



# Voting Rights Act Coverage Update

December 2016

## Census Director Identifies Jurisdictions that Must Provide Language Assistance under Section 203 of Voting Rights Act

On December 5, 2016, the Director of the U.S. Census Bureau issued a notice of determination identifying the jurisdictions subject to the language assistance provisions of Section 203 of the Voting Rights Act. *See* Voting Rights Act Amendments of 2006, Determinations Under Section 203, 81 Fed. Reg. 87,532 (Dec. 5, 2016) (to be codified at 28 C.F.R. pt. 55). The Director of the Census is authorized by statute to make the determinations. The Director's determinations are not reviewable in any court and are effective upon publication in the Federal Register. *See* 52 U.S.C. § 10503(b)(4). The new determinations are based upon the most recent five years of American Community Survey (ACS) census data.

### Language Assistance under the Voting Rights Act

The Voting Rights Act has three language assistance provisions. A permanent provision in the 1965 Act, Section 4(e), requires that Spanish-speaking Puerto Rican voters be provided with voting materials and assistance in Spanish. In 1975, Congress amended the Act to add temporary language assistance provisions in Section 4(f)(4) and Section 203 to help millions of non-English speaking voting-age U.S. citizens overcome language barriers to political participation resulting from discrimination in education and voting. The requirements apply to four language groups: Alaska Natives; American Indians; Asian-Americans; and persons of Spanish Heritage, as well as the distinct languages and dialects within those groups.

In addition, Section 208, added in 1982, gives any voter who is unable to read and write in English the right to choose any person, other than his/her employer or union representative, to assist him or her with voting.

### How the New Language Assistance Determinations Were Made under Section 203

Under Section 203(c) of the Voting Rights Act, a state or political subdivision is covered and required to provide language assistance if it has a sufficient number of

“limited-English proficient” voting-age U.S. citizens (persons 18 years and older) who speak a single language and experience a higher illiteracy rate than the national average. “Limited English proficient” is defined as the inability “to speak or understand English adequately enough to participate in the electoral process.” 52 U.S.C. § 10503(b)(3)(B).

The Census Director determines Section 203 coverage using three population formulas (or “triggers”): (1) more than five percent of the voting-age U.S. citizens are members of a single language minority and are limited-English proficient; (2) more than 10,000 voting-age U.S. citizens are members of a single language minority and are limited-English proficient; or (3) in a political subdivision containing any part of an Indian reservation, more than five percent of the American Indian or Alaska Native voting-age U.S. citizens residing on the reservation belong to a single language minority and are limited-English proficient. *See* 52 U.S.C. § 10503(b)(2)(A). Statewide coverage is determined solely by the first formula described above.

“Single language minority” means that the population triggering coverage must be from the same language group. In other words, American Indians cannot be combined with persons of Spanish Heritage to obtain coverage under Section 203.

