

**LANGUAGE BARRIERS TO VOTING:
FINDINGS FROM APALC AND CAA'S NOVEMBER 2006 POLL
MONITORING IN LOS ANGELES, ORANGE AND
SAN FRANCISCO COUNTIES**



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BACKGROUND OF ORGANIZATIONS

The Asian Pacific American Legal Center of Southern California (APALC) was founded in 1983 and is the largest organization in the country focused on providing multilingual culturally sensitive legal services, education, and civil rights support to Asians and Pacific Islanders (APIs). APALC's mission is to advocate for civil rights, provide legal services and education, and build coalitions to positively impact Asians and Pacific Islanders and to create a more equitable and harmonious society. APALC works on a range of issues affecting APIs and immigrants, including workers rights, consumer rights, immigration, citizenship, domestic violence, hate crimes, health care, language access, and voting rights.

Founded in 1969, Chinese for Affirmative Action (CAA) is a progressive voice in the Asian and Pacific American (APA) community, advocating for policies that address systemic racism, and ensure meaningful access for APAs and other communities of color to education, public services, employment, and the means of civic participation.

APALC and CAA would like to extend our sincere appreciation to the following groups who recruited volunteers and otherwise assisted to make this poll monitoring effort a reality: Asian Law Caucus, the Bay Area Immigrant Rights Coalition, Korean Resource Center, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, the National Korean American Service and Education Consortium, the Orange County Asian and Pacific Islander Community Alliance, and the Partnership for Immigrant Leadership and Action.

INTRODUCTION

In November 2006, as part of an ongoing effort to assess and improve language access for LEP voters, APALC and CAA led a network of civil rights advocates in poll monitoring of 182 polling sites in Northern and Southern California. Monitors observed 58 polling places in Los Angeles County, 28 polling places in Orange County, and 96 polling places in San Francisco County. Poll monitoring efforts assessed both overall accessibility and compliance with specific language assistance requirements of federal and state voting rights laws. Over the years, poll monitoring reports have documented a range of common problems at poll sites.¹ When LEP voters do not receive the language assistance they need to vote, they either experience difficulty in voting or leave the poll site without voting altogether. This report summarizes language barriers manifested in the two primary forms of language assistance: bilingual poll workers and translated documents. It concludes with recommendations for improving language assistance through better compliance with existing voting rights laws.

According to the 2000 U.S. Census, over 12 million Californians speak a language other than English at home. Of this population, approximately half, or over 6 million Californians, are deemed "limited-English proficient" and face daily barriers to participating fully and equally in civic life. California's growing population of limited-English proficient (LEP) voters requires paying closer attention to policies that address language barriers at the polls and ensure new

¹ APALC and CAA's poll monitoring reports from past elections are available at www.aacre.org. Additionally, *Sound Barriers: Asian Americans and Language Access in Election 2004*, produced by the Asian American Justice Center in 2005, provides an overview of poll monitoring observations from eight Section 203-covered jurisdictions across the country during the November 2004 election.

voters have accessible information about the voting process. Language barriers at the polls threaten the very idea of a participatory democracy where every individual has both a right and an obligation to participate in the decisions that impact their lives. Many systemic barriers to voting, particularly those faced by new and LEP voters, can be addressed by ensuring compliance with existing federal and state laws mandating language assistance at the polls.

Enshrined in federal, state and local laws, the right to cast a vote regardless of the ability to speak English is well established. Despite such voter protections, challenges to effective implementation of language assistance means many LEP voters face enormous language barriers at the polls. Language barriers disproportionately impact Asian American and Latino voters. Census 2000 data show that 39% of Asian Americans and 43% of Latinos statewide are limited English proficient and experience some difficulty communicating in English. Exit polling conducted during the November 2004 election shows that 40% of Asian American voters in Los Angeles County and 37% in Orange County were limited English proficient.²

