October 31, 2018

Stan Stanart, County Clerk
Harris County Elections Division
P.O. Box 1148
Houston, TX 77251-1148

RE: Section 208 Interpreters at Poll Sites

Dear Mr. Stanart:

Our organizations write to oppose recent efforts in Harris County to restrict the rights of limited English proficient (LEP) voters and their access to interpreters within the 100-foot zone outside of polling stations.1

The Asian American Legal Defense and Education Fund (AALDEF) is a non-partisan civil rights organization that protects the voting rights and promotes the political participation of Asian Americans.

The ACLU of Texas, since its inception in 1938, has been committed to advancing the right to vote and fighting against voter suppression. As such, the ACLU has a strong interest in protecting the rights of Texas voters under the Voting Rights Act of 1965 and the United States Constitution.

Asian and Pacific Islander American Vote – APIAVote is a national nonpartisan organization that works with local community partners to mobilize Asian Americans and Pacific Islanders in electoral and civic participation.

Asian Americans Advancing Justice – AAJC’s mission is to fight for civil rights and empower Asian Americans to create a more just America for all, including working to protect and strengthen voting rights.

Asian American Bar Association of Houston is a voluntary nonpartisan organization of attorneys, judges, and law students of Asian heritage who have Asian American interests.

1 See Zach Despart, Harris County defends decision to bar Korean translators from Spring Branch polling site, THE HOUSTON CHRONICLE (Oct. 29, 2018), available at: https://www.houstonchronicle.com/news/houston-texas/houston/article/Harris-County-defends-decision-to-bar-Korean-13346474.php?bclid=IwAR00zDht1BTDlnw9St92MRXsbXaeD7eOfu5U1_dAtLk9GM-31JT_WamWSC; See also Christine Dobbyn, Volunteer translators kicked out of polling location after confusion at Houston poll, ABC 13 NEWS (Oct. 29, 2018), available at: https://abc13.com/politics/early-voters-said-to-have-been-kicked-out-after-confusion-at-poll/4572536/
Chicago Lawyers’ Committee for Civil Rights is a nonpartisan, nonprofit organization of civil rights lawyers and advocates working to secure racial equity and economic opportunity for all since 1969.

The Chinese Community Center (CCC) is a multi-service center that strives to meet the current and evolving needs of an increasingly diverse population in the Greater Houston area, and furthermore, is focused on bridging East and West by enriching families with educational, cultural, and social service programs.

Daya is a South Asian organization assisting survivors of domestic violence and sexual assault in the Harris county and surrounding areas.

Demos is a racial justice non-profit organization working to build a more inclusive democracy and just economy.

eMgage-TX is a non-profit that engages, educates and empowers Greater Houston's MASA (Muslim, Arab, South Asian) communities to participate in civic engagement - including volunteerism, voting, and other forms of participation in the democratic process.

The Empowering Communities Initiative (ECI) is a coalition of Houston-area nonprofits that work to increase civic engagement in the AAPI community.

Fair Elections Center is a national, nonpartisan voting rights and election reform organization which works to remove barriers to registration and voting for traditionally underrepresented constituencies.

Houston Chinese Youth Camp is a local non-profit that has for over 34 years developed thousands of students ages 8-18 through our summer program to learn about the power of inclusivity, community, cultural pride and leadership.

The Japanese American Citizens League (JACL) is the oldest and largest Asian American civil rights organization in the United States whose ongoing mission is to secure and maintain the civil rights of Japanese Americans and all others who are victimized by injustice and bigotry.

OCA - Asian Pacific American Advocates is a national membership-driven organization of community advocates dedicated to advancing the social, political, and economic well-being of AAPIs.

OCA-Greater Houston is a chapter of OCA, a national membership-driven civil rights organization of community advocates dedicated to advancing the social, political, and economic well-being of Asian Pacific Americans. Founded in 1979, OCA-GH’s overarching goal is to increase the long-term leadership, civic participation, education and engagement of Asian Americans in the Greater Houston metropolitan area.
LatinoJustice PRLDEF (formerly known as Puerto Rican Legal Defense & Education Fund) is a national non-profit civil rights legal defense fund that has advocated for and defended the constitutional rights of all Latinos to ensure their equal protection under the law since 1972.

League of Women Voters of Texas -- “We are a nonpartisan nonprofit political organization that envisions a democracy where every person has the desire, the right, the knowledge and the confidence to participate. We are working towards Empowering Voters. Defending Democracy.”

The National Asian Pacific American Bar Association (NAPABA) is the national association of Asian Pacific American attorneys, judges, law professors, and law students, representing the interests of over 50,000 legal professionals and over 80 national, state, and local bar associations.

The National Korean American Service & Education Consortium (NAKASEC)
Our mission is to organize Korean and Asian Americans to achieve social, economic, and racial justice.

The NAACP Legal Defense & Education Fund, Inc. (LDF) – Since its founding in 1940, LDF has been a pioneer in the struggle to secure and protect the civil rights of Black people and other people of color in Texas and elsewhere by using legal, advocacy, and public education strategies, including much of the precedent-setting litigation in Texas and elsewhere. LDF has been a separate entity from NAACP, and its state branches, since 1957.

