



Policymakers' 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-sizeable 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, in terms of

- 1 E.g., James T. Tucker, “Enfranchising Language Minority Citizens: The Bilingual Election Provisions of the Voting Rights Act,” *NYU Journal of Legislation and Public Policy* 10 (2006): 206.
- 2 See generally Juan Cartagena, “Latinos and Section 5 of the Voting Rights Act: Beyond Black and White,” *National Black Law Journal* 18 (2004): 201-223.
- 3 U.S. Commission on Civil Rights, “The Voting Rights Act...the first months,” 26, 75, <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, <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, <http://www.theatlantic.com/politics/archive/2015/08/give-us-the-ballot-expanding-the-voting-rights-act/399128/> (last visited September 22, 2015).

participation in elections and personal and social investment in robust democracy. It describes currently-applicable federal and state language assistance requirements, and concludes by suggesting legislative and administrative initiatives that policymakers can advance in order to secure the deeper engagement in civic affairs of Americans who are not yet fully fluent in English.

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 existence.⁹

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

Increases in availability of language assistance in elections have also helped increase the presence of representatives of language-minority communities in elected office. During the 2006 reauthorization of the VRA, Congress found that more than 5,200 Latinos and almost 350 Asian Americans had been elected to office.¹³ Native American candidates, whose communities had not traditionally been represented by their own members, were winning election to local school boards, county commissions and State legislatures in ever-increasing numbers.¹⁴

Some experts have posited that language assistance has more of a symbolic than practical positive effect. If it has increased participation, some have concluded, language assistance has done so primarily among native-born voters who are likely to be fluent in English and to derive only psychological benefit from a multilingual presence in the polls, in the sense that they feel more comfortable and welcomed in polling places in which there is increased descriptive

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 J. of Behavioral Sci. 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, supra note 1.

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

14 Id. at 20.

presence from language-minority communities, and visible provision of multilingual services.¹⁵ Even this symbolic value of language assistance plays a materially important role in encouraging underrepresented communities' civic participation, and thereby sustaining our democratic system.

The process of ensuring meaningful linguistic accessibility in elections does not end with the enactment of legislation, because – unfortunately – many jurisdictions have struggled to faithfully implement the law. For example, Michael Jones-Correa and Israel Waismel-Manor surveyed jurisdictions subject to Section 203 in 2005, and found that one in seven did not have voter registration materials available in covered languages, while one in four lacked the bilingual personnel necessary to provide timely assistance with voting-related inquiries.¹⁶ The Department of Justice's long record of successful litigation against violations of language assistance provisions is itself incontrovertible proof of significant non-compliance with language assistance provisions.¹⁷ Advocates for language-minority voters can and do work with jurisdictions informally to improve their performance in extending access to elections to people not fluent in English, and these efforts do bear fruit, in part because voter advocates can credibly threaten legal action against persistent, deliberate noncompliance. Yet even where jurisdictions act in good faith and cooperate with advocates to improve language assistance in elections, litigation has sometimes proven necessary to ensure the availability of effective language assistance.¹⁸

Available statistics and qualitative reports indicate that language assistance enforcement actions have brought about noticeable improvement in fidelity to the law, which leads to increases in language-minority community members' civic engagement. From a series of interviews conducted by the authors of this report with legal experts and community leaders from jurisdictions that had been the target of successful language assistance enforcement actions, we found widespread agreement that election administrators had significantly improved the quality of bilingual services and increased their interactions with language-minority communities in the wake of successful enforcement actions. One knowledgeable community activist even noted that ancillary polling place problems including under-apportionment of voting machines to Latino precincts, hostility, and unnecessary requests for personal identification had diminished after the language assistance suit against his home jurisdiction was resolved. The closer relationships between election administrators and members of language-minority communities that are formed as a result of the steps recalcitrant jurisdictions are required to take, and the increased presence of bilingual individuals in polling places and election offices, help to defuse any pre-existing tensions and to improve qualitatively the experience of participating in elections.

Improvements that result from enforcement of the VRA's language access provisions have produced notable increases in voter registration and turnout among language-minority communities. In San Diego County, California, 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.¹⁹ 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.²⁰

15 E.g., Rodolfo de la Garza and Louis de Sipio, "Save the Baby, Change the Bathwater, and Scrub the Tub: Latino Electoral Participation after Twenty Years of Voting Rights Act Coverage," in *Pursuing Power: Latinos and the Political System*, ed. F. Chris Garcia (Notre Dame: University of Notre Dame Press, 1997), 72-126; S. Karthick Ramakrishnan, "Voters From Different Shores: Electoral Participation in Immigrant America" (Ph.D. diss., Princeton University, 2002); Rodolfo de la Garza, "Latino Politics," 7 *Ann. Rev. of Pol. Sci.* 91 (2004); Michael Parkin and Frances Zlotnick, "The Voting Rights Act and Latino Voter Registration: Symbolic Assistance for English-Speaking Latinos," 36 *Hispanic J. of Behavioral Sci.* 48 (2014).