SUMMARY OF FINDINGS

Poll Workers: Poll worker ignorance of legal requirements and failure to accommodate limited-English proficient voters

In all three counties, poll monitoring revealed missing or an inadequate number of bilingual poll workers. Monitors also observed a number of instances where poll workers were ignorant of the legal requirements to provide language assistance and uninformed about the language resources they could draw on to assist voters. Poll monitors also observed poll workers who overtly or through their actions showed a negative attitude toward language assistance, for example by making disparaging remarks about voters' limited English skills. Failure to provide language assistance also took less visible forms in situations where poll monitors observed bilingual poll workers who were passive, failed to display signage or badges informing voters of the availability of language assistance, or were unaware of valuable language assistance resources such as free telephonic interpreter services.

San Francisco

For precincts with Cantonese language requirements, the Department of Elections (DOE) provided adequate bilingual staffing at most of the sites. Among Spanish language polling places, however, two of the busiest sites did not have Spanish bilingual poll workers. Monitors observed 3 sites where more bilingual poll workers were needed to serve the large numbers of LEP Chinese and Spanish speaking voters.

If a LEP voter goes to a polling place that did not have a bilingual poll worker, poll workers are instructed to contact the DOE multilingual hotline which provides Arabic, Cantonese, Mandarin, Russian, Spanish, Tagalog and Vietnamese language assistance on Election Day. However, poll workers at nearly 40% of the monitored sites were not aware of the multilingual hotline at the Department of Elections. Poll monitors surveyed the poll workers or inspectors on what they would do if a LEP voter came into their site and they did not have a bilingual poll worker. Responses illustrate the need for more effective training on language assistance obligations and

² November 2004 Southern California Voter Survey, Asian Pacific American Legal Center.

resources. For example, on poll worker replied that rather than calling the DOE hotline for the voter, they would “speak very slowly” to the LEP voter or tell the voter to call a friend. Another poll worker replied that voters must bring their own translator. Several poll workers said they would direct voters to another polling place.

Voters and poll workers rely on inspectors to provide guidance and accurate information at each polling place. While there were inspectors who were helpful and informed of the correct voting protocols, there were, unfortunately, inspectors who were rude and impatient to voters or could not help poll workers with their assigned duties. There were even a couple of inspectors who were unaware of the language capacity of their bilingual poll workers.

Los Angeles County

Although poll monitors found poll inspectors and poll workers to be cooperative, at least a quarter of poll sites observed had at least one poll worker missing. Additionally, some poll workers were misapplying federal and state laws – poll workers at five sites erroneously asked voters to show identification even though the voters were not subject to the voter identification requirements of the Help America Vote Act (HAVA), and poll worker at five sites suggested that voters whose names were not on the list of voters go to another poll site without informing the voters of their right to cast provisional ballots.

At other poll sites, poll monitors observed bilingual poll workers lacking to help voters who needed language assistance. At nearly 40% of poll sites, bilingual poll workers did not wear badges identifying themselves as being able to provide language assistance.

Orange County

Although poll monitors found poll inspectors and poll workers to be cooperative, nearly 20% of poll sites observed had at least one poll worker missing, and over 21% of poll inspectors indicated that they had no prior experience working either as a poll inspector or a poll worker.

Poll monitors did observe improvements in the number of bilingual poll workers wearing badges identifying themselves as speaking another language, and in the number of poll sites with signs posted indicating the availability of bilingual poll workers.

Translated materials: Inaccessibility of translated materials and poorly translated documents

All three counties had problems ensuring translated materials were fully accessible to voters. Poll monitors observed instances where poll sites were not supplied with translated materials, or translated materials were stacked underneath tables, left in boxes or otherwise inaccessible to voters.

San Francisco

Nearly half (49%) of monitored poll sites failed to provide bilingual signage and voting materials in Chinese and Spanish. Of the 96 precincts visited, 47 did not have the bilingual voter information pamphlet. It was also difficult for LEP voters to identify bilingual poll workers since 22 polling places had workers who did not wear name tags to notify voters of the availability of language assistance. 23 of the polling places did not have the table cards outlining

the available multilingual services and 18 did not have table cards with bilingual messages of the Eagle optical scanner.

