



Election Officials' Guide to Providing Language Access in Elections

About the Organizations



Rooted in the dreams of immigrants and inspired by the promise of opportunity, Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC) advocates for an America in which all Americans can benefit equally from, and contribute to, the American dream. Our mission is 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 a national 501 (c)(3) nonprofit founded in 1991 in Washington, D.C.



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. The Center works to improve election administration through legislative, legal and administrative reform, to protect access to the ballot through litigation, and to provide election law expertise, voter information and technical assistance to voter mobilization organizations. The Center is a 501(c)(3) nonprofit organization, founded in 2017 to continue the work of the Fair Elections Legal Network.



NALEO Educational Fund is the leading non-profit, non-partisan organization that facilitates full Latino participation in the American political process, from citizenship to public service. Our constituency encompasses the more than 6,600 Latino elected and appointed officials nationwide, and includes Republicans, Democrats and Independents serving at all levels of government. NALEO Educational Fund is dedicated to ensuring that Latinos have an active presence in our democratic process, and to that end, we engage in a broad range of census, civil rights and election policy development and voter engagement efforts.

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I. Introduction

At its inception, the Voting Rights Act of 1965 (“VRA”) was intended primarily to address rapidly-evolving tactics used to restrict African Americans’ access to elections.¹ Its only original provision to protect citizens who were not fully fluent in English from discrimination was § 4(e), 52 U.S.C. § 10303(e), which prohibits practices that deny registration or the vote because of inability to speak English to U.S. citizens educated in another language within the United States and its territories. This provision was inspired by Congress’s awareness that Puerto Ricans, in particular the then-sizable Puerto Rican population in New York, experienced significant and intentional barriers to the vote that exploited some individuals’ lack of fluency in English.²

By the time of the VRA’s 10th anniversary and reauthorization in 1975, significant additional evidence had come to light of systemic discrimination against Latino and other language-minority voters, and both policymakers and academics were increasingly taking note of the problem. Whereas the U.S. Commission on Civil Rights’ 1965 report on initial implementation of the VRA focused nearly exclusively on African American voters and the effect of literacy tests and other barriers on their exercise of the franchise, its 1975 report on the state of voting rights contained extended discussion of the selection of polling locations and personnel inhospitable to Latino voters; purges of registration records done without provision of notice to voters in a language they could understand; and insistence on English-only signage and other election materials in the face of widespread need for translations.³ In 1975, Congress received testimony from numerous voters, such as Modesto Rodriguez of Pearsall, TX, who told Members that officials in his home town used tactics including issuance of subpoenas and filing of election fraud charges against illiterate Latino voters to successfully intimidate local residents into avoiding polling places. Election materials and assistance available only in English served as a de facto language test for voters in Pearsall, where many could not read or speak English: Mr. Rodriguez estimated that 60 percent of Spanish-speaking residents did not read English, and that 30 percent could not speak any English. As a result, fewer than half of eligible Latino voters in the town were registered in 1975, compared to two-thirds of eligible white voters.⁴

In recognition that language-minority voters were targets of discriminatory measures meant to prevent them from participating in elections, Congress adopted Section 203 of the VRA, 52 U.S.C. § 10503, in 1975 to mandate language assistance in jurisdictions that meet the criteria in the coverage formulas. Covered jurisdictions must ensure that all information provided in English – including notices, forms, and ballot materials – be provided in the covered minority language(s) as well. In 1982, Congress added Section 208, 52 U.S.C. § 10508, which allows language-minority voters to receive assistance in the voting booth from the person of their choosing. Section 208 ensures not just that any person less than fully fluent in English can access linguistic accommodations, but that voters exercise some control over the provision of assistance and can choose to receive help from a person whose language skills and respect for the confidentiality of the ballot they trust. These provisions complement Section 2 of the VRA, 52 U.S.C. § 10301, which prohibits practices or procedures that discriminate on the basis of race, color, or membership in a language-minority group. Together these provisions help to break down some of the barriers faced by citizens with limited English proficiency. The VRA has also inspired states and localities to take statutory and voluntary action to further expand language assistance beyond the minimum requirements of the Voting Rights Act.

This report begins by reviewing evidence of the benefits of conducting linguistically accessible elections and exploring the federal standards and requirements for language access. It identifies best practices that can be implemented by elections officials to expand language access in their jurisdictions and describes some administrative changes that can be utilized to institutionalize language access to better address the needs of language-minority voters. It is important

- 1 E.g., James T. Tucker, “Enfranchising Language Minority Citizens: The Bilingual Election Provisions of the Voting Rights Act,” 10 NYU Journal of Legislation and Public Policy 206 (2006).
- 2 See generally Juan Cartagena, “Latinos and Section 5 of the Voting Rights Act: Beyond Black and White,” 18 National Black Law Journal 201 (2004).
- 3 U.S. Commission on Civil Rights, “The Voting Rights Act...the first months,” 26, 75, available at <http://www.law.umaryland.edu/marshall/usccr/documents/cr12v942.pdf> (last visited Sept. 26, 2015); U.S. Commission on Civil Rights, “The Voting Rights Act: Ten Years After,” 74-75, 78, 86-87, 109, 114-16, available at <http://www.law.umaryland.edu/marshall/usccr/documents/cr12v943a.pdf> (last visited Sept. 26, 2015).
- 4 Ari Berman, *The Lost Promise of the Voting Rights Act*, The Atlantic, August 5, 2015, available at <http://www.theatlantic.com/politics/archive/2015/08/give-us-the-ballot-expanding-the-voting-rights-act/399128/> (last visited September 22, 2015).

to note that these best practices and administrative changes are not one size fits all – the authors of this report encourage elections officials to communicate and work with organizations representing voters who are not fully fluent in English and cater language access to best meet the needs of your specific communities.

II. Benefits of Providing High Quality Language Assistance in Elections

Isolating the positive or negative impact of a particular practice on voters' attitudes about and engagement in elections is persistently difficult.⁵ Nonetheless, many influential political scientists and voting rights experts agree that, insofar as they are properly implemented, language assistance requirements have had a tangible positive impact on language-minority communities' rates of participation in elections and governance. Researchers see this positive effect in, for example, increased descriptive presence in local office the longer a jurisdiction has been subject to Section 203 and has hosted federal observers⁶, higher likelihood of being registered among Latinos residing in covered jurisdictions⁷, increased Latino registration and voting rates in covered jurisdictions as compared to non-covered jurisdictions⁸, and increased language-minority community registration, voter turnout, and presence in office overall over the span of Section 203's existence⁹.