16 Michael Jones-Correa and Israel Waismel-Manor, "Verifying Implementation of Language Provisions in the Voting Rights Act," in *Voting Rights Act Reauthorization of 2006: Perspectives on Democracy, Participation, and Power*, ed. Ana Henderson (Berkeley, CA: Berkeley Public Policy Press, 2007), 178.

17 A partial list of DOJ's litigation under the VRA is available on the agency's website. Dept. of Justice, Voting Section Litigation, <http://www.justice.gov/crt/voting-section-litigation> (last visited June 15, 2018).

18 See, for two such examples, DOJ's Memorandum of Agreement of Oct. 6, 2011 with Lorain Co., OH at page 3, discussing prior exchanges between DOJ and County officials and the parties' mutual agreement that additional efforts would be required to meet language assistance obligations, https://www.justice.gov/sites/default/files/crt/legacy/2011/10/13/lorain_moa.pdf; and the preamble to DOJ's Consent Decree of July 22, 2002 with Osceola Co., FL, noting that the County had shown that it appreciated the problem posed and wanted to take action to improve Spanish-dominant voters' access to elections, <https://www.justice.gov/crt/consent-decree-7>.

19 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/agspeeches/2005/080205agvotingrights.htm>.

20 The Battle Over Bilingual Ballots, *supra* note 12, 229.

There is also evidence that improved language assistance efforts motivate language minorities to run for office in greater numbers. Community leaders interviewed by the authors of this report have explicitly acknowledged that the changes that enforcement activity brought about in the conduct of their local elections encouraged them to run for office. In addition, we examined historical lists of candidates in six jurisdictions that settled lawsuits challenging inadequacies in Spanish assistance, and found that in five of the six, Latinos ran for office at the highest rates in the elections immediately following resolution of the legal claim. The one jurisdiction that did not follow this pattern was an outlier in that litigation concerning its language assistance practices was concluded last in time, leaving fewer subsequent elections for analysis than in other jurisdictions examined. Moreover, the jurisdiction's consent decree was extended beyond its original expiration date, a strong indication that the jurisdiction's challenges with providing language assistance are not yet resolved and that residents have not yet experienced the full benefits that successful voting rights litigation brings.

In sum, democracy benefits when jurisdictions commit to and invest in holding elections in which all their citizens can participate, regardless of their ability to read or speak English. The provision of language assistance effectively encourages members of historically underrepresented communities to participate in elections, and ensures that all individuals can vote comfortably and knowledgeably. By increasing parity and deepening relationships between public officials, the communities they represent, and the voters who elect them, effective language assistance efforts increase faith and trust in government; in turn, these sentiments ensure the long-term stability of our society and nation.

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.²¹ 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 group is higher than the national illiteracy rate.²²

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.²³

21 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.

22 52 U.S.C. § 10503(a); 52 U.S.C. § 10503(b)(2). The Census Bureau defines "illiteracy" for Section 203 threshold purposes as having less than a fifth grade education.

23 52 U.S.C. § 10503(a); S. REP. NO. 94-295 at 31. See also, 52 U.S.C. § 10503(b)(4).

i. Current Section 203 Coverage

The Census Bureau published updated Section 203 coverage determinations in December 2016. As of that publication, 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; while 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.²⁴

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.²⁵ Covered jurisdictions must also provide oral assistance at polling sites and publicity about the language assistance prior to Election Day.²⁶

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."²⁷

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 forms of languages or dialects will be effective. For written language assistance, jurisdictions need only provide materials in the one dialect 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 American Indian and 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."²⁸

24 According to the U.S. Census Bureau's announcement of the newly covered jurisdictions. 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>.

25 28 C.F.R. § 55.19; 52 U.S.C. § 10503.

26 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.

27 28 C.F.R. § 55.2(b).

28 28 C.F.R. § 55.17.

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 serve many, or any, 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.”²⁹

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 write³⁰ 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. An assistor can be a non-citizen, someone who is not registered to vote, or even a minor. Congress added Section 208 to the VRA based in part upon its finding that citizens facing language barriers to voting were disproportionately susceptible to having their votes unduly influenced or manipulated, and that ensuring the right to an assistor of choice would guarantee that voters could exercise their right to vote without intimidation or manipulation. 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.