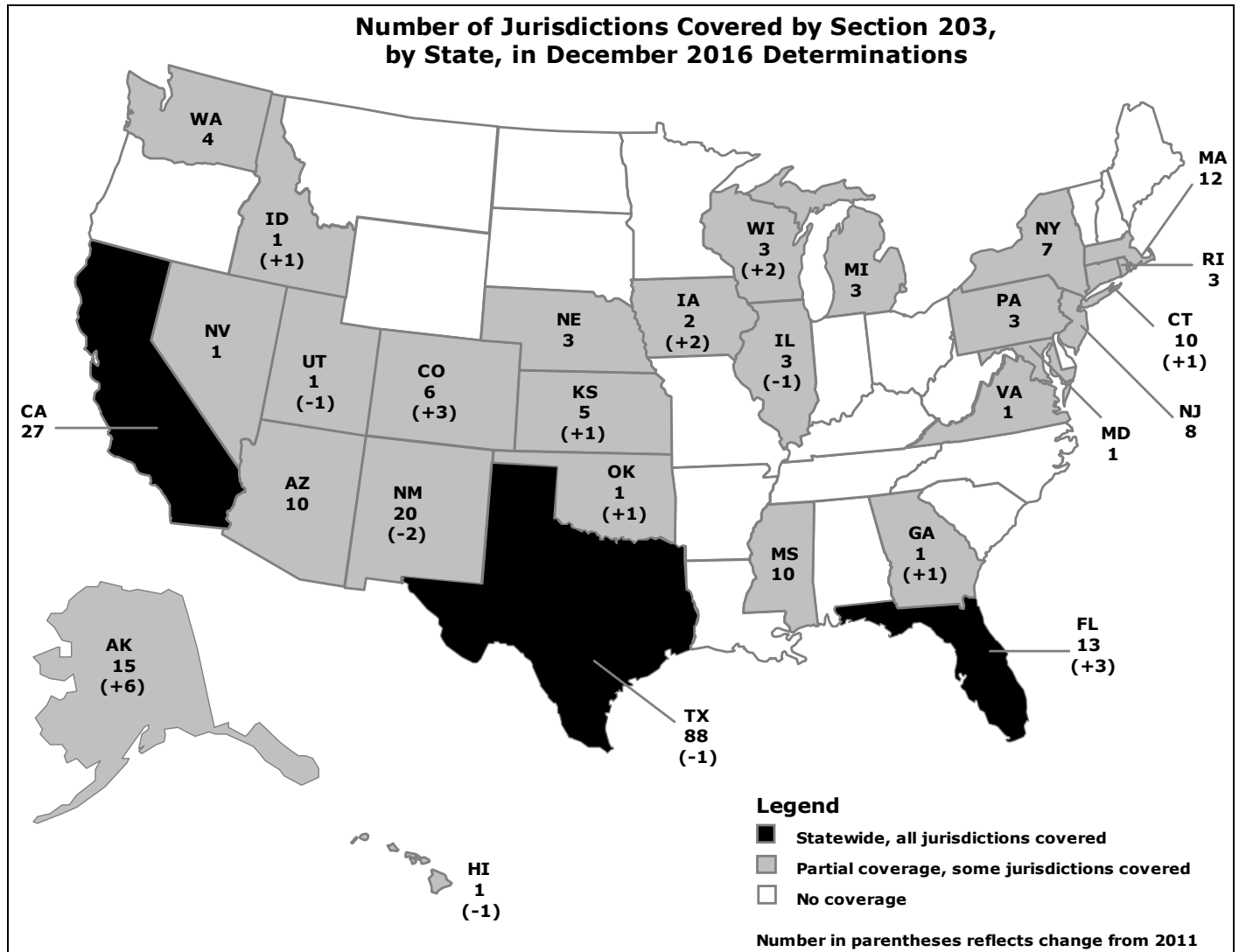
The new Section 203 determinations replace the previous Section 203 determinations made in October 2011.

### Number of Section 203 Jurisdictions

As a result of the new determinations made by the Director of the Census, a total of 263 political subdivisions nationwide are now covered by Section 203 (see Figure 1). This is an increase of 15 from the 248 political subdivisions covered by the 2011 determinations.

Demographic changes have led to five states having fewer covered political subdivisions than in 2011. However, ten states now have more covered political subdivisions than under the 2011 determinations.

**Figure 1. Jurisdictions Covered under Section 203 of the Voting Rights Act**



Source: Voting Rights Act Amendments of 2006, Determinations Under Section 203, 81 Fed. Reg. 87,532 (Dec. 5, 2016) (“2016 Section 203 Determinations”).

The numbers for the 29 states in Figure 1 that are covered only include the 263 political subdivisions independently covered by Section 203. If all counties in the three states covered statewide for Spanish are included (California has a total of 58 covered counties, Florida has 67 covered counties, and Texas has 254 covered counties), then language assistance coverage applies in at least some form to a total of 514 political subdivisions.

The number of states covered in whole or in part by Section 203 has increased from 25 states to 29 states.

Three states continue to be covered in their entirety by Section 203 (California, Florida, and Texas for Spanish). Statewide coverage applies linguistic accessibility requirements to election materials created, and election-related activities conducted, by state government entities such as Secretaries of State's offices and offices responsible for administering statewide voter registration, such as designated registration sites under the National Voter registration sites.

None of the states that previously were covered in part by Section 203 lost coverage entirely.

Section 203 coverage has been extended to political subdivisions of four states not covered under the previous 2011 determinations: Georgia, Idaho, Iowa, and Oklahoma for Spanish, and Iowa for an American Indian language (all other American Indian Tribes).

Los Angeles County, California, continues to be required to provide assistance in the most languages, six languages: Cambodian, Chinese, Filipino, Korean, Spanish, and Vietnamese. Two languages covered previously, Asian Indian (Bangladeshi) and Japanese, are no longer covered in Los Angeles County.