Pilipino American Unity for Progress, Inc. (UniPro) seeks to empower the Pilipino American and Asian American community through education, collaboration and civic engagement and provide spaces for our voices to be heard.

South Asian Americans Leading Together (SAALT). SAALT is a national, nonpartisan, non-profit organization that fights for racial justice and advocates for the civil rights of all South Asians in the United States

The Texas Civil Rights Project is a non-partisan organization that uses litigation and advocacy to remove barriers to voter registration, support grassroots voter mobilization efforts, and oppose attempts to suppress voting.

As you may be aware, AALDEF represented an individual voter and OCA Greater-Houston in litigation against the state of Texas concerning the interpreter provisions of the Texas Election Code, specifically regarding the conflict of the state law with Section 208 of the federal Voting Rights Act of 1965 (VRA). Section 208 of the VRA, states:

2 OCA Greater-Houston v. Texas, 867 F.3d 607 (5th Cir. 2017).
3 “To be eligible to serve as an interpreter, a person must be a registered voter of the county in which the voter needing the interpreter resides.” TEX. ELEC. CODE § 61.033.
Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.4

The Fifth Circuit Court of Appeals found that Texas Election Code 61.033, "flatly contradict[s] Section 208" of the VRA, and that Section 208 does not only apply inside the voting booth or within the polling station, but applies throughout the entire voting process, including from registration to exiting the station.5

The Fifth Circuit Court of Appeals decision and the revised Order and Injunction issued by the federal District Court in the Western District of Texas, are attached for your reference and review. The injunction enjoins Texas from arbitrarily limiting the breadth of Section 208’s reach.

Asian American voters benefit from Section 208 because most jurisdictions in Texas are not required to provide Asian-language interpreters under the Voting Rights Act. Section 208 allows LEP voters to be assisted by their friends, family members, or others, throughout the entire voting process, regardless of the citizenship or voter registration status of the interpreter, regardless of the method by which the translator is identified by the voter, and regardless of where the translator is standing. In 2016, AALDEF conducted an Exit Poll of 876 Asian American voters in Texas. Thirty two percent (32%) of all Asian American voters that were surveyed were LEP. The ability of LEP voters to receive fulsome assistance under Section 208 is critical for Asian American voters in Texas, and that right must not be arbitrarily restricted by state or local laws or policies.

Certain activities are prohibited within the 100 foot “no electioneering” zone. Sec. 61.003 of the Texas Election Code provides:

ELECTIONEERING AND LOITERING NEAR POLLING PLACE. (a) A person commits an offense if, during the voting period and within 100 feet of an outside door through which a voter may enter the building in which a polling place is located, the person: (1) loiters; or (2) electioneers for or against any candidate, measure, or political party.

Section 208 interpreters that are not loitering or electioneering within the 100 foot zone, are not prohibited from that space, and any formal or informal policy requiring all interpreters to

5 OCA Greater-Houston v. Texas, 867 F.3d 607 (5th Cir. 2017). “To vote,” therefore, plainly contemplates more than the mechanical act of filling out the ballot sheet. It includes steps in the voting process before entering the ballot box, “registration,” and it includes steps in the voting process after leaving the ballot box, “having such ballot counted properly.” Indeed, the definition lists “casting a ballot” as only one example in a nonexhaustive list of actions that qualify as voting. Id. See also Nick v. Bethel, Case No. 3:07-cv-0098, slip. op at 1, 9-10, 12 (D. Alaska July 30, 2008) (the Voting Rights Act ensures that the availability of translation assistance is not limited, and not relegated to the electioneering zone).
be removed from such space, is an arbitrary restriction on LEP voters, not supported by any provision of federal, state, or municipal law. In the absence of charges of loitering or electioneering, there is no legal basis to remove interpreters from this space.

Any new policy that restricts interpreters from the 100 foot zone gravely misinterprets the voting rights afforded LEP voters under federal law, and draws an unreasonable discriminatory line between interpreters and others allowed entrance to the polling station - including those offering assistance to disabled voters.

We urge Harris County to refrain from implementing any new policy or procedure that abrogates the rights of LEP voters under Section 208 of the VRA. Prohibiting interpreters from the 100-foot zone would do just that. We cannot accept any backsliding from the attached court order and injunction, and if necessary, may seek appropriate relief in a court of law, including, but not limited to, a temporary restraining order, preliminary injunction, and any other remedies available in law or equity.

Moreover, due to the confusion by voters, poll monitors, election judges, and election administrators throughout Texas that may result from recent public statements by Harris County officials, we urge Harris County to issue an immediate public statement clarifying that translation services may not be relegated to the 100-foot line, and that translation services may be offered within the polling station pursuant to state and federal law.

If you would like to discuss this matter further, please contact Jerry Vattamala, Director of Democracy Program for AALDEF at 212-966-5932, ext. 209 or at jvattamala@aaldef.org. You may also contact local community leader, Dona Kim Murphey, MD PhD at 713-459-0450 or dmkim@post.harvard.edu. Thank you for your assistance.

Sincerely,

Jerry G. Vattamala  
Director, Democracy Program  
Asian American Legal Defense and Education Fund