 U.S.C. § 1973i by intimidating [REDACTED] and [REDACTED] with threats of physical assault and abusive comments. The group of white males also used racial epithets and disparaging comments about [REDACTED] and [REDACTED]'s Korean ethnicity and language minority status. One of the white males physically assaulted [REDACTED] with a football.

B. Harassment of White Volunteer for Kevin Kim's Campaign on Election Day

White supporters of Kevin Kim were also harassed for supporting Mr. Kim. [REDACTED] is white and a registered voter in District 19. In 2009, she volunteered for Kevin Kim's campaign.

On Election Day, Tuesday, November 3, 2009, a Metropolitan Transportation Authority (MTA) employee in Whitestone, Queens verbally harassed and physically threatened [REDACTED] for

⁶ Sworn Statement of [REDACTED].

supporting a Korean American candidate. He wore an official MTA uniform at the time of incident.

The MTA employee ripped apart campaign materials for Kevin Kim including large posters and signs and yelled at [REDACTED] saying, "Why would you support the locusts?", in reference to Asian Americans in his community. When [REDACTED] asked the MTA employee to stop his actions he threatened [REDACTED] with violence, "Well if it keeps my community white... I can do whatever the fuck I want. I'm going to punch you in the face."⁷ The MTA employee's public act of vandalism also intimidated [REDACTED] and intimidated other voters passing by who may have considered supporting Kevin Kim.

[REDACTED]

C. Destruction of Property and Campaign Signage

a. Candidate Lawn Sign Set on Fire

[REDACTED]. [REDACTED] supported Kevin Kim's candidacy and put up a Kevin Kim campaign lawn sign in her front yard approximately one week before the September 15th District 19 City Council Primary Election.⁸ At around 11:30 PM on September 4, 2009, a vandal set fire to the Kevin Kim campaign lawn sign. The fire damaged the sign and her front yard. [REDACTED]

[REDACTED] is a voter in District 19 and was also a volunteer for Kevin Kim's campaign. She felt intimidated by this act of arson.⁹ The burning Kevin Kim sign may have intimidated other voters and neighbors nearby as well. The vandalism of her yard sign was an act of intimidation directed at [REDACTED], a voter participating in the electoral franchise, in violation of 42 U.S.C. § 1973i.

b. Kevin Kim Posters Taken Down in Early Campaign

Campaign workers for Kevin Kim have also reported that early in the campaign in June 2009, a white civilian was caught on camera removing Kevin Kim campaign posters that were erected on fences across Northern Boulevard near 210th Street in Bayside, Queens. The signs were ripped and became unusable. The civilian then discarded the pieces of the sign over the fence.

The vandalism of the posters deterred the efforts of the Kevin Kim campaign to urge other persons to participate in the electoral franchise. Furthermore, the removal and destruction of the

⁷ Sworn Statement of [REDACTED].

⁸ Shin, Dong Chan. *Korea Daily*. "Kevin Kim Campaign Promotions Attacked Again... Lawn Sign on the Front Lawn of Supporter's Home Torched". September 9, 2009.

⁹ Sworn Statement of [REDACTED].

posters conveyed a threatening message to voters. The vandalism of the posters demonstrated broader violations of the Voting Rights Act.¹⁰

D. Disenfranchisement of Korean American Voters in District 19

a. Limited English Proficiency of Korean American Voters in District 19

St. Andrews Church is a poll site located at 35-60 158th Street in Flushing, Queens. It has one of the largest numbers of registered Korean American voters in City Council District 19 and the largest number of Korean American voters who are limited English proficient. There are 592 registered Korean American voters who are limited English proficient at St. Andrews Church. It also has the second largest number of registered Chinese American voters who are limited English proficient at 381 voters. Twenty-seven (27%) of voters registered at St. Andrews Church are Korean and Chinese American voters who are limited English proficient.¹¹