Federal regulations provide that “[w]here a political subdivision (e.g., a county) is determined to be subject to” the language assistance provisions of the Voting Rights Act, “all political units that hold elections within that political subdivision (e.g., cities, school districts) are subject to the same requirements as the political subdivision.” 28 C.F.R. § 55.9.

Therefore, the number of jurisdictions covered by Section 203, identified above, does not include the total number of jurisdictions that must provide language assistance in voting. The actual number of “political units” covered by Section 203 is likely many times greater.

### **Number of Jurisdictions Required to Provide Assistance in the Covered Languages**

There are a number of states and political subdivisions identified in the Census determinations to provide assistance in the four covered language groups:

- Spanish language assistance must be provided statewide in California, Florida, and Texas, and a total of 214 political subdivisions in 26 states, an increase from the 212 political subdivisions covered in 23 states under the 2011 determinations (see Figure 2);

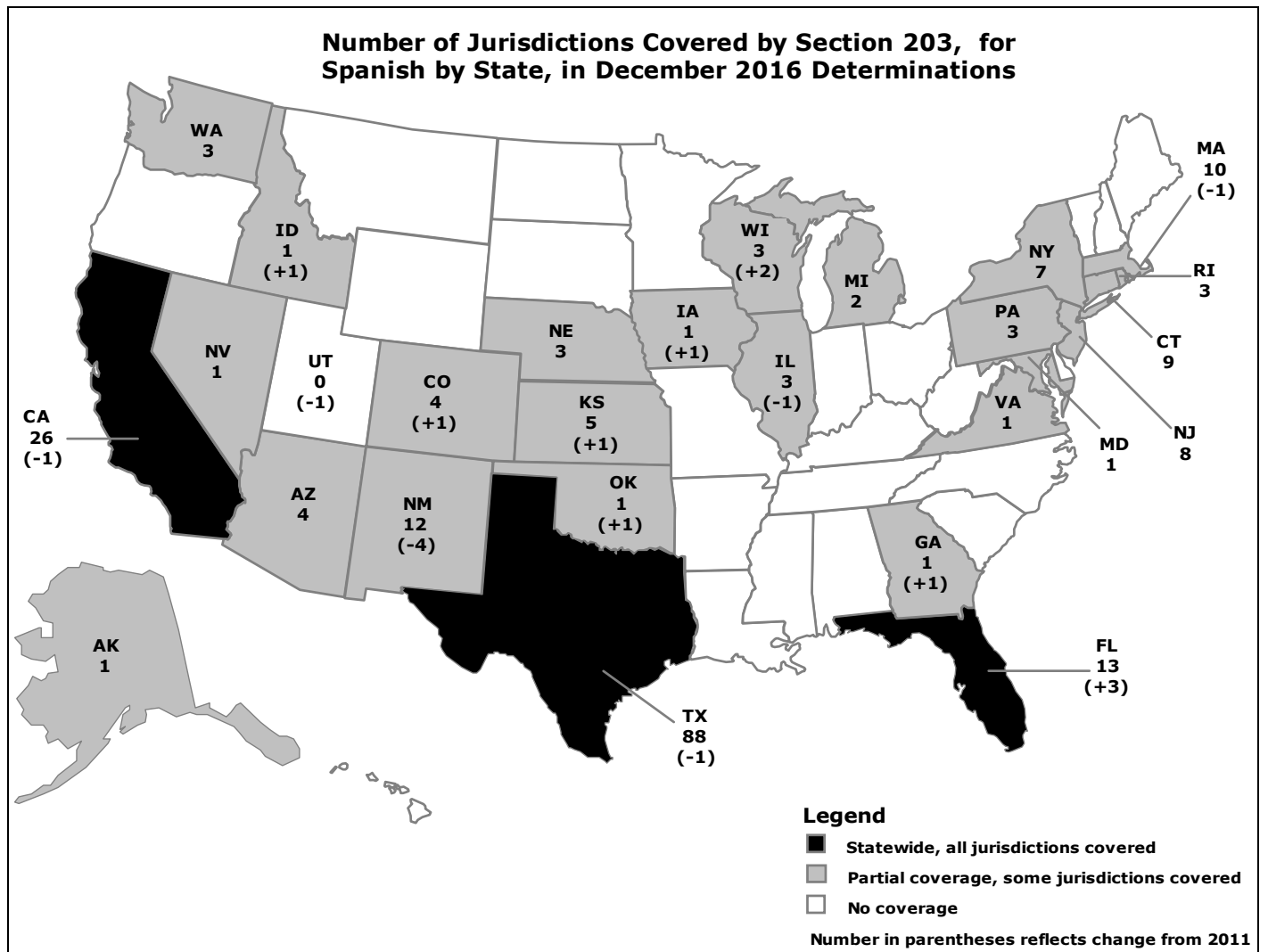
- Alaska Native language assistance must be provided in 15 political subdivisions of Alaska (see Figure 3), which is an increase of 8 political subdivisions from 2011;
- American Indian language assistance must be provided in 35 political subdivisions in nine states, up from the 33 political subdivisions of five states covered in the 2011 determinations (see Figure 3);
- Language assistance must be provided in Asian languages in 27 political subdivisions in 12 states, up from the 22 political subdivisions of 11 states covered in the 2011 determinations (see Figure 4).