The progressively wider application of language assistance requirements is positively associated with increased voter participation by Latino, Asian American, American Indian and Alaska Native citizens.¹⁰ For example, the number of registered Latino voters grew from 7.6 million in 2000 to 9 million in 2004 and, in certain cases, Native American voter turnout has increased by more than 50 percent to 150 percent.¹¹ Asian American voter registrations increased most dramatically between 1996 and 2004, at approximately 58.7 percent.¹² Elections officials should be mindful to address the needs of these populations, particularly as their voter registration and election participation rates increase.

Enforcement of Section 203 has resulted in increases in voter registration and turnout. In San Diego County, California, following DOJ enforcement actions, voter registration among Latinos and Filipinos rose by over 20 percent and Vietnamese registrations increased by 40 percent after the County agreed to voluntarily provide additional language assistance in Vietnamese.¹³ Navajo voter turnout increased by 26 percent between 2000 and 2004 after Apache County, Arizona entered into a consent decree with DOJ to resolve the lack of language assistance in voting activities.¹⁴

5 Cf. Robert S. Erikson & Lorraine C. Minnite, Modeling Problems in the Voter Identification - Voter Turnout Debate, 8 Election L. J. 85 (2009) (discussing empirical challenges in measuring impact of voter ID); Daniel Tokaji, Applying Section 2 to the New Vote Denial, 50 Harvard Civil Rights-Civil Liberties Law Review 475-76 (2015) (stating, "As a practical matter, it is extremely difficult - sometimes impossible - for plaintiffs to prove that a particular practice will actually cause turnout disparities. That is largely because of the inherent difficulties in isolating the effects of a particular voting practice, especially one that has not yet been implemented, from all the other factors that can affect turnout.").

6 E.g., Melissa J. Marschall and Amanda Rutherford, "Voting Rights for Whom? Examining the Effects of the Voting Rights Act on Latino Political Incorporation," 60 *American Journal of Political Science* 590 (July 2016).

7 E.g., Michael Parkin and Frances Zlotnick, "The Voting Rights Act and Latino Voter Registration: Symbolic Assistance for English-Speaking Latinos," 36 *Hispanic Journal of Behavioral Sciences* 48 (2014).

8 E.g., Michael Jones-Correa, "Language Provisions Under the Voting Rights Act: Effectiveness and Implementation" (testimony presented to a public meeting of the Presidential Commission on Election Administration, Philadelphia, PA, September 4, 2013).

9 E.g., James T. Tucker, "Enfranchising Language Minority Citizens: The Bilingual Election Provisions of the Voting Rights Act."

10 H.R. REP. No. 109-478, at 18-19.

11 *Id.* at 19-20.

12 James T. Tucker, *The Battle Over Bilingual Ballots* 229 (2009).

13 Alberto R. Gonzales, U.S. Attorney General, Prepared Remarks at the Anniversary of the Voting Rights Act, Lyndon B. Johnson Presidential Library Austin, Texas (Aug. 2, 2005), available at <http://www.justice.gov/archive/ag/speeches/2005/080205agvotingrights.htm>.

14 James T. Tucker, *The Battle Over Bilingual Ballots* 229 (2009) (hereinafter *Battle Over Bilingual Ballots*).

Section 203 has also helped increase political representation by candidates of choice as a direct result of the increased civic engagement of these groups. During the 2006 reauthorization of the Voting Rights Act, Congress found that more than 5,200 Latinos and almost 350 Asian Americans had been elected to office.¹⁵ Native American candidates, whose communities had not traditionally been represented by their own members, were being elected to local school boards, county commissions and State legislatures in ever-increasing numbers.¹⁶

III. Contours of Federal Language Assistance Mandates

Language assistance in elections first came about as a result of expansions of the VRA, and these federal mandates remain the most important and influential guarantors that elections are accessible in jurisdictions with significant populations of eligible voters not yet fluent in English. The following sections describe in detail the efforts and actions these provisions require.

a. Section 203 of the Voting Rights Act

Section 203 requires certain jurisdictions that meet population and literacy requirements to provide language assistance during elections.¹⁷ This section requires the provision of assistance in languages spoken by four racial and ethnic groups – Latinos, Asian Americans, American Indians and Alaska Natives – and was enacted in 1975 to remedy potential racial discrimination in the voting process that results in the disenfranchisement of language minorities from these groups. A jurisdiction becomes covered under Section 203 when it meets the following requirements: (1) More than five percent of the voting-age citizens in a jurisdiction belong to a single language-minority community and are limited-English proficient; more than 10,000 voting-age citizens in a jurisdiction belong to a single language-minority community and are limited-English proficient; or the number of citizens in the language-minority community exceeds five percent of all reservation residents on an Indian reservation; and (2) The illiteracy rate of the citizens in the language minority is higher than the national illiteracy rate.¹⁸ These determinations are made by the Director of the Census Bureau using data from the American Community Survey, and are effective upon publication in the Federal Register. The Director's determinations are final and not subject to review in any court.¹⁹

i. Current Section 203 Coverage

The Census Bureau published updated Section 203 coverage determinations in December 2016. Today, there are 263 political subdivisions in 29 states subject to Section 203's requirements. Spanish language assistance is mandated statewide in California, Florida, and Texas, and in a total of 214 political subdivisions in 26 states, an increase from the 212 political subdivisions covered in 23 states under the previous 2011 determinations. Alaska Native language assistance must be provided in 15 political subdivisions of Alaska, up from 8 political subdivisions from 2011; American Indian language assistance must be provided in 35 political subdivisions in nine states, which represents an expansion from the 33 political subdivisions of five states covered in the 2011 determinations. Asian language coverage requirements now reach 27 political subdivisions in 12 states, up from the 22 political subdivisions of 11 states previously covered. Under the newest coverage determinations, 31.3 percent of the total U.S. citizen voting-age population live in covered jurisdictions.²⁰

15 H.R. REP. NO. 109-478, at 19.

16 *Id.* at 20.

