

# Article

## GOVERNMENT EFFECTIVENESS AND EFFICIENCY? THE MINORITY LANGUAGE ASSISTANCE PROVISIONS OF THE VRA<sup>\*1</sup>

James Thomas Tucker<sup>†</sup>  
Rodolfo Espino<sup>‡</sup>

### I. INTRODUCTION

The minority language assistance provisions of the Voting Rights Act (VRA) remove language barriers to voting and help provide limited-English speaking American citizens with a full and meaningful opportunity to cast ballots.<sup>2</sup> Despite their increasing importance throughout the United States, these provisions are widely misunderstood.

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<sup>1</sup> This article is an abridged version of a longer report submitted to Congress in support of the reauthorization of the Voting Rights Act in 2006. See JAMES THOMAS TUCKER & RODOLFO ESPINO ET AL., MINORITY LANGUAGE ASSISTANCE PRACTICES IN PUBLIC ELECTIONS (March 2006) (hereinafter LANGUAGE ASSISTANCE PRACTICES), reprinted in *Voting Rights Act: Evidence of Continued Need*, 109th Cong., 109-103, at 2124. In certain places, the article will refer to tables or material in the full report that could not be included in this article. The views expressed herein are those of the authors, and do not necessarily reflect those of their respective organizations.

<sup>†</sup> S.J.D. and LL.M., University of Pennsylvania; J.D., University of Florida; M.P.A., University of Oklahoma; B.A., Arizona State University, Barrett Honors College. Adjunct Professor at the Barrett Honors College at Arizona State University; Policy Counsel for the ACLU's Washington Legislative Office; Former Senior Trial Attorney, U.S. Department of Justice, Civil Rights Division, Voting Section. During the recent VRA reauthorization hearings, he testified before Congress three times on the bill as a Voting Rights Consultant for NALEO.

<sup>‡</sup> Ph.D. and M.A. in Political Science, University of Wisconsin-Madison; B.A., Luther College. Assistant Professor, Department of Political Science, Arizona State University; Affiliate Professor, Department of Transborder Chicana/o & Latina/o Studies. Specialties in American Politics and Methodology and Political Theory. Co-recipient of American Political Science Association's award for best dissertation in the field of Race and Politics (2005).

<sup>2</sup> See 42 U.S.C. §§ 1973b(f)(4), 1973aa-1a.

Since their adoption in 1975,<sup>3</sup> the language assistance provisions have been subjected to repeated efforts by the English-only movement to repeal them or let them expire.<sup>4</sup> Critics have attacked the requirements for so-called “multilingual ballots”<sup>5</sup> as unnecessary, costly, ineffective, difficult to provide, and unused.<sup>6</sup> In preparation for the recent reauthorization of the language assistance provisions through the Voting Rights Act Reauthorization Act of 2006 (VRARA),<sup>7</sup> we conducted a comprehensive study to determine whether the evidence supported these criticisms. Contrary to the criticisms leveled against the minority language assistance provisions of the VRA, our study actually shows that these studies are not costly and can be efficiently implemented by election officials. As a result, a large majority of the election officials we surveyed conveyed support for the provisions.

This article details the findings of our study. Part II describes the language assistance provisions of the VRA, including coverage formulas and requirements. Part III provides an overview of the nationwide survey and the respondents. Part IV details the need for language assistance based upon Census data of the language and literacy abilities of language minority voting-age citizens in covered jurisdictions, as well as the perceptions of election officials about the extent of that need. Part V includes the survey results regarding the availability of language assistance in the covered jurisdictions. Part VI describes the quality of language assistance that is offered through an assessment of common characteristics of successful bilingual election programs. Part VII assesses the cost of providing oral and written language assistance and discusses ways in which additional election costs are lowered or eliminated altogether. Part VIII summarizes election officials’ comments about the language assistance requirements, highlighting their own experiences under the VRA. Part IX concludes with several

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3. See Pub. L. No. 94-73, 89 Stat. 402.

4. For a discussion of these efforts, see generally James Thomas Tucker, *The Politics of Persuasion: Passage of the Voting Rights Act Reauthorization Act of 2006*, 33 J. LEGIS. (2007) (forthcoming) (draft on file with author).

5. *Rep. King Applauds Decision to Give Americans Another Chance to End Bilingual Voting*, U.S. FED. NEWS, June 21, 2006, available at 2006 WLNR 10888239. References to the language assistance provisions as a mandate for multilingual or bilingual ballots are misleading and incorrect. Oral language assistance also must be provided at every stage of the election process. See *infra* notes 51–57, 189, 191–92 and accompanying text. In addition, bilingual election materials generally do not have to be provided to covered language groups with historically unwritten languages. See *infra* notes 49–50 and accompanying text. Bilingual election materials and oral language assistance also only need to be provided in places where voters actually require language assistance. See *infra* notes 58–61, 212–15 and accompanying text.

6. See *Rep. King Applauds Decision*, *supra* note 5. For additional examples of arguments made by English-only supporters, see generally *The Politics of Persuasion*, *supra* note 4; James Thomas Tucker, *Enfranchising Language Minorities: The Language Assistance Provisions of the Voting Rights Act*, 10 N.Y.U. J. LEGIS. & PUB. POL’Y 101, 136–40 (2007) (forthcoming) (draft on file with author).

7. See Pub. L. No. 109-246, 120 Stat. 577 (2006). For an extensive discussion of the VRARA and its legislative history, see generally *The Politics of Persuasion*, *supra* note 4.

recommendations for improving language assistance programs, based on information gathered in our study. Our findings establish that the language assistance provisions of the VRA, where implemented properly, play a critical role in offering language minority citizens an equal opportunity to participate.

## II. LANGUAGE ASSISTANCE UNDER THE VOTING RIGHTS ACT

The language assistance provisions of the VRA eliminate language barriers for millions of “limited-English proficient,” or “LEP,” language minority citizens who experience a higher illiteracy rate than the national average.<sup>8</sup> The provisions apply to four language groups: Alaska Natives, American Indians, persons of Spanish Heritage, and Asian Americans,<sup>9</sup> as well as the distinct languages and dialects within these language groups.<sup>10</sup> Other language groups were not included because there was no evidence that they experienced similar difficulties in voting.<sup>11</sup> Congress originally focused on protection of Spanish-language minorities in Texas who had experienced a well-documented history of discrimination in voting and education.<sup>12</sup> At the same time, Congress considered evidence of widespread discrimination against the other three covered language minority groups.<sup>13</sup>

Congress found that educational discrimination had led to high illiteracy rates among language minority citizens, which limited their ability to participate in English-only elections.<sup>14</sup> The evidence showed

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8. “Limited-English proficient” is the inability “to speak or understand English adequately enough to participate in the electoral process.” 42 U.S.C. § 1973aa-1a(b)(3)(B). “LEP voters,” as used herein, refers to voting-age (persons eighteen years or older) U.S. citizens from a covered language minority group who are limited-English proficient.

9. See 42 U.S.C. §§ 19731(c)(3), 1973aa-1a(e).

10. See 121 CONG. REC. H4716 (daily ed. June 2, 1975) (statement of Rep. Edwards); S. REP. NO. 94-295 at 24 n.14, *reprinted in* 1975 U.S.C.C.A.N. 790-91 n.14 (quoting Letter from Meyer Zitter, Chief, Population Division, Bureau of the Census, to House Judiciary Committee, Apr. 29, 1975).

11. See S. REP. NO. 94-295 at 31, *reprinted in* 1975 U.S.C.C.A.N. 797.

12. For a discussion of the legislative history of the temporary language assistance provisions and how they work, see generally *Enfranchising Language Minorities*, *supra* note 6, at 106-36; Juan Cartagena, *Latinos and Section 5 of the Voting Rights Act: Beyond Black and White*, 18 NAT'L BLACK L.J. 201 (2005); David H. Hunter, *The 1975 Voting Rights Act and Language Minorities*, 25 CATH. U. L. REV. 250, 254-57 (1976).

13. See S. REP. NO. 94-295, at 24-31, 37-39, *reprinted in* 1975 U.S.C.C.A.N. at 790-797, 804-06; 121 CONG. REC. H4709-4713, H4716-4718 (daily ed. June 2, 1975) (statement of Rep. Edwards); U.S. COMM'N ON CIVIL RIGHTS, THE VOTING RIGHTS ACT: TEN YEARS AFTER 22-25, 57-59, 85-87, 97-99, 103-04, 108-111, 114-21, 123, 144, 160, 166, 220-30, 242-48, 251-54, 331-32 (1975).