Language assistance is required in jurisdictions covered for one or more of seven languages included in the Asian language group:

- Chinese language assistance must be provided in a total of 18 political subdivisions of seven states;
- Vietnamese language assistance must be provided in nine political subdivisions of four states;
- Filipino language assistance must be provided eight political subdivisions of four states;
- Korean language assistance must be provided in four political subdivisions in three states;
- Asian Indian language assistance must be offered in three political subdivisions of three states;
- Cambodian language assistance must be offered in two political subdivisions of two states;
- Bangladeshi must be provided in Hamtramck city in Michigan.

Assistance in Japanese, which previously was required in two political subdivisions of California and Hawaii, is no longer covered under the 2016 Determinations.

**Figure 2. Jurisdictions Covered for Spanish under Section 203**

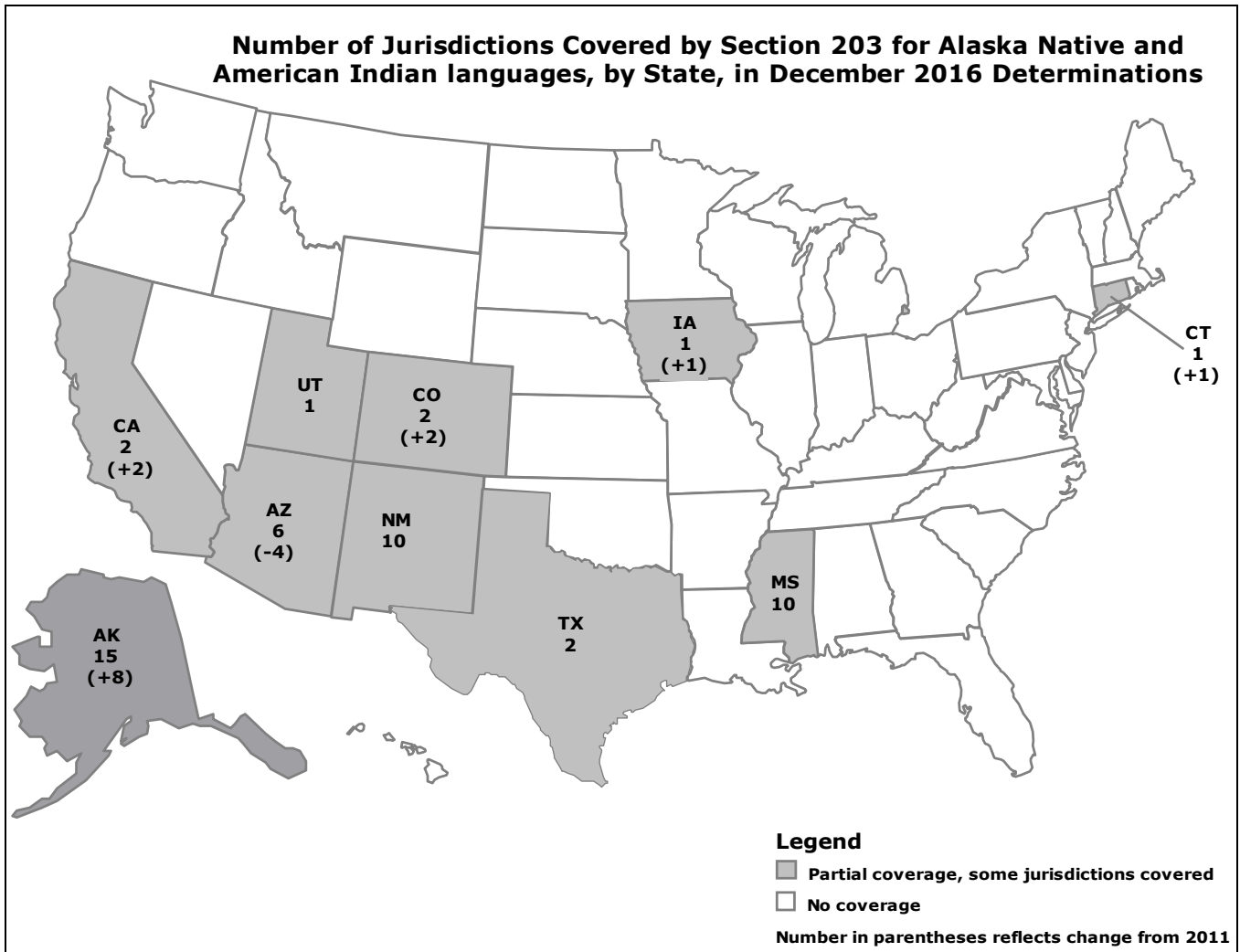


Source: 2016 Section 203 Determinations.

Among the three states covered statewide for Spanish, the following number of political subdivisions are independently covered under Section 203 as a result of the new determinations: 26 in California; 13 in Florida; and 88 in Texas.

Notably, Spanish has been added to four new states since 2011: Gwinnett County in Georgia, Lincoln County in Idaho, Buena Vista County in Iowa, and Texas County in Oklahoma. Spanish coverage was lost in six states: one county each in California, Illinois, Texas, and Utah; one township in Massachusetts; and in four counties in New Mexico.