17 See Bilingual Election Requirements, 52 U.S.C. § 10503. Section 203 applies only to Latinos, Asian Americans, American Indians, and Alaskan Natives because Congress has continually found that these groups have faced and continue to face significant voting discrimination because of their race and ethnicity.

18 52 U.S.C. § 10503(a); § 10503(b)(2). The Census Bureau defines "illiteracy" for Section 203 threshold purposes as having less than a fifth grade education.

19 52 U.S.C. § 10503(a); S. REP. NO. 94-295 at 31. See also § 10503(b)(4).

20 Census Bureau, *Census Bureau Releases 2016 Determinations for Section 203 of the Voting Rights Act* (Dec. 5, 2016), available at <https://www.census.gov/newsroom/press-releases/2016/cb16-205.html>.

Generally, jurisdictions covered by Section 203 must ensure that any election-related information provided in English is also provided in the covered language. Jurisdictions must create and distribute registration forms, voting notices, forms, instructions, assistance, or other materials or information related to the electoral process, including ballots in both English and the covered language.²¹ Covered jurisdictions must also provide oral assistance at polling sites and publicity about the language assistance prior to Election Day.²²

ii. Section 203 Compliance

The Department of Justice (“DOJ”) provides specified guidelines for local officials on how to comply with the language-minority provisions under Section 203. The guidelines set forth minimum requirements as to what covered jurisdictions must provide but do not preclude affected jurisdictions from taking additional steps to further the policy of the Act.

In relevant part, DOJ’s guidelines affirm that Section 203 applies to covered political subdivisions – primarily counties – as well as to all political units that hold elections within covered political subdivisions, including cities and school districts. Section 203 applies to all stages of the electoral process, from voter registration to voting, in any type of election. The two basic standards by which compliance is measured are: “[t]hat materials and assistance should be provided in a way designed to allow members of applicable language-minority groups to be effectively informed of and participate effectively in voting-connected activities; and that an affected jurisdiction should take all reasonable steps to achieve that goal.”²³

Section 203 compliance requires individualized assessment of the covered jurisdiction and language group(s) to determine what is needed. There is no “one size fits all” approach when it comes to language assistance plans. The covered jurisdiction is responsible for determining what languages, forms of languages, or dialects will be effective. For written language assistance, jurisdictions need only provide materials in the one language most widely used by the jurisdiction’s voting-age citizens who are members of the covered language-minority group. There is an exemption from the provision of translated written materials for “historically unwritten languages,” where only oral assistance and publicity are required. This exemption negatively affects the American Indian Alaskan Native communities. For oral language assistance, the jurisdiction’s obligation is to ascertain the dialects and languages that are commonly used by members of the applicable language-minority group and to provide oral assistance in such dialects and languages. Jurisdictions are allowed to target their language assistance to fewer than all voters so long as the targeting system is “designed and implemented in such a way that language-minority group members who need minority language materials and assistance receive them.”²⁴ For example, translated materials and bilingual poll workers can be placed in those polling locations that serve covered language-minority voters but not sent to those locations that do not have many covered language-minority voters. Compliance with Section 203 will be measured by results and a standard of effectiveness. A jurisdiction is more likely to achieve compliance if it works with the “cooperation of and to the satisfaction of organizations representing members of the applicable language-minority group.”²⁵

b. Section 208 of the Voting Rights Act

Section 208 provides that a person who needs assistance as a result of blindness, disability, or the inability to read or write²⁶ is eligible to receive assistance from a person of her choice, as long as it is not an agent or officer of the voter’s employer or labor union. Congress added Section 208 to the VRA in 1982, finding that citizens facing language

21 28 C.F.R. § 55.19; 52 U.S.C. § 10503.

22 The provision of minority language materials and assistance includes ensuring that the following are accessible to the applicable language-minority group(s): materials provided by mail (or by some comparable form of distribution), public notices, registration system, polling place activities (such as providing bilingual poll works and translated signage and materials at the polling place) and publicity (of the availability of language assistance to the applicable language group(s) through effective mean, such as using ethnic media). 28 C.F.R. § 55.18.

23 28 C.F.R. § 55.2(b).

24 28 C.F.R. § 55.17.

25 28 C.F.R. § 55.16

26 Protection on the basis of inability to read or write extends to U.S. citizens who are not literate in English. Senate Judiciary Committee Report on the Voting Rights Act Amendments of 1982, S. Rep. No. 97–417, 97th Cong, 2d Sess., reprinted in 1982 USCCAN 177.

barriers were more susceptible to having their votes unduly influenced or manipulated, which could more likely result in discrimination at the polls. Stressing the importance of the voter's freedom to choose a person to assist the voter, as opposed to having someone appointed by elections officials, Congress determined that the right to an assistor of choice is an important way to ensure that voters can exercise their right to vote without intimidation or manipulation.

The assistor of choice can be a non-citizen, someone who is not registered to vote, or even a minor, which is very common for immigrant families where the child is fluent in both English and their parents' language. Even the two statutory exceptions (i.e., employer and union representative) have exceptions – Congress made clear that in less populous jurisdictions, even an employer or union agent can be an assistor of choice. Some states have tried to restrict this provision of the VRA by explicitly defining who may assist a limited-English proficient voter. In Texas, state law differentiates between individuals providing voting assistance and interpreters. Texas law contains a provision allowing a voter to request assistance from any person as set forth in Section 208²⁷, but this provision narrowly defines “assistance” as “assistance in marking the ballot”²⁸. A separate provision authorizes a voter to request an interpreter, and states that if there is no language in common between poll workers and a voter, then “the voter may communicate through an interpreter selected by the voter.”²⁹ Voters are not free to select anyone to serve as an interpreter, however. State law requires interpreters to be registered voters in the jurisdiction in question.³⁰ In fact, Texas poll workers are known to have prohibited voters from obtaining interpretation from the individuals of their choice where the requested assistors were not registered voters in the same jurisdiction, as in the case of Williamson County, Texas voter Mallika Das, a plaintiff in a lawsuit filed in 2015.³¹ In August 2017, the Fifth Circuit Court of Appeals affirmed the district court decision, ruling that the Texas law requiring interpreters to be registered voters violates the Voting Rights Act and cannot be enforced.³² In his opinion, Judge Patrick Higginbotham wrote that the Texas Election Code provision “flatly contradict[s] Section 208.”³³