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 voter. Additionally, Section 208 applies to any language-minority group and has no sunset date, so it ensures that language assistance is available to all voters and will remain so.

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 as necessary to voters who attended American schools in which the predominant language of instruction was not English.³¹ 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.³² Section 4(e) has generally been interpreted to require the same kinds of actions mandated by Section 203 that ensure meaningful access to elections 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).³³ 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,

29 28 C.F.R. § 55.16.

30 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.

31 52 U.S.C. § 10303(e).

32 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.

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

including New York State³⁴, Chicago³⁵, and Philadelphia³⁶; 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 origin³⁷. 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 Latino³⁸, or in precincts serving at least 100 registered voters with Latino surnames³⁹. In a settlement agreement finalized in 2012, 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.⁴⁰

IV. Moving Beyond the Minimum Federal Requirements for Language Assistance

The Voting Rights Act is a floor, not a ceiling, and there are a number of existing examples of state and local laws, ordinances, and policies that expand language assistance beyond minimum federally-mandated requirements in order to ensure the meaningful electoral participation of limited-English proficient citizens. Such expansions have taken many forms, including adding covered languages and lowering thresholds at which language assistance requirements apply. At the same time, there are states and localities whose laws and regulations contradict Sections 203 and 208 by purporting to restrict protections afforded by these sections of the VRA. Lawmakers who seek to increase engagement in elections should advocate, and pursue adoption of, state and local policies that complement federal language assistance provisions. In the following sections, we recommend and provide examples of five model initiatives: lowering coverage thresholds, expanding the list of covered languages, eliminating provisions that restrict voter assistance and expanding rights to be assisted in the voting process, permitting the hiring as bilingual poll workers of 16- and 17-year olds and of legal permanent residents, and providing dedicated funding for the conduct of exemplary language assistance programs.

a. Lower Thresholds for Language Assistance Coverage

Section 203's coverage threshold – 5 percent of voting-age citizens or 10,000 voting-age citizens who are members of a single minority language group, have depressed literacy rates, and do not speak English very well – imposes requirements that reach millions of limited-English proficient voters, but also leaves many significant populations of Americans who are not fully fluent in English without any guaranteed access to in-language assistance. For example, Luzerne County, Pennsylvania is one of the top ten counties in the nation in terms of the growth of its Latino population between 2007 and 2014, according to the Pew Research Center. American Community Survey 5-year data for 2011-2015 show that there are nearly 3,200 Spanish-speaking adult, U.S. citizen residents of the county who are qualified to vote but not fluent in English. These individuals are a significant and growing presence in their communities, but their numbers still fall well short of those required under Section 203 to trigger language assistance obligations.

States and localities can, and have, set the bar lower than Section 203 in order to ensure the provision of language assistance that more comprehensively meets the needs of their voters. In California, state law requires language assistance efforts to be undertaken for precincts in which at least 3 percent of voting-age citizens are limited-English proficient, or where stakeholders can otherwise demonstrate to the satisfaction of county elections officials or the Secretary of State the existence of significant local need for materials and assistance in languages other than English.

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

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

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

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

38 *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>.

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

40 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.

Counties that encompass such precincts must make reasonable efforts to recruit bilingual voting registrars and poll workers for covered precincts who are fluent in the language or languages spoken by residents. That recruitment must be conducted in conjunction with community stakeholders and through public service announcement placements.⁴¹ In addition, election officials in those counties and precincts that meet the 3 percent threshold must both post and make available ballot translations, with additional materials to be made available at specific precincts determined to meet a twenty percent threshold of voting-age residents who are members of a language minority who lack the English skills to vote without assistance.⁴² California’s Secretary of State must conduct a reevaluation at least once every four years of precinct-level voting-eligible populations in order to produce updated lists of precincts subject to language assistance requirements imposed by state law.⁴³

Colorado law also sets a lower trigger for some language assistance requirements by mandating that if at least 3 percent of the eligible electors served by a precinct do not speak English, the county clerk and recorder who oversee the voting precinct must “take affirmative action to recruit full-time or part-time staff members who are fluent in the language used” by the language-minority citizens.⁴⁴ County officials are directed to recruit bilingual personnel by placing public service announcements in newspapers and on radio and television, especially in those outlets that serve speakers of languages other than English.