**Figure 3. Jurisdictions Covered for AIAN Languages under Section 203**

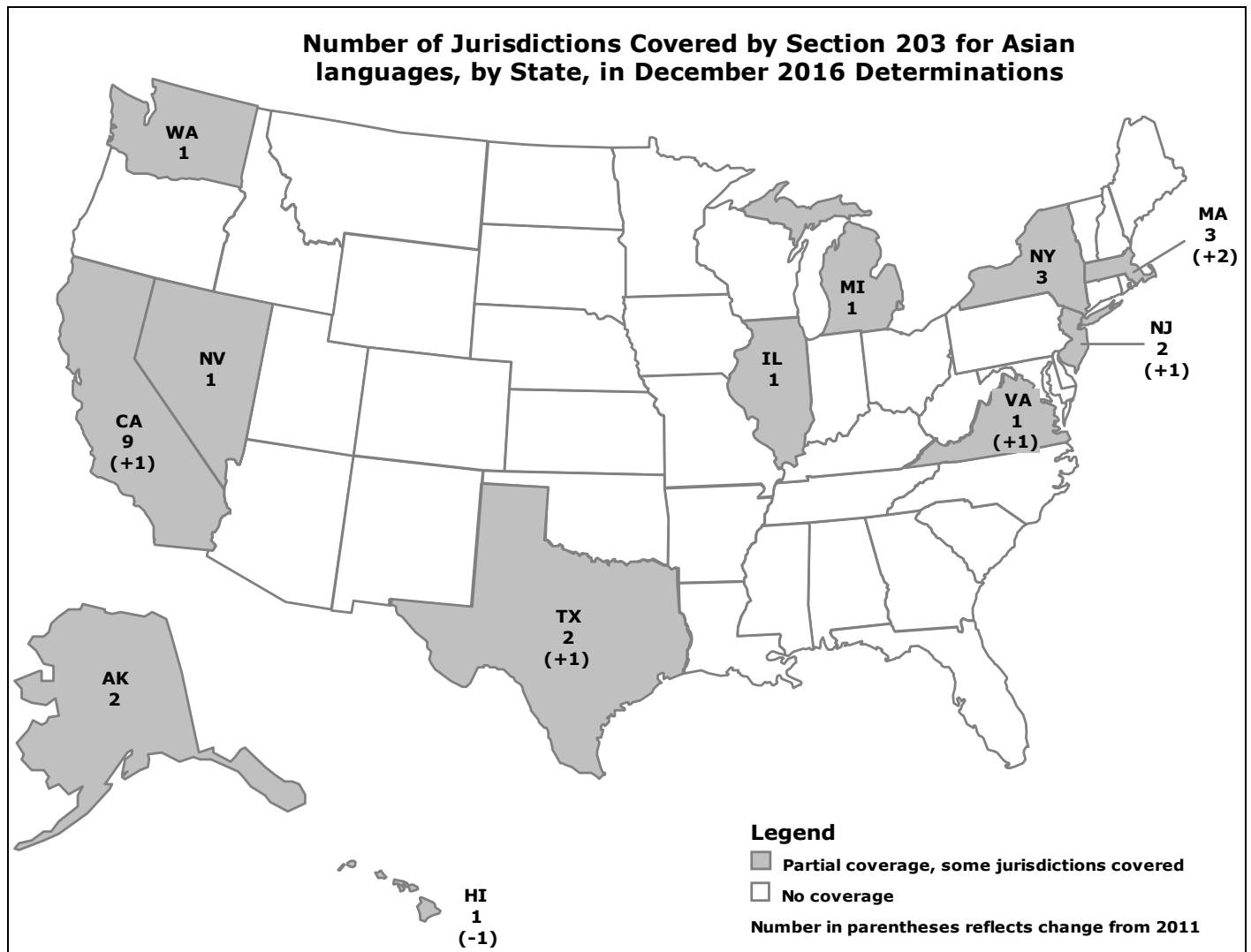


Language	Political Subdivisions Covered	Affected States
Navajo	11	AZ, NM, UT
Choctaw	10	MS
Yup'ik (Alaska Native)	9	AK
Inupiat (Alaska Native)	6	AK
American Indian (all other AI Tribes)	5	CA, CT, IA, TX
Apache	5	AZ, NM
Ute	4	CO, NM, UT
Alaska Athabaskan (Alaska Native)	3	AK
Pueblo	3	NM, TX
Aleut	1	AK

Source: 2016 Section 203 Determinations.

Alaska Native coverage doubled, nearly replicating the statewide coverage of Alaska under Section 4(f)(4) of the VRA. Similarly, political subdivisions in California, Colorado, and Iowa that previously were covered for American Indian languages are again covered. It appears that coverage may be attributable to corrections made to undersampling issues present under the 2011 Determinations. Four American Indian languages that were previously covered no longer are: Hopi, Tohono O’Odham, Yaqui, and Yuma.

**Figure 4. Jurisdictions Covered for Asian Languages under Section 203**



Language	Political Subdivisions Covered	Affected States
Chinese	18	CA, HI, IL, MA, NY, TX, WA
Vietnamese	9	CA, TX, VA, WA
Filipino	8	AK, CA, HI, NV
Korean	4	CA, NJ, NY
Asian Indian	3	IL, NJ, NY
Cambodian	2	CA, MA
Bangladeshi	1	MI

Source: 2016 Section 203 Determinations.