Because Section 208 is nationwide in its application, with almost no limitations, it is an effective complement to Section 203 in ensuring language-minority voters get the assistance they need to vote. Additionally, Section 208 applies to any language-minority group and has no sunset date, ensuring that language assistance is available to more voters than just those who benefit from Section 203. In Section 203 covered jurisdictions, limited-English proficient voters are also protected by Section 208 and can utilize an assistor of their choosing or an election official who is already required to provide language assistance under Section 203.

c. Section 4(e) of the Voting Rights Act

Section 4(e) of the VRA was enacted in 1965 and requires that language materials and assistance be provided to voters who attended American schools in which the predominant language of instruction was not English.³⁴ Its requirements ensure that Americans educated in Puerto Rico are not prevented from voting nor understanding the voting process by any lack of fluency in English. There are a significant number of individuals whose ability to vote knowledgably may well depend upon jurisdictions' adherence to this provision of the VRA: as of 2013, according to the Pew Hispanic Center, there were approximately 1.5 million Puerto Rican-born Americans living in the 50 states, 36 percent of whom reported speaking primarily Spanish. In the wake of destruction caused by Hurricane Maria in 2017, moreover, migration from Puerto Rico to the mainland United States has accelerated.³⁵ Section 4(e) has generally been interpreted to require the same kinds of actions mandated by Section 203 that ensure meaningful access to elections

27 TEX. ELEC. CODE § 64.032(c).

28 TEX. ELEC. CODE § 64.032(a).

29 TEX. ELEC. CODE § 61.032.

30 TEX. ELEC. CODE § 61.033.

31 “Asian Americans sue Texas for denial of language assistance under the Voting Rights Act,” Asian American Legal and Education Defense Fund (August 6, 2015), <http://aaldef.org/press-releases/press-release/asian-americans-sue-texas-for-denial-of-language-assistance-under-the-voting-rights-act.html>.

32 *OCA-Greater Houston v. State of Texas*, 867 F.3d 604 (5th Cir. Aug. 16, 2017).

33 *Id.* at 17.

34 52 U.S.C. § 10303(e).

35 E.g., Arelis Hernandez, “Exodus from Puerto Rico grows as island struggles to rebound from Hurricane Maria”, WASHINGTON POST, March 6, 2018, available at https://www.washingtonpost.com/national/exodus-from-puerto-rico-grows-as-island-struggles-to-rebound-from-hurricane-maria/2018/03/06/b2fcb996-16c3-11e8-92c9-376b4fe57ff7_story.html?utm_term=.8d422ef00a7d.

to speakers of languages other than English, including provision of in-language ballots and voting instructions, dissemination of translated announcements of and information about elections, and recruitment of bilingual poll workers and administrative staff.

Unlike Section 203, Section 4(e)'s protections are not premised on the satisfaction of any particular formula; at least one federal court decision has explicitly rejected the assertion that the thresholds that trigger coverage under Section 203 should also apply to determination of coverage under Section 4(e).³⁶ There is no comprehensive list of jurisdictions that must provide Spanish assistance because of its mandates. In certain cases, jurisdictions have proactively instituted language assistance programs in recognition of the needs of their residents of Puerto Rican origin; otherwise, jurisdictions have been brought into compliance with Section 4(e) after being challenged in court. The earliest lawsuits brought under Section 4(e) concerned jurisdictions with sizable populations of residents in need of assistance, including the state of New York³⁷, Chicago³⁸, and Philadelphia³⁹; although these cases did not set a firm threshold at which coverage applied, they did impose remedies that required language assistance in election districts that overlapped with Census tracts in which at least 5 percent of residents were of Puerto Rican origin⁴⁰. Subsequent cases have reached additional less-populated and less-urban jurisdictions, and have similarly requested provision of Spanish assistance in precincts in which at least 5 percent of registered voters were Latino⁴¹, or in precincts serving at least 100 registered voters with Latino surnames⁴². In a 2012 settlement agreement, Orange County, NY agreed that it was subject to Section 4(e) where, according to the 2010 decennial Census, 7.8 percent of its population, or nearly 30,000 individuals, were of Puerto Rican origin.⁴³

IV. Best Practices for Increasing Language Assistance

Election administrators – even those who are not yet working under any federal mandate to provide election materials and assistance in languages other than English – can and must improve language-minority voters' experiences by taking the initiative to ensure that elections are accessible. The Voting Rights Act makes it the duty of elections officials in covered jurisdictions to provide effective language assistance, instead of requiring private citizens to ask for it. Public officials cannot presume that low use of or lack of requests for assistance indicate lack of need for it. Such deficits may reflect voters' lack of knowledge that assistance in languages other than English may or should be available, particularly in places that do not have a long history of administering multilingual elections.

Election administrators whose constituents would benefit from language assistance should make language assistance programs a priority on equal footing with other responsibilities. Prioritizing the implementation of an effective program minimizes compliance costs. Being a good actor is the more efficient choice: the costs of non-compliance can include negative publicity, alienation of community leaders who might otherwise assist officials, and even the possibility of expensive litigation.

Below, we set forth best practices in language assistance, drawn from our collective organizational experience, voters' and election officials' feedback, and the detailed action plans adopted by jurisdictions after falling short in their efforts to provide services to voters who are not fully fluent in English.

36 *United States v. Berks County*, 250 F. Supp. 2d 525, 537-38 (E.D. Pa. 2003).

37 *Katzenbach v. Morgan*, 384 U.S. 641 (1966).

38 *PROPA v. Kusper*, 350 F. Supp. 606 (N.D. Ill. 1972).

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

40 *Id.* at 768; *Torres v. Sachs*, 381 F. Supp. 309, 313 (S.D.N.Y. 1974).

41 *Berks County*, 250 F. Supp. 2d at 537; Settlement Agreement, *U.S. v. Salem County, NJ and Penns Grove, NJ*, No. 1:08-cv-03276-JHR-AMD (D.N.J. July 28, 2008), available at <https://www.justice.gov/crt/united-states-district-court-district-new-jersey-1>.

42 Agreement, Judgment, and Order, *U.S. v. Cuyahoga County, OH*, No.1:10-cv-01949- (N.D. Ohio Sept. 3, 2010), available at https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/cuyahoga_agreement.pdf.