14. See 42 U.S.C. § 1973b(f)(1); 42 U.S.C. § 1973aa-1a(a). Congress found:

[T]hrough the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational

that the high illiteracy rates experienced by language minorities were “not the result of choice or mere happenstance,” but instead resulted from “the failure of state and local officials to afford equal educational opportunities.”<sup>15</sup> The obstacle that illiteracy posed for language minority citizens attempting to vote was exacerbated even further by the lack of adequate bilingual assistance at the polls.<sup>16</sup> The language assistance provisions of the VRA adopt a practical approach to the illiteracy problem. “[T]he purpose of suspending English-only and requiring bilingual elections is not to correct the deficiencies of prior educational inequality. It is to permit persons disabled by such disparities to vote now.”<sup>17</sup>

#### A. FORMULAS FOR COVERAGE UNDER THE LANGUAGE ASSISTANCE PROVISIONS

Jurisdictions are selected for coverage under the language assistance provisions through two separate tests, or “triggering” formulas. Under Section 4(f)(4) of the Act, a jurisdiction is covered if three criteria were met as of November 1, 1972: (1) over 5% of voting age citizens were members of a single language minority group; (2) the jurisdiction used English-only election materials; and (3) less than 50% of voting age citizens were registered to vote or fewer than 50% voted in the 1972 presidential election.<sup>18</sup> This trigger covers jurisdictions that have experienced “more serious problems” of voting discrimination against language minority citizens.<sup>19</sup> Jurisdictions covered under Section 4(f)(4), which includes three states and nineteen political subdivisions,<sup>20</sup> must provide assistance in the language triggering coverage and are

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opportunities afforded them, resulting in high illiteracy and low voting participation.

*Id.*

15. S. REP. NO. 94-295 at 28, *reprinted in* 1975 U.S.C.C.A.N. 794; *see also* 42 U.S.C. § 1973aa-1a(a).

16. S. REP. NO. 94-295 at 39, *reprinted in* 1975 U.S.C.C.A.N. 805-06.

17. S. REP. NO. 94-295 at 34, *reprinted in* 1975 U.S.C.C.A.N. 800.

18. *See* 42 U.S.C. § 1973b(b). The Section 4(f)(4) trigger is “essentially identical to the traditional trigger” found in Section 4(b) of the Act, which already had proven effective in covering jurisdictions with a history of discriminating against African-Americans. S. REP. NO. 94-295 at 32, *reprinted in* 1975 U.S.C.C.A.N. 798.

19. S. REP. NO. 94-295 at 31, *reprinted in* 1975 U.S.C.C.A.N. 798; *see also id.* at 9, *reprinted in* 1975 U.S.C.C.A.N. 775 (Section 4(f)(4) applies to areas “where severe voting discrimination was documented” against language minorities). Specifically, “the more severe remedies of title II are premised not only on educational disparities” like the less stringent provisions under title III of the 1975 amendments, “but also on evidence that language minorities have been subjected to ‘physical, economic, and political intimidation’ when they seek to participate in the political process.” 121 CONG. REC. H4718 (daily ed. June 2, 1975) (statement of Rep. Edwards).

20. Section 4(f)(4) coverage applies in three states (Alaska for Alaska Natives, and Arizona and Texas for Spanish Heritage) and nineteen counties or townships in six additional states. *See* 40 Fed. Reg. 43746 (Sept. 23, 1975), 40 Fed. Reg. 49422 (Oct. 22, 1975), 41 Fed. Reg. 784 (Jan. 5, 1976) (corrected at 41 Fed. Reg. 1503 (Jan. 8, 1976)), and 41 Fed. Reg. 34329 (Aug. 13, 1976).

subject to the Act's special provisions, including Section 5 preclearance<sup>21</sup> and federal observer coverage.<sup>22</sup> Bailout under Section 4(a) of the VRA allows jurisdictions that have eliminated voting discrimination to be removed from coverage under Section 4(f)(4).<sup>23</sup>

Under Section 203 of the Act, a jurisdiction is covered if the Director of the Census determines that two criteria are met. First, the limited-English proficient citizens of voting age in a single language group must: (a) number more than 10,000; (b) comprise more than 5% of all citizens of voting age; or (c) comprise more than 5% of all American Indians of a single language group residing on an Indian reservation. Second, the illiteracy rate of the LEP language minority citizens must exceed the national illiteracy rate.<sup>24</sup> A person is LEP if he or she speaks English "less than very well" and would need assistance to

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21. See 42 U.S.C. § 1973c; 28 C.F.R. § 55.8(b). Section 5 requires a covered jurisdiction to submit for approval, or "preclearance," any proposed change affecting voting to either the U.S. Attorney General or the U.S. District Court for the District of Columbia before the change can be implemented. See 42 U.S.C. § 1973c; A CITIZEN'S GUIDE TO UNDERSTANDING THE VOTING RIGHTS ACT 8 (1984) (hereinafter CITIZEN'S GUIDE). "Change affecting voting" is broadly defined as "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" adopted after the coverage date. 42 U.S.C. § 1973c. Section 14(c) of the VRA defines "voting" as including "all action necessary to make a vote effective in any primary, special, or general election, including but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly." 42 U.S.C. § 19731(c)(1).

22. See 42 U.S.C. § 1973f; 28 C.F.R. § 55.8(b). Federal observers are non-lawyer employees of the United States Office of Personnel Management (OPM) authorized to observe "whether persons who are entitled to vote are being permitted to vote" and "whether votes cast by persons entitled to vote are being properly tabulated." *Id.* They are "trained by OPM and the Justice Department to watch, listen, and take careful notes of everything that happens inside the polling place during an election, and are also trained not to interfere with the election in any way." U.S. Dep't of Just., Civ. Rts. Div., Voting Sec., *Frequently Asked Questions* (Feb. 25, 2002), [http://www.usdoj.gov/crt/voting/examine/activ\\_exam.htm](http://www.usdoj.gov/crt/voting/examine/activ_exam.htm). When a voter requires assistance to cast a ballot, the observer may accompany that voter behind the curtain of the voting booth if the observer first obtains the voter's permission. See *United States v. Executive Committee of Democratic Party of Greene County*, 254 F. Supp. 543 (N.D. Ala. 1966); *United States v. Louisiana*, 265 F. Supp. 703, 715 (E.D. La. 1966). According to the 1975 Senate Report, "the role of Federal observers can be critical in that they provide a calming and objective presence which can serve to deter any abuse which might occur. Federal observers can . . . prevent or diminish the intimidation frequently experienced by minority voters at the polls." S. REP. NO. 94-295 at 21, *reprinted in* 1975 U.S.C.C.A.N. 787. They also prepare reports that can be used in subsequent litigation and the observers can testify as witnesses. See 42 U.S.C. § 1973f; S. REP. NO. 94-295 at 21, *reprinted in* 1975 U.S.C.C.A.N. 787. For an extended discussion of the federal observer provisions, see generally James Thomas Tucker, *The Power of Observation: The Role of Federal Observers under the Voting Rights Act* (2007) (forthcoming) (draft on file with author).

23. See 42 U.S.C. § 1973b(a). Specifically, a state or political subdivision may be removed from coverage under Section 4(f)(4) if it obtains a declaratory judgment in the District Court of the District of Columbia that it has not used English-only elections or any other "test or device" in a discriminatory manner against language minorities and other racial or ethnic groups in the preceding ten years. See 42 U.S.C. § 1973b(a). See also S. REP. NO. 94-295 at 35, *reprinted in* 1975 U.S.C.C.A.N. 801-02 (describing "bailout" for areas covered by Section 4(f)(4) "where there has been no voting discrimination"); 121 CONG. REC. H4718 (daily ed. June 2, 1975) (statement of Rep. Edwards) (observing that high turnout and participation and literacy by the covered language minority group "typically" will support "a successful bailout"). Covered counties in Colorado, New Mexico, and Oklahoma have bailed out pursuant to Section 4(a) of the VRA. See 28 C.F.R. § 55.7(a).

24. See 42 U.S.C. § 1973aa-1a(b)(2).

participate in the political process effectively.<sup>25</sup> Section 203(d) of the Act allows a covered jurisdiction to bailout from coverage if it can demonstrate “that the illiteracy rate of the applicable language minority group” that triggered coverage “is equal to or less than the national illiteracy rate.”<sup>26</sup>

#### B. JULY 2002 CENSUS BUREAU DETERMINATIONS OF SECTION 203 COVERAGE

Following the Section 203 determinations made by the Director of the United States Bureau of the Census in July 2002,<sup>27</sup> the language assistance provisions now cover thirty-one states in whole or in part.<sup>28</sup> Figure 1 summarizes the language assistance coverage.<sup>29</sup> Five states are covered in their entirety: Texas for Spanish under both Section 4(f)(4) and Section 203; Alaska for Alaska Natives and Arizona for Spanish under Section 4(f)(4); and California and New Mexico for Spanish under Section 203.<sup>30</sup> A total of 505 political subdivisions nationwide are covered under either Section 4(f)(4) or Section 203.<sup>31</sup> Forty-eight must

25. See generally 42 U.S.C. § 1973aa-1a(b)(3)(B) (defining “limited-English proficient” as the inability “to speak or understand English adequately enough to participate in the electoral process”); H.R. REP. NO. 102-655 at 8, *reprinted in* 1992 U.S.C.C.A.N. 772 (explaining the manner in which the Director of Census determines the number of limited-English proficient persons).

