“I became a U.S. citizen on November 20th, 2013. I registered to vote right away. But I’m always afraid when I go to vote. No one will be able to speak Mandarin and help me if I have questions. Also at the Registrar Office, they should have staff who speak in Asian language[s] to help us understand the proposition that we are voting for. Many seniors like me want to vote. But we don’t want to make mistakes when we vote. We also don’t want to be treated with disrespect at voting place[s] because we do not speak English well.”

–Su Fang Gao, an 80-year-old public witness, testified in Cantonese about the need for staffing polling sites with workers who speak Chinese languages. (NCVR California state hearing)
CHAPTER 7
Language Assistance for Limited English-Speaking Citizens

One of the primary ways that minority language voters have suffered discrimination is through the use of English-only elections. It is difficult for a voter who cannot understand the ballot or a voter registration form to effectively participate in the electoral process. Recognizing this problem, beginning in 1975, Congress found that the use of English-only elections in jurisdictions with a significant number of limited-English proficient (LEP) voting age citizens discriminated against those voters. Congress imposed affirmative obligations on those jurisdictions to provide materials and language assistance in the language of the particular minority group. As discussed below, these language minority provisions have resulted in substantial progress; however, lack of compliance with these legal protections is not uncommon. The denial or insufficiency of language assistance in certain jurisdictions where it is legally required continues to deny language minority groups equal access to the polls.

Today, there are over 25 million people in the United States who do not speak English proficiently. Over 57 million adults speak a language other than English at home.¹ This is a 148 percent increase since 1980. Moreover, the trends indicate that these numbers will only continue to grow over the next decade and beyond. Experts predict that by 2020 there will be somewhere between 64 and 68 million people in the United States who do not primarily speak English at home.² As language minority communities continue to grow in the coming decades, it will be crucial to ensure that they are equal participants in the democratic process.

I. FEDERAL VOTING PROTECTIONS FOR LIMITED ENGLISH PROFICIENT CITIZENS

There are several federal voting protections for minority language citizens contained within the Voting Rights Act (VRA), including the following:

• **Section 203** places an affirmative obligation on covered jurisdictions to provide all voting information such as registration and voting notices, forms, instructions, polling site assistance, and ballots in the applicable minority group language.³ The covered minority groups under these provisions are voters who are of Spanish heritage, or are Asian Americans, American Indians, or Alaska Natives.
Drost Kokoye, a member of the public, spoke about the lack of minority language assistance at the Paragon Hills polling place in Nashville, Tennessee, at the NCVR Nashville regional hearing.

PHOTO CREDIT: JOSEPH GRANT

Every five years, the Census Bureau applies a formula to determine which jurisdictions are covered under Section 203 and for which language groups. For a jurisdiction to be covered under Section 203, the number of LEP, voting age citizens from the group must be either:

» More than five percent of all voting age citizens within a state or locality,

» More than 10,000 in number within a political subdivision, or

» In the case of a political subdivision that contains all or any part of an Indian reservation, more than 5 percent of the American-Indian or Alaska-Native voting age citizens within the Indian reservation.4

Additionally, the illiteracy rate of such language minority citizens in the jurisdiction must be higher than the national illiteracy rate.5 Currently 25 states are either fully or partially covered by Section 203.

• **Section 4(e)** protects the right to vote of United States citizens educated in a language other than English in American-flag schools in any state, territory, the District of Columbia, or Puerto Rico. The provision provides that these citizens’ voting rights cannot be denied because of their inability to read, write, understand, or interpret English.6

• **Section 208** provides that “Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.”7
The applicability of one other provision, Section 4(f)(4), is uncertain in light of the Shelby County v. Holder decision. Jurisdictions covered under the Section 4(b) formula—i.e., jurisdictions that held English-only elections and had a registration rate lower than 50 percent or a turnout rate lower than 50 percent for the November 1972 elections and where more than five percent of the voting age citizens were from a minority language group—were subject to Section 5 preclearance and were required to provide the same types of language assistance as specified by Section 203. The Shelby County decision eliminated Section 5 preclearance for these jurisdictions but did not address the law’s constitutionality as it applies to the affirmative obligation to provide language assistance under Section 4(f)(4). Regardless, most of the Section 4(f)(4) jurisdictions are still obligated to provide language assistance under Section 203.