AALDEF conducted a nonpartisan exit poll survey of Asian American voters in District 19 during the 2009 Elections. We found that over three-quarters (78%) of Korean Americans who voted at St. Andrews Church were limited English proficient and a third (34%) preferred voting with some form of language assistance.¹²

b. Palm Cards Taken Away From Korean American Voters Only

The Poll Workers Manual issued by the New York City Board of Elections to poll workers for Election Day outlines election rules and procedures that should be followed at poll sites. The 2009 Poll Workers Manual explicitly states that voters are allowed to have palm cards in their possession inside the poll site.¹³

However, on November 3, 2009, Korean American voters at St. Andrew's Church were mistreated by the Republican Commissioner from the New York City Board of Elections, Judith Stupp. Commissioner Stupp was at the poll site all day. She targeted Korean American voters entering the poll site and took away their Kevin Kim campaign palm cards. The voters were limited English proficient and needed the cards to help them find their candidate of choice on the ballot. She did not prevent other white voters who entered the poll site with palm cards. Commissioner Stupp is white.¹⁴

Commissioner Stupp created unequal access to the voting process for language minority voters and voters of a certain ethnicity in violation of the federal Voting Rights Act.¹⁵ She did not allow Korean American voters to take palm cards in the voting booth on an equal basis as white voters, in contradiction of Board of Elections policy. This discriminatory conduct provided less

¹⁰ 42 U.S.C. § 1973i.

¹¹ NYC BOE. "Facility EDAD LEP – Queens – General Election 2010 – 11/02/2010".

¹² AALDEF. "Exit Poll Data: Limited English Proficient Korean Voters at St. Andrews Church". April 26, 2010.

¹³ NYC BOE. *Poll Workers Manual – Election Day Operations 2009*. "Voters are permitted to carry palm cards or candidate lists into the voting booth." p.14.

¹⁴ Sworn Statement of [REDACTED]

¹⁵ 42 U.S.C. § 1973.

opportunity for minority Korean voters than other white voters to participate in the political process and elect representatives of their choice for public office.

c. Provisional Ballots Not Offered to Korean Voters

The Help America Vote Act (HAVA) requires that voters who have some deficiency that would prevent them from voting, but believe they are eligible to vote, may cast provisional ballots.¹⁶ Provisional ballots are known as “affidavit ballots” in New York State. The New York City Board of Elections Poll Workers Manual also directs poll workers to issue affidavit ballots to voters if the voters’ names do not appear on the voter registration list.¹⁷

Election officials did not follow the procedures outlined by HAVA and the Poll Workers Manual. One Korean American voter, [REDACTED], who was limited English proficient, came to vote at St. Andrews Church but was told by a Republican inspector she could not vote at that site and needed to go to Kew Gardens, a neighborhood that is located seven (7) miles away from St. Andrew’s Church. It would have taken [REDACTED] over an hour to travel there by public transit. The inspector did not explain clearly why the voter needed to go to Kew Gardens. She was not offered an affidavit ballot.

Not knowing what to do, [REDACTED] was on her way out of the poll site where she encountered Republican candidate Dan Halloran standing near the entranceway. He yelled at [REDACTED] to leave the poll site. [REDACTED] felt intimidated by Mr. Halloran’s yelling. She felt like he was kicking her out of the poll site. [REDACTED]’s intimidating behavior violated 42 U.S.C. § 1973i.

[REDACTED] believed she was a registered voter and went back inside the poll site to vote by affidavit ballot. Commissioner Stupp intervened but still did not offer [REDACTED] an affidavit ballot. A poll watcher from the Kevin Kim campaign, [REDACTED], pressed the Commissioner and said that the voter had the right vote by affidavit ballot. Afterwards, the Commissioner finally offered the voter the option to vote by affidavit ballot.^{18/19}

d. Restrictions Imposed on Official Korean Interpreters from the Board of Elections

Queens County falls under the language assistance provisions of section 203 of the Voting Rights Act for Korean and Chinese. The New York City Board of Elections provides 25 poll sites in District 19 with oral language assistance in Korean and Chinese for limited English proficient voters. The Board of Elections trains and dispatches interpreters to these select poll sites. St. Andrews Church is one of the poll sites targeted by the Board of Elections to provide interpreters in Korean.