26. 42 U.S.C. § 1973aa-1a(d). “Having found that the voting barriers experienced by these citizens is in large part due to disparate and inadequate educational opportunities,” this bailout procedure “rewards” jurisdictions that are able to remove these barriers. 121 CONG. REC. H4719 (daily ed. June 2, 1975) (statement of Rep. Edwards). Also, like the Section 4(f)(4) bailout procedure, it helps ensure that application of Section 203(c) is limited to only those jurisdictions where it is needed. See *supra* note 23.

27. The Director of the Census is authorized by statute to determine which states and political subdivisions are covered by Section 203(c). The Director’s determinations are not reviewable in any court and are effective upon publication in the Federal Register. See 42 U.S.C. § 1973aa-1a(b)(4). Although the new determinations are based upon 2000 Census data, the Director of the Census may update census data and publish Section 203 determinations more frequently than decennially, as new data becomes available. See *Doi v. Bell*, 449 F. Supp. 267 (D. Haw. 1978).

28. See Voting Rights Act Amendments of 1992, Determinations Under Section 203, 67 Fed. Reg. 48,871 (July 26, 2002) (to be codified at 28 C.F.R. pt. 55) (hereinafter 2002 Determinations). Two states that previously were covered in part by Section 203—Iowa and Wisconsin—no longer are covered. See *id.*; 28 C.F.R. pt. 55, App. Section 203 coverage has been extended to political subdivisions of five states not covered previously: Kansas, Maryland, Montana, Nebraska, and Washington. See 2002 Determinations; 28 C.F.R. pt. 55, App.

29. The Section 4(f)(4) determinations are unaffected by the new Section 203 determinations and remain in effect. See 2002 Determinations, *supra* note 28, at 48,872.

30. See 2002 Determinations, *supra* note 28, at 48,872–48,877; 28 C.F.R. pt. 55, App. The three states covered statewide under Section 4(f)(4) of the Act, Alaska, Arizona, and Texas, *id.*, are required to comply with the requirements of Section 203. See 42 U.S.C. § 1973b(f)(4); see also 42 U.S.C. § 1973aa-1a(c) (providing the same bilingual election requirements under Section 203 of the Act). In addition, these three states also include several political subdivisions covered under Section 203(c) for American Indian language minorities not otherwise covered under Section 4(f)(4). See 28 C.F.R. pt. 55, App.

31. Federal regulations provide that “[w]here a political subdivision (e.g., a county) is determined to be subject to” the minority language assistance provisions of the Voting Rights Act, “all political units that hold elections within that political subdivision (e.g., cities, school districts)

provide language assistance in more than one minority language: thirty-one in two languages; fourteen in three languages; two in four languages; and one, Los Angeles County, California, in six languages (Spanish, Chinese, Filipino, Japanese, Korean, and Vietnamese).<sup>32</sup>

FIGURE 1: NUMBER OF POLITICAL SUBDIVISIONS REQUIRED TO PROVIDE LANGUAGE ASSISTANCE UNDER SECTION 203 OR SECTION 4(F)(4) OF THE VOTING RIGHTS ACT.<sup>33</sup>

State	Spanish <sup>34</sup>	American Indian	Alaska Native <sup>35</sup>	Asian	Total Covered <sup>36</sup>
Alaska	0	6	27 (13)	1	27
Arizona	15 (6)	9	0	0	15
California	58 (26)	2	0	7	58
Colorado	8	2	0	0	10
Connecticut	7	0	0	0	7
Florida	9	3	0	0	11
Hawaii	0	0	0	2	2
Idaho	0	5	0	0	5
Illinois	2	0	0	1	2
Kansas	6	0	0	0	6
Louisiana	0	1	0	0	1
Maryland	1	0	0	0	1
Massachusetts	6	0	0	0	6

are subject to the same requirements as the political subdivision.” 28 C.F.R. § 55.9. The 505 jurisdiction figure includes all Section 4(f)(4) jurisdictions, all counties that are covered in their own right or as political subdivisions of states that are covered in their entirety, as well as cities or townships specifically identified by the Census Director’s 2002 determinations.

32. See 2002 Determinations, *supra* note 28.

33. See 2002 Determinations, *supra* note 28; 28 C.F.R. pt. 55, App.

34. For states covered statewide for Spanish, this number includes all political subdivisions. The number of political subdivisions separately covered is provided in parentheses.

35. All twenty-seven boroughs in Alaska are covered for Alaska Natives. The number of political subdivisions separately covered in Alaska for Alaska Native languages is provided in parentheses.

36. “Total covered” refers to the total number of political subdivisions covered for one or more languages. Many political subdivisions are covered for more than one language. See LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix C, *reprinted in* H. HRG. 109-103, at 2272-95. Since the total refers to the total number of covered jurisdictions and not the total number of languages covered in those jurisdictions, the numbers in the columns left of “total covered” will not add up to the number in the “total covered” column. For example, Alaska has a total of 27 political subdivisions, which are each covered for one or more languages. Therefore, “total covered” for Alaska is 27, and not 34, which is the total number of languages covered in political subdivisions of Alaska.

Michigan	2	0	0	0	2
Mississippi	0	9	0	0	9
Montana	0	2	0	0	2
Nebraska	1	1	0	0	2
Nevada	1	5	0	0	6
New Jersey	7	0	0	0	7
New Mexico	33 (21)	11	0	0	33
New York	7	0	0	3	7
North Carolina	0	1	0	0	1
North Dakota	0	2	0	0	2
Oklahoma	2	0	0	0	2
Oregon	0	1	0	0	1
Pennsylvania	1	0	0	0	1
Rhode Island	2	0	0	0	2
South Dakota	0	18	0	0	18
Texas	254 (103)	2	0	1	254
Utah	0	1	0	0	1
Washington	3	0	0	1	4
<b>TOTALS</b>	<b>425</b>	<b>81</b>	<b>27</b>	<b>16</b>	<b>505</b>

Spanish language assistance is the most common with coverage in 425 jurisdictions, or 84.2% of all covered jurisdictions, including statewide coverage in Arizona, California, New Mexico, and Texas, and a total of 224 political subdivisions in twenty states.<sup>37</sup> Assistance in American Indian languages is the next most common, encompassing 16% of all covered jurisdictions (seventy-five jurisdictions in eighteen states). Jurisdictions that are required to provide assistance for American Indian languages have to do so for at least eighteen distinct languages that are summarized in Figure 2.<sup>38</sup> Language assistance in Alaska Native

37. See LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix C, reprinted in H. HRG. 109-103, at 2272-95.

38. See *id.*; Figure 1. Language assistance actually has to be provided in substantially more American Indian languages because many of the language groups include several different languages or dialects. For example, the Pueblo American Indian group includes the Havasupai, Hopi, Keres, Tiwa, and Tiowa Indian languages. See 28 C.F.R. pt. 55 (listing these languages separately under the previous determinations). In addition, the Sioux American Indian group includes the Dakota,



languages is required statewide in Alaska and in thirteen political subdivisions of Alaska comprising 5.3% of all covered jurisdictions.<sup>39</sup> Asian-American language assistance must be provided in 3.2%, or sixteen, of all covered jurisdictions,<sup>40</sup> including coverage for Chinese,<sup>41</sup> Filipino,<sup>42</sup> Vietnamese,<sup>43</sup> Korean,<sup>44</sup> and Japanese.<sup>45</sup>

FIGURE 2: NUMBER OF POLITICAL SUBDIVISIONS COVERED FOR AMERICAN INDIAN LANGUAGES UNDER SECTION 203 OR SECTION 4(F)(4) OF THE VOTING RIGHTS ACT.<sup>46</sup>

Language	Political Subdivisions (Total in Affected States)	Affected States
Sioux	21	NE, ND, SD
Other American Indian Languages	16	AK, ID, LA, NC, NV, OR, TX
Navajo	13	AZ, CO, NM, UT
Pueblo	13	AZ, NM, TX
Choctaw	9	MS
Apache	5	AZ
Unspecified American Indian Languages	4	AK
Ute	4	CO, NM, UT
Seminole	3	FL
Shoshone	3	NV

Lakota, and Nakota languages. See S.D.C.L. § 12-3-10. Many of the descriptions for American Indian language minority groups changed as a result of new Census Bureau definitions.