The 2016 Determinations have resulted in increased coverage for Chinese (adding two more political subdivisions), Vietnamese (adding two more political subdivisions), and Cambodian (adding a township in Massachusetts to the coverage in Los Angeles County, California). Filipino coverage decreased by one political subdivision, and coverage of two counties in California and Hawaii for Japanese was eliminated. The number of political subdivisions covered for Korean, Asian Indian, and Bangladeshi remains unchanged from 2011.

## Language Requirements for Covered States and Political Subdivisions

Congress enacted Section 203 to remove obstacles posed by discrimination in public education, illiteracy and lack of adequate bilingual language assistance for members of language minority groups. Section 203 initially was adopted in 1975, was extended for ten years in 1982, for fifteen years in 1992, and for an additional twenty-six years during the 2006 reauthorization. It is scheduled to expire, unless renewed, on August 6, 2032.

Once a jurisdiction is covered by Section 203, all “voting materials” it provides in English generally must be provided in the language of all groups or sub-groups that triggered covered. Voting materials include the following:

- Voter registration materials
- Voting notices (including information about opportunities to register, registration deadlines, time/ places/locations of polling places, and absentee voting)
- Voting materials provided by mail
- All election forms
- Polling place activities and materials
- Instructions
- Publicity
- Ballots
- Other materials or information relating to the electoral process
- Live assistance and personalized response to voters’ inquiries

*See* 52 U.S.C. § 10503(c); 28 C.F.R. §§ 55.15, 55.18.