In Connecticut, state law requires municipalities to employ or retain Spanish translators on a stand-by basis if those municipalities’ populations are composed of at least 1 percent and at least 500 Latinos, according to Census data.⁴⁵ Determinations are made on an annual basis by the Connecticut Secretary of State’s office, which sends notifications to subject jurisdictions and publishes a list of them on its website. In addition, Connecticut jurisdictions that are home to at least 500 Latino U.S. citizens who constitute at least 1 percent of the municipality’s population must send required notices of removal from voter registration lists in both English and Spanish.⁴⁶

Prior to the enactment of Section 203, the state of New Jersey adopted provisions that condition requirements to make available materials and assistance in Spanish upon at least 10 percent of an election district’s registered voters being primarily Spanish speakers. The specific accommodations required include publication and mailing to registered voters of sample ballots in Spanish⁴⁷, dissemination in covered polling places of bilingual complaint forms⁴⁸ and bilingual affidavit forms for challenged voters⁴⁹, publication in both English and Spanish of advance notice of election dates⁵⁰, and recruitment of at least two bilingual members of District Boards of Election⁵¹. The state’s laws likely require efforts beyond those mandated by federal law because, unlike Section 203, they take into account all registered voters who prefer to speak Spanish, whether or not they are also able to communicate effectively in English, in determining coverage. These provisions demonstrate that states and localities can extend the availability of language assistance not only by requiring it in places whose limited-English proficient, voting-eligible populations reach a threshold number lower than 5 percent or 10,000 individuals, but also by counting a larger segment of potential voters who speak languages other than English for the purpose of applying language assistance requirements.

Policymakers may consider laws that, like New Jersey’s, count eligible or registered voters who speak languages other than English regardless of their degree of fluency in English, as well as laws that count voting-age limited-English proficient populations, or percentages of voting-age citizens who are foreign-born or belong to a particular racial or ethnic group.

41 Cal. Elec. Code § 12303.

42 Cal. Elec. Code § 14201 (as amended by A.B. 918 (2017)).

43 Cal. Elec. Code § 14201(f) (as amended by A.B. 918 (2017)).

44 COLO. REV. STAT. ANN. § 1-2-202(4).

45 CONN. AGENCIES REGS. § 9-4-1.

46 CONN. AGENCIES REGS. § 9-35-1.

47 E.g., N.J. Rev. Stat. § 19:23-22.4; id. § 19:49-4.

48 Id. § 19:32-4.1.

49 Id. § 19:15-18.1.

50 Id. § 19:12-9.

51 Id. § 19:6-1.

b. Coverage for Languages Not Included in Section 203

The Section 203 coverage formula only provides assistance to members of specific language-minority groups, namely eligible voters who are “American Indian, Asian American, Alaskan Natives, or of Spanish heritage.”⁵² This leaves many sizeable language-minority communities without coverage: for example, more than 120,000 residents of Miami-Dade County, Florida speak Haitian Creole, and just over 47 percent of those individuals report that they are not fully fluent in English; similarly, nearly 68,000 residents of Cook County, Illinois are predominantly Polish speakers who are limited-English proficient. To combat gaps in coverage due to the limited universe of languages in which Section 203 requires assistance, some states and localities have adopted policies that require election materials and interpretation to be provided in additional languages. These states recognize that sizeable populations of citizens in need of linguistic help exist, and that mandating assistance for these voters in statute is an important aspect of ensuring equal opportunity to vote for all citizens.

At least four states have taken steps to ensure that certain election-related documents are available in widely-spoken languages not covered by Section 203. Some mandate provision of information in a specified language or languages, such as Maine, which requires its Secretary of State to make available to requesting municipal clerks ballot instructions translated into French.⁵³ New York similarly explicitly requires municipalities with at least one million residents to provide voting assistance in Russian, to include the posting on cities’ websites of Russian versions of all materials available in a language other than English, and dissemination of booklets containing instructions in Russian for completing voter registration forms and requesting absentee ballots, as well as general information and the answers to frequently-asked questions in Russian.⁵⁴

Some state laws that expand language assistance beyond the limited set of languages covered by federal law set criteria for determining the languages in which assistance is to be offered, but do not name particular languages. In Minnesota, for example, state law gives the Secretary of State authority to produce voting instructions in languages other than English, while requiring the State Demographer to “determine and report to the Secretary of State the languages that are so common in this state that there is a need for translated voting instructions.”⁵⁵ California language assistance law explicitly creates an obligation to provide materials in Spanish, but also requires that jurisdictions in the state post translated ballots and ballot instructions “in other languages” not specifically covered by Section 203 “if a significant and substantial need is found” by the Secretary of State.⁵⁶ At least one copy of the translated ballot must be “made available for voters at the polling place to use as a reference when casting a private ballot,” and more reference copies must be made available at specific precincts if the population of voting-age residents who are members of a single language minority and lack sufficient skills in English to vote without assistance reaches a certain threshold.⁵⁷ While it stops short of making it mandatory that voting information be provided in any languages other than Russian and those covered in federal law, the New York law previously cited also empowers municipalities to go beyond the boundaries of federal law by permitting a board of election in a large city to “include other languages on its website and in [its voting information] booklet.”⁵⁸