39. See LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix C, reprinted in H. HRG. 109-103, at 2272-95.

40. See *id.*

41. See *id.* at 2294-95. Chinese language assistance must be provided in a total of six counties in California, Honolulu County in Hawaii, Cook County in Illinois, three counties in New York, and Kings County in Washington. See *id.*

42. See *id.* Filipino language assistance must be provided in the Kodiak Island Borough of Alaska, three counties in California, and in two counties in Hawaii. See *id.*

43. See *id.* Vietnamese language assistance must be provided in three counties in California and in Harris County in Texas. See *id.*

44. See *id.* Korean language assistance must be provided in two counties in California and in Queens County in New York. See *id.*

45. See *id.* Japanese language assistance must be provided in Los Angeles County in California and in Honolulu County in Hawaii. See *id.*

46. See 2002 Determinations, *supra* note 28; 28 C.F.R. pt. 55, App.

Tohono O'Odham	3	AZ
Central/South American Indian	2	CA
Cheyenne	2	MT
Yuman	2	AZ, CA
Chickasaw	1	AK
Paiute	1	NV
Yacqui	1	AZ
Zuni	1	NM

### C. LANGUAGE ASSISTANCE REQUIREMENTS

Jurisdictions covered by the language assistance provisions generally must provide all “voting materials” they provide in English in the language of all groups or sub-groups that trigger coverage.<sup>47</sup> “Voting materials” include voter registration materials, voting notices such as information about opportunities to register, registration deadlines, polling place information (including the times they are open, their location, and the voter’s election precinct assignment), absentee voting, voting materials provided by mail, all election forms, polling place activities and materials, instructions, publicity, ballots, and other materials or information relating to the electoral process.<sup>48</sup> Written materials generally do not have to be provided to members of Alaska Native and American Indian groups whose languages historically are unwritten.<sup>49</sup> Instead, the covered jurisdiction only must provide “oral instructions, assistance, or other information relating to registration and voting” in the covered Alaska Native or American Indian language.<sup>50</sup>

Covered jurisdictions also must provide oral language assistance to voters.<sup>51</sup> Oral language assistance includes “announcements, publicity, and assistance” to the extent such assistance is needed to allow the language group triggering coverage to participate effectively in

47. See 42 U.S.C. § 1973aa-1a(b)(1).

48. See 42 U.S.C. § 1973aa-1a(c); 28 C.F.R. §§ 55.15, 55.18.

49. See 42 U.S.C. § 1973aa-1a(c).

50. *Id.*

51. See generally 42 U.S.C. § 1973aa-1a(b)(3)(A) (defining “voting materials” as including “assistance”).

elections.<sup>52</sup> Oral language assistance also must be provided to language minorities “who cannot effectively read either English” or the covered minority language.<sup>53</sup> Furthermore, covered jurisdictions are required to provide “helpers” to language minority voters at polling places on election day.<sup>54</sup> Jurisdictions should be proactive in recruiting bilingual poll workers who are members of the covered language minority group to ensure that oral language assistance is available.<sup>55</sup> If they fail to do so, they also may violate Section 2 of the VRA,<sup>56</sup> which prohibits discriminatory poll official appointment policies or practices.<sup>57</sup>

Targeting allows a covered jurisdiction to provide bilingual materials and assistance “only to the language minority citizens and not to every voter in the jurisdiction.”<sup>58</sup> Although the VRA does not expressly provide for targeting, the legislative history of the Act demonstrates that Congress intended to allow covered jurisdictions flexibility in devising appropriate methods to provide bilingual language assistance.<sup>59</sup> Targeting is permissible as long as it ensures language minority voters have “access to bilingual materials” and “does not place an unequal burden upon those voters requiring information and materials in a language other than English.”<sup>60</sup> During the 1992 hearings, Congress described effective targeting as whether “it is designed and implemented in a manner that ensures that all members of the language minority who need assistance, receive assistance.”<sup>61</sup>

Section 208 of the VRA<sup>62</sup> supplements the language assistance provisions by protecting groups of voters, including language minority

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52. 28 C.F.R. § 55.20(a).

53. *Id.* at § 55.20(b).

54. *Id.* at § 55.20(c).

55. See CITIZEN’S GUIDE, *supra* note 21, at 16. The jurisdiction also should take appropriate steps to confirm that “bilingual” poll workers actually are bilingual in English and the covered minority language, and also are able to read and write in both languages, if applicable. See *id.*

56. 42 U.S.C. § 1973.

57. See *Harris v. Graddick*, 593 F. Supp. 128 (M.D. Ala. 1984). The absence of minority language poll officials may discourage language minority citizens from voting because they do not feel welcome at polling places, particularly if they have been mistreated at the polls in the past or no language assistance is available for them in the present. See *id.* at 131–32; U.S. COMM’N ON CIVIL RTS., THE VOTING RIGHTS ACT: UNFULFILLED GOALS 79–80 (1981).

58. S. REP. NO. 94-295 at 39, *reprinted in* 1975 U.S.C.C.A.N. 806.

59. See 121 CONG. REC. S13650 (daily ed. July 24, 1975) (statement of Sen. Tunney).

60. S. REP. NO. 94-295 at 69, *reprinted in* 1975 U.S.C.C.A.N. 820. See also 28 C.F.R. § 55.17 (stating the Attorney General’s view “that a targeting system will normally fulfill the Act’s minority language requirements if it is designed and implemented in such a way that language minority group members who need minority language materials and assistance receive them”).

61. H. REP. NO. 102-655 at 9, *reprinted in* 1992 U.S.C.C.A.N. 773. The legislative history from the original 1975 amendments also describes the use of effective targeting. See CONG. REC. S13650 (daily ed. July 24, 1975) (statement of Sen. Tunney); S. REP. NO. 94-295 at 69, *reprinted in* 1975 U.S.C.C.A.N. 820. The Department of Justice guidelines explicitly provide for targeting. See also 28 C.F.R. § 55.17 (stating the Attorney General’s view “that a targeting system will normally fulfill the Act’s minority language requirements if it is designed and implemented in such a way that language minority group members who need minority language materials and assistance receive them.”).

62. 42 U.S.C. § 1973aa-6.

citizens, who need assistance at the polls.<sup>63</sup> It provides, “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.”<sup>64</sup> Like the mandate for minority language assistance contained in Section 203, voter assistance under Section 208 must be provided at every stage of the voting process, from registration through actually casting a ballot.<sup>65</sup> Unlike Section 203, Section 208 applies nationwide, and requires even those jurisdictions not covered under Section 203 to allow LEP citizens, and other protected voters, to receive assistance from the person of their choice.<sup>66</sup> State laws are preempted to the extent that they place limitations on voter assistance inconsistent with Section 208.<sup>67</sup>

### III. SURVEY OVERVIEW AND RESPONSES

There have been few studies examining how jurisdictions have actually implemented the Congressional mandate to provide language assistance in public elections. Congress previously commissioned the General Accounting Office (GAO) in 1984 and 1997 to determine the

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63. Specifically, Congress made the following findings in enacting Section 208: Certain discrete groups of citizens are unable to exercise their rights to vote without obtaining assistance in voting including aid within the voting booth. These groups include the blind, the disabled, and those who either do not have a written language or who are unable to read or write sufficiently well to understand the election material and the ballot. Because of their need for assistance, members of these groups are more susceptible than the ordinary voter to having their vote unduly influenced or manipulated. As a result, members of such groups run the risk that they will be discriminated against at the polls and their right to vote in state and federal elections will not be protected.

S. REP. NO. 97-417 at 62, *reprinted in* 1982 U.S.C.C.A.N. 240; *see also* S. REP. NO. 97-417 at 63-64, *reprinted in* 1982 U.S.C.C.A.N. 242 (noting that the amendment “does not create a new right . . . to receive assistance; rather it implements an existing right by prescribing minimal requirements as to the manner in which voters may choose to receive assistance”). Congress concluded that the only way to make such votes meaningful “is to permit them to bring into the voting booth a person whom the voter trusts and who cannot intimidate him.” S. REP. NO. 97-417 at 62, *reprinted in* 1982 U.S.C.C.A.N. 241.

64. 42 U.S.C. § 1973aa-6. The employer limitation “does not apply to cases of voters who must select assistance in a small community composed largely of language minorities whose language is primarily unwritten or oral, such as those residing in an Alaska Native village [or] a New Mexico pueblo or reservation.” S. REP. NO. 97-417 at 64, *reprinted in* 1982 U.S.C.C.A.N. 242. The ban on assistance by an agent “does not extend to assistance by a voter’s co-worker, or fellow union-member.” *Id.*

65. *See* S. REP. NO. 97-417 at 63, *reprinted in* 1982 U.S.C.C.A.N. 241 (providing that under Section 208 “a procedure could not deny assistance at some stages of the voting process during which assistance was needed”).

66. *See* 42 U.S.C. § 1973aa-6; CITIZEN’S GUIDE, *supra* note 21, at 6.