While most of the inspectors displayed the materials after our poll monitors mentioned irregularities, a number of inspectors were unaware of the need to post bilingual signage and to make bilingual voting materials visible for LEP voters. There was even one inspector who told the monitor that it was “too early” to put the materials out and refused to do so.

There were also 25 sites where bilingual signage and materials such as voter information pamphlets, name tags, multilingual voter services cards and Eagle message cards were present at the respective polling places, but were not clearly visible for voters. Monitors saw many of the bilingual resources hidden in stacks and nametags covered under clothing.

Los Angeles

The 58 poll sites that were observed had some translated materials posted, but not others. Poll sites generally displayed translated how-to-vote instruction cards and signs indicating the availability of bilingual poll workers. However, over 90% of poll sites provided provisional ballot envelopes only in English without making the translated photocopies available, and over 70% of poll sites did not have telephone referral cards displayed listing the Registrar-Recorder/County Clerk’s hotline number for voters to call and receive language assistance. Additionally, nearly 20% of poll sites failed to have translated sample ballots available, which are critical to limited English proficient voters’ ability to use the Ink-a-Vote machine. Lastly, while the majority of poll sites had voter bill of rights signs displayed, the signs were generally locating lying on a table rather than hung on a wall to make the signs more visible.

Orange County

Poll monitors observed noticeable improvements from the June 2006 election. Nearly all sites had translated how-to-vote instruction cards, sample ballots, and voter bill of rights signs. In contrast, a quarter of poll sites lacked these translated materials during the June election. Despite these improvements, two-thirds of poll sites provided provisional ballot envelopes in English without making translated versions available.

EXISTING FEDERAL AND STATE LAWS

Both federal and state laws require jurisdictions that meet a certain threshold of limited English proficient voters to provide specific forms of language assistance. Massive civil rights marches and the murders of voting rights activists spurred the advance of the Voting Rights Act of 1965. This wide-sweeping legislation was a much needed systemic federal intervention that addressed states’ resistance to enforcing the 15th Amendment’s guarantee that the right to vote shall not be denied or abridged on the basis of race, color or previous condition of servitude. In 1975, based on testimony about the experiences of Latino and Asian American limited English proficient voters, Congress permanently banned literacy tests and enacted Section 203 of the Voting Rights Act.

In requiring certain jurisdictions to provide language assistance to voters, Section 203 is recognition of the intimate relationship between language access and discrimination based on race, ethnicity and national origin. Specifically, Sections 203 and 4(f)4 of the Voting Rights Act

(VRA) require jurisdictions with high concentrations of limited English proficient voters to provide language assistance.

California has also enacted legislation to protect the rights of language minority voters, Sections 14201 and 12303 of the Elections Code delineates language assistance requirements for counties and precincts with a designated percentage of limited English proficient voters who share a common language.

Federal Law: Section 203 of the Voting Rights Act

Nearly half of California's 58 counties trigger language assistance obligations under Section 203 of the federal Voting Rights Act.³ Currently, the Voting Rights Act requires 26 counties in California to provide bilingual voting assistance in Spanish, 7 counties to provide assistance in at least one Asian language, and 2 counties to provide assistance in Native American languages.⁴

Jurisdictions covered by these provisions are required to provide three types of assistance:

- 1) translations of written materials, such as ballots, sample ballots, provisional ballots, and informational materials;
- 2) oral assistance at polling sites in the form of bilingual poll workers and interpreters; and
- 3) publicity regarding the availability of bilingual assistance, including bilingual notices at voter registration and polling sites, and announcements in ethnic radio, television and newspaper outlets.⁵

