



# Community Leaders' 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

Community leaders are working to ensure that the growing population of voters who speak a language other than English at home are getting the assistance they need to effectively participate in our country's political process. In the United States, more than 62 million persons speak a language other than English at home.<sup>1</sup> Of this population, over 40 percent are limited-English proficient; that is, have some difficulties with the English language.<sup>2</sup> Almost 15 percent of voting-age citizens speak a language other than English at home and of those, almost a third are limited-English proficient.<sup>3</sup>

For voters who speak a language other than English at home, and particularly those who are limited-English proficient, the language barrier can prove to be insurmountable and leads to depressed voter engagement. The complex voting process can confuse even native-born English speakers – but those voters for whom English is a second language and who may have emigrated from a country with a vastly different elections process may have difficulty navigating the process without assistance in their language of choice. In fact, we have continually seen depressed voting participation rates for Asian Americans and Latino Americans. The 2016 election saw only 56.3 percent of eligible Asian Americans and 57.3 percent of eligible Latinos registered to vote compared to 73.9 percent of Whites. Only 49 percent of eligible Asian Americans and 47.6 percent of eligible Latinos voted in 2016, compared to 65.3 percent of Whites.<sup>4</sup> This continues the trend of an approximately 15-20 percent gap in election participation between Asian Americans and Latino Americans with their White counterparts.<sup>5</sup>

But we know when properly implemented and effectively provided, language assistance can increase voter participation.<sup>6</sup> For example, Section 203, the language assistance provision of the Voting Rights Act, has successfully increased voter participation by Latino, Asian American, American Indian and Alaska Native citizens.<sup>7</sup> The number of registered Latino voters grew from 7.6 million in 2000 to 15.3 million in 2016.<sup>8</sup> In certain cases, Native American voter turnout has increased by more than 50 percent to 150 percent.<sup>9</sup> There has been a record increase in voting for Asian Americans with about 1.14 million new Asian American voters entering the electorate between 2012 and 2016, nearly double the average increase of 620,000 new voters in the prior three presidential cycles.<sup>10</sup>

Whether in jurisdictions covered by the VRA for language assistance or in a jurisdiction that has a language community with a need for assistance, this report details how community leaders can engage with their local jurisdiction or their state legislature to help ensure community members get the language assistance they need to meaningfully participate in our elections.

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1 U.S. Census Bureau, Tables S1601 LANGUAGE SPOKEN AT HOME ; 2011-2015 American Community Survey 5-Year Estimates.

2 *Id.*

3 *Id.*

4 U.S. Census Bureau, Voting and Registration in the Election of November 2016, Table 2. Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age, for the United States: November 2016.

5 U.S. Census Bureau, Historical Reported Voting Rates, Table A-1. Reported Voting and Registration by Race, Hispanic Origin, Sex and Age Groups: November 1964 to 2016; Source: U.S. Census Bureau, Current Population Survey, November 2016 and earlier years.

6 Section 203 has also helped increase political representation by candidates of choice as a direct result of the increased civic engagement of these groups. During the 2006 reauthorization of the VRA, Congress found that more than 5,200 Latinos and almost 350 Asian Americans had been elected to office. Native American candidates, whose communities had rarely been represented by their own members, were being elected to local school boards, county commissions and State legislatures in ever-increasing numbers. See H.R. REP. NO. 109-478, at 20.

7 H.R. REP. NO. 109-478, at 18-19.

8 U.S. Census Bureau, Voting and Registration in the Election of November 2016, Table 2. Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age, for the United States: November 2016; U.S. Census Bureau, Voting and Registration in the Election of November 2000, Table 2. Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age, for the United States: November 2000.

9 H.R. REP. NO. 109-478 at 20.

10 Karthick Ramakrishnan, The Asian American Vote In 2016: Record Gains, But Also Gaps, available at <http://aapidata.com/blog/voting-gains-gaps/> (May 19, 2017).

## II. Overview of Legal Obligations to Provide Language Assistance

Recognizing the barriers faced by language-minority voters when attempting to cast their ballot, the Voting Rights Act of 1965 (“VRA”) provides protections to the rights of language minorities to vote. Added by Congress in 1975, Section 203 requires language assistance in certain jurisdictions that meet the criteria in the coverage formulas.<sup>11</sup> Section 208 of the VRA allows language-minority voters to receive assistance from the person of their choosing. Section 2 of the VRA has also been utilized by private parties and the Department Of Justice on behalf of language-minority voters to protect their right to vote. Together these provisions help to break down some of the barriers faced by language minorities.

### 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.<sup>12</sup> This section requires the provision of assistance in languages spoken by four racial and ethnic groups – Latinos, Asian Americans, American Indians and Alaska Natives – and was enacted in 1975 to remedy potential racial discrimination in the voting process that results in the disenfranchisement of language minorities from these groups. A jurisdiction becomes covered under Section 203 when it meets the following requirements: (1) More than five percent of the voting-age citizens in a jurisdiction belong to a single language-minority community and are limited-English proficient; more than 10,000 voting-age citizens in a jurisdiction belong to a single language-minority community and are limited-English proficient; or the number of citizens in the language-minority community exceeds five percent of all reservation residents on an Indian reservation; and (2) The illiteracy rate of the citizens in the language minority is higher than the national illiteracy rate.<sup>13</sup> 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.<sup>14</sup>

#### 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 lives in covered jurisdictions.<sup>15</sup>

11 Section 4(f)(4) was added to the VRA in 1975 in response to Congress finding that pervasive voting discrimination against citizens of language minorities was national in scope and that English-only elections excluded language-minority citizens from participating in the electoral process. 52 U.S.C. § 10303(f)(4). The Department of Justice announced that due to the US Supreme Court’s decision in *Shelby County v. Holder*, which invalidated the coverage formula found in 4(b), they are not enforcing 4(f)(4) because coverage under 4(f)(4) was dependent on a part of the Section 4(b) formula. See, Department of Justice, Fact Sheet On Justice Department’s Enforcement Efforts Following Shelby County Decision (2016), available at <https://www.justice.gov/crt/file/876246/download>.

12 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.