67. *See* S. REP. NO. 97-417 at 63, *reprinted in* 1982 U.S.C.C.A.N. 241. For example, many state laws only permitted voting assistance given by poll officials or relatives. CITIZEN’S GUIDE, *supra* note 21, at 6.

costs associated with language materials and assistance under Section 203.<sup>68</sup> The 1984 GAO study obtained information from 318 political subdivisions and nineteen state governments.<sup>69</sup> The 1997 study reported data from 292 covered jurisdictions in twenty-six states.<sup>70</sup> Both studies were limited by the inability of many responding jurisdictions to provide the costs of bilingual voting assistance. Our study encountered similar problems. Nevertheless, for those jurisdictions that reported complete expense data, the costs of compliance generally comprise only a small fraction of total election expenses.

The purpose of our study was to update the cost data collected by the two GAO studies and to determine the practices of public election officials in providing oral and written language assistance. Our survey assessed the availability and quality of assistance in several different areas: the use of bilingual coordinators who act as liaisons between the election office and the covered language groups; recruitment and training of election day poll workers; telephonic assistance; oral language assistance at every stage of the election process; written language materials provided to limited-English proficient voters; outreach and publicity; and the ability of voters to receive assistance from the person of their choice. The survey concluded by asking about the respondent's views on reauthorization and the federal government's role in providing language assistance, and an open-ended question about the jurisdiction's experiences under Section 203.<sup>71</sup>

A total of 810 jurisdictions in thirty-three states were surveyed.<sup>72</sup> The surveyed jurisdictions included all jurisdictions specifically identified by the Census Department under either Section 4(f)(4) or Section 203, all counties in the five states that are covered, all cities in covered jurisdictions that the 2000 Census reports as having 50,000 or more people, a handful of jurisdictions that no longer are covered as a result of the 2002 Census determinations,<sup>73</sup> and the chief elections

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68. As part of the VRARA, Congress adopted an amendment offered by Rep. Issa requiring GAO to "study the implementation, effectiveness, and efficiency" of Section 203 and "alternatives to the current implementation consistent with that section." See H. REP. NO. 109-478, at 126-27. The Issa Amendment became Section 9 of the VRARA. See Pub. L. NO. 109-246 § 9, 120 STAT. 581. At the time of this writing, the GAO is still conducting its study, which is not due until July 27, 2007. See *id.*

69. See U.S. GEN. ACCT. OFF., BILINGUAL VOTING ASSISTANCE: COSTS OF AND USE DURING THE 1984 GENERAL ELECTION 11-12 (1986) (hereinafter 1984 GAO STUDY).

70. See U.S. GEN. ACCT. OFF., BILINGUAL VOTING ASSISTANCE: ASSISTANCE PROVIDED AND COSTS 1, 33 (1997) (hereinafter 1997 GAO STUDY).

71. The questions were derived from the Voting Rights Act and Census definitions. Survey results were analyzed in light of Census 2000 data and the number and type of languages covered in each jurisdiction. For a copy of the survey, see LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix D, reprinted in H. HRG. 109-103, at 2296-2307.

72. See generally LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix E, reprinted in H. HRG. 109-103, at 2308-32 (listing surveyed jurisdictions).

73. Jurisdictions covered by Section 203 immediately prior to the release of the 2002 Census determinations were surveyed to determine whether they continued to provide language materials and assistance in the absence of a requirement that they do so.

officer in each of the surveyed states. Jurisdictions were guaranteed anonymity to increase the likelihood that they would complete the survey. Over half of all surveyed jurisdictions responded. Complete responses<sup>74</sup> were received from 361 jurisdictions in thirty-one states, making this one of the most comprehensive studies of its kind ever conducted. The actual number of responses varied because some questions did not apply to all respondents and some respondents chose not to answer certain questions.

Of the thirty-three states receiving the survey, 93.9% responded (N = 31). Two states with a single covered county or parish, Louisiana and Pennsylvania, did not respond. Seventy-two percent of all responding jurisdictions are counties, 26% are cities or boroughs, and 2% are states. Responding jurisdictions ranged from a low population of sixty-seven people to a high of over eight million people, with a mean population of 33,627 people. Among the respondents, 57.9% (N = 209) are required to make Section 5 submissions because of coverage under Section 4(f)(4) or Section 4(b) of the Voting Rights Act. Texas and California had the largest number of responses, comprising 62.9% (N = 227) of all responding jurisdictions. However, the percentage of responses from these two states is proportionate to the number of surveys they received, which comprised 62.1% (N = 503) of the 810 surveys that were mailed.

Responding jurisdictions were covered for an average of 1.4 languages, with the mean jurisdiction covered for one language. Fourteen of the responding jurisdictions were in Los Angeles County, California, where six languages are covered (Spanish, Chinese, Filipino, Japanese, Korean, and Vietnamese). Fifteen respondents had no covered language because they are either previously covered jurisdictions that lost coverage as a result of the 2002 Census determinations or are states that are not covered in their own right but have covered political subdivisions (such as counties, boroughs, cities, or towns).

The percentage of responding jurisdictions covered by the four language groups approximated the percentage of all jurisdictions covered for those languages.<sup>75</sup> Respondents included jurisdictions covered by 89.7% of the 29 languages (N = 26) identified for coverage in the July 2002 Census determinations. Only three American Indian languages—each covered in only a single jurisdiction—were not encompassed by the survey responses.<sup>76</sup> Chinese was the most common covered language

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74. A response was considered “complete” if the responding jurisdiction answered at least half of all the survey questions. Responses also were received from fifty additional jurisdictions that did not complete the survey because they reported that their elections were handled by other surveyed jurisdictions.

75. Among the respondents, 85.9% (N = 310) are covered for Spanish, 14.7% (N = 53) for American Indian languages, 10.8% (N = 39) for Asian languages, and 3.0% (N = 11) for Alaska Native languages. Compare with percentages of all coverage for each language group described in *supra* notes 37–45 and accompanying text.

76. No responses were received from jurisdictions covered for the Chickasaw, Paiute, and Yacqui languages, each of which is only covered in a single jurisdiction. See Figure 2. Some

among the 39 responding jurisdictions covered for Asian languages, at 89.7% (N = 35), consistent with its designation as the most frequently covered Asian language. Vietnamese was the next most common, at 66.7% (N = 26), followed by Korean at 56.4% (N = 22), Filipino at 51.3% (N = 20), and Japanese at 38.5% (N = 15). At least one response was received from jurisdictions covered by each of the five Alaska Native languages.<sup>77</sup>

#### IV. THE NEED FOR LANGUAGE ASSISTANCE IN COVERED JURISDICTIONS

The 2002 Census determinations illustrate the compelling need for language assistance among LEP voters who experience high rates of low educational attainment. In the 367 covered political subdivisions,<sup>78</sup> an average of 8,403 citizens of voting age were LEP in the 464 language groups triggering coverage,<sup>79</sup> or 13.1 % of all voting age citizens.<sup>80</sup> Nearly one-third (N = 147) of the covered language groups in these political subdivisions had LEP rates exceeding 20%.<sup>81</sup> In 15.5% (N = 72) of the 464 language groups, more than one-half of all citizens of voting age in the covered language were LEP.<sup>82</sup> Nearly 19% (N = 87) of the covered language groups in these political subdivisions could not meet the 5% trigger.<sup>83</sup> As a result, these eighty-seven jurisdictions were covered under either the 10,000-person or reservation triggers.<sup>84</sup>

The overwhelming majority of the 116 jurisdictions with more than 5,000 LEP voting age citizens were urban areas covered for Spanish or Asian languages. Among the seventy-seven covered jurisdictions falling into this category for which Census data was available, 54.5% (N = 42) were covered for Spanish and 33.8% (N = 26) were covered for Asian

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responding jurisdictions in Alaska, Arizona, Nevada, and New Mexico are covered by more than one American Indian language. *See id.*

77. For more information on the survey respondents, *see* LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Chapter 2 and Appendix E, *reprinted in* H. HRG. 109-103, at 2308–32.

78. “Political subdivision” refers to the subdivisions of states that are covered by Section 203. The term excludes the three states (California, New Mexico, and Texas) that are covered statewide, but includes all of the subdivisions of those states that are covered in their own right as a result of the July 2002 Census determinations.

79. The 464 languages include each instance in which a jurisdiction is covered for a distinct language group. Several of the 367 political subdivisions are covered by more than one language under Section 203. *See* LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix C, *reprinted in* H. HRG. 109-103, at 2272–95.