Without the language assistance provisions of section 203 of the Voting Rights Act, limited English proficient voters are unable to vote for their candidate of choice. Bilingual ballots and

¹⁶ Help America Vote Act of 2002, 42 U.S.C. § 15482.

¹⁷ NYC BOE. *Poll Workers Manual – Election Day Operations 2009*. “If the name [of a voter] does not appear on the Voter Registration List, issue an affidavit ballot...” p.49.

¹⁸ Sworn Statement of [REDACTED].

¹⁹ Sworn Statement of [REDACTED].

translated materials greatly increase voting access to limited English proficient voters. However, election procedures are complex and oftentimes translated materials are not enough to assist voters. If a problem occurs, a qualified interpreter is needed in order for an election official and voter to communicate properly.

Although Korean interpreters are mandated under the law and provided at some poll sites in Queens County, voters are sometimes unaware of the language resources available to them or are unable to ask for language assistance because of their limited English proficiency. Oftentimes, limited English proficient Korean voters will approach other Korean Americans who appear to be at the poll site in an official capacity.^{20/21} Thus, it is important for Board of Elections interpreters to actively seek and assist voters who are limited English proficient.

However, at St. Andrews Church, Commissioner Stupp restricted Korean interpreters provided by the Board of Elections. She explicitly told them they were not allowed to approach Korean voters and ask if the voters needed language assistance. She said they could only assist voters if they were approached and explicitly asked.²²

Forcing Korean interpreters from the Board of Elections to help voters only if they ask for assistance is too restrictive, especially for those voting for the first time who may not know oral assistance is available. Commissioner Stupp's restrictions prevented Korean interpreters from directly offering oral assistance to limited English proficient Korean voters in direct violation of the Voting Rights Act.²³

e. Eligibility to Vote Challenged and Oral Language Assistance Denied to Limited English Proficient Korean Voter

AALDEF monitors also witnessed Commissioner Stupp prevent a Board of Elections interpreter from assisting a limited English proficient Korean American voter, [REDACTED].

[REDACTED] had no problems voting in the Democratic Primary Election two months prior on September 15, 2009 with his wife [REDACTED]. However, when [REDACTED] returned to St. Andrews Church with his wife to vote on November 3, 2009, Commissioner Stupp challenged [REDACTED]'s right to vote. Although he was not required to show any identification according to HAVA, he showed his driver's license. The license showed his name as "[REDACTED]" and not "[REDACTED]," as it appeared in the voter registration list. Commissioner Stupp demanded he fill out a challenge oath if he wished to vote by machine.

[REDACTED] does not speak any English. Although his wife [REDACTED] spoke some English and was able to vote, she did understand why her husband was being challenged. She was unable to give her husband a proper interpretation.

²⁰ Sworn Statement of [REDACTED].
²¹ Sworn Statement of [REDACTED].

²² Id.

²³ 42 U.S.C. § 1973aa-6.

AALDEF monitors then witnessed a Board of Elections Korean interpreter come over and ask the Commissioner and Korean couple in English if anyone needed language assistance. Before the couple could respond, Commissioner Stupp told the interpreter she was not needed and to go away. Frustrated by the confusion, the growing line of voters behind him waiting to vote, and the gathering of poll workers and poll watchers around him, ██████ opted to leave and stormed out of the poll site with his wife.

Afterwards, ██████ spoke with an AALDEF monitor and said, “What if I was white? Would they still behave that way? They intentionally prevented Asians from voting!”²⁴ ██████ now fears this will happen to him again and expressed his reluctance to vote in future elections.²⁵

Furthermore, Commissioner Stupp’s denial of voter assistance for a Korean American voter – in this case, a Korean interpreter from the Board of Elections – violated the Voting Rights Act.²⁶

██████’s voter eligibility was also challenged even though he was not required to show identification since he was not a first-time voter.²⁷ Commissioner Stupp was suspicious of ██████ simply because his western name “██████” was absent from his driver’s license even though his non-Western, Korean name “██████” clearly appeared in both his license and the voter registration list. ██████’s voter eligibility was unfairly challenged on the basis of both his ethnic and language minority status in violation of the Voting Rights Act.