Municipalities have also moved to expand access to elections to speakers of languages not covered by Section 203. Although legislative and regulatory language assistance requirements are the most durable and ensure that voters can depend upon the availability of in-language materials and live assistance even as elected and appointed personnel change, jurisdictions can and sometimes have made translations and interpretation available voluntarily, in the absence of binding law. For example, although required only to provide Spanish assistance by federal law, Philadelphia County, Pennsylvania voluntarily makes voter registration applications available in Russian and French, in addition to Section 203-covered languages such as Korean, Vietnamese, Khmer, Chinese, Japanese and Tagalog.⁵⁹ Los Angeles County

52 52 U.S.C. § 10503(e); see also *supra* note 21.

53 ME. REV. STAT. ANN. tit. 21-a, § 603(5).

54 N.Y. ELEC. LAW § 3-506.

55 MINN. STAT. ANN. § 204B.27.

56 CAL. ELEC. CODE § 14201.

57 CAL. ELEC. CODE § 14201(b) (as amended by A.B. 918 (2017)).

58 N.Y. ELEC. LAW § 3-506.

59 Office of the Philadelphia City Commissioners, Register to Vote, <http://www.philadelphiavotes.com/en/voters/registering-to-vote> (last visited Mar. 19, 2018).

must provide assistance to voters in Cambodian (Khmer), Chinese, Filipino (Tagalog), Korean, Vietnamese, and Spanish. The County does not stop there, however; its website contains materials translated into the additional, non-Section 203 languages of Farsi, Armenian, and Russian, as well as the non-mandated Section 203-covered languages of Hindi, Japanese, and Thai.⁶⁰ Both states and municipalities maximize access to elections by making efforts to make information and assistance available in any languages that are widely spoken at a local level, and voluntary expansions of language assistance should concentrate on those African, European, Caribbean and Middle Eastern languages not treated in federal language access law.

c. Expansion of Right to Assistance in Voting and Elimination of Contradictory Provisions

Section 208 of the VRA seeks to ensure that people who require assistance with voting are able to obtain it for themselves, even where the necessary assistance is not provided by municipal or other election administrators. Section 208 cites, as permissible predicates for being allowed to bring an assistor of choice into the voting booth, a voter's blindness, disability, or inability to read or write.⁶¹ Although the provision is explicitly broad in scope, some jurisdictions have nonetheless taken legislative action to guarantee the most expansive rights possible to self-obtained assistance. Other jurisdictions have enacted apparently contradictory restrictions on assistance with voting that policymakers should consider repealing or amending to assure compliance with federal law and avoid unnecessarily expensive litigation.

i. Extending the Right to Assistance to Literate Voters Without Disabilities

Election administrators generally understand that the VRA empowers people with disabilities, and people unable to read and write in English, to secure voting assistance from the person of their choice (other than an employer or union representative), but may stop at the limits of those categories and deny the right to assistance to, for example, individuals who possess some English literacy but who feel more comfortable voting with assistance from an interpreter. In order to ensure against any such restrictive interpretation of the right to assistance, some states have eliminated altogether the setting of conditions upon which this right is predicated. State laws in jurisdictions including Alabama, Alaska, Arizona, California, New Hampshire, North Dakota, and Vermont provide that any voter is allowed to have someone of their own choice assist them in voting, regardless of disability or literacy.⁶² For example, Alabama law says that, "Any person who wishes assistance in voting may receive assistance...The voter is not required to state a reason for requesting assistance."⁶³ North Carolina law is expansive in some respects and purports to potentially restrict the federal protections on the other; it allows voters who do not meet the categories of disability or impairment set out in its state law to seek assistance for any or no reason where that assistance is provided by the voter's spouse, sibling, parent/stepparent, grandparent, child/stepchild, grandchild, or parent-in-law or sibling-in-law.⁶⁴ However, it purports to only allow voters the assistant of their choice regardless of relationship to the voter if they meet specific definitions of disability or impairment as they relate to marking the ballot or entering the voting booth.⁶⁵

Some states have chosen to maintain explicit qualifications that entitle voters to assistance while establishing triggers that are more inclusive than Section 208's basis in inability to read or write. For example, Colorado allows anyone who has any "difficulties with the English language" to request voting assistance if they are otherwise unable to vote.⁶⁶

60 Los Angeles City Clerk Election Division, <http://clerk.lacity.org/Elections/index.htm> (last visited Mar. 19, 2018).

61 52 U.S.C. § 10508.