13 52 U.S.C. § 10503(a); § 10503(b)(2). The Census Bureau defines “illiteracy” for Section 203 threshold purposes as having less than a fifth grade education.

14 52 U.S.C. § 10503(a); S. REP. NO. 94-295 at 31. See also § 10503(b)(4).

15 According to the U.S. Census Bureau’s announcement of the newly covered jurisdictions. Census Bureau Releases 2016 Determinations for Section 203 of the Voting Rights Act (Dec. 5, 2016), available at <https://www.census.gov/newsroom/press-releases/2016/cb16-205.html>.

Generally, jurisdictions covered by Section 203 must ensure that any election-related information provided in English is also provided in the covered language. Jurisdictions must create and distribute registration forms, voting notices, forms, instructions, assistance, or other materials or information related to the electoral process, including ballots in both English and the covered language.<sup>16</sup> Covered jurisdictions must also provide oral assistance at polling sites and publicity about the language assistance prior to Election Day.<sup>17</sup>

## 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 write<sup>18</sup> is eligible to receive assistance from a person of their choice, as long as it is not an agent or officer of the voter's employer or labor union. The assister of choice can be a non-citizen, someone who is not registered to vote, or even a minor, which is very common for immigrant families where the child is fluent in both English and their parents' language. Congress added Section 208 to the VRA in 1982, finding that citizens facing language barriers were more susceptible to having their votes unduly influenced or manipulated, which could more likely result in discrimination at the polls. Stressing the importance of the voter's freedom to choose a person to assist the voter, as opposed to having someone appointed by elections officials, Congress determined that the right to an assister 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 vote. Additionally, Section 208 applies to any language-minority group and has no sunset date, ensuring that language assistance is available to more voters than just those living in jurisdictions subject to Section 203. In Section 203-covered jurisdictions, limited-English proficient voters are also protected by Section 208 and can utilize an assister of their choosing or an election official who is already required to provide language assistance under Section 203.

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

Another provision of the VRA that directly affects language-minority voters is Section 4(e). Section 4(e) was enacted in 1965 and requires that language materials and assistance be provided to Puerto Rican voters who attended schools in which the predominant language of instruction was not English.<sup>19</sup> The specific requirements for language assistance under Section 4(e) are generally the same as those under Section 203.<sup>20</sup>

## d. Section 2 of the Voting Rights Act

Section 2, the nationwide provision of the VRA that prohibits voting standards, practices, or procedures that result in the denial or abridgement of the right of any citizen to vote on account of their race, color, or membership in a language-minority group, has been used to protect the voting rights of all language minorities.<sup>21</sup>

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16 28 C.F.R. § 55.19; 52 U.S.C. § 10503.

17 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 means, such as using ethnic media). 28 C.F.R. § 55.18.

18 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.

19 52 U.S.C. § 10303(e).

20 Compare Consent Decree, *U.S. v. Orange County Bd. of Elections*, No. 12-Civ-3071 (ER) (S.D.N.Y. April 16, 2012), available at [https://www.justice.gov/sites/default/files/crt/legacy/2012/04/20/orange\\_cd\\_ny.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2012/04/20/orange_cd_ny.pdf) (requiring, for settlement of charges under Section 4(e), certified translators to translate a variety of election materials, in-language publicity, recruitment and deployment of bilingual election workers, a bilingual coordinator, training, and creation of a language assistance advisory group, and federal observers) with Consent Order, *U.S. v. Colfax County*, No. 8:12-CV-84 (D. Neb. Feb. 13, 2012), available at [https://www.justice.gov/sites/default/files/crt/legacy/2012/03/05/colfax\\_cd.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2012/03/05/colfax_cd.pdf) (similar requirements for settlement of charges under Section 203).

21 52 U.S.C. § 10301.

Section 2 has been used to require language assistance for communities whose populations have not yet become large enough to meet the Section 203 thresholds. For example, in 2005, the Department of Justice (“DOJ”) brought a Section 2 lawsuit on behalf of Chinese- and Vietnamese-speaking voters in Boston who were discriminated against due to their language ability, including being treated disrespectfully and having their ballot choices improperly influenced, coerced or ignored by poll workers.<sup>22</sup> In order to remedy the Section 2 violations against Chinese and Vietnamese limited-English proficient voters, the City of Boston agreed to provide additional language assistance in Chinese and Vietnamese.<sup>23</sup> DOJ also filed a Section 2 complaint on behalf of Latino limited-English proficient voters against the Borough of Penns Grove, New Jersey in 2008, alleging that the borough lacked Spanish-language materials, denied voters the right to choose their assistor of choice, and engaged in disparate treatment, resulting in less opportunity to participate in the political process and to elect representatives of their choice.<sup>24</sup> DOJ and the Borough entered into a settlement agreement which required the Borough to provide language assistance to Latino voters.<sup>25</sup>

Section 2 has also been used on behalf of language-minority voters whose language is not covered under Section 203. For example, DOJ brought a Section 2 case in Hamtramck, Michigan on behalf of Arab American voters in 2000.<sup>26</sup> An organization called “Citizens for Better Hamtramck” challenged voters at the polls who they alleged “looked” Arab, had Arab- or Muslim-sounding names, or had dark skin. As a result of DOJ’s engagement, the city agreed to appoint at least two Arab Americans or one Arab American and one Bengali American as election inspectors to provide language assistance for each of the 19 polling places where the voter challenges occurred.<sup>27</sup>

While DOJ has been the only party to bring Section 2 cases regarding language assistance to date, it is not the only entity empowered to do so. It is important for community leaders to be on the lookout for improper treatment of limited-English proficient voters and consider bringing lawsuits on behalf of those voters. Section 2 of the VRA remains a viable tool to achieve language assistance where discrimination against voters due to language has occurred.

### III. Community Engagement for Effective Language Assistance

Community leaders can play an important role in helping language-minority voters access effective language assistance. First, they can engage directly with elections officials to assist with Section 203 compliance and/or to encourage voluntary language assistance. Second, community leaders can engage in poll monitoring in order to provide feedback to elections officials or to pursue enforcement actions as necessary. Finally, community leaders can advocate for state legislative solutions that go beyond the federal requirements of the Voting Rights Act.

#### a. Working with election officials

##### i. Section 203 Compliance

DOJ provides specified guidelines on how to comply with Section 203, which community leaders can utilize to help them better engage with elections officials on a jurisdiction’s language assistance plan. The guidelines serve as a floor as to what covered jurisdictions must provide but do not “preclude affected jurisdictions from taking

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22 *United States v. City of Boston*, Mass. No. 05-11598 (D. Mass. 2005). DOJ also brought a Section 203 enforcement claim against the City of Boston for noncompliance in providing language assistance in Spanish. See also Complaint, *United States v. City of Boston*, Mass. (D. Mass. 2005), available at [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/boston\\_comp.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/boston_comp.pdf).

23 Order, *United States v. City of Boston*, Mass. (D. Mass. 2005), available at [http://www.justice.gov/crt/about/vot/sec\\_203/documents/boston\\_cd2.php](http://www.justice.gov/crt/about/vot/sec_203/documents/boston_cd2.php).

24 Complaint, *United States v. Salem County and the Borough of Penns Grove, NJ* No. 1:08-cv-03276 (D.N.J. July 28, 2008), available at <https://www.justice.gov/crt/case-document/united-states-v-salem-county-and-borough-penns-grove-nj-complaint>.

25 Justice Department Announces Agreement Protecting Puerto Rican and Spanish-Speaking Voters in Penns Grove, New Jersey, Webwire (July 29, 2008), available at <http://www.webwire.com/ViewPressRel.asp?ald=71216>.

26 *United States v. City of Hamtramck*, Michigan, No. 00-73541 (E.D. Mich. 2000).

27 See Second Amended Consent Order and Decree, *United States v. Hamtramck* (E.D. Mich. Jan. 29, 2004), available at [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/hamtramck\\_cd04.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/hamtramck_cd04.pdf).



additional steps to further the policy of the Act.” Because Section 203 applies to a covered political subdivision (e.g. a county), as well as all political units that hold elections within that political subdivision (e.g., cities, school districts), community leaders should be engaging with all relevant elections officials on their language assistance plan. These plans should encompass all stages of the electoral process, from voter registration to voting, in any type of election, whether it is a primary, general or special election.

Recognizing that Section 203 compliance requires individualized assessment of the covered jurisdiction and language group(s) to determine what is needed, that is, there is no “one size fits all” approach when it comes to language assistance plans, community leaders can help elections officials better understand the covered communities. The covered jurisdiction is responsible for determining what languages, forms of languages, or dialects will be effective. For written language assistance, jurisdictions need only provide materials in the one language most widely used by the jurisdiction’s voting-age citizens who are members of the covered language-minority group.<sup>28</sup> 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. Community leaders can work with elections officials to flesh out the details of their language assistance plan, as discussed below in best practices.<sup>29</sup>

## ii. Voluntary provision of language assistance

Community leaders can engage elections officials to advocate for voluntary language assistance coverage in their jurisdiction even where there is no federal requirement to provide assistance. Some local jurisdictions have expanded language access coverage to include languages not covered by Section 203 to better serve their communities.

Philadelphia County, Pennsylvania is only required to provide language assistance in Spanish under Section 203.<sup>30</sup> However, the city has made the effort to provide voter registration applications by mail in non-Section 203 covered languages, Russian and French, in addition to languages where the County does not meet the minimum trigger under Section 203 to cover, such as Korean, Vietnamese, Khmer, Chinese, Japanese and Tagalog.<sup>31</sup> New York City provides voter registration applications and has its website translated in the non-Section 203 covered language of Russian.<sup>32</sup> Los Angeles County is required to cover six languages other than English under 2016 Section 203 determination (Khmer, Chinese, Tagalog, Spanish, Korean, Vietnamese);<sup>33</sup> however, its website has translated materials into twelve different languages,<sup>34</sup> adding Armenian, Farsi, Hindi, Japanese, Russian, and Thai translations.

In Fairfax County, Virginia, 2016 determinations captured Vietnamese language assistance coverage. However, upon review of the data used to make the determinations, Fairfax County officials realized that they just missed the Section 203 coverage threshold for Korean. As a result, the Fairfax County Electoral Board decided to voluntarily provide Korean language assistance, thereby addressing the needs of 35,000 Korean-speaking residents, 55% of whom have difficulties with the English language.<sup>35</sup>

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- 28 There is an exemption from the provision of translated written materials for “historically unwritten languages,” where only oral assistance and publicity are required. This exemption negatively affects the American Indian Alaskan Native communities.
- 29 Compliance with Section 203 will be measured by results and a standard of effectiveness and a jurisdiction is more likely to achieve compliance if they work with the “cooperation of and to the satisfaction of organizations representing members of the applicable language-minority group.”
- 30 U.S. Census Bureau, Voting Rights Act Amendments of 2006, Determinations Under Section 203, 81 Fed. Reg. 87532, available at <https://www.gpo.gov/fdsys/pkg/FR-2016-12-05/pdf/2016-28969.pdf>.
- 31 Office of the Philadelphia City Commissioners, Register to Vote, <http://www.philadelphiamvotes.com/en/voters/registering-to-vote> (last visited Mar. 19, 2018).
- 32 Board of Elections in the City of New York, <http://vote.nyc.ny.us/html/home/home.shtml> (last visited Mar. 19, 2018).
- 33 Voting Rights Act Amendments of 2006, Determinations Under Section 203, *supra* note 30.
- 34 Los Angeles City Clerk Election Division, <http://clerk.lacity.org/Elections/index.htm> (last visited Mar. 19, 2018).
- 35 Jen Fifield, Yo Voté: Communities Scramble to Translate Ballots (June 28, 2017), available at <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/06/28/yo-vote-communities-scramble-to-translate-ballots>.

Cook County, Illinois is another jurisdiction that decided to voluntarily provide language assistance in Korean. In 2015, Asian Americans Advancing Justice-Chicago and Korean American Resource and Cultural Center engaged in discussions with the Cook County Clerk's Office about the possibility of providing a translated Korean sample ballot and Korean bilingual election judges in targeted precincts. The Clerk's Office agreed to partner in providing Korean language assistance in areas where the need is greatest. The Chicago Board of Elections also joined these discussions and agreed to provide Korean language services in Chicago's highest areas of need. With about 37,000 Korean Americans in Cook County, over 40 percent of whom are limited-English proficient, a significant number of Korean Americans now have increased access to cast a meaningful ballot.<sup>36</sup>

Also in 2015, the King County, Washington County Council unanimously decided to translate voting materials into additional languages, starting with Spanish and Korean in the 2016 general election, and adding other languages in 2017. One of the fastest growing areas in the country, King County saw a rapid growth in its population of individuals who speak a language other than English – one quarter of King County residents speak a language other than English at home, and close to half report that no one in their households speaks English well or at all. The new law also requires a report (starting January 2017 and then every 5 years) of the languages that are spoken by 10,000 or more limited-English proficient King County residents, which will then be included as translation options.<sup>37</sup>

For the 2016 election cycle, Mississippi voluntarily translated materials and information about its voter ID law into Spanish, which is not covered in that state.<sup>38</sup> As another example, although it has not been required by law to provide language assistance, the city of Minneapolis, Minnesota works to recruit bilingual pollworkers fluent in languages including Spanish.<sup>39</sup> The city also provides a robust set of voting instructions, information and materials in Spanish on its website, and has a dedicated phone number for obtaining information and assistance in Spanish.<sup>40</sup>

### iii. Best Practices for Language Assistance

Community leaders can engage their elections officials to determine if some of the following best practices could be implemented in their jurisdiction. At the same time, developing relationships with elections officials can result in continued engagement on voting and election administration matters in a proactive manner.

#### 1. Advisory committees

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

*"The cornerstone of every successful program is a vigorous outreach program to identify the needs and communication channels of the minority community. Citizens who do not speak English very well often rely on communication channels that differ from those used by English-speakers. Each community is different. The best-informed sources of information are people who are in the minority community and those who work with it regularly. Election officials should talk to them."*<sup>41</sup>

Community leaders should urge their local jurisdiction to form Language Assistance Advisory Committees that meet throughout the year to institutionalize the process of collecting feedback from the community for which multilingual materials and services are provided. Members of these Advisory Committees typically include the leaders of social service organizations, churches, social clubs, schools and parent-teacher organizations, in-language media outlets, chambers of commerce, and professional organizations. It is important that a broad cross-section of the community –

36 Advancing Justice | Chicago statement on Korean language sample ballots in Chicago & Cook County (Jan. 26, 2016), available at <http://www.advancingjustice-chicago.org/advancing-justice-chicago-statement-on-korean-language-sample-ballots-in-chicago-cook-county/>.

37 King County Council, County Council Expands Access to Voting (July 20, 2015), <http://www.kingcounty.gov/council/news/2015/July/07-20-RDB-Voter-Access.aspx>; Venice Buhain, King County adds Spanish and Korean ballots, boosts voter outreach, The Seattle Globalist (Aug. 18, 2016), available at <http://www.seattleglobalist.com/2016/08/18/king-county-expands-voting-spanish-korean-languages/55192>.

38 Deborah Barfield Barry, Groups making sure voting materials are available in Spanish, (June 10, 2016), available at <https://www.usatoday.com/story/news/nation/2016/06/10/groups-making-sure-voting-materials-available-spanish/85704514/>.

39 City of Minneapolis, Election Judges, <http://vote.minneapolismn.gov/judges/index.htm> (last visited Mar. 19, 2018).

40 City of Minneapolis, Language Support, <http://vote.minneapolismn.gov/voters/language-support> (last visited Mar. 19, 2018).

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



including unregistered individuals, people who cannot speak or read English, and naturalized and young citizens who lack voting experience – participate in advisory committees. These committees will help ensure election officials are more likely to understand the needs of language-minority voters and help create a pipeline to a stronger language-minority community presence among the elected and appointed leaders who implement and oversee elections.

Where a jurisdiction is not willing to set up an official advisory committee, community leaders can set up their own community-led advisory committee. Some local jurisdictions have their election officials work closely with community-created advisory committees. In Clark County, Nevada, in 2012, the Asian Pacific American Labor Alliance of Nevada formed the Filipino American Voters Outreach Advisory Committee.<sup>42</sup> The Committee met biweekly with the Clark County Board of Elections leading up to the 2012 general election.<sup>43</sup> Subcommittees were created to conduct community outreach and education, recruit bilingual poll workers, facilitate connections with the Filipino-American community and review translations of written materials.<sup>44</sup> In King County, Washington, OneAmerica created an informal advisory committee to the King County Elections Office before the 2012 general election, composed of Chinese- and Vietnamese-American community leaders and organizations.<sup>45</sup> This committee met with the King County Elections Director in early June of 2012 to review the county’s Section 203 implementation plan and develop a partnership to assist in its implementation.<sup>46</sup> They discussed issues such as poll monitoring at accessible voting centers and training materials for poll workers on Section 203 implementation.<sup>47</sup> In Cook County, Illinois, Asian Americans Advancing Justice-Chicago, the Indian American Bar Association of Chicago, the South Asian American Policy and Research Institute and other partners have provided qualitative input to the Chicago Board of Election Commissioners about which areas to target for language assistance, particularly with the placement of bilingual poll workers.<sup>48</sup> In Alameda County, California, Asian Americans Advancing Justice-Asian Law Caucus and its partners worked with the county Registrar of Voters in 2012 to identify a cross-section of data that would best reflect the need for language assistance in the county.<sup>49</sup>

## 2. Recruitment & Training

### a. Bilingual Coordinators

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

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

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42 *Voices of Democracy: Asian Americans and Language Access During 2012 Elections* 7 (Sept. 2012), available at <http://www.advancingjustice-chicago.org/wp-content/uploads/2012/09/Voting-Rights-Report.pdf>.

43 *Id.*

44 *Id.*

45 *Id.*

46 *Id.*

47 *Id.*

48 *Id.* at 8.

49 *Id.*

Community leaders can also help recruit qualified individuals from the impacted communities. An ideal bilingual coordinator should possess, in addition to fluency in a second language, personal and professional connections within local language-minority communities, as well as training on federal, state, and local election procedures. The best Bilingual Coordinators receive strong support from other election officials in their office and sufficient resources to perform their very important duties. Where funding does not permit the hiring of a full-time, year-round employee, a Bilingual Coordinator may even work in a volunteer or part-time capacity.

## **b. Bilingual Poll Workers and Poll Worker Training**

Bilingual poll workers are critical to ensuring a smooth voting experience for limited-English proficient voters and are a critical component of any successful language assistance program. Community leaders can work with elections officials and their bilingual coordinators to prioritize recruitment of bilingual poll workers and assist the office with such recruitment. Without in-person bilingual assistance at the polls, many language-minority voters will be unable to cast an effective vote that reflects their intent. Community leaders can urge jurisdictions to hire bilingual poll workers who speak any languages that are commonly used in the locality, but in which election materials and assistance are not legally required to be provided, filling a gap in language assistance.

In order to overcome a barrier often faced by elections officials – inability to effectively identify and recruit qualified bilingual poll workers– community leaders can assist in bilingual poll worker recruitment. They can help identify individuals who are qualified or reach out to community institutions – such as community colleges, churches, and local businesses – to advertise for qualified poll workers. Community leaders can also urge administrators to prioritize funding for multi-media advertising of bilingual poll worker positions, design job announcements that are in the languages the poll workers are required to speak, and place advertisements in media outlets that cater to speakers of the relevant languages, as well as help make those connections with ethnic media.

Recruitment of poll workers is but one step to ensuring limited-English proficient voters get the assistance they need at the polls. Community leaders can help train poll workers, both bilingual and monolingual, to ensure they are able to properly assist voters as well as advise elections officials on their poll worker training curriculum and plans. Bilingual poll workers should be provided with separate training on language assistance, including instructions to provide active assistance, greeting voters and guiding them through the elections process. Trainings for bilingual poll workers should feature review of all voting materials in all the languages in which they are provided, to ensure that bilingual poll workers understand the materials and will provide clear, complete, and accurate translations to voters. Poll workers should also be engaged in role-playing exercises in-language that involve common situations the bilingual poll workers can expect to encounter, such as voters showing up at the wrong precinct or voters who bring someone with them to provide assistance. Role-playing provides another opportunity for election officials to confirm that bilingual poll workers are qualified to provide translations and allows for the opportunity to provide pointers in-language for better options of how to handle a situation or how to translate. Finally, it offers an opportunity to reinforce instruction through hands-on training that allows poll workers to practice their interpretation skills before the election.

Training for monolingual poll workers is also important. Community leaders can also weigh in on this training to ensure that the proper emphasis is being placed on cultural sensitivity and appropriate assistance to limited-English proficient voters. This training should also focus on Section 208 of the Voting Right Act and educate all poll workers about this right and the very few limitations to it.

### 3. Translations

Community leaders can serve as a resource to jurisdictions in ensuring quality translations and press their jurisdictions to make a conscious effort to ensure the quality and legibility of prepared translations. The most reliable translations are those done manually, by live persons who have had their linguistic and other necessary skills confirmed by third parties. Community leaders can help provide these translation services for a fee or help connect elections officials with the appropriate providers of commercial, professional translation services, bilingual election workers and coordinators already employed by the jurisdiction, community organizations that are closely involved with the concerned language-minority communities, and official glossaries and translations provided by reputable authorities such as the U.S. Election Assistance Commission and Secretaries of State's offices. At the same time, community leaders should warn jurisdictions against relying purely on translation software when translating official election materials as this can lead to mistakes and confusion for the voters.

Community leaders can also assist with the quality control of the translations. This requires urging the jurisdiction to translate all voting materials well in advance of when they must be distributed in order to provide sufficient time to confirm that written translations are accurate and understandable to voters. Community leaders can test and review the usability of in-language materials, making sure that the proper terminology and appropriate level of literacy are utilized.

In Bergen County, New Jersey, Korean American Civic Empowerment reviewed materials in Korean in the spring and summer of 2012 and met with election officials to discuss numerous errors on both the Korean vote-by-mail and voting machine instructions. Through this coordination, election officials learned that for their local community, they should have been using the transliterated candidate names (phonetic transcription of English names in Korean) on ballots and sample ballots. Most Korean-American voters rely heavily on Korean ethnic media for information on elections. However, Korean ethnic media use transliterated candidate names, so the lack of transliteration on the ballot resulted in confusion for Korean-American voters.<sup>50</sup>

In California, there are specific requirements for preparing translated election materials, such as working with local groups representing language minorities to verify that election materials are correctly translated. When preparing a translation for a ballot in a language other than English, the California Secretary of State is required by state law to “consult with an advisory body consisting of language experts and nonpartisan organizations that advocate on behalf of, or provide services to, individuals that speak that language,” post the resulting translation for public input, and use that translation on the official ballot.<sup>51</sup> Another California law requires that translations of ballot measures and ballot instructions be made by a person meeting one of several specific professional criteria.<sup>52</sup>

### 4. Targeting

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.” For example, translated materials and bilingual poll workers can be placed only in those polling locations that serve covered language-minority voters but not sent to those locations that do not have many language-minority voters. Community leaders can help assist jurisdictions in their targeting efforts, helping them to better understand the community's specific needs.

Community leaders can collect relevant information to help assist the jurisdictions in their targeting plans, including Census data concerning the residential location and socio-economic characteristics of U.S. citizens who are not fully fluent in English or who speak a language other than English at home. Other important data points to note are the existence of services provided by community-based organizations, religious facilities, media outlets and other institutions oriented toward the needs of language-minority communities. This information can be supplemented with firsthand surveys of voters, such as through exit polls or telephonic surveys of likely voters. Community leaders must also regularly update this information to accommodate constantly changing demographics.

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50 *Voices of Democracy* at 8.

51 Cal. Elec. Code § 9054.

52 Cal. Elec. Code § 14111.

## 5. Outreach and education

Language-minority voters cannot and will not take advantage of the materials and assistance provided if they are unaware of their availability, which is too often the case. Absent intentional official efforts to alert community members, language-minority voters tend to receive less information than English speakers about participating in elections. Public service announcements and other advertisements, and informational pamphlets, can inform language-minority voters when elections will be held, and emphasize that in-language materials and assistance will be provided throughout the jurisdiction and at every step of the electoral process, from registration to voting. They should list contact information for the office or person responsible for the language assistance program, as well as the number to any hotlines the jurisdiction has set up for voters seeking further information or assistance in-language. Materials and ads should be placed in in-language media outlets and public spaces, and with community-based institutions including social services organizations, churches, and schools and community leaders who can help facilitate these placements.

Community leaders can also provide opportunities for election officials to speak directly to community members, as well as educate voters as trusted voices. For example, community leaders can provide space for, or help drive attendance to, regular voter information meetings. The meetings can be utilized as a way for voters, especially newly registered or unregistered voters, to learn more about the voting process and procedures for the upcoming elections. These are opportunities to share critical information with voters about changes made to voting locations, equipment, or processes and can provide election officials with an opportunity to meet voters and solicit their feedback on language assistance programs. The meetings also can attract qualified and bilingual poll workers. Perhaps most important of all, holding coordinated voter information meetings between election officials and community leaders sends a strong message to the community that election officials care about voters and are willing to go the extra mile to provide them with a good voting experience.

### b. Poll Monitoring and Exit Polls

The community plays a critical role in monitoring the jurisdiction's actions. Community leaders can help determine if their community is being effectively served by the language assistance offered by the jurisdiction by collecting information, monitoring the jurisdiction's language assistance efforts, and documenting its progress. Exit polls and poll monitoring surveys are devices used to monitor actual voter turnout and behavior, and assess whether the language needs of voters at polling sites are being met. Important information to collect in a poll includes: ethnicity, gender, age, income level, political party affiliation, bilingual assistance needed or received, how the voter was treated by election officials, whether translated materials are made available to voters, number of bilingual election officials, and how individuals voted on issues or candidates. The information collected through poll monitoring and exit polling can be used to improve language assistance provided in future elections. Community leaders should engage with elections officials post-election to discuss the findings of their poll monitoring and exit polling to highlight where things went well and where things did not. A collaborative approach between community leaders and elections officials in addressing the findings will ensure more limited-English proficient voters are assisted moving forward.

In instances where there is no collaboration between the jurisdiction and community leaders and where noncompliance with the language assistance provisions and discrimination against language-minority voters occur, these findings can lead to litigation to enforce the language assistance provisions, either through DOJ or private attorneys.

Section 203 claims have been brought by DOJ and private parties. For example, in 2011, DOJ filed a Section 203 complaint against Alameda County, California for failing to provide effective language assistance to Spanish- and Chinese-speaking citizens. Despite being continuously covered under Section 203 for Spanish and Chinese languages since 1992, the county failed to implement an effective language assistance program for Spanish- and Chinese-speaking voters. DOJ's engagement led to a consent decree which required the translation and dissemination of election-related materials and information in Spanish and Chinese, bilingual language assistance at the polls, incorporation of language assistance into its election official training, a process to address complaints about poll officials, designation of Spanish and Chinese language program coordinators, and an Advisory Group to assist and inform the Spanish and Chinese language election program. The consent decree also ordered the county to provide

the same language assistance to any newly covered languages as determined by the Census Bureau in the future.<sup>53</sup> Unfortunately, the pace of DOJ enforcement of language assistance cases appears to have slowed from the previous decade. According to DOJ's website on Voting Section Litigation<sup>54</sup> only seven cases have been brought between 2010 and 2018 under the language-minority provisions of the Voting Rights Act, compared to 30 cases between 2000 and 2009. Similarly, under Section 208 of the Voting Rights Act, no cases have been brought between 2010 and 2018, compared with 11 during the decade spanning 2000-2009.

Private parties have also sued for noncompliance with the language assistance provision in part to help address the decline in language assistance cases being pursued by DOJ. In 2013, the Native American Rights Fund and law firm Wilson Elser filed *Toyukak v. Treadwell* and sued the state of Alaska for ongoing violations under Section 203 and the 14<sup>th</sup> and 15<sup>th</sup> Amendments of the U.S. Constitution for failure to provide language assistance in the covered Yup'ik language.<sup>55</sup> The court found that the state failed to provide limited-English proficient Alaska Native voters with voting information substantially equivalent to what voters received in English, which was compounded by limited publicity to voters, all in violation of Section 203.<sup>56</sup> The court permanently enjoined the state from violating Section 203 and ordered the State to enact a series of improvements to be in place until December 31, 2020.<sup>57</sup>

Similarly, violations of Section 208 have been enforced through litigation.<sup>58</sup> For example, DOJ sued Miami-Dade County in 2002 for violating Section 208 when poll workers prevented limited-English proficient Haitian American voters from having assistants of choice while voting.<sup>59</sup> The county agreed to comply with Section 208, prevent violations in the future, provide new poll worker training and hire bilingual poll workers for the Haitian American community.<sup>60</sup>

### c. Legislative approaches to expanding language assistance

Community leaders can also work with their elected officials to expand language assistance through state or local law. Some states and jurisdictions have adopted laws, regulations, or policies which expand language assistance to ensure the meaningful electoral participation of limited-English proficient citizens. Such expansions have taken the form of covering more languages, instituting more translation services, or providing more input from language-minority communities than the baseline requirements of Section 203 or ensuring easier access to assistance in voting than the baseline requirements of Section 208. However, other states have laws, regulations, or policies that are in violation of Sections 203 and 208 by not meeting the minimum level of protections afforded by these sections of the VRA, which acts as a floor, not a ceiling. Advocates should push their states to offer more language assistance and establish lower thresholds to trigger additional language assistance requirements by a jurisdiction.

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53 Consent Decree, Judgment, and Order, *United States v. Alameda County*, No. 3:11-cv-03262 (N.D. Cal. Oct. 19, 2011), available at [https://www.justice.gov/sites/default/files/crt/legacy/2011/10/20/alameda\\_cd11.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2011/10/20/alameda_cd11.pdf).

54 Dept. of Justice, Voting Section Litigation, [www.justice.gov/crt/voting-section-litigation](http://www.justice.gov/crt/voting-section-litigation) (last visited June 15, 2018).

55 Complaint, *Toyukak v. Treadwell*, No. 3:13-cv-00137-SLG-LCL (D. Alaska 2013), available at [http://www.wilsonelser.com/writable/files/News\\_briefs\\_PDF/toyukuk\\_complaint.pdf](http://www.wilsonelser.com/writable/files/News_briefs_PDF/toyukuk_complaint.pdf).

56 Press Release, Native American Rights Fund, *Alaska Natives Win Landmark Voting Rights Lawsuit* (Sept. 3, 2014), available at <https://www.narf.org/alaska-natives-win-landmark-voting-rights-lawsuit/>.

57 See Stipulated Judgment and Order, *Toyukak v. Mallott* (D. Alaska Sept. 8, 2015), available at [http://narf.org/narf/documents/20150910\\_alaska\\_voting\\_settlement.pdf](http://narf.org/narf/documents/20150910_alaska_voting_settlement.pdf). See also Order, *Toyukak v. Treadwell* (D. Alaska Sept. 22, 2014), available at [http://www.gpo.gov/fdsys/pkg/USCOURTS-akd-3\\_13-cv-00137/pdf/USCOURTS-akd-3\\_13-cv-00137-0.pdf](http://www.gpo.gov/fdsys/pkg/USCOURTS-akd-3_13-cv-00137/pdf/USCOURTS-akd-3_13-cv-00137-0.pdf). See also Joint Press Release, State of Alaska and Native American Rights Fund, *The State of Alaska and Alaska Native Voters and Tribal Councils Reach Settlement in Historic Language Assistance Case for Gwich'in and Yup'ik-speaking Voters*, available at [http://www.narf.org/wordpress/wp-content/uploads/2015/01/20150909\\_press\\_release\\_alaska\\_voting\\_language.pdf](http://www.narf.org/wordpress/wp-content/uploads/2015/01/20150909_press_release_alaska_voting_language.pdf).

58 See generally Dept. of Justice, *Cases Raises Claims Under Section 208 of the Voting Rights Act*, [http://www.justice.gov/crt/about/vot/litigation/recent\\_208.php](http://www.justice.gov/crt/about/vot/litigation/recent_208.php) (last visited Mar. 19, 2018).

59 Consent Order, *United States v. Miami-Dade County*, No. 02-21698 (S.D. Fla., June 17, 2002), available at [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/miamidade\\_cd.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/miamidade_cd.pdf).

60 *Id.* ¶¶ 5-6.



## i. Going Beyond Section 203 Minimum Requirements

Many states and local jurisdictions go beyond the minimum requirements of Section 203 by providing voter information and election materials in languages other than English. All of the measures discussed in this section contribute to a smoother voter registration and voting process for limited-English proficient citizens and, therefore, all voters. Community leaders should assess their legislative landscape to determine whether any of these laws would be feasible to pursue in their localities.

### 1. Coverage for Languages Not Included in Section 203

The Section 203 coverage formula only covers specific language-minority groups: American Indian, Asian American, Alaskan Natives, or of Spanish heritage.<sup>61</sup> This leaves sizeable language-minority communities that do not fit in one of these groups without coverage. Examples include Haitian Creole speakers in Florida, Portuguese speakers in Massachusetts and Polish Speakers in the upper Midwest. As discussed previously in this report, many jurisdictions have voluntarily provided language assistance for languages not covered by Section 203. While voluntary provision of language access is helpful, states can further combat the gap in coverage by adopting policies to require translation into specific languages regardless of Section 203 coverage. States that have done so recognize that such sizeable populations exist and that including assistance to these limited-English proficient voters in statute is an important way to create an equal opportunity to vote for all citizens.

At least four states have laws that require translations in languages not covered by Section 203 for certain election-related documents. In Maine, though not required by Section 203, ballot instructions are offered in French to voters who request translated materials from local election officials.<sup>62</sup> California requires that in counties and precincts in which minority language communities reach three percent of the residents of voting age, or in which the Secretary of State otherwise determines there is significant need for in-language assistance, elections officials must post “in a conspicuous location in the polling place” one copy of the ballot translated into the language spoken by the relevant community and make at least one additional translated copy available to be taken into the voting booth to be used as a reference. Vote-by-mail voters living in precincts reaching this threshold may request a translated copy of the ballot be sent to them before Election Day. Also, in precincts in which this threshold is met, elections officials must provide various forms of translated signage and make “reasonable efforts” to recruit poll workers who speak the language of the relevant community.<sup>63</sup> New York law states that the Board of Elections in a city with a population of over one million people must provide some of the same information on its website and voting materials in Russian.<sup>64</sup> In Minnesota, state law gives the Secretary of State authority to develop voting instructions in languages other than English and requires 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.”<sup>65</sup> This Minnesota law does not limit applicable languages to just those covered by Section 203.

At least two states have tried to enact similar measures through their legislatures. In 2015, a bill in the Massachusetts legislature would have required the Secretary of State to post electronic voter registration forms in Portuguese and any other language he or she deemed necessary.<sup>66</sup> There was also legislation in Illinois in 2015 which would have required any political subdivision with more than 10 percent of the population within a single language-minority group that is LEP to provide all hard-copy election materials in that language.<sup>67</sup> The Illinois bill applied to five language-minority groups<sup>68</sup> – one of which, Polish, went beyond the covered languages of Section 203. While these proposals were unsuccessful, it is clear that there are unmet needs that would be addressed by these types of legislative efforts in other states and localities across the country.

61 52 U.S.C. § 10503(e).

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

63 CAL. ELEC. CODE § 14201(b) (as amended by A.B. 918 (2017)); §12303(c).

64 N.Y. ELEC. LAW § 3-506.

65 MINN. STAT. § 204B.27.

66 H.544, 189th Gen. Ct., Reg. Sess. (Mass. 2015). The bill was not voted on in the House and was sent to study committee.

67 H. 1452, 99th Gen. Assemb. Reg. Sess. (Ill. 2015).

68 The covered language minority groups are Chinese, Korean, Polish, Spanish, and a combination of Gujarati, Hindi and Urdu.



## 2. Lower Threshold for Language Assistance Coverage

While states cannot set a higher threshold for language assistance, states can set the bar lower to require increased language assistance. California is an excellent case study in effectively lowering the threshold for coverage, thereby expanding access to the ballot for limited-English proficient voters in the state. In California, state law requires that where 3 percent or more of the voting-age citizens in a precinct do not speak English, or if interested citizens or organizations provided information that the election official believes indicates a need for voting assistance, county officials must make reasonable efforts to recruit election officials who are fluent in the language.<sup>69</sup> That recruitment must be conducted through working with the community and voluntarily donated public service notices in the media.<sup>70</sup> Certain materials must also be made available in counties and precincts determined to meet a three percent threshold of voting-age residents who are members of a language minority who lack the English skills to vote without assistance, or where community input indicates the need, with increased materials available at higher thresholds.<sup>71</sup> Colorado law has a similar lower trigger for some language assistance requirements by mandating that if a jurisdiction has 3 percent of non-English-speaking eligible electors, county clerks and recorders are required to “take affirmative action to recruit full-time or part-time staff members who are fluent in the language used” by the language minority.<sup>72</sup> In Connecticut, the law requires municipalities to employ or retain Spanish translators on a stand-by basis, if those municipalities have at least a 1 percent population, amounting to at least 500 citizens, of Hispanic-Americans according to the U.S. Census.<sup>73</sup> Connecticut law has the same threshold requirement forcing municipalities to send voters notices of removal from the rolls in Spanish.<sup>74</sup>

### ii. Section 208 and State Laws

Community leaders could look to expand upon Section 208’s right to assistance of choice. Several states and local jurisdictions expand the ability of limited-English proficient voters to have assistance in voting beyond Section 208’s minimum requirements. These expanded efforts to assist voters include: (a) placing fewer or no restrictions on a voter’s ability to seek assistance; (b) requiring verbal language assistance, and (c) creating official partnerships with high schools or community colleges to recruit bilingual poll workers to assist voters. Community leaders should also assess whether there are conflicting state requirements that violate Section 208 and work to fix this through legislative efforts. There are laws on the books across the country which limit the effectiveness of Section 208. Examples include laws that allow only certain people – such as relatives or friends of a voter – to assist that voter, laws that cap the number of voters an individual may assist in a given election, or laws that allow only Board of Elections-employed interpreters to provide assistance. Community leaders can work to overturn these laws by informing elected officials that limitations on Section 208 are not only detrimental to the ability of limited-English proficient voters to successfully register and vote, but also may be in violation of federal law.

At least one state simply denies voters assistance from a person of their choosing. In Michigan, only an interpreter called by the Board of Elections may assist a voter.<sup>75</sup> At least two other states, Nebraska and Missouri, narrow whom citizens can choose to assist them in voting. In Nebraska, the state law only allows for assistance “by a relative or friend” of the voter’s selection, instead of anyone of the voter’s choice.<sup>76</sup> In Missouri, only someone who is voting at a polling station can assist another voter in voting.<sup>77</sup> This means if a voter’s family member is not voting that family member cannot assist the voter.

69 CAL. ELEC. CODE § 12303(c) (as amended by A.B. 918 (2017)).

70 *Id.*

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

72 COLO. REV. STAT. § 1-2-202.

73 Conn. Agencies Regs. § 9-4-1.

74 Conn. Agencies Regs. § 9-35-1.

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

76 NEB. REV. STAT. § 32-918.

77 MO. REV. STAT. §115.409.

In 2015, a lawsuit was filed in Texas by the Asian American Legal Defense and Education Fund which alleged that during the 2014 elections, election officials refused to allow a voter's son to assist her with interpreting the ballot because he was not a registered voter in the County, in violation of Section 208.<sup>78</sup> The Texas Election Code has two provisions related to bringing someone in with the voter to assist – one that allows the use of an “assistor” which generally mirrors Section 208 and another one that requires “interpreters” to be registered voters in the same county as the voter.<sup>79</sup> In August 2017, the Fifth Circuit Court of Appeals affirmed the district court decision, ruling that the Texas law requiring interpreters to be registered voters violates the Voting Rights Act.<sup>80</sup> In the opinion, Judge Patrick Higginbotham wrote that the Texas Election Code provision “flatly contradict[s] Section 208.”<sup>81</sup>

At least four states restrict the number of voters someone can assist in voting for an entire election. Provisions like these may violate Section 208 because if a voter wants someone to assist them and that person has already assisted others in voting, a state should not be able to stop the voter from receiving assistance from that assistor of choice. Georgia does not allow someone to assist more than ten voters.<sup>82</sup> Missouri does not allow someone to assist more than one voter.<sup>83</sup> Minnesota does not allow someone to assist more than three voters.<sup>84</sup> Arkansas does not allow someone to assist more than six voters.<sup>85</sup> There was legislation introduced in Arkansas in 2013 to remove this limitation and allow individuals to assist an unlimited number of people, which unfortunately did not pass.<sup>86</sup>

## Conclusion

Community leaders can often be what makes a language assistance plan successful and ensures its compliance with the Voting Rights Act. Successful language assistance benefits both the individual voters who now better understand the instructions, process and ballots, and elections officials who have a more engaged community and smoother polling site operations. Even when there is not a federal mandate to provide language assistance, community leaders can advocate for voluntary assistance by working collaboratively with elections officials. As our country becomes more and more diverse, including linguistically diverse, our election administration must continue to evolve to address these growing needs.

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78 Complaint, *OCA-Greater Houston v. State of Texas*, No. 1:15-cv-00679, (W.D. Tex., Aug. 06, 2015), available at <http://aaldef.org/OCAvStateofTexascomplaint.pdf>.

79 See TEXAS ELEC. CODE §§ 64.0321, 61.034 and 61.033.

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

81 *Id.* at 17.

82 GA. CODE § 21-2-409(b)(2).

83 MO. REV. STAT. § 115.445(3).

84 MINN. STAT. § 204C.15.

85 ARK. CODE § 7-5-310(b)(4)(B).

86 S. 634, 89th Gen. Assemb. Reg Sess. (Ark. 2013).