The scope of the minority language provisions has changed over the course of the VRA’s history based on the conditions found by Congress at the time.

1965: Limited Protections for Language Minorities

The original Voting Rights Act included a limited, yet important, provision for some language minority citizens: Section 4(e). This provision provides that an eligible voter who was educated up to the sixth grade in an American public school where the instruction was conducted in a language other than English cannot be denied the right to vote because of his or her inability to read or write English. The primary focus of this provision is on citizens who received their education in Puerto Rico. A challenge under Section 4(e) ended New York’s English literacy test, which had been utilized to disenfranchise Puerto Rican voters in New York.

1975: Significant Expansion of the VRA to Protect Limited English Proficient Citizens

In 1975, Congress expanded the Voting Rights Act to provide significant legal protections for language minority citizens. Congress found that these protections were necessary because voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language.

Since “states and local jurisdictions have been disturbingly unresponsive to the problems of these minorities,” Congress found it imperative to institute legal protections to ensure that language minority citizens are afforded equal access to voting, as required by the Fourteenth and Fifteenth Amendments to the United States Constitution. Among other things, Congress
added Section 203, which places affirmative language access obligations on jurisdictions\textsuperscript{12} to provide “registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots… in the language of the applicable minority group as well as in the English language.”\textsuperscript{13}

Notably, the 1975 amendments also established that in some jurisdictions English-only elections constituted a “test or device” for purposes of coverage under Section 4(b) of the Voting Rights Act.\textsuperscript{14} Preclearance and federal observer protections were therefore extended to any jurisdiction in which more than 5 percent of voting age citizens were of a single language minority, election materials had been prepared only in English in the 1972 presidential election, and less than 50 percent of voting-age citizens had registered for or voted in the 1972 presidential elections.\textsuperscript{15}

Although the additions to the VRA were intended primarily to assist Spanish-speaking citizens, Congress also found “evidence that although other language groups do not suffer from the same pervasive voting discrimination which has been demonstrated for persons of Spanish origin, they do register and vote in fewer numbers than their English-speaking neighbors.”\textsuperscript{16} As a result, Native Americans and Asian Americans were also covered under the VRA’s language assistance provisions.

1982: Reauthorization of Language Provisions for Ten Years

Originally enacted for a seven-year period, the language assistance provisions were reauthorized in 1982. During the debates surrounding reauthorization, Congress learned that in Texas the language assistance provisions contributed to a 64 percent increase in Mexican-American voter registration and a 30 percent increase in Hispanic elected officials in Texas over the prior four years.\textsuperscript{17}

However, hostility and insufficient compliance with the language provisions continued. For example, U.S. Representative Robert Garcia testified in 1982 about the continuing unavailability of language assistance for language-minority voters, such as “election officials who did not permit bilingual poll workers to speak Spanish when that was what they were hired to do.”\textsuperscript{18} Finding that “[u]nless they have access to materials in a language they can understand, minority Americans clearly cannot exercise their right to vote”\textsuperscript{19} and acknowledging its “obligation to erase discrimination against Hispanic Americans and other minorities,”\textsuperscript{20} Congress reauthorized the language assistance provisions for another 10 years.
In 1992, Congress not only reauthorized the existing language assistance provisions but extended them to “provide coverage for jurisdictions with significant populations which currently do not provide language assistance under Federal mandate.” It did this by extending the language assistance coverage formula to provide two additional criteria for coverage.