62 E.g., ALA. CODE § 17-9-13 (a); ALASKA STAT. § 15.15.240; ARIZ. REV. STAT. § 16-580; CAL. ELEC. CODE § 2300(A)(6); N.H. REV. STAT. § 659:20; N.D. CENT. CODE § 16.1-13-27; VT. STAT. tit. 17 § 2569.

63 ALA. CODE § 17-9-13 (a).

64 N.C. GEN. STAT. § 163A-1139.

65 Id.

66 COLO. REV. STAT. § 1-7-111.

Similarly, Illinois allows anyone unable to “read, write, or speak the English language” to receive assistance.⁶⁷ In these states, as in those cited above, voters who possess some English literacy are guaranteed the right to assistance from an interpreter whenever they prefer and are able to secure it.

ii. Eliminating Restrictions on the Right to Assistance

Unfortunately, some states purport to limit the right to assistance in ways that may contradict the spirit or letter of Section 208. By taking action to eliminate any such restrictions, policymakers not only ensure that limited-English proficient voters enjoy a meaningful opportunity to vote intelligently, but also safeguard against legal challenges that are likely to necessitate significant expenditures for little benefit.

Although Section 208 gives individuals the right to be assisted by any person of their choice, other than an employer or union representative, some states attempt to place limitations on who may provide live assistance to a voter in need. For example, Michigan law states that voters may be assisted only by interpreters determined to be necessary and called by Boards of Elections or by inspectors of elections.⁶⁸ These provisions suggest that only elections officials and not voters themselves may choose interpreters to provide assistance, or may serve as assistors themselves. At least two other states, Nebraska and Missouri, limit who may be chosen to assist an individual in voting. In Nebraska, state law only allows for assistance by a “relative or friend” of the voter’s selection, instead of anyone of the voter’s choice.⁶⁹ In Missouri, only someone who is voting at a polling station can assist another voter.⁷⁰ If a voter’s family member is unable or does not wish to vote in the same location as the voter needing assistance, Missouri’s law would purport to prevent that family member from assisting the 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 208⁷¹, but this provision narrowly defines “assistance” as “assistance in marking the ballot”⁷². A separate provision authorizes requests for interpretation, 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.”⁷³ 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.⁷⁴ 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 2015.⁷⁵ In August 2017, the Fifth Circuit Court of Appeals affirmed the district court decision that the Texas law requiring interpreters to be registered voters violates the Voting Rights Act.⁷⁶ In the opinion, the appeals court noted District Judge Patrick Higginbotham’s finding that the Texas Election Code provision “flatly contradict[s] Section 208.”⁷⁷

Although Section 208 does not limit assistors in any way except to prohibit them from helping voters over whom they wield influence based on employment or union affiliation, at least four states have apparently contradictory laws in effect that restrict the number of voters a single person can assist during any particular election. Georgia law prohibits an individual from assisting more than ten voters.⁷⁸ Missouri does not allow someone to assist more than

67 10 ILL. COMP. STAT. ANN. § 5/17-14 (emphasis added).

68 MICH. COMP. LAWS § 168.736; MICH. COMP. LAWS § 168.751.

69 NEB. REV. STAT. § 32-918.

70 MO. REV. STAT. § 115.409 (restricting to only certain categories persons admitted to the polling place).

71 TEX. ELEC. CODE § 64.032(c).

72 TEX. ELEC. CODE § 64.032(a).

73 TEX. ELEC. CODE § 61.032.

74 TEX. ELEC. CODE § 61.033.

75 “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>.

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

77 Id. at 615.

78 GA. CODE § 21-2-409(b)(2).

one voter.⁷⁹ Minnesota limits individuals to assisting no more than three voters.⁸⁰ Arkansas does not allow assistants other than poll workers, county clerks, and deputy county clerks to assist more than six voters.⁸¹ Finally, the state of Georgia risks being found in violation of Section 208 by maintaining two separate standards in state law applicable to federal and state elections. While applicable law acknowledges a broad right to assistance in federal elections⁸², it also specifies that in non-federal elections, voters may seek assistance only from other voters registered in the same precinct or from a voter's parent, grandparent, aunt or uncle, sibling, spouse, child, grandchild, niece or nephew, child-in-law, parent-in-law, sibling-in-law, or caregiver.⁸³ These two separate sets of rules are reflected not just in the law but also in the state's Poll Worker Training Manual.⁸⁴ The Voting Rights Act is predicated on the Fourteenth and Fifteenth Amendments, however, and its protections and requirements therefore apply to all elections, not merely federal elections.

d. Employment of Youth and Legal Permanent Residents as Poll Workers

One of the most challenging aspects of providing comprehensive, high-quality language assistance to voters is the identification, recruitment, and training of sufficient numbers of bilingual employees. Many election-related jobs are temporary, must be filled by U.S. citizens, and are not sufficiently well-paid to support an individual, and these characteristics severely limit the universe of individuals willing and able to accept that employment. Bilingual candidates are particularly hard to find, but policymakers can ease the difficulty of filling critical positions and encourage the future civic engagement of people not yet eligible to vote by permitting election authorities to hire 16- and 17-year olds and legal permanent residents ("LPRs"). All LPRs are eligible to work in the United States, and after three or five years of residence in the United States, all are eligible to apply for U.S. citizenship.