43 Consent Decree, *U.S. v. Orange County, NY*, No. 7:12-cv-03071-ER (S.D.N.Y. Apr. 19, 2012), available at https://www.justice.gov/sites/default/files/crt/legacy/2012/04/20/orange_cd_ny.pdf.

a. Customize Language Assistance for Your Community

i. Assess voters' linguistic abilities and direct resources to where they are most needed.

As is true of other domains of governance, strategic decisions about language assistance programs are best made when informed by detailed, current information about voters and community infrastructure. Before undertaking any of the activities recommended herein, officials responsible for elections should start by gathering and analyzing pertinent information about the communities they serve, including, most importantly, Census data concerning the residential location and socio-economic characteristics of U.S. citizens who are not fully fluent in English or who speak a language other than English at home. Election administrators should also take note of the existence of and services provided by community-based organizations, religious facilities, media outlets and other institutions oriented toward the needs of language-minority communities.

Election authorities may wish to supplement the knowledge they glean from Census data with firsthand surveys of voters, since the former is based on sampling and may not perfectly reflect the rates at which members of language-minority communities actually engage in the political process, nor the rates at which eligible voters prefer and choose in-language materials over those available in English. For example, new voters can be asked their language preference when they register and existing voters can be sent a multilingual postcard asking them to identify their preferred language, to ensure that written materials and oral assistance are available where necessary.

To identify the precincts that serve concentrations of language-minority voters, it may be possible to get information by requiring that poll workers keep track of how many voters they assist who are speaking or receive assistance in a language other than English, assuming poll workers are properly trained and are proactively assisting language-minority voters. However, election officials should keep in mind that this approach is not fool-proof. Poll workers might not keep accurate counts. And of course, this measurement will not identify language-minority U.S. citizens who are eligible to register to vote but have not yet done so.

The information gathered through the methods discussed above will not only help election officials measure the language assistance needs of their communities, but will also be useful in “targeting” the selective use of language assistance in order to keep the costs of administering linguistically accessible elections down. Targeting becomes possible when elections officials conduct the detailed needs assessment and resource-inventorying recommended in this report. Targeting allows a covered jurisdiction to provide in-language materials and assistance to the language-minority citizens and not to every voter in the jurisdiction. The practice is not expressly provided for in the VRA, but the law has been interpreted to allow flexibility in devising appropriate methods to provide language assistance. Therefore, targeting is permissible as long as it ensures that voters who are not fluent in English have the same access to materials, information, and assistance as English-speaking voters.

Typically, the most effective way to target language assistance resources to the locations where they are most likely to be needed is to use some combination of the data-gathering methods set forth above, along with input from language-minority communities. Election officials must build into their language assistance program processes to regularly check and update this information as needed, particularly as the demographics of their communities are changing.

ii. Consult regularly with language-minority-serving institutions in the community and solicit participation in community advisory committees.

One of the best methods for determining and improving the effectiveness of language assistance is to consult regularly with members of local language-minority communities. As the Justice Department has explained:

“The cornerstone of every successful program is a vigorous outreach program to identify the needs and communication channels of the minority community. Citizens who do not speak English very well often rely on communication channels that differ from those used by English-speakers. Each community is different. The best-informed sources of information are people who are in the minority community and those who work with it regularly. Election officials should talk to them.”⁴⁴

44 Dept. of Justice, Language Minority Citizens, <https://www.justice.gov/crt/language-minority-citizens> (last visited Mar. 19, 2018).

A number of jurisdictions have formed Language Assistance Advisory Committees that meet throughout the year in order to institutionalize the process of collecting feedback from the community for which multilingual materials and services are provided. Members of these Advisory Committees typically include the leaders of social service organizations, churches, social clubs, schools and parent-teacher organizations, in-language media outlets, chambers of commerce, and professional organizations. At their most effective, these efforts will result not just in receipt of advice from community leaders, but in feedback from a broad cross-section of potential voters, including unregistered individuals, those who cannot speak or read English, and naturalized and young citizens who lack voting experience.

Election officials who consult with community members about their language assistance programs are more likely to understand the needs of language-minority voters. Building partnerships with community leaders also helps create a pipeline to a stronger language-minority community presence among the officials who implement and oversee elections.

iii. Communicate proactively with language-minority voters about elections.

In addition to producing written materials and providing live assistance to voters at polling places and in elections offices, election administrators can ensure that elections are fully linguistically accessible by advertising language assistance programs through in-language media and community-based organizations. Language-minority voters cannot and will not take advantage of the materials and assistance provided if they are unaware of their availability, which is too often the case. Absent intentional official efforts to alert community members, language-minority voters tend to receive less information than English speakers about participating in elections.

Public service announcements and other advertisements should inform language-minority voters when elections will be held and emphasize that in-language materials and assistance will be provided at every step of the electoral process, from registration to voting. They should also list contact information for the office or person responsible for the language assistance program, as well as the number to any hotlines the jurisdiction has set up for voters seeking further information or assistance in-language. Materials and ads should be placed in in-language media outlets and public spaces, and with community-based institutions including social services organizations, churches, and schools. Informational pamphlets should be routinely mailed to known language-minority voters who have indicated their linguistic preference to elections officials, and provided at voter registration drives and community events in which an elections office participates.

Another proactive means of alerting voters to the availability of language assistance is to hold regular voter information meetings. The meetings can be advertised as a way for voters, especially newly registered or unregistered voters, to learn more about the voting process and procedures for the upcoming elections. Officials can take advantage of the opportunity to share critical information with voters about changes made to voting locations, equipment, or processes. Voter information sessions provide election officials with a great opportunity to meet voters and solicit their feedback on language assistance programs. The meetings also can attract qualified bilingual poll workers. Perhaps most important of all, holding voter information meetings sends a strong message to the community that election officials care about voters and are willing to go the extra mile to provide them with a good voting experience. Regular contact with language-minority voters instills mutual trust and encourages citizen involvement.

b. Develop In-House Language Expertise

i. Employ full-time bilingual staff and confirm bilingual employees' abilities.