80. *See* LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix C, *reprinted in* H. HRG. 109-103, at 2272–95. The average of 13.1% is calculated from the 403 language groups for which Census data is available. The Census Bureau has suppressed some of the data used in the July 2002 determinations. *See id.*

81. *See id.*

82. *See id.*

83. *See id.*

84. *See id.*

languages.<sup>85</sup> Only 11.7% (N = 9) of these jurisdictions were covered for American Indian languages, and none were covered for Alaska Native languages.<sup>86</sup> As a result, the 10,000-person trigger had the greatest impact on Spanish and Asian language groups.<sup>87</sup>

Conversely, Alaska Native and American Indian coverage was based almost entirely on the reservation trigger.<sup>88</sup> Approximately 61.6% (N = 286) of all covered political subdivisions had 1,000 or fewer citizens of voting age in the covered language group who are LEP.<sup>89</sup> The Census Bureau suppressed LEP data for specific language groups in nineteen of these 286 jurisdictions. Among the remaining 267 jurisdictions, over three-quarters (N = 203) were covered for Alaska Native or American Indian languages.<sup>90</sup> The large number of Alaska Native and American Indian jurisdictions with 1,000 or fewer voting age LEP citizens reflected the more sparsely populated locations of covered reservations.

Illiteracy rates among language minority voting age citizens were extremely high in covered political subdivisions. The Census Bureau defines “illiteracy” as having less than a fifth grade education.<sup>91</sup> According to the 2000 Census, the illiteracy rate of citizens of voting age in the United States was 1.35%.<sup>92</sup> Section 203 applies to a jurisdiction if a single language group meets at least one of the triggers described above and “the illiteracy rate of the citizens in the language group is higher than the national illiteracy rate.”<sup>93</sup>

Among the 464 covered language groups in the covered political subdivisions, only 10.3% (N = 48) had illiteracy rates of 2.5% or less among LEP voting age citizens.<sup>94</sup> By comparison, approximately three-quarters (N = 345) of LEP voting age citizens in the covered language groups had illiteracy rates over seven times higher than the national illiteracy rate.<sup>95</sup> Over 15% (N = 70) of the covered language groups had illiteracy rates among LEP voting age citizens in their group that exceeded 50%, or more than thirty-seven times the national illiteracy rate.<sup>96</sup> Among the 403 language groups for which complete Census data

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85. *See id.*

86. *See id.*

87. *See* 42 U.S.C. § 1973aa-1a(b)(2)(A)(i)(II).

88. *See* 42 U.S.C. § 1973aa-1a(b)(2)(A)(i)(III).

89. *See* LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix C, *reprinted in* H. HRG. 109-103, at 2272-95.

90. *See id.*

91. *See* U.S. Bureau of the Census, Voting Rights Output File Documentation (Sept. 2, 2004), available at [www2.census.gov/census\\_2000/datasets/determination/vr\\_doc\\_rev7.wpd](http://www2.census.gov/census_2000/datasets/determination/vr_doc_rev7.wpd).

92. *See* LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix C, *reprinted in* H. HRG. 109-103, at 2272.

93. 42 U.S.C. § 1973aa-1a(b)(2)(A)(ii).

94. *See* LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix C, *reprinted in* H. HRG. 109-103, at 2272-95.

95. *See id.*

96. *See id.*



was available, the average illiteracy rate of voting age citizens in the covered language groups was 18.8%, or nearly fourteen times the national illiteracy rate.<sup>97</sup> The combination of limited-English proficiency and high illiteracy rates resulted in a particularly acute need for language assistance among these groups. Availability of oral language assistance at every stage of the election process was especially important for illiterate LEP voters.

#### A. SPANISH

Three states, California, New Mexico, and Texas, were covered for Spanish as a result of the 5% trigger.<sup>98</sup> These three states had an average of 632,345 Spanish-speaking LEP voters, or 5.8% of all voting age citizens.<sup>99</sup> Although California barely met the 5% trigger at 5.02%, it had over one million Spanish Heritage LEP voters.<sup>100</sup> In New Mexico, more than 6% (N = 74,855) of Spanish Heritage voting age citizens are LEP.<sup>101</sup> Texas had the highest LEP rate among the three states at 6.15%, which included 818,185 Spanish Heritage LEP voters.<sup>102</sup> The three states covered statewide had an average of 16.3% of Spanish LEP citizens who were illiterate, twelve times the national illiteracy rate.<sup>103</sup>

Among the 217 political subdivisions covered for Spanish for which Census data was available,<sup>104</sup> 85% (N = 188) were covered as a result of the 5% trigger and 28% (N = 62) as a result of the 10,000-person trigger.<sup>105</sup> These political subdivisions had an average of 14,335 Spanish Heritage LEP voters, comprising an average of 10.4% of all voting age citizens.<sup>106</sup>

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97. *See id.*

98. *See* 2002 Determinations, *supra* note 28. Arizona is covered statewide for Spanish under Section 4(f)(4), but not under Section 203. *See id.*; 28 C.F.R. pt. 55, App. In the six Arizona counties covered for Spanish under Section 203, an average of 3.4% of all LEP voters speak Spanish. *See* LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix C, *reprinted in* H. HRG. 109-103, at 2273. Two of the Arizona counties with large urban centers Maricopa (Phoenix) and Pima (Tucson), do not meet the 5% threshold and are covered by Section 203 under the 10,000-person trigger. *See id.* The remaining four Arizona counties are each covered by the 5% trigger with Spanish-speaking LEP citizens comprising approximately 9% of the combined voting age citizen populations in those counties. *See id.*

99. *See* LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix C, *reprinted in* H. HRG. 109-103, at 2273, 2276, 2278.

100. *See id.* at 2273.

101. *See id.* at 2276.

102. *See id.* at 2278.

103. *See id.* at 2273, 2276, 2278.

104. Census data for Borden County, Texas has been suppressed by the Census Bureau. *See id.* at 2273-80.

105. *See id.* The percentages add up to more than 100% because 13.1% (N = 29) of all jurisdictions are covered because of both the five percent and 10,000-person triggers. *See id.*

106. *See id.*

Nearly two-thirds ( $N = 136$ ) of the 217 covered political subdivisions had more than 1,000 Spanish Heritage LEP voters.<sup>107</sup> The remaining eighty-two jurisdictions had 1,000 or fewer Spanish LEP voters because they were located in sparsely populated rural areas.<sup>108</sup> However, the percentage of Spanish Heritage LEP voters remained high even among these jurisdictions.<sup>109</sup>

Over one-third ( $N = 81$ ) of covered political subdivisions had more than 5,000 Spanish Heritage LEP citizens.<sup>110</sup> Ten jurisdictions in large urban areas had more than 75,000 Spanish Heritage LEP citizens: Los Angeles County, California; Miami-Dade County, Florida; Cook County (metro Chicago), Illinois; Bronx, Kings, New York, and Queens Counties in metropolitan New York City; Bexar County (San Antonio), Texas; El Paso County, Texas; and Harris County (Houston), Texas.<sup>111</sup>

Only 15.2% ( $N = 33$ ) of the 217 political subdivisions had 5% or less Spanish LEP voters.<sup>112</sup> These thirty-three jurisdictions were covered as a result of the 10,000-person trigger and were located in populous urban centers.<sup>113</sup> For example, although Spanish Heritage LEP voters comprised only 3.84% of all voting age citizens in Cook County (Chicago), Illinois, the county was covered because there were 131,530 Spanish Heritage LEP voters.<sup>114</sup>

Nearly half ( $N = 106$ ) of the 217 political subdivisions covered for Spanish Heritage had Spanish LEP percentages among voting age citizens of between 5 and 10%.<sup>115</sup> Approximately one-quarter ( $N = 52$ ) had a Spanish LEP percentage among voting age citizens of between 10 and 20%.<sup>116</sup> The remaining 12.4% ( $N = 27$ ) had Spanish LEP percentages among voting age citizens of over 20%, including five with over 35%.<sup>117</sup>

The illiteracy rate for political subdivisions covered for Spanish was very high. Among the 217 covered political subdivisions, an average of 20.8% of Spanish Heritage LEP citizens were illiterate, over fifteen times the national illiteracy rate.<sup>118</sup> Over half ( $N = 110$ ) had illiteracy rates greater than 20%.<sup>119</sup> Fifteen of the political subdivisions had illiteracy rates among Spanish Heritage LEP voters greater than 35%.<sup>120</sup> Only two jurisdictions had illiteracy rates for Spanish Heritage

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107. *See id.*

108. *See id.*

109. *See id.*

110. *See id.*

111. *See id.* at 2273–75, 2277–79.

112. *See id.* at 2272–95.

113. *See id.*

114. *See id.* at 2275.

115. *See id.* at 2272–95.