f. Ineffective Oral Language Assistance for Korean Voters

At St. Andrews Church, when Korean interpreters from the Board of Elections did assist limited English proficient voters, Korean voters reported the interpreters’ English skills were inadequate. ██████, a limited English proficient Korean American voter, tried to vote at St. Andrews Church on Election Day. She was told by a Republican poll site inspector to go to Kew Gardens, but the Korean interpreter from the Board of Elections was unable to explain to ██████ why she needed go. ██████ was confused and did not know what to do until the poll watcher from Kevin Kim’s campaign assisted her in securing an affidavit ballot.²⁸

██████ suspected that the Board of Elections interpreter who gave her oral assistance did not understand English very well, which was why the interpreter was unable to explain to ██████ what the poll site inspector had said. The oral assistance ██████ received from the Board of Elections interpreter was ultimately inadequate. The ineffective language assistance violated the Voting Rights Act.²⁹

²⁴ Statement of ██████.

²⁵ Sworn Statement of ██████.

²⁶ 42 U.S.C. § 1973aa-6.

²⁷ See HAVA.

²⁸ Sworn Statement of ██████.

²⁹ See 28 CFR part 55, Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups.

g. Oral Language Assistance Unavailable to Korean Voters

P.S. 41 at 214-43 35th Avenue in Bayside, Queens is another poll site in District 19 targeted by the Board of Elections to provide Korean interpreters. The Board of Elections intended to dispatch two Korean interpreters to the poll site for both the September 15th City Council Primary Election and November 3rd General Election.³⁰

In the September 15th Primary Election, however, neither of the two Korean interpreters from the Board of Elections arrived at P.S. 41. Korean interpreters from the Board of Elections were unavailable until later in the afternoon when one of the official interpreters finally arrived. Yet the lone Korean interpreter was not enough for the large number of limited English proficient Korean American voters at P.S. 41 that day. Many of them were first-time voters and did not know what to do.

The poll site coordinator at P.S. 41 was desperate to help Korean American voters who needed language assistance. The coordinator decided to appoint two poll watchers who were fluent in Korean to assist the voters orally in Korean in a non-partisan fashion. At least 75 Korean American voters who were limited English proficient received language assistance at P.S. 41.

On November 3rd, 2009, neither of the two Korean interpreters assigned by the Board of Elections was present at P.S. 41 during the entire City Council General Election. The poll site coordinator was again put in distressing position and was anxious to fill the need of Korean interpreters for incoming Korean voters who were limited English proficient. She again approved poll watchers who were fluent in Korean to orally assist voters in a non-partisan manner. The coordinator also decided to deputize a first-time voter fluent in Korean on that day to act as an official Board of Elections interpreter.³¹

Oral language assistance for limited English proficient Korean voters promised by the Board of Elections was not fully available at P.S. 41 for both the September 2009 Primary Election and November 2009 General Election, in violation of the Voting Rights Act.³² This is in violation of the settlement plan in *Chinatown Voter Education Alliance v. Ravitz* that was approved by the Department of Justice.

Korean interpreters dispatched by the New York City Board of Elections were absent from other poll sites in District 19 as well, which have been designated to provide language assistance under Section 203 of the Voting Rights Act.³³

³⁰ NYC BOE. *2009 LAP Queens Targeted Sites*. p. 2.

³¹ Sworn Statement of [REDACTED].

³² See 28 CFR part 55, Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups.

³³ AALDEF. "Observations from the 2009 General Elections: Attachment C – Specific Observations at Each Poll Site". December 8, 2009.

Missing Interpreters from the 2009 District 19 City Council Elections			
Poll Site Name	Site Address	Korean Interpreters Assigned	Korean Interpreters Present
Bayside H.S.	32-24 Corporal Kennedy St., Bayside	2	0
P.S. 31*	211-45 46 Rd., Bayside	2	1
P.S. 130	200-01 42 Ave., Bayside	2	1

*Two (2) Chinese interpreters were also assigned to P.S. 31 but only 1 was present.