State Law: Sections 14201 and 12303 of the Elections Code

The California Elections Code requires jurisdictions meeting specified thresholds to provide written language assistance and to recruit bilingual poll workers. Specifically, Section 14201 of the Elections Code requires translated sample ballots to be posted at poll sites where at least 3% of the county or precinct's voting-age population have limited English skills and share a common language. Section 12303 of the Elections Code requires election officials to actively recruit bilingual poll workers to work at poll sites where at least 3% of the precinct's voting-age population have limited English skills and share a common language. The impact of such language assistance is invaluable and far reaching. For example, in San Francisco County, 257 of the 561 polling places in San Francisco meet the state threshold for Chinese and 50 polling places meet the threshold for Spanish. In sum, well over half (54%) of all precincts in San Francisco are required to provide language assistance as required by state law.

³ A jurisdiction is covered when (1) the number of U.S. citizens in a single language group who are of voting age and limited English proficient is more than 10,000, or is more than 5% of all voting age citizens (or on an Indian reservation, exceeds 5% of all reservation residents), and (2) the illiteracy rate of the group is higher than the national illiteracy rate.

⁴ For details on California counties covered by Section 203 of the Voting Rights Act, see *Impacted States and Counties, Voting Rights Act: Renew. Restore*, at www.votingrights.org/states.

⁵ For more information on Section 203 requirements, see *Voting Rights Act: Renew. Restore*, a resource of the American Civil Liberties Union, available at www.votingrights.org, and *About Language Minority Voting Rights*, a resource of the U.S. Department of Justice, Civil Rights Division, available at www.usdoj.gov/crt/voting/sec_203/activ_203.htm.

RECOMMENDATIONS

Many of the language barriers to voting revealed through poll monitoring efforts can be remedied by more effective monitoring and systemic implementation of existing voting rights laws. We recommend the following solutions to addressing problems in implementing language assistance:

- *Secretary of State involvement in monitoring poll worker training curriculums for adherence to the Secretary of State's uniform poll worker training standards.* These standards establish a minimum set of requirements which poll worker training sessions and materials must meet, and set a standard by which local programs should be measured.⁶ Among other things, trainings must ensure that poll workers:
 - 1) are familiar with the rights of voters,
 - 2) are trained in cultural sensitivity, and
 - 3) know how to assist voters with limited English proficiency.

Given the Secretary of State's role as the state's chief elections officer, charged with ensuring that elections are efficiently conducted, we suggest that the Secretary of State take an active role in ensuring that counties' poll worker trainings satisfy the uniform poll worker training standards.

- *Secretary of State involvement in monitoring counties' plans for implementing language assistance and working with them to improve such plans when necessary.* The Secretary of State has the authority to require election officials to report on elections conducted in their jurisdictions. Given this, the Secretary of State is uniquely positioned to monitor counties to ensure that they have adequate plans for recruiting and targeting of bilingual poll workers, conducting outreach in ethnic media, and involving community organizations. Such monitoring would provide a systematic and statewide mechanism of addressing the recurring problems that poll monitors have observed in language assistance implementation.
- *Local election officials working to improve poll worker training content on language assistance.* County election officials should make sure that poll worker trainings not only emphasize the requirement to display all multilingual materials, but also illustrate how to display multilingual materials so that they are visible. Similarly, election officials should make sure that poll worker trainers demonstrate how poll workers can resolve common problems encountered by LEP voters, and also explain the various language assistance resources that are available such as voter hotlines so that poll workers know to offer them to voters.
- *Local election officials ensuring compliance with state language assistance laws.* County election officials should ensure sufficient bilingual poll worker recruitment and posting of translated sample ballots in accordance with state language assistance provisions that supplement the federal Voting Rights Act. Given California's linguistic diversity,

⁶ Poll Worker Training Guidelines 2006, adopted by the California Secretary of State pursuant to Section 12309.5 of the Elections Code.

compliance with both federal and state laws is necessary to ensure equal access to the ballot for all of California's voters.

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