Prospective language-minority voters are more likely to have their language needs addressed in jurisdictions that have one or more full-time employees who are fluent in their language. Bilingual full-time employees are uniquely equipped to simultaneously appreciate and find balance between the needs and limitations of both election-administering agencies and language-minority voters. They will normally be among the most qualified of their colleagues to advise on language-minority voter outreach and education, to help review translations, to respond to inquiries from voters who do not speak English, and to recruit and train bilingual poll workers.

Ideally, jurisdictions that are home to language-minority communities will employ at least one staff member fluent in each language in which election materials and assistance are provided, possibly as a Bilingual Coordinator. Dedicated employees are best able to devote sufficient time to the year-round outreach and networking that are crucial to the sound functioning of multilingual elections. Bilingual Coordinators' responsibilities typically include enlisting the assistance of community-based organizations that serve language-minority voters, recruiting and training temporary bilingual election workers as well as other election officials about multilingual programs, verifying bilingual poll workers' linguistic abilities, producing and reviewing written translations, serving as media liaison, procuring and preparing instructions regarding the use of multilingual voting machines, and troubleshooting on Election Day. Finally, they can determine how language assistance can be improved based upon feedback from election officials, translators, voters, and their own observation.

To ensure that potential Bilingual Coordinators have the language skills necessary to take on this role, it may be necessary to confirm their fluency through periodic spoken and written tests. An ideal Bilingual Coordinator should possess, in addition to fluency in a second language, personal and professional connections within local language-minority communities, as well as training on federal, state, and local election procedures. The best Bilingual Coordinators receive strong support from other election officials in their office and sufficient resources to perform their very important duties. Where funding does not permit the hiring of a full-time, year-round employee, a Bilingual Coordinator may even work in a volunteer or part-time capacity.

ii. Recruit bilingual poll workers and conduct separate training tailored to those poll workers.

In order to ensure a smooth voting experience for limited-English proficient voters, election administrators and their bilingual coordinators should prioritize recruitment of bilingual poll workers. When a language-minority voter cannot communicate effectively with poll workers, this opens the voter to facing unnecessary barriers to voting and leaves open the possibility that the voter may be unable to successfully cast a ballot that is counted. These problems can be mitigated by employing bilingual poll workers that are stationed in polling locations with concentrations of language-minority voters.

Qualified bilingual poll workers can be ineffective if they are untrained. Election officials should provide bilingual poll workers with separate training on language assistance. Some training on voting information should be in covered languages to ensure that effective language assistance is provided in the polls. Bilingual poll workers should be instructed to provide active assistance, greeting voters and guiding them through the elections process.

Trainings for bilingual poll workers should feature review of all voting materials in all the languages in which they are provided, to ensure that bilingual poll workers understand the materials and will provide clear, complete, and accurate translations to voters. Poll workers should also be engaged in role-playing exercises in-language that involve common situations the bilingual poll workers can expect to encounter, such as voters showing up at the wrong precinct or voters who bring someone with them to provide assistance. Role-playing provides another opportunity for election officials to confirm that bilingual poll workers are qualified to provide translations and allows for the opportunity to provide pointers in-language for better options of how to handle a situation or how to translate. Finally, it offers an opportunity to reinforce instruction through hands-on training that allows poll workers to practice their interpretation skills before the election.

iii. Maximize staff capacity by identifying “master poll workers” and enlisting them as supervisors.

In some communities in which language assistance is provided at the polls, there are hundreds, or even thousands, of precincts. That makes it impossible for election officials or bilingual coordinators to visit every polling place to perform the important function of assessing the quality of in-language materials and assistance provided to voters on Election Day. A good solution is for election officials to identify their strongest bilingual poll workers and train them to be “master poll workers.” Each can be assigned a reasonable number of polling places to supervise throughout Election Day. When travelling to each polling location several times throughout the day, master poll workers should ensure that all in-language voting materials and signs are available to voters, a sufficient number of trained bilingual poll workers are present, and that poll workers are providing effective voter assistance and language assistance. Master bilingual poll workers should speak to other bilingual poll workers in-language to confirm that they are able to provide effective assistance.

Typically, but not always, master bilingual poll workers are more experienced poll workers. Regardless of their background and experience, they should be provided with separate additional training on how to perform their quality control functions and should be instructed to report issues that must be addressed immediately (such as a lack of in-language materials or long lines for assistance). Election administrators should create logs that allow master poll workers to document what they observe and election officials to address any quality control issues that are documented.

c. Integrate Language Accessibility into All Operations and Elections

i. Train all elections staff on language assistance procedures and materials, and bias awareness.

Training is a key component of any successful language assistance program. In consideration of the fact that violations of language assistance requirements have frequently been discovered alongside and at the same time as hostile, intimidating, and coercive behavior directed at language-minority voters, even monolingual election workers need to be educated on the requirements for providing language assistance under federal and state law so that they will be sensitive to the needs of language-minority voters and not interfere with assistance.

Training programs for all election administration staff and poll workers should focus on language-minority voters’ rights, with special emphasis on the universal right to assistance under Section 208 of the Voting Rights Act. Poll workers must be trained to allow every voter requesting assistance to get it from the person of their choice, without regard to whether or not the assistor is eligible to vote. Often, voters who are not fully fluent in English bring their children into the polling place to assist them and the right to do so is protected by Section 208. The assistor must be allowed to provide assistance at any stage of the voting process, including inside the voting booth.

Training programs should equip all elections employees to recognize, actively combat, and better understand the negative and legal consequences of implicit and explicit bias. Moreover, it is not enough to only train bilingual poll workers in the use of voting materials written in languages other than English – all poll workers need to be provided with that training. Poll workers should receive checklists of all voting materials that should be available on Election Day and their training should include a discussion of where to display all of the voting materials, including materials printed in-language. That training should be reinforced through instructions or a diagram accompanying their polling place supplies.

All poll workers should also be trained on culturally unique characteristics of language-minority populations that may pose problems if encountered by uninformed and unprepared individuals. For example, in jurisdictions that provide assistance in Spanish, every election worker should understand that it is common for Latino voters to use more than one surname in their daily lives: their father’s last name, followed by their mother’s last name, or both parents’ last names hyphenated. This practice, and some officials’ lack of familiarity with it, makes it possible that voters may register under a different last name than the one they provide to a poll worker when they are checking in to vote on Election Day. Training can minimize the chances of a qualified, registered voter being turned away on Election Day.