III. Racial Appeals

White campaigners for Dan Halloran made racial appeals on the basis of Kevin Kim's race and ethnicity throughout the months leading up to Election Day.

In Bayside, Queens, a white campaign worker for Dan Halloran made racial appeals to non-Asian voters while electioneering outside of PS 158 Junior High School on Election Day. He told several voters, mostly white, that "Halloran's opponent is some Chinese guy" even though Kevin Kim is Korean American. He also told voters that the "neighborhood is getting really Asian. Chinese people are taking over" and urged them to support Dan Halloran. His tone was negative when mentioning "Asian" or "Chinese." The campaign worker was intentionally boisterous so everyone could hear him. The white Halloran campaign worker made other Asian Americans nearby feel uncomfortable and unsafe.³⁴ The explicit racial appeals made by the white campaigner for Dan Halloran compromises the protections embodied in the Voting Rights Act.

Many also complained that a mailer sent by Halloran's campaign promoted xenophobia and anti-Asian sentiments. Several weeks before Election Day, residents in District 19 received a mailer with a picture of Kevin Kim's face edited over a picture of Downtown Flushing, Queens - a neighboring area of District 19 with many shops and businesses run by Chinese and Korean Americans. The designer intentionally chose a picture of downtown Flushing, even though it is not part of District 19, in order to capture the many business signs written in Chinese and Korean. Many of the white residents in District 19 have complained about local business signs that are in Chinese or Korean.³⁵ The mailer attempted to feed on these sentiments and aimed to portray Kevin Kim as a pawn of Asian developers to incite concern in local white residents.³⁶ The mailer is an implicit racial appeal.

AALDEF was also informed of another incident at a campaign rally for Dan Halloran where racial appeals were publicly made. A volunteer for Kevin Kim's campaign reported that a white person at a campaign rally displayed a poster with pictures of the faces of President Barack Obama, Iranian President Mahmoud Ahmadinejad, North Korean leader Kim Jong Il, and Kevin Kim crossed out. The poster aims to call attention to Kevin Kim's race, as a non-white candidate, and attempts to associate him with controversial leaders in other countries on the sole basis that

³⁴ Sworn Statement of [REDACTED].

³⁵ Sworn Statement of [REDACTED].

³⁶ Colangelo, Lisa L. *NY Daily News*. "Race Furor Over Campaign Ads: Dems Say GOP Flyers Aimed at Scaring Whites." October 27, 2009.

they are also not white. This racially charged poster is another example of the animosity of many white residents towards Asian Americans and other racial and ethnic minorities in District 19.

IV. Other Issues Found in the 2009 Elections and Previous Years

The transgressions of the Board of Elections, Dan Halloran's campaign, and the residents of District 19 must also be considered in light of other problems that have denied Korean Americans the full and fair opportunity to participate equally in the electoral franchise. The following other problems in the 2009 Elections in District 19 were documented by AALDEF poll monitors:

- Provisional ballots in Korean were unavailable at some poll sites, which are required under Section 203 of the Voting Rights Act, Help America Vote Act, and local election laws.
- Poll workers did not display Korean-language voting machine instructions and Korean sample ballot posters in some poll sites with large numbers of Korean American voters as required under New York State Election Law and the Help America Vote Act.

AALDEF has monitored elections in New York City over several years and found Korean American voters encountered the following problems in the past:

- Poll workers refused to take translated voting materials in Korean and Chinese out of their supply kits to make them available to voters at P.S. 169 in District 19 in the 2004 General Elections.³⁷
- A third (31%) of Korean interpreters assigned by the Board of Elections were missing from poll sites targeted for Korean language assistance in the 2006 General Elections.³⁸ Twenty-nine percent (29%) of Korean interpreters were missing in the 2008 Primary Elections.³⁹ Twenty-eight percent (28%) of Korean interpreters were missing during the 2008 General Elections.⁴⁰
- Poll workers were rude, impatient and hostile towards limited English proficient Korean voters. At a poll site in Flushing, Queens, one poll worker shouted out that "Asian people are dirty!" and yelled at an elderly limited English proficient voter to "Speak English!" The poll worker then turned away the voter. An AALDEF monitor heard another poll worker say "voters who cannot speak English shouldn't have the right to vote," at the same poll site.⁴¹
- Poll workers targeted Korean American voters to show identification even though the Help America Vote Act only requires first-time voters to show identification.⁴²
- Voting materials and signs in Korean were missing from poll sites.⁴³

³⁷ AALDEF. "Re: Poll Workers for Commissioner's Program for Noncompliance". December 10, 2004.