At least two states, California and Connecticut, have statutes that encourage hiring people as young as 16 to serve as bilingual poll workers. In Connecticut, 16- and 17-year old U.S. citizens may serve as translators in the town of their residence.⁸⁵ California law allows election officials to appoint "not more than five pupils per precinct . . . notwithstanding his or her lack of eligibility to vote" as long as the pupil is a citizen or LPR in the United States.⁸⁶ Many California counties have high school partnerships to recruit students to serve as poll workers, and a number of jurisdictions are also beginning to reach out to local community colleges as a source of younger, bilingual poll workers. For example, during the 2012 General Election the vast majority of San Francisco's bilingual poll workers were drawn from high schools, and the strong staffing level left only one polling location without a bilingual poll worker.⁸⁷

California also allows as many as five LPRs to be hired as poll workers for each precinct.⁸⁸ The state's law explicitly states its intention to promote civic engagement, but the provision has also significantly broadened the pool of potential bilingual poll workers in a state desperately in need of qualified bilingual personnel. LPR poll workers interviewed by Asian Americans Advancing Justice-LA ("Advancing Justice-LA") have reported putting their linguistic skills to good use and feeling invigorated by the experience of being a part of elections. For example, A.F., a resident of Santa Barbara County, had worked during several elections since passage of the law that made it possible, and told Advancing Justice-LA, "Because I am a Spanish speaker, I was able to assist the Spanish-speaking voters on Election Day. I got to explain to them the whole process when they walked in -- everything, step by step, on how to cast their vote. It was a great feeling that I could help, and I just loved the whole experience. Now, I can't wait to become a U.S. citizen so I can vote myself!"

79 Mo. REV. STAT. § 115.445(3).

80 MINN. STAT. § 204C.15.

81 ARK. CODE § 7-5-310(b)(4)(B).

82 GA. CODE § 21-2-409(b)(1).

83 GA. CODE § 21-2-409(b)(2).

84 Georgia Secretary of State, The Poll Worker Manual, 45-46 (2016), available at <https://georgiapollworkers.sos.ga.gov/Shared%20Documents/Georgia%20Poll%20Worker%20Training%20Manual.pdf>.

85 CONN. GEN. STAT. § 9-235d(a).

86 CAL. ELEC. CODE § 12302(b)(1).

87 Asian Americans Advancing Justice, Voices of Democracy: Asian Americans and Language Access During the 2012 Elections 26 (August 2013), available at <http://vwww.advancingequality.org/sites/aaajc/files/Full-layout-singlesv1-072313.pdf>.

88 CAL. ELEC. CODE § 12302(c).

e. Funding for and Regulation of Community Outreach and Resource Development

Conducting accessible elections in which all eligible citizens can participate fully regardless of their linguistic abilities requires effort and support from public officials who exercise oversight of elections. At a minimum, election administrators must secure reliable translations of materials and instructions, make arrangements to ensure availability of live assistance in-language, and spread awareness about bilingual elections so that voters not fully fluent in English can and do take advantage of accommodations. Ideally, policymakers should dedicate funding for this work, or otherwise collaborate with election administrators on budgeting that ensures that funds are available to pay for expenses such as customized, professional translation services, placement of advertising in languages other than English, printing of multilingual signage, and the addition of a Bilingual Coordinator to permanent election administration staff. In addition to providing funding for bilingual elections, policymakers can informally encourage or require by regulation outreach and community engagement activities that facilitate the success of language assistance programs by leveraging existing resources.

At least two states, New Mexico and California, have created official minority language outreach coordinators, advisory committees, or work groups charged with educating limited-English proficient voters and devising strategies that most effectively serve these voters. In New Mexico, Native American Elections Information Program Liaisons have been deployed in several counties with sizable Native American populations.⁸⁹ They oversee voter outreach, registration drives, and voter education presentations on reservations that are conducted in the language of the area's Native American population. These Liaisons also conduct poll worker recruitment and training. In California, a statute directs the Secretary of State to establish a Language Accessibility Advisory Committee ("LAAC") to meet at least four times a year to advise and provide recommendations regarding language accessibility for elections and elections materials to the Secretary of State.⁹⁰ The LAAC has consulted with and given constructive recommendations to the Secretary of State's office around a wide range of voting-related legislation, including the implementation of modernized voter registration procedures at state agencies and legislation allowing jurisdictions to conduct voting by mail and at consolidated in-person vote centers.