116. *See id.*

117. *See id.*

118. *See id.*

119. *See id.*

120. *See id.*

LEP voters that were less than 5%; in both cases, the illiteracy rates still far exceeded the national illiteracy rate.<sup>121</sup> The high illiteracy rates among Spanish Heritage LEP voters confirmed congressional findings that educational disparities continued to result in barriers to political participation by those citizens.<sup>122</sup>

## B. ALASKA NATIVE LANGUAGES

There are twenty-one political subdivisions covered for Alaska Native languages for which at least some Census data is available.<sup>123</sup> All were recovered as a result of the partial reservation trigger.<sup>124</sup> The jurisdictions included portions of ninety Alaska Native reservations,<sup>125</sup> with an average of eight-six Alaska Native LEP voters.<sup>126</sup> The low number reflected very sparsely populated and geographically isolated communities of Alaska Native voting age citizens.<sup>127</sup>

Complete Census data was only available for fifty-nine of the ninety Alaska Native reservations in these jurisdictions.<sup>128</sup> On those reservations, an average of 22.6% of voting age citizens was LEP in an Alaska Native language.<sup>129</sup> The rate of non-English speaking voting age citizens was especially high among Alaska Natives, with 40% (N = 36) of all reservations with LEP rates greater than 50%.<sup>130</sup> An average of 28.3% of Alaska Native LEP voters on those reservations were illiterate, nearly twenty-one times the national illiteracy rate.<sup>131</sup> Forty percent (N = 36) of the reservations had illiteracy rates exceeding 50%.<sup>132</sup>

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121. *See id.* Greenlee County, Arizona, has an illiteracy rate of 4.76% among Spanish Heritage voting age citizens, over three times the national rate. *See id.* at 2273. Bergen County, New Jersey, has the lowest illiteracy rate of Spanish Heritage voting age citizens, which at 3.76% is still nearly three times the national rate. *See id.* at 2276.

122. *See* 42 U.S.C. § 1973aa-1a(a); Pub L. No. 109-246 § 2(b), 120 Stat. 577–78.

123. *See* LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix C, *reprinted in* H. HRG. 109-103, at 2281–83.

124. *See id.*

125. *See id.* Several of the Alaska political subdivisions are covered for multiple language groups. *See id.*

126. *See id.*

127. *See id.*

128. *See id.* Census data is suppressed for several of the reservations with small populations. *See id.*

129. *See id.*

130. *See id.*

131. *See id.*

132. *See id.*

## C. AMERICAN INDIAN LANGUAGES

Every jurisdiction required to provide language assistance to American Indians under the 2002 Census determinations was covered as a result of a reservation trigger.<sup>133</sup> Only one jurisdiction, the Rosebud Reservation in Todd County, South Dakota, was covered under the whole reservation trigger;<sup>134</sup> the remaining 100 jurisdictions were covered because of the partial reservation trigger.<sup>135</sup> The extensive coverage under the partial reservation trigger confirmed Congressional findings underlying the 1992 Voting Rights Act Amendments, which added the trigger.<sup>136</sup> All of the covered American Indian reservations except the Rosebud Reservation were divided between multiple political subdivisions, and in many cases, between several states.<sup>137</sup>

Only 8.9% (N = 9) of American Indian covered counties met the 5% trigger for two languages.<sup>138</sup> Six of these counties were covered for the Navajo language: Apache, Coconino, and Navajo Counties in Arizona; McKinley and San Juan Counties in New Mexico; and San Juan County in Utah.<sup>139</sup> The remaining three counties were located in South Dakota and were covered for the Sioux language: Shannon, Todd, and Ziebach Counties.<sup>140</sup>

Apache County, Arizona was the only jurisdiction covered for an American Indian language (Navajo) because of all three triggers.<sup>141</sup> The Navajo Nation has its capital in Window Rock, Arizona, located in northern Apache County near the New Mexico border. According to the 2000 Census, there were 11,245 Navajo LEP voters, comprising 26.5%

133. *See id.* at 2284–93.

134. *See id.* That is, a reservation that is located completely within the boundaries of the covered political subdivision.

135. *See id.*

136. *See* Pub. L. No. 102-349, § 2, 106 Stat. 921 (codified at 42 U.S.C. § 1973aa-1a(b)(2)(A)(i)(III)). Congress added the partial reservation trigger because the county-specific requirement included in the 1975 amendments ignored “the historical fact that reservation boundaries predate and therefore often do not correspond to State or county lines.” S. REP. NO. 102-315 at 18. For example, LEP Native American citizens living on the Tohono O’odham Reservation in Arizona, the fifth largest reservation in the nation and spanning three counties, were not covered under the 1975 amendments. Although there were 4500 voting-age citizens living on that reservation in Pima County, they were not covered under Section 203(c) because they comprised fewer than 5% of the half-million voting-age citizens in Pima County. *See* H.R. REP. NO. 102-655 at 9, *reprinted in* 1992 U.S.C.C.A.N. 773. In addition, the 1975 Act’s trigger created the inconsistent result that some Native Americans living on a reservation in one county could receive bilingual assistance, whereas others living on the same reservation but in a different county could not. *See id.* at 9–10, *reprinted in* 1992 U.S.C.C.A.N. 773–74; S. REP. NO. 102-315 at 18.

137. *See* LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix C, *reprinted in* H. HRG. 109-103, at 2284–93.

138. *See id.*

139. *See id.*

140. *See id.*

141. *See id.* The 1992 Senate Report indicated that a “county may be covered for Native Americans under any of [the] three coverage formulas.” S. REP. NO. 102-315 at 18.

of all voting age citizens in Apache County.<sup>142</sup> The illiteracy rate among Navajo LEP voters was 25.4%, nearly nineteen times the national illiteracy rate of 1.35%.<sup>143</sup> Apache County also was covered for the Apache and Hopi (Pueblo) languages under the partial reservation trigger.<sup>144</sup>

Among the 129 reservations triggering American Indian language coverage, an average of 721 American Indian voters were LEP.<sup>145</sup> The average was raised dramatically by jurisdictions containing portions of the Navajo Nation or Sioux reservations, which had the largest populations of American Indian LEP voters.<sup>146</sup> Most of the remaining American Indian reservations had an average of fewer than 251 American Indian LEP voters.<sup>147</sup> The low number reflected sparsely populated and geographically isolated communities of American Indian voting age citizens.<sup>148</sup>

Many of the jurisdictions covered for American Indian languages did not have any voters who were LEP in the covered language. For example, Bernalillo County, New Mexico, was covered for the Pueblo (Keres and Tiwa<sup>149</sup>) language because it contained a portion of the Laguna Pueblo and off-reservation trust land, which met the 5% trigger.<sup>150</sup> However, the Census reported that Bernalillo County did not contain any voters who were LEP in the Pueblo language.<sup>151</sup> By comparison, Cibola County, New Mexico, which also was covered for the Pueblo language because of the Laguna Pueblo, had 430 LEP voters on the portion of the reservation in the County.<sup>152</sup>

Jurisdictions covered under the partial reservation trigger that did not contain any LEP voting age citizens in the covered language, such as Bernalillo County, were not required to provide language assistance. Instead, use of targeting would allow the jurisdiction to determine that no assistance was needed because there were no voters who needed it.<sup>153</sup>

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142. See LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix C, *reprinted in* H. HRG. 109-103, at 2285.

143. See *id.*

144. See *id.*

145. See *id.* at 2284-93.

146. See *id.*

147. See *id.*

148. See *id.*

149. See the table in 28 C.F.R. Part 55, which indicates that the covered Pueblo languages in Bernalillo County are Keres and Tiwa. The Census Bureau aggregated these and other American Indian languages for pueblo tribes, such as the Hopi, into a single "Pueblo" language group.

150. See LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix C, *reprinted in* H. HRG. 109-103, at 2290.

151. See *id.*

152. See *id.*

153. Targeting allows a covered jurisdiction to comply with the bilingual election requirements by providing bilingual materials and assistance "only to the language minority citizens and not to every voter in the jurisdiction." S. REP. NO. 94-295 at 39, *reprinted in* 1975 U.S.C.C.A.N. 806. Although the VRA does not expressly provide for targeting, the legislative history of the Act demonstrates that Congress intended to allow covered jurisdictions flexibility in devising appropriate methods to provide bilingual language assistance. See 121 CONG. REC. S13650 (daily ed. July 24,

Only a small number of jurisdictions with no LEP voters were covered as a result of the partial reservation trigger, which was necessary for the reasons discussed above.<sup>154</sup>

Jurisdictions covered for American Indian languages tended to have high LEP and illiteracy rates. Among the 100 reservations for which complete Census data was available, an average of 16.3% of all voting age citizens was LEP in American Indian languages.<sup>155</sup> Over one-quarter (N = 35) of all reservations had LEP rates exceeding 50%.<sup>156</sup> On average, 11.7% of the American Indian LEP voters were illiterate, nearly nine times the national illiteracy rate.<sup>157</sup> Over one-quarter (N = 33) of those reservations had illiteracy rates exceeding 50%.<sup>158</sup> The illiteracy rates were even higher on some reservations. For example, four of the six counties covered in Arizona for the Navajo and Tohono O'Odham languages had illiteracy rates of at least 25% among LEP voters in the covered language groups, over eighteen times the national illiteracy rate.<sup>159</sup> Similarly, Maverick County, Texas, which was covered for the Kickapoo language, had an illiteracy rate of 86.2% among LEP voters in the covered language group.<sup>160</sup>

#### D. ASIAN LANGUAGES

Most political subdivisions required to provide Asian language assistance were covered as a result of the 10,000-person trigger. That trigger was added in 1992<sup>161</sup> to cover "highly populated metropolitan areas" where "many language minority citizens in need of assistance are not covered because they do not make up a large enough percentage of the local population to trigger coverage."<sup>162</sup> Of the twenty-seven jurisdictions covered for Asian languages, 88.9% (N = 24) were covered because of the 10,000-person trigger and only 7.4% (N = 2) because of the 5% trigger.<sup>163</sup> Only one jurisdiction, San Francisco County (for

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1975) (statement of Sen. Tunney). Targeting is permissible as long as it ensures that language minority voters face no unequal burden in obtaining access to bilingual materials. See S. REP. NO. 94-295 at 69, *reprinted in* 1975 U.S.C.A.N. 820; 28 C.F.R. § 55.17.