³⁸ AALDEF. "Re: Observations from the 2006 General Elections". January 26, 2007.

³⁹ AALDEF. "Re: Observations from the 2008 Primary Elections". March 28, 2008.

⁴⁰ AALDEF. "Re: Observations of General Elections in New York on November 4, 2008". March 16, 2009.

⁴¹ Sworn Statement of [REDACTED]

⁴² AALDEF. "Re: Poll Workers for Commissioner's Program for Noncompliance". December 10, 2004.

⁴³ AALDEF. "Re: Observations from the 2006 General Elections". January 26, 2007.

- The Board of Elections did not count votes or correct voter registration data from affidavit ballots completed by Korean American voters.⁴⁴

Anti-Asian sentiments were found to be present even in local Democratic Party leadership in Queens. One witness heard a Democratic Party leader say to Kevin Kim that he “tore apart the Italians,” attempting to blame Kim for stealing the support of Democratic Italian American voters in District 19 from another white Democratic candidate.⁴⁵

Many of these incidents show a history of violations of the Voting Rights Act made by the New York City Board of Elections. We believe that all of these incidents, in the totality of the circumstances, deny Korean Americans the right to vote.

AALDEF has complained to the Board of Elections in a letter sent on December 8, 2009 regarding Commissioner Judith Stupp’s behavior during the City Council Elections as well as the harassment of [REDACTED] and racial appeals made by Dan Halloran campaigners on Election Day.⁴⁶ Moreover, we have complained to the Board regarding Election Day problems in numerous letters sent in previous years. However, the Board has not responded to any of our complaints.

V. Conclusion

Korean American voters in District 19 in Queens, NY felt that they were intimidated and threatened for voting in the 2009 elections. One voter had such a negative experience that he said he is scared to participate in future elections. Korean Americans felt that they were racially profiled. White supporters of Kevin Kim feared for their safety after the backlash for supporting an Asian American candidate. Overall, many worry they will be singled out for being Asian or for supporting non-white political candidates in subsequent elections.

As evidenced in our complaint letters to the Board of Elections, the same problems with Korean language assistance recur every year. These problems are chronic and will persist in future elections if they remain unaddressed by the Board of Elections. Unless the Board fully complies with the language provisions mandated under Section 203 of the Voting Rights Act, Korean American voters in District 19 will continue to be marginalized.

AALDEF’s investigation of the District 19 City Council Elections in 2009 reveal numerous violations of the Voting Rights Act. We urge the U.S. Department of Justice to investigate the New York City Board of Elections and the efforts of Dan Halloran’s campaign workers to intimidate and suppress Korean Americans from voting in the 2009 Elections. Furthermore, we urge the Department of Justice to appoint federal observers in poll sites in New York City Council District 19 to deter future discriminatory conduct against Korean American voters.

⁴⁴ AALDEF. “RE: Poll Book Problems on Election Day.” April 1, 2009.

⁴⁵ Statement of [REDACTED].

⁴⁶ AALDEF. “Observations from the 2009 General Elections”. December 8, 2009.

Sincerely,

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AALDEF Complaint to U.S. Department of Justice Details Voting Rights Violations in Queens City Council District Election in 2009

New York, NY ... The Asian American Legal Defense and Education Fund (AALDEF) has submitted a complaint to the U.S. Department of Justice, urging it to commence an investigation of the 2009 New York City Council election in District 19 and to appoint federal observers to deter future discriminatory conduct and intimidation in this Queens district.