Poll worker training is, generally, best provided in person, in advance of Election Day, and should be reinforced through self-guided written or video materials. Training programs for first-time poll workers may need to last longer than those designed for more experienced poll workers. The temporary nature of poll work and the modest pay usually associated with it make it difficult to secure workers' commitments for Election Day, and, presumably, all the more difficult to secure workers' attendance at training programs. Therefore, jurisdictions should set aside funding to pay workers for the time they spend obtaining the necessary training to provide quality language assistance. At the conclusion of training, workers should individually affirm that they are knowledgeable about language assistance obligations, and should commit to treating each voter equally.

ii. Ensure that all materials and communications produced in English are also available in other languages commonly spoken in the jurisdiction, and that bilingual assistance is available in a full range of formats and at all elections.

Election administrators will likely be familiar with the legal imperative to make the same information accessible to both English-speaking voters and citizens who speak covered languages under Section 203 and Section 4(e) or state or municipal law. Language assistance must be provided at every stage of the election process and encompass topics including election deadlines, voter registration and every type of voting opportunity available. In order to ensure compliance with these requirements, we recommend that administrators work through written checklists of all documents that their offices produce for prospective registrants and voters. Materials that should be translated include registration information and applications, poll worker recruitment-related advertising, voter's rights pamphlets, sample ballots, early and mail voting materials including instructions, instructions for using voting machines, polling place signs, regular and provisional ballots and associated instructions, Election Day publicity, poll worker badges, and election results. In addition, election administrators should disseminate these translated materials in public locations as a matter of course, throughout the year. If, for example, an elections office routinely places printed voter registration applications in local post offices, libraries, and other government buildings, it must always ensure that copies are available in all languages in which assistance is provided.

Translation of polling place signage is of particular importance. Signs that direct voters to polling places and other locations where election-related services are provided, and those that explain how and where to obtain in-language materials or assistance with voting, must be easy to find in their translated form. Signage should include in-language instructions for obtaining language assistance at polling places, especially when no bilingual poll worker is present.

It is also particularly important that election administrators ensure the availability of in-language voter registration materials and assistance before Election Day. This is one of the activities most frequently overlooked by officials responsible for language assistance programs. In addition to translating forms and online registration portals, jurisdictions should use "deputy registrars who are members of the... language-minority group and the use of decentralized places of registration, with minority language materials available at places where persons who need them are most likely to come to register."⁴⁵ Election officials should travel to neighborhoods in which concentrations of language-minority voters live and work to hold voter registration drives at convenient times and locations, such as at cultural events, scheduled school activities such as football games, and holiday activities. Partnering with community organizations to coordinate and publicize these events will increase buy-in from the local community and therefore turnout at the events.

Finally, election administrators must be attentive to ensuring that adequate language assistance is available for all elections. While administrators who adopt a careful and conscientious approach to providing assistance are likely to make appropriate efforts in each election directly managed by state and local public officials, they may overlook caucuses and other candidate nominating processes that are managed by political parties, but are nonetheless subject to the rules set forth in the VRA.⁴⁶ Election officials can and should play a key role to ensure that political parties are aware of their language assistance obligations, and able to make use of any helpful resources that they can share.

45 28 C.F.R. § 55.18(c).

46 See, e.g., *Morse v. Republican Party*, 517 U.S. 186 (1996); 28 C.F.R. § 55.10.

Language assistance should be accessible to voters or persons eligible to register to vote at any time during the year, even when there are no elections on the horizon. Providing sufficient assistance year-round begins with making available to the public custom-translated⁴⁷, in-language versions of a jurisdiction's election-related websites, and a phone line staffed by multilingual personnel who can answer inquiries and provide information in all languages in which elections are conducted in the jurisdiction. Even jurisdictions with limited bilingual staff capacity can provide phone assistance by, for example, setting up lines that are answered with a pre-recorded in-language message that invites callers to leave voice messages for staff who respond to inquiries when their time permits; or by arranging for in-language calls to be answered by an outside vendor or community volunteers. In any case, phone lines should be connected to toll-free telephone numbers. If available, additional staff members should be assigned to answer hotline calls on and around Election Days.

iii. Give your team enough time to ensure high quality translations and interpretation.

Jurisdictions must make a conscious effort to ensure the quality and legibility of prepared translations. The most reliable translations are those done manually, by live persons who have had their linguistic and other necessary skills confirmed by third parties. Election administrators can obtain quality translations from providers of commercial, professional translation services, bilingual election workers and coordinators already employed by the jurisdiction, community organizations that are closely involved with the concerned language-minority communities, and official glossaries and translations provided by reputable authorities such as the U.S. Election Assistance Commission and Secretaries of State's offices. Certified court translators and language professors and teachers are also frequently qualified to provide or assist with translations.

All voting materials should be translated well in advance of when they must be distributed, and into the dialect or dialects most commonly spoken in the community in question. Quality control requires sufficient time to confirm that written translations are accurate and understandable to voters, and cannot happen if the materials are translated at the last minute. Several sources can be consulted to verify whether the translation of voting materials is effective. Bilingual coordinators should play key roles in reviewing all of the voting materials and identifying any translations that may be confusing or inaccurate. Master bilingual poll workers, community members who sit on language assistance advisory committees, and language-minority voters themselves can also test and review the usability of in-language materials. After voting materials are distributed, election officials should ask for voter feedback to determine if any of the information in those materials was unclear. That way, steps can be taken to improve the quality of the translations when the materials are distributed again in the future.

iv. Be prepared with backup plans and personnel in case you encounter challenges in providing language assistance.

Election officials should have plans in place for filling the positions of election workers who fail to show up on Election Day, arrive late or leave early, or are asked to leave because of performance issues. Some precincts may experience long lines, particularly in locations where there is a high need for language assistance, creating an urgent need for additional bilingual workers to help process voters more quickly and drive down wait times to vote. In anticipation of these situations, election officials should recruit and train more than the number of bilingual poll workers they know they will need. Those back-up or contingency bilingual poll workers should be directed to report to the elections office, where they can be deployed to the precincts where they are needed. It may be necessary to provide transportation for some of these back-up poll workers, particularly if the precincts where they are assigned to work are a long distance from their own precinct or the central elections office.