154. See LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix C, *reprinted in* H. HRG. 109-103, at 2284-93.

155. See *id.*

156. See *id.*

157. See *id.*

158. See *id.*

159. See *id.* at 2285-86.

160. See *id.* at 2293.

161. See Pub. L. No. 102-349, § 2, 106 Stat. 921 (codified at 42 U.S.C. § 1973aa-1a(b)(2)(A)(i)(II)).

162. S. REP. NO. 102-315 at 16.

163. See LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix C, *reprinted in* H. HRG. 109-103, at 2294-95.

Chinese), was covered under both the 10,000-person and the 5% triggers.<sup>164</sup>

The 2002 Census determinations confirmed the 1992 congressional finding that a numerically-based trigger, such as the 10,000-person trigger, was necessary to cover Asian languages in populous urban counties.<sup>165</sup> Without that trigger, only three jurisdictions would have been covered under the 5% trigger: Kodiak Island Borough, Alaska, for Filipino; San Francisco County, California, for Chinese; and Maui County, Hawaii, for Filipino.<sup>166</sup> The number of Asian voters who needed language assistance was tremendous. The twenty-seven jurisdictions covered for Asian languages had the highest average number of voters who were LEP in the covered language among all four principal language groups, with an average of 24,917.<sup>167</sup> Only two jurisdictions covered for Asian languages, Kodiak Island Borough in Alaska and Maui County in Hawaii, had Asian LEP voter populations less than 10,000.<sup>168</sup> Nearly half (N = 13) of all jurisdictions covered for Asian languages had more than 20,000 voters who were LEP in the language triggering coverage.<sup>169</sup>

On the other hand, on average only 2.4% of all voting age citizens in the covered Asian languages were LEP.<sup>170</sup> This low percentage masks the widespread need for language assistance in jurisdictions covered for Asian languages. For example, in Los Angeles County, California, none of the five covered Asian language groups had LEP voters who comprised more than 2% of the County's voting age citizens.<sup>171</sup> At the same time, there were nearly a quarter million Asian LEP voters in the County, including 95,700 Chinese-speaking citizens; 42,930 Korean-speaking citizens; 34,985 Filipino-speaking citizens; 30,340 Vietnamese-speaking citizens; and 12,510 Japanese-speaking citizens.<sup>172</sup> The large population of urban centers such as Los Angeles

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164. *See id.*

165. S. REP. NO. 102-315 at 16. According to 1990 Census data, the following numbers of Asian language minority citizens with limited-English proficiency lived in large metropolitan areas not covered under the trigger implemented in the 1975 Act and the 1982 amendments: 39,000 Chinese-Americans in Los Angeles County, California; and 37,000 Asian Americans in Honolulu County, Hawaii. *Id.* In addition, thousands of limited-English proficient Asian-American citizens living in San Francisco County, California, and Queens County, Kings County, and New York County in New York also were not covered under the original trigger, although San Francisco County would have met the 5% trigger under the 1990 Census. *See id.* at 17; H.R. REP. NO. 102-655 at 8, *reprinted in* 1992 U.S.C.C.A.N. 772.

166. *See* LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix C, *reprinted in* H. HRG. 109-103, at 2294-95.

167. *See id.*

168. *See id.*

169. *See id.*

170. *See id.*

171. *See id.* at 2294.

172. *See id.*

County prevented nearly all groups of Asian LEP voters from meeting the 5% trigger.<sup>173</sup>

The twenty-seven jurisdictions covered for Asian languages had the lowest average illiteracy rates among the four language groups.<sup>174</sup> Nevertheless, Asian-covered jurisdictions still had an average illiteracy rate of 8.5% for Asian LEP voters, more than six times the national illiteracy rate.<sup>175</sup>

#### E. ELECTION OFFICIAL PERCEPTIONS

Respondents were asked to estimate how many voters in their jurisdiction needed oral language assistance to vote in public elections to determine whether the perceptions of election officials corresponded to the 2002 Census determinations. Of the 361 jurisdictions providing complete responses to the survey, three-quarters (N = 271) estimated that an average of 5.5% of their jurisdiction's voters required oral language assistance in the covered language. However, according to the 2000 Census, the average number of LEP voters in those jurisdictions is actually double that number, or 10.9%.

This divergence between perception and reality occurred regardless of how much language assistance the jurisdiction provided, if any. Of the 271 responding jurisdictions, 67.2% (N = 182) indicated that they provided both oral and written assistance to voters; they estimated the average assistance need at 6.5%, compared to the actual need of 12.8%. Approximately 14% (N = 39) indicated that they provide neither oral nor written assistance to voters; they estimated the average need for assistance at 2.5%, compared to the actual need of 4.5%. Slightly more than 11% (N = 31) indicated they provided only written language materials to voters; they estimated the need for assistance at 2.5%, compared to the actual need of 4.5%. The 7% (N = 19) of responding jurisdictions providing only oral language assistance estimated the need for assistance at 4.6%, compared to the actual need of 7.6%. It appeared that the acknowledged failure of many jurisdictions to provide language assistance in the covered languages may have been attributable to the misperception of election officials about the need for that assistance.

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173. *See id.* at 2294–95.

174. *See id.*

175. *See id.*



There may be several reasons for these misperceptions. Nearly two-thirds of all covered jurisdictions reported that they did not engage in outreach and consultation with community organizations or individuals in the covered language groups. Similarly, election officials may not have understood how voters were determined to be limited-English proficient and in need of language assistance for public elections. Some election officials appeared to perceive that voters who spoke some English did not need language assistance, even if they spoke English less than “very well.” For example, one election official noted that language assistance was not needed in their jurisdiction because “[e]veryone in the community speaks English.”<sup>176</sup> Another election official reported a lack of need for assistance because “[t]he majority of our voters speak English fluently, even those with Spanish surnames.”<sup>177</sup>

Other election officials apparently relied upon the absence of requests for language assistance as evidence that such assistance was not needed.<sup>178</sup> One election official reported an “[e]xtremely low use of both oral and written mediums” of assistance.<sup>179</sup> In some cases, the absence of requests could be an indication that assistance is not needed. However, often the absence of requests was the result of LEP voters failing to participate in the election process because of the lack of language assistance or the failure to publicize that it was available.

At least some election officials appeared to underestimate the need for language assistance because of confusion over what Section 203 required. One election official reported, having had “no experiences in providing language assistance to voters.”<sup>180</sup> Indeed, one-third of all election officials reported that they either provided no language assistance or only written language materials in the covered language despite the identified need for assistance in their jurisdiction. Training and information about Section 203 could have dispelled misconceptions of what the federal language assistance provisions required.

Some election officials may have underestimated the need for language assistance because of their ideological opposition to that assistance. There appeared to be very few election officials who fell into

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176. Respondent 269.

177. Respondent 624.

178. See Respondents 364, 412, 639, 706, 758, 854, 987 & 1029.

179. Respondent 357.

180. Respondent 1029.

this category. Only twelve jurisdictions expressly advocated English-only elections.<sup>181</sup> Conversely, nearly three-quarters of responding jurisdictions indicated that they believe the federal language assistance provisions should remain in effect for public elections.<sup>182</sup>

## V. THE AVAILABILITY OF LANGUAGE ASSISTANCE IN PUBLIC ELECTIONS

Many covered jurisdictions reported election practices that fall short of complying with the VRA's language assistance provisions. Approximately 80% of responding jurisdictions (N = 287) reported providing some type of language assistance to voters: 60.4% (N = 215) reported providing both oral and written language assistance; 14.0% (N = 50) reported providing only written language materials; and 6.2% (N = 22) reported providing only oral language assistance.

### A. AVAILABILITY BY LANGUAGE GROUP