AALDEF found that Asian American voters and volunteers for candidate Kevin Kim's campaign for City Council were racially targeted and harassed, in violation of the Voting Rights Act (VRA). Some were physically threatened and assaulted. Korean American voters also faced racially discriminatory application of election procedures by New York City Board of Elections officials and were given limited access to Korean language assistance, which is mandated in Queens County under the VRA. In past years, AALDEF has monitored several elections in New York City and found numerous violations of the language assistance provisions of the VRA and Help America Vote Act, as well as other barriers to voting for Asian Americans.

Early in the 2009 campaign, the New York City Police Department investigated a hate crime committed by individuals supporting Dan Halloran, a white candidate in District 19. A large group of white male teenagers verbally harassed and physically threatened two Korean American volunteers. The group of white males used racial slurs and made disparaging comments about their Korean ethnicity, chanting "White Power!" and "White Supremacy!" One of the white males assaulted a Korean American, injuring the volunteer's hand.

Supporters of Kim also reported that their property was vandalized. One resident of District 19 found her Kim campaign lawn sign was set on fire.

Moreover, non-Asian supporters for Kim were targeted. At a poll site in Whitestone, Queens, a Metropolitan Transit Authority employee in uniform ripped apart campaign signs for Kim. He yelled at a white female volunteer for Kim saying, "Why would you support the locusts?", referring to Asian Americans in his community. When asked to stop, the MTA employee threatened her with violence and said, "Well if it keeps my community white. . .I'm going to punch you in the face."

AALDEF also discovered campaigners for Halloran made racial appeals:

- Residents in District 19 received mailers with Kim's face edited over a picture of Main Street, Flushing in District 20. The picture of Chinese and Korean business signs exploited xenophobia and anti-Asian sentiments among the residents of District 19.



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- At one poll site on Election Day, a white campaigner for Halloran told voters that “Halloran’s opponent is some Chinese guy,” even though Kim is Korean American. He complained that the “neighborhood is getting really Asian. Chinese people are taking over” and urged them to support Halloran.

Election procedures were applied in a racially discriminatory manner against Korean American voters in District 19, and there was limited access to Korean language assistance on Election Day:

- At a poll site in Flushing, Queens, a Republican New York City Election Commissioner, Judith Stupp, racially targeted and confiscated palm cards from Korean American voters entering the site. She did not take palm cards away from white voters. As a result, Korean American voters with limited English proficiency had difficulty voting for their candidates of choice.
- AALDEF monitors witnessed Commissioner Stupp block a Board of Elections interpreter from assisting a limited English proficient Korean American voter. The Commissioner then challenged the the Korean American’s eligibility to vote, even though his Korean name appeared clearly on both his ID and voter registration list.
- An elderly Korean American voter who was limited English proficient was told by a poll worker to go to a different poll site. However, the Board of Elections interpreter did not translate everything the poll worker had said to the voter. The voter was confused and left the poll site without knowing what to do. She was not offered a paper affidavit ballot. As the Korean American voter left, Halloran, who was located inside the poll site at the time, yelled at her to get out.
- The New York City Board of Elections is mandated to provide Korean interpreters at selected poll sites in District 19. Several poll sites were missing interpreters in both the September 15th Primary Election and November 3rd General Election. At one poll site, the site coordinator was so desperate to provide assistance to limited English proficient voters that a first-time voter with no previous training was deputized as an interpreter.

AALDEF Democracy Program Director Glenn D. Magpantay said, “These incidents are a part of a history of Voting Rights Act violations in New York City. All of these incidents, in the totality of circumstances, deny Korean Americans the right to vote.”

AALDEF complained about these incidents to the Board of Elections in a letter sent on December 8, 2009. Moreover, AALDEF has repeatedly written to the Board about Election Day problems in numerous letters in previous years.

The incidents in the District 19 City Council elections in 2009 violated both the Voting Rights Act and settlement agreement with the New York City Board of Elections in *Chinatown Voter Education Alliance v. Ravitz*. AALDEF has urged the U.S. Department of Justice to investigate these incidents and to appoint federal observers in future elections to ensure Korean Americans can participate fully and equally in the electoral franchise.

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The Asian American Legal Defense and Education Fund (AALDEF), founded in 1974, is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all.