In some cases, courts have found that written materials may not be required for certain Alaska Native and American Indian groups, but only if their languages are “historically unwritten.” Although the term “historically unwritten” is not defined in the statute, the legislative history suggests that Congress intended it to apply to languages that were either not written at all or for which the written language is not commonly used. However, federal courts have determined that even for those languages found to be “historically unwritten,” written translations may still have to be prepared to ensure that translators and election officials provide complete,

accurate, and uniform translations of voting materials provided in English.

Oral instructions, assistance, or other information in the covered language must be available for members of those groups at every stage of the electoral process, regardless of the covered language. *See* 52 U.S.C. § 10503(c).

The language assistance provisions apply to all stages of the electoral process for “any type of election, whether it is a primary, general or special election.” It includes not only elections of officers, but elections on such matters as bond issues, constitutional amendments and referenda. Federal, state, and local elections are covered, as well as special district elections, such as school districts and water districts. 28 C.F.R. § 55.10.

In many cases, the costs of compliance can be greatly minimized by the selective use of “targeting.” Targeting allows a political subdivision to comply with Section 203 by providing bilingual materials and assistance only to the language minority citizens and not to every voter in the jurisdiction. The availability of oral language assistance requires compliance with an “effectiveness” standard, in which the quality of the assistance is evaluated on whether it provides accurate and complete translations of all voting materials to language minority voters. *See* 28 C.F.R. § 55.20(c). Ultimately, it is the covered jurisdiction’s responsibility for ensuring compliance with Section 203. *See* 28 C.F.R. § 55.2(c).

## U.S. Department of Justice and Private Groups Enforce Section 203

The Justice Department and private organizations have been very successful in securing federal consent decrees from jurisdictions that fail to comply with the language assistance provisions of the Voting Rights Act. In part, this is because covered jurisdictions that fail to provide effective language assistance are liable for violation of the Voting Rights Act regardless of evidence concerning difficult matters that must be explored in other Voting Rights Act cases, including policymakers’ motivations and the ultimate impact of election administrators’ actions or failure to act. The costs of noncompliance can be tremendous, both in terms of litigation expenses, bad publicity, and the prospect of federal oversight including, but not limited to, consent orders and the use of federal observers on Election Day.

Private enforcement also can be costly to a jurisdiction. In places where successful private actions have been brought, covered jurisdictions have in some cases been required to pay millions of dollars in fees and costs to the prevailing language minority plaintiffs.

## About Our Organizations



### Asian Americans Advancing Justice | AAJC:

Asian Americans Advancing Justice | AAJC is a nonprofit, nonpartisan organization founded in 1991 to advance the civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. Advancing Justice | AAJC is the voice for the Asian American and Pacific Islander (AAPI) community – the fastest-growing population in the U.S. – fighting for our civil rights through education, litigation, and public policy advocacy. Advancing Justice | AAJC strives to increase the voting power of the Asian American electorate, to protect equal access to the ballot box at the local, state, and national levels, and to strengthen and expand the capacity of local community-based organizations to mobilize against threats to voting rights. For more information about Asian Americans Advancing Justice | AAJC, visit [www.advancingjustice-aaajc.org](http://www.advancingjustice-aaajc.org) or call (202) 296-2300 x 144.



### NALEO Educational Fund:

The National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund is the nation's leading non-profit, non-partisan organization that facilitates full Latino participation in the American political process, from citizenship to public service. Founded in 1981, the organization achieves its mission through integrated strategies that include increasing the effectiveness of Latino policymakers, mobilizing the Latino community to engage in civic life, and promoting policies that advance Latino political engagement. For more information about NALEO Educational Fund, please visit [www.naleo.org](http://www.naleo.org) or call (213) 747-7606.



### Native American Rights Fund:

Founded in 1970, the Native American Rights Fund (NARF) is the oldest and largest nonprofit law firm dedicated to asserting and defending the rights of Indian tribes, organizations and individuals nationwide who may have otherwise gone without adequate representation. NARF has successfully asserted and defended the most important rights of Indians and tribes in hundreds of major cases, and has achieved significant results in such critical areas as tribal sovereignty, treaty rights, voting rights and language assistance, natural resource protection, and Indian education. NARF is headquartered in Boulder, Colorado, with branch offices in Washington, D.C., and Anchorage, Alaska. For more information about NARF, visit <http://www.narf.org> or call (303) 447-8760.