First, the 1992 amendments added the provision that a political subdivision is covered if “more than 10,000 of the citizens of voting age... are members of a single language minority and are limited-English proficient,” and if the illiteracy standard is also met. The House report explained that “[d]uring the period from 1982 until the present, the need for a numerical benchmark became clear, so that jurisdictions with large language minority populations that do not meet the 5 percent trigger” could otherwise attain coverage. The House report found that—under the old formula—Latino, Asian-American and Native-American communities were insufficiently protected. As such, the change was intended to address the fact that some language minority communities, though sizeable, are located in such populous areas that they do not constitute more than five percent of the population. This 10,000 citizen benchmark has been particularly crucial for Asian-American citizens. “After the 1982 reauthorization, no Asian-American community outside of Hawaii qualified for assistance. Under the 1990 census, only Chinese Americans in San Francisco County would qualify on the mainland... [A] 10,000-citizen benchmark [resulted in] coverage for three additional Asian languages and five additional counties, including three large counties in the State of New York.”
Secondly, Congress also provided that “in the case of a political subdivision that contains all or any part of an Indian reservation,” a jurisdiction is covered if “more than 5 percent of the American Indian or Alaska Native citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient,” and the illiteracy standard is met. Experience had shown, the House report stated, that “the American Indian and Alaska Native populations were not receiving the type of assistance they needed.”

Reservations, which have relatively small populations, often have boundaries that do not coincide with county or state lines, as many reservations were established before the states or counties came into existence. The division of Native American communities across multiple states or political subdivisions allowed even areas with a relatively strong Native American presence to avoid coverage. Thus, the House report found, “the 5 percent trigger has proven to be ineffectual in the Native American context.”

Beyond expanding the reach of the language assistance provisions, Congress also reauthorized them for an additional 15 years. It found that “the four language minority groups covered by section 203—Hispanics, Asian Americans, American Indians and Alaska Natives—continue to experience educational inequities, high illiteracy rates and low voting participation.” Congress recounted numerous examples of the barriers to literacy and participation faced by non-English speakers, such as the fact that in 1991, Latinos age 25 and older had a high school graduation rate of only 51.3 percent, compared to 80.5 percent for non-Latinos. While the language assistance provisions had produced a “closing of the gap between Hispanic and Anglo voter registration in areas where language assistance is provided” and had not proved to be burdensomely costly, Congress found that persistent disparities in access to the electoral process between English and non-English speakers justified the language assistance provisions’ further extension.

**2006: Extension of Section 203 for 25 Years**

In 2006, Congress reauthorized the provisions for an additional 25 years, and emphasized that covered jurisdictions “were required to provide language minorities with not only bilingual election materials but also bilingual election assistance, including oral assistance and other written election and voting assistance, such as instructions, guides, forms, notices, and ballots, in response to the needs demonstrated by limited English speaking citizens.” The House Judiciary Committee Report accompanying the bill detailed a litany of problems facing voters with limited English proficiency and/or little education. For example, it recounted testimony that during the 2004 election in Pima County, Arizona, many LEP Latino voters were denied equal access to the electoral process due to a lack of bilingual ballots. It noted that the Department of Justice (DOJ) had litigated an increased number of Section 203 cases since 2000, which the report described as “critical to protecting language minority voters.”
II. PROGRESS AND BARRIERS FOR LIMITED ENGLISH PROFICIENT VOTERS

The VRA’s language assistance provisions are essential to ensuring equal participation for language minority communities that have historically been the targets of discrimination. Although voter participation rates for Asian Americans (47.3 percent), Latinos (48 percent), and American Indians and Alaska Natives (46.6 percent) continued to lag behind that of whites (64.1 percent) in 2012, the VRA’s language protections have positively influenced voter participation and turnout. Following the enactment of the language assistance provisions of the VRA, voter registration and turnout rates for Native Americans, Asian Americans, and Latinos have greatly increased:

- Following the 1992 extension of coverage under Section 203 to jurisdictions that had more than 10,000 LEP language minority voting age citizens, “the number of Asian-Americans registered to vote increased dramatically. Between 1996 and 2004, Asian-Americans had the highest increase of new voter registration[s], approximately 58.7 percent. During that same period, Asian-Americans experienced an increase in turnout of 71 percent.”