Two examples of local jurisdictions that have institutionalized official coordinators or advisory committees are Cook County, Illinois and San Diego County, California. In 2012, Cook County had a Chinese bilingual outreach worker employed by the Chicago Board of Election Commissioners.⁹¹ San Diego County's Registrar's Office has an official Chinese Language Advisory Committee which focuses on translation issues and community outreach.⁹²

Some jurisdictions have taken affirmative steps other than creation of coordinator positions or advisory committees to ensure that election administrators collaborate with representatives of language-minority communities. For example, the Clark County, Nevada Board of Elections met biweekly in the months preceding the 2012 General Election with a local Filipino American Voters Outreach Advisory Committee, headed by the Asian Pacific American Labor Alliance of Nevada.⁹³ This public-private working group formed subcommittees to conduct community outreach and education, recruit bilingual poll workers, facilitate connections with the Filipino-American community and review translations of written materials.⁹⁴ Similarly, in early June of 2012, the King County, Washington Elections Director met with an informal advisory committee created by OneAmerica and Chinese- and Vietnamese-American community leaders and organizations.⁹⁵ These community leaders reviewed the county's Section 203 implementation plan, and made recommendations around poll monitoring at accessible voting centers and training poll workers on Section 203 implementation.⁹⁶ The Chicago Board of Election Commissioners has sought advice from community-

89 New Mexico Secretary of State, Native American Elections Information Program Liaisons, http://www.sos.state.nm.us/Voter_Information/NAEIP_Coordinators.aspx (last visited Mar. 20, 2018).

90 Cal. Elec. Code § 2600; Language Accessibility Advisory Committee, California Secretary of State Alex Padilla, <http://www.sos.ca.gov/elections/language-accessibility-advisory-committee/> (last visited Mar. 20, 2018).

91 Voices of Democracy, *supra* note 87, at 20.

92 *Id.* at 7.

93 *Id.*

94 *Id.*

95 *Id.*

96 *Id.*

based organizations including Asian Americans Advancing Justice-Chicago, the Indian American Bar Association of Chicago, and the South Asian American Policy and Research Institute about where to place bilingual poll workers and materials.⁹⁷ Similarly, the Alameda County, California Registrar of Voters has worked with Asian Americans Advancing Justice-Asian Law Caucus and other partner organizations to gather and analyze data that reveal the amount and type of language assistance needed in the county.⁹⁸

Regulations that mandate or incentivize community engagement to strengthen language assistance help ensure not only strong public awareness of accessibility programs and effective targeting of efforts, but also the quality of in-language communications. Policymakers may take steps to urge the involvement of community leaders in creation of materials in languages other than English, for example, or to prescribe review procedures prior to production of documents. In California, state law sets forth specific requirements for preparation of translated election materials, including consulting with community-based organizations representing language minorities, inviting public review of resulting ballot translations, and requiring those translations to be those actually used.⁹⁹ California law further requires that translators of ballot measures and ballot instructions possess particular professional qualifications.¹⁰⁰

V. Conclusion and Resources

Significant advice and other resources exist for policymakers ready to take action to strengthen language-minority citizens' participation in our democracy. The authors of this document would be pleased to provide assistance and introductions to individual and institutional colleagues. In addition, the Election Assistance Commission possesses over 15 years of experience advising and creating resources around bilingual voting, including Election Glossaries in Section 203-covered languages, for election administrators and policymakers responsible for election oversight, and is an important partner in this work. The Department of Justice's 2011 guidelines are another helpful resources for policymakers looking to expand language access in elections. Through utilizing the available resources to enhance and expand language assistance for language-minority citizens, policymakers can open the process to all voters.¹⁰¹

97 Id. at 8.

98 Id.

99 CAL. ELEC. CODE § 9054.

100 CAL. ELEC. CODE § 14111 (stating, "(a) A certified and registered interpreter on the Judicial Council Master List. (b) An interpreter categorized as "certified" or "professionally qualified" by the Administrative Office of the United States Courts. (c) From an institution accredited by a regional or national accrediting agency recognized by the United States Secretary of Education. (d) A current voting member in good standing of the American Translators Association. (e) A current member in good standing of the American Association of Language Specialists.").

101 28 C.F.R. § 55.1 et seq., available at <https://www.justice.gov/crt/page/file/927236/download>.