⁴⁷ We strongly caution against the use of automated translating programs such as Google Translate to produce in-language versions of websites or other materials. These tools often leave selected words untranslated, and use phrasing that is unnatural or not easily understood by native speakers of languages other than English; these problems can sometimes render automated translations functionally incomprehensible.

Administrators should also maintain cumulative lists of qualified and trained bilingual election workers who may be called in case of emergency need. If and when it proves impossible to identify and recruit sufficient numbers of bilingual poll workers, jurisdictions should consider such potential solutions as hiring interpreters from an agency, contracting for phone interpretation services to work with monolingual poll workers, and arranging in advance to request urgent assistance as needed from community-based organizations' staff and volunteers.

d. Evaluate Your Efforts and Make Evidence-Based Adjustments

Election administrators who wait to be informed of problems with the provision of language assistance do so at peril of becoming subject to protracted, expensive litigation, and an oversight process that may feel onerous. Instead, jurisdictions should actively monitor polling place and election operations, accept and investigate complaints, and discipline personnel who impede the provision of language assistance and voting by language-minority citizens. The process of ensuring accountability should begin with language-minority voters' feedback, including through working with community groups that regularly serve and interact with those voters. Voters' individual comments can be solicited with comment cards and electronic forms placed in election-related locations and on election websites, which ask voters to relate their experiences concerning availability of voting materials and live assistance, poll workers' linguistic abilities, waiting times for voting, and the civility of poll workers and other voting officials.

Election officials can also cooperate with community groups to solicit feedback and better understand the experience and needs of their voters.

Administrators must promptly investigate, and take appropriate action to remedy, any voter complaints they receive. Recognizing the importance of good customer service, election officials should notify voters about the status of their complaints, and follow up to inquire whether voters' concerns have been adequately addressed. Administrators should also routinely compile and preserve records of the hiring and assignment of bilingual employees, of the translation of documents along with details of their distribution in hard copy and electronically, and of the placement of election-related announcements and advertisements and any available indicators of the size of the audience reached thereby.

As our recommendations have made clear, an effective language assistance program for voters is multi-faceted. This means that election officials must regularly evaluate each component of their programs to determine whether it is effective and, if not, steps that must be taken to make it effective. Part of this recurring assessment should occur after each election, as administrators take global stock of successes and areas for future improvement.

V. Examples of Providing Language Access Without a Federal Mandate

As previously discussed in this report, federal language access requirements act as a floor, rather than a ceiling. Therefore, elections official in jurisdictions with significant language-minority populations may voluntarily provide language access or expand upon federal, state, and local language access requirements.

e. Translating Voter Registration Forms

i. Pennsylvania

Absent any legal requirement, the Pennsylvania Department of State worked with local language-minority-serving organizations to translate the State's voter registration form into five languages. In addition to Spanish, for which three of Pennsylvania's jurisdictions are covered under Section 203, the voter registration form was translated into French, Khmer, Korean, Russian, and Vietnamese. The registration form was initially translated at the behest of local organizations that reached out to the Department of State to explain the need to provide translated materials beyond what is required by law. The forms were not translated overnight – the Department of State took time to

ensure translations were correct, following many of the best practices set out in this report. While the forms were not disseminated in paper form, they were posted prominently on the Department of State's election website, www.votespa.com, where they could be downloaded and printed for use. With the advent of online registration in Pennsylvania in 2015 making the process more accessible than ever, the state scaled back its paper offerings and presently provides Spanish, Chinese, and Vietnamese translations of its voter registration form online in printable form.⁴⁸

ii. New York City

In 2016, Mayor de Blasio announced that New York City had translated the state voter registration form into eleven new languages, bringing the total number of translated forms to fifteen languages in addition to English. The new languages include Russian,⁴⁹ Urdu, Haitian Creole, French, Arabic, Albanian, Greek, Italian, Polish, Tagalog, and Yiddish.⁵⁰ Based on its Section 203 requirements, the city provides translated materials in Bengali, Chinese, Korean, and Spanish, but went beyond the federal minimum in order to make the elections process as accessible as possible. In fact, ninety percent of the State's limited-English proficient population is now covered by the translated voter registration forms.

f. Translating Ballots

i. Miami-Dade County and Broward Counties

In reaction to the growing population of Haitian Creole-speaking citizens in South Florida in the late 1990s, the Miami-Dade Board of County Commissioners passed a county ordinance which required Haitian Creole translations of the ballot to be posted in voting booths where a significant portion of the electorate is Haitian-American.⁵¹ Because it does not fall under the statutorily-protected language groups⁵², Haitian Creole is not covered by Section 203, so the only way to require expanded language access for this language-minority group is to do so via changes in state or local law. In the years following Miami-Dade's expansion of language access, neighboring Broward County followed suit with similar Haitian Creole translation requirements for ballots. Unlike in Miami-Dade, the Broward County translation of ballots was not due to a county ordinance. Instead, the longtime county Supervisor of Elections directed the translation after Haitian Creole activists requested it.⁵³

Conclusion

By enhancing and expanding language assistance, election officials have the opportunity to open the process to all their voters. Both election officials and voters benefit from improved compliance with the Voting Rights Act's language assistance provisions. And by going beyond these requirements, election officials demonstrate their commitment to the citizens they serve and provide a better voting experience. The examples in this report demonstrate that better language assistance practices are not only possible, but are an integral part of effective election administration.

48 Pennsylvania Dept. of State, *How and Where to Register to Vote*, available at <http://www.votespa.com/Register-to-Vote/Pages/How-to-Register-to-Vote.aspx#mail> (last visited June 15, 2018).

49 New York City is required to provide the translation in Russian pursuant to state law. N.Y. ELEC. LAW § 3-506.

50 The translated forms are available at <http://www.nyccfb.info/nyc-votes/registering>.

51 See Miami-Dade County Code of Ordinances § 12-16; see also Consent Order at 5-6, *United States v. Miami-Dade County*, No. 02-21698 (S.D. Fla., June 17, 2002), available at https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/miamidade_cd.pdf.

52 See 52 U.S.C. § 10503(e).

53 Alva James-Johnson, "Creole ballots on track for '08," *Sunsentinel.com* (Apr. 7, 2007), available at http://articles.sun-sentinel.com/2007-04-07/news/0704060502_1_ballots-local-haitian-americans-creole.