- The Latino voter registration rate has nearly doubled since the addition of the language assistance requirements in 1975. Additionally, between 1980 and 1990, Latino “voter participation increased [at] five times the national rate.”

- For Native Americans, between 1975 and 2013, in covered counties “[r]egistration and turnout increased between 50 percent and 150 percent.”

Studies and surveys have nearly uniformly shown a substantial increase in voter participation when language materials and assistance are provided—and by implication, participation is lower than it would be when language assistance is not provided. For example, one witness testified at the National Commission on Voting Rights (NCVR) California state hearing that, “in San Diego County, [] once the county adopted a comprehensive [language assistance] program, voter registration increased by 20 [percent] in the Filipino American community and increased by 40 [percent] in the Vietnamese American community.”

A recent study found that even controlling for other variables, a county that is covered by Section 203 has a Latino voter turnout that is 15 percent higher than a similarly situated county that is not covered; counties with Spanish-speaking staff see Latino registration that is 6 percent higher than those without such staff; counties that provide voting materials in Spanish have a 4 percent higher Latino voter registration rate; and, finally, that “[a]ll other things equal, a county covered under Section 203 has Latino voter turnout that is 11 percent higher than non-covered counties.” Moreover, Latino voter registration in covered counties is almost 15 percent higher than in non-covered counties.
Despite its effectiveness, some jurisdictions continue to fail to comply with Section 203. A 2005 study found that of jurisdictions covered for an Asian, Spanish, or Native language, a large number failed to provide at least one element of the language assistance required. A memo provided to the Presidential Commission on Election Administration states flatly, “Despite an array of federal, state, and local laws and practices requiring accommodations for voters of limited English proficiency, the need for assistance is often unmet.” The memo cites numerous recent problems, including poor and inaccurate translations that could have impacted voters’ ability to cast a meaningful ballot.

On the left, Henry Yee, Co-Chair of the Chinatown Residents Association in Boston, testified at the NCVR Boston regional hearing on the need for Chinese language ballots in the City of Boston. He said, “The biggest right that we enjoy as American citizens is the right to vote, and because of the language barrier, a lot of times when these citizens will go and vote, it’s hard for them to tell on the ballot which—one is maybe Bush or Obama, and there’s a lot of mistakes that would occur when they’re trying to vote.”

PHOTO CREDIT: MEREDITH HORTON

There are several recent examples of significant translation errors. In 2012, Maricopa County, Arizona published the wrong election date in the Spanish translation of official election materials, listing the election date as November 8 instead of November 6. The same problem was repeated on Spanish-language bookmarks distributed at a voter-education event. In 2012, the Spanish translation of Maryland’s ballot summary misstated the proposed effect of the voter initiative on same-sex marriage. “Barack Obama” was misspelled as “Barack Osama” on New York’s absentee ballots for Spanish speakers in 2008, and a 2010 ballot in Massachusetts had to be reprinted when it improperly spelled the word “Alguacil” (Spanish for “sheriff”) as “Aguacil” (Spanish for “dragonfly”).

In another memo for the Presidential Commission on Election Administration, it was noted that one in seven jurisdictions could not provide researchers registration materials in required languages, one in four did not have the necessary personnel to provide assistance, and one-third failed to provide either translated materials or bilingual personnel.

Additionally, at the California state hearing of the NCVR, Deanna Kitamura, a senior staff attorney for the Voting Rights Project of Asian Americans Advancing Justice of Los Angeles, told the Commission of serious failures to comply with Section 203 obligations for Asian languages during the 2012 election, including missing translated materials and the absence of bilingual poll workers. The Commission further received testimony stating that the
Department of Justice has filed nine lawsuits for failure to comply with Section 203 in California since 2004.58

At the NCVR Pennsylvania state hearing, Jerry Vattamala, an attorney for the Asian American Legal Defense and Education Fund, talked about voting accessibility for language minorities in Philadelphia. The City agreed to provide voting assistance in Chinese, Khmer, Korean, and Vietnamese. Vattamala remarked, “Since that time, they have significantly backslid each successive election, until the point in 2012 where there were only four Asian language interpreters for the entire city… [In] South Philadelphia… there was long lines of Vietnamese-American voters that needed language assistance, but there was no interpreter.”59

The Commission also heard about a failure to provide language assistance for Haitian Creole speakers in several counties in Florida. Until 2006, Miami-Dade County was required by a consent decree to provide Creole language assistance and hire Creole-speaking poll workers. However, by 2012, Creole-speaking voters in Palm Beach, Broward, and Miami-Dade Counties reported “that they did not have adequate access [to] translation or literacy assistance.” In some cases this led to voters mistakenly invalidating their ballots.60

The impressive gains in voter registration and participation for LEP voters after the enactment of the VRA’s language minority provisions are a welcome sign of progress. However, the continued reports of insufficient compliance with language assistance requirements and hostility toward LEP voters in some jurisdictions, as illustrated by testimony before the NCVR and the litigation summaries below, highlight the need to continue working to ensure true equal and meaningful access to voting throughout the United States.

III. EXAMPLES OF RECENT LANGUAGE ACCESS LITIGATION

Between 1995 and 2014, there have been 58 successful language minority cases and settlements (matters) throughout the United States (see Table 4 in Chapter 2 for a table outlining the languages and states involved). A great majority of these cases involved Spanish-speaking voters. A breakdown for the matters involving different language minorities is as follows:

- 46 matters involved Spanish.

- Ten discrete matters involved Asian languages: Seven involved Chinese, four involved Vietnamese, two involved Korean, one involved Japanese, one involved Bengali, one involved Tagalog, and one involved Ilocano.
• Five discrete matters involved a Native American language: Three involved Navajo, two involved Keresan, one involved Lakota, and one involved Yup’ik.

• One matter involved Creole.

Some of these recent matters are summarized below.

**Refusal to Provide Language Assistance**

In *Nick v. Bethel*, the State of Alaska entered into a settlement agreement as a result of its longstanding disregard for the federally protected voting rights of its Native citizens. The Bethel Census Area is 81.6 percent Alaska Native or American Indian, and its most populous town the City of Bethel has a population that is 61.8 percent Alaska Native or American Indian. Yup’ik is the most common native language in Alaska, and many elders cannot read or speak English. Language assistance is especially important in Bethel because the illiteracy rate among the Eskimo limited-English proficient population is 21.46 percent, almost 16 times the national illiteracy rate of 1.35 percent. However, plaintiffs contended that the State failed to provide the language assistance required by Section 203 of the VRA.

Yup’ik is historically a written language, and the State of Alaska has provided other, non-election documents in Yup’ik. The City of Bethel was continuously covered by Section 4(f)(4) since October 22, 1975. Despite this, plaintiffs, who were illiterate in English, alleged that Bethel had falsely told Yup’ik-speaking voters that they must go into the voting booth alone and that no one may see their votes, denied voters their right to select or receive assistance from the assistor of their choice, required Yup’ik-speaking voters to be assisted by poll workers not fluent in Yup’ik, and required that all assistance take place outside the voting booth. In 2002 and 2004, the DOJ sent letters to remind Bethel of the VRA’s bilingual election requirement.

The State’s response to the litigation was characterized by a high degree of resistance and hostility. The district court found that “evidence of past shortcomings justifies the issuance of injunctive relief to ensure that Yup’ik-speaking voters have the means to fully participate in… State-run elections.” Although the State had been “covered by Sections 203 and 4(f)(4) for many years[,] it lacks adequate records to document past efforts to provide language assistance to Alaska Native voters” and “the revisions to the State’s minority language assistance program, which are designed to bring it into compliance[,] are relatively new and untested.” In granting a preliminary injunction ahead of the 2008 elections to obligate the State to provide language assistance to Yup’ik voters (including translators, sample ballots, and a Yup’ik-English glossary of election terms), the district court observed that
the State “had failed to [...] provide print and broadcast public service announcements (PSA’s) in Yup’ik, or to track whether PSA’s originally provided to a Bethel radio station in English were translated and broadcast in Yup’ik; ensure that at least one poll worker at each precinct is fluent in Yup’ik and capable of translating ballot questions from English into Yup’ik; ensure that ‘on the spot’ oral translations of ballot questions are comprehensive and accurate, or require mandatory training of poll workers in the Bethel census area, with instructions on translating ballot materials for Yup’ik-speaking voters with limited English proficiency.”

The State argued that because it had already begun to take steps to remedy its defective language assistance program, an injunction was not necessary, an argument that the district court rejected because of the long history of noncompliance.

Effective Minority Language Assistance Leads to Electoral Success

A 1999 case filed in Passaic County, New Jersey, illustrates the impact of increased compliance with Section 203 of the VRA. Starting after World War II, Passaic County experienced an influx of Latino residents, and eventually became covered by Section 203 in 1984. Latino presence continued to increase, going from 21.7 percent of the county population in 1990 to 30 percent in 2000. The County, however, had failed to comply with the language assistance requirements of state and federal statutes, which resulted in a state court invalidating the result of the Patterson city council elections in 1986 and ordering the County to provide bilingual poll workers in future elections. Over the next several years, the County continued to disenfranchise Latino voters by failing to comply with the court order. Latino voters continued seeing a lack of Spanish-speaking poll workers, insufficient Spanish-language materials at the polls, failure to advertise election information in Spanish-language media, as well as ethnically derogatory remarks by poll workers and their refusal to allow voters to obtain assistance in voting by a person of their choice. Eventually in 1999, the DOJ filed suit, which resulted in a consent decree, but the County failed to comply. In 2000, the DOJ filed an application to hold the County in contempt, and under an agreed order, the court appointed an independent elections monitor, granting him sweeping authority to bring the County into compliance with its language assistance obligations. By May 2002, vast improvements had been made, including:

- the appointment of the County’s first Latino member to the four-member Board of Elections;

- the appointment of a Latino to a senior position in the County’s elections office (i.e., deputy superintendent of elections);
• registration of thousands of new Latino voters; and

• increasing availability of Spanish-language materials at the polls and a record-breaking Latino voter turnout.

These improvements were followed in short order by the election of the first Latino member of the County Board of Freeholders and the election of the first Latino mayor in Passaic City.77

Similarly, in 1998, the Department of Justice filed a lawsuit against the City of Lawrence, Massachusetts, on behalf of Latino citizens, some of whom were LEP voters.78 The City of Lawrence had been covered under Section 203 since 1984; however, “the jurisdiction had done little to comply with” its obligations.79 Along with vote dilution claims relating to the election systems for city council and school committee, the lawsuit alleged that the City had (1) failed to provide election-related materials in Spanish, as required by Section 203; (2) failed to assign Latino poll workers on the same basis as whites, in violation of Section 2; and (3) provided ineffective oral and written bilingual assistance and discriminatory poll worker assignments, in violation of Section 2.80 In 1990, Latinos comprised 41.6 percent of the Lawrence population and 34.1 percent of the voting age population. As of 1997, approximately 31 percent of Lawrence’s registered voters were Latino. Importantly, 51.8 percent of Latino voting age citizens (or 12.8 percent of all voting age citizens) were LEP.81

In September 1999, the City entered into a settlement agreement with the DOJ, which, among other things, required the city to (1) hire a coordinator to implement the language access program;82 (2) provide Spanish translations of all election-related information;83 (3) provide bilingual poll workers at each precinct; and (4) assign Latino poll workers in each precinct that was proportionate to the share of Latino registered voters in the precinct.84

The settlement agreement had a major impact. Previously, only one Latino had been elected to the City Council in its history, and that candidate had run from a majority-Latino district.85 “In the first election after the settlement, three Latinos were elected to the nine-member City Council.”86 One of these candidates, Marcos Devers, won running at-large. Devers had lost four previous times in at-large elections for City Council.87 Later, in 2009, William Lantigua was elected mayor of Lawrence, making him the first elected Latino mayor in the State of Massachusetts.88

A third matter that highlights the positive impact of Section 203 compliance involved Harris County, Texas. Though the County took some steps to comply in 2002 when it was first required to provide assistance in Vietnamese under Section 203,89 it did not translate its electronic ballot. According to Trang Q. Tran of the Asian American Legal Center, while the remedy had “been to provide paper templates in [the] Vietnamese language to be used with
the E-Slate machines in the polling booths” these were, at times, denied to Vietnamese voters requesting them, or they arrived late to the polling locations and were not distributed.\textsuperscript{90}

After the November 2003 election, the County and the DOJ arrived at an agreement, which resulted in the translation of the County’s ballot into Vietnamese, the hiring of a Vietnamese staff member in the county clerk’s office, and the staffing of precincts with a significant number of Vietnamese-speaking poll workers. These changes resulted in the doubling of Vietnamese-American voter turnout,\textsuperscript{91} and “are probably responsible, in part, for the [2004] election of Hubert Vo, the first member of the Texas legislature of Vietnamese descent.”\textsuperscript{92} Vo defeated “the incumbent chair of the Appropriations Committee by sixteen votes out of more than 40,000 cast.”\textsuperscript{93}

\section*{Hostility Toward Limited English Proficient Voters}

Hostility Toward Limited English Proficient Voters

In July 2008, DOJ filed suit against Salem County, New Jersey, in \textit{United States v. Salem County}, alleging violations of Sections 4(e), 208, and 2 of the VRA related to Puerto Rican and other Latino voters in Penns Grove, a Borough of Salem County.\textsuperscript{94} DOJ claimed that Salem County and Penns Grove officials failed to translate ballots into Spanish, prohibited family members or other people from assisting voters with limited English skills, interfered with assistance when it was allowed, directed hostile or discriminatory remarks to Latino voters at elections, turned away Latino voters, and committed other violations of the law.\textsuperscript{95} On the same day DOJ filed its complaint, it entered into a settlement agreement with Salem County to resolve the dispute, and the court approved the settlement agreement shortly after it was filed.\textsuperscript{96}
In another case in Pennsylvania, *United States v. Berks County*, language issues joined with hostile actions led the court to require Berks County to provide Spanish language assistance. In this case, the DOJ brought suit under Sections 2, 4(e), and 208 (the jurisdiction was not covered by Section 203). The court found that poll workers made discriminatory remarks to Latino voters, prevented and discouraged them from voting (e.g., because they could not understand their names or refused to “deal” with Latino last names), and treated them differently with respect to voter identification requirements—they demanded photo identification from Latino voters even though such identification was not legally required in order to vote in the State. The court also found that the County did not provide bilingual oral and written assistance at the polls and barred Latino voters from bringing in people to assist them. In granting the United States’ motion for preliminary injunction, the court ruled that the lack of bilingual materials and poll workers had a “severe” impact on limited-English proficient voters. In that same order, the court noted the problems in voting experienced by a woman born in Puerto Rico who was unable to read the English-language ballot, and consequently pushed all the buttons on the ballot and was unsure who she had voted for.

Moreover, the Berks County government had been made aware of the above issues by the Department of Justice four separate times between 2001 and 2002—after four elections—but the County still failed to take action to remedy the situation. The district court granted permanent relief on August 20, 2003. The permanent injunction authorized the appointment of federal observers and ordered, among other things, that the County: (1) provide bilingual election materials; (2) provide trained bilingual poll workers and interpreters; (3) provide dedicated phone lines staffed by trained bilingual employees; (4) provide training for all poll workers to make them aware of voting rights and compliance with the VRA; and (5) appoint language coordinators to hold regular meetings with the Latino community and investigate and report on any complaints related to hostility toward Latino voters.

“In 2012, APIA Vote-Michigan […] [found that m]any poll sites failed to provide Bengali ballots, make translated materials available, or provide interpreters. […] In one case […] the translated sign displayed next to the Voter Bill of Rights had nothing to do with voter […] rights at all. Poll workers also complained that voting machine scanners would not read the translated Bengali ballots,” testified Theresa Tran of APIA Vote-Michigan at the NCVR Michigan state hearing.

The case *United States v. City of Hamtramck*, Michigan is an additional example of the interconnection between racial hostility and minority language issues. Though this case was brought under Sections 2 and 208 of the VRA because Hamtramck was not covered under Section 203, a substantial part of the remedy involved requirements for language assistance. A group of Arab citizens in Hamtramck, an enclave surrounded by the City of Detroit, had their right to vote challenged and were not allowed to vote in a 1999 election until they
recited an oath of citizenship—even when some were able to produce an American passport. The challenges were made by a “group named Citizens for a Better Hamtramck…, which had registered with the city clerk to provide challengers for the city elections in an effort to keep the election ‘pure.’” In 2000, a court entered a consent decree:

“order[ing] the city to establish a program to train election officials and private citizens regarding the proper grounds for election challenges.” The order also required the placement of bilingual poll workers at every polling location in Hamtramck on Election Day and assigned federal observers to ensure the city’s compliance with the order.106

There continued to be problems in Hamtramck after the consent decree, including the City’s failure to hire sufficient numbers of bilingual poll workers. This led the court to extend the consent decree to 2004, amending it to require at least two bilingual poll workers in every precinct for the assistance of Arab-American voters.107
Case Spotlight
California’s English-Only Initiative and Recall Petition Process

A major barrier identified by witnesses from the Greenlining Institute and the Mexican American Legal Defense and Educational Fund (MALDEF) during the NCVR California state hearing is that, according to a ruling by the U.S. Court of Appeals for the Ninth Circuit, individuals and organizations that circulate recall petitions and initiatives for voter signatures may do so only in English without violating Section 203 of the VRA. California’s ballot initiative process, established in 1911, plays a crucial role in determining public policy in California. However, because initiative petitions may be circulated in English only, LEP voters are subject to manipulation by unscrupulous paid signature gatherers who misinterpret or deliberately lie about the substance of the initiative the LEP voter is being asked to support. In Padilla v. Lever, an en banc panel of the Ninth Circuit determined that the scope of Section 203 is limited to “voting materials” provided by the government, which does not include recall petition materials.\(^{108}\) In that case, plaintiffs challenged a recall petition that was circulated in English in a district with a high concentration of LEP voters. MALDEF, who represented the challengers, testified that a number of people signed the petition after being told that they were signing in support of something else, and that the petition resulted in the recall of a school board member who was supported by the Latino community, according to MALDEF.

At the NCVR California hearing, MALDEF President Thomas Saenz testified about the barriers Latinos face when voting in English-only elections. PHOTO CREDIT: ANDRIA LO
“For Latino citizens that speak little English, [much recent research shows that] access to Spanish ballots [...] and language assistance increases and influences election turnout.”

– Dr. Mindy Romero, Director of the California Civic Engagement Project at the UC Davis Center for Regional Change (NCVR California hearing)