

PROTECTING CALIFORNIA'S DEMOCRACY:
*ENSURING COMPLIANCE WITH FEDERAL AND STATE BILINGUAL
VOTING ASSISTANCE LAWS*



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California's democracy is challenged by low voter participation in communities of color. Poll monitoring efforts by groups such as the Asian Pacific American Legal Center and Chinese for Affirmative Action reveal that communities of color, especially those with large populations of new voters and/or limited English proficient voters, must often overcome significant language barriers to voting. A recent Public Policy Institute of California study found that the state's electorate does not reflect California's racial diversity, with persons of color making up over half of California's adult population but only three out of ten likely voters.¹

The health of a democracy depends on enabling each eligible voter access to the polls. California's growing population of limited English proficient voters requires paying closer attention to policies that address language barriers at the polls and ensure new voters have accessible information about the voting process. Many systemic barriers to voting, particularly those faced by new and limited English proficient voters, can be addressed by ensuring compliance with existing federal and state laws mandating language assistance at the polls. Lack of English proficiency is a significant barrier for many 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

Protecting the Right of Limited English Proficient Citizens to Vote

Both federal and state laws require jurisdictions that meet a certain threshold of limited English proficient voters to provide specific forms of language assistance. 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. At the state level, 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. Additionally, both federal and state law require poll workers at all poll sites in California to make provisional ballots available to voters whose names are not on the poll site roster index.

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 *California's Exclusive Electorate*, Public Policy Institute of California, September 2006.

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

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.

- 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 under state law.

Benefits of Bilingual Voting Assistance

Compliance with and proper implementation of these laws facilitates the ability of limited English proficient voters to participate in the political process. The following are a few examples:

- In 2004, the U.S. Department of Justice brought an enforcement action against San Diego to bring the county into compliance with Section 203 of the VRA. According to the Department, Latino and Filipino American voter registration increased by 21% since the action, and Vietnamese American registration increased by 37%.⁶
- During the November 2004 election, Asian American turnout in Los Angeles County increased by 29% from the November 2000 election, and increased by 68% in Orange County.⁷ Language assistance was crucial to these increases, with over one-third of Asian American voters in Los Angeles and Orange Counties using some form of government-provided language assistance to vote during the November 2004 election.⁸

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.

⁶ Statement of Bradley J. Schlozman, Acting Assistant Attorney General, Civil Rights Division, United States Department of Justice, before the House Judiciary Subcommittee on the Constitution, November 8, 2005, available at www.judiciary.house.gov/media/pdfs/schlozman110805.pdf.

⁷ *Asian Americans at the Ballot Box*, Asian Pacific American Legal Center, September 2006.

⁸ November 2004 Southern California Voter Survey, Asian Pacific American Legal Center.

Lack of Full Compliance with Existing Laws Harms Limited English Proficient Voters

Poll monitoring efforts by the Asian Pacific American Legal Center, Chinese for Affirmative Action, and other organizations reveal poll sites frequently falling short of full compliance with federal and state obligations to provide language assistance. When limited English proficient voters at these poll sites do not receive the language assistance they need to vote, they either experience difficulty in voting or leave the poll site without voting altogether.

Over the years, poll monitoring reports have documented a range of common problems at poll sites.⁹ These problems include the following:

- **Poll workers' failure to accommodate limited English proficient voters** – Poll monitors have observed poll workers who were reluctant to help limited English proficient voters, unaware of how to help such voters, or were suspicious of such voters.
- **Poll worker ignorance of legal requirements** – Poll monitors have observed poll workers who were unaware of what the law required or provided misinformation about the voting process, for example improperly asking voters to show identification, failing to offer provisional ballots, or refusing to allow voters to bring an assistor into the voting booth.
- **Inaccessibility of translated materials** – Poll monitors have observed poll sites that were not supplied with translated materials or that had poorly displayed translated materials which were not visible to voters.
- **Lack of understanding of why translated materials are necessary** – Poll monitors have 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.
- **Poor quality of translations** – Poll monitors and community organizations have observed translated materials that had significant errors or were translated at too high of a reading level for average voters to understand.
- **Inaccessibility of bilingual poll workers** – Poll monitors have observed poll sites that did not have any bilingual poll workers or that lacked signs to indicate the presence of bilingual poll workers.
- **Inconsistent quality of oral bilingual assistance across polling sites** – Poll monitors have observed bilingual poll workers who were passive in helping limited English proficient voters instead of taking an active role in helping voters. In other instances, poll monitors have observed bilingual poll workers who were unable to help limited English

⁹ 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.

proficient voters because the poll inspector refused to allow the bilingual poll worker to provide assistance to the voter.

Recommendations

Where a jurisdiction experiences recurring problems in language assistance implementation, many of these problems are attributable to poll worker trainings failing to focus on the provision of language assistance. Additionally, election officials may have inadequate plans for recruiting bilingual poll workers and targeting poll sites for language assistance. Election officials may also fail to involve community organizations that can help with working with ethnic media, recruiting bilingual poll workers, and reviewing draft translations of written materials to ensure that the materials are translated at a readable level.

APALC and CAA make the following recommendations to address 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.¹⁰ 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

¹⁰ Poll Worker Training Guidelines 2006, adopted by the California Secretary of State pursuant to Section 12309.5 of the Elections Code.

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

APPENDIX A – SUGGESTED RESOURCES

Background Material on Federal Law – Section 203 of the Voting Rights Act

Asian American Justice Center Handbook on Section 203 – provides community leaders and other interested parties with critical information concerning the implementation of Section 203 of the Voting Rights Act.

English – www.advancingequality.org/files/section_english.pdf

Chinese – www.advancingequality.org/files/section_chinese.pdf

Japanese – www.advancingequality.org/files/section_japanese.pdf

Korean – www.advancingequality.org/files/section_korean.pdf

Tagalog – www.advancingequality.org/files/section_tagalog.pdf

Vietnamese – www.advancingequality.org/files/section_vietnamese.pdf

U.S. Department of Justice website – www.usdoj.gov/crt/voting/sec_203/activ_203.htm.

Provides background information on Section 203, as well as links to (1) text of Section 203, (2) list of jurisdictions subject to Section 203, (3) U.S. Department of Justice’s Section 203 regulations, (4) plain language informational brochures, and (5) enforcement actions.

Background Material on California State Requirements

California Secretary of State HAVA Compliance Manual –

www.ss.ca.gov/elections/hava_compliance_manual.htm. Chapter 4 provides information on state language assistance requirements.

California Secretary of State’s 2006 Poll Worker Training Guidelines and Poll Worker Task Force Recommendations – www.ss.ca.gov/elections/pollworker.htm (at bottom of webpage).

Poll Monitoring Reports

APALC and CAA poll monitoring reports – www.aacre.org.

Asian American Justice Center report on November 2004 general election – www.advancingequality.org/?id=184.

Asian American Legal Defense and Education Fund report on November 2004 general election – http://www.aaldef.org/article.php?article_id=189.

Research

“Minority Language Assistance Practices In Public Elections” – comprehensive report documenting Section 203 implementation – www.votingrights.org/resources/?resourceID=94.

APALC Southern California Exit Poll and Voter Reports – www.demographics.apalc.org.

Contact Information

California Secretary of State Elections Division – www.ss.ca.gov/elections/elections_contacts.htm.

Listing of County Election Officials in California – www.ss.ca.gov/elections/elections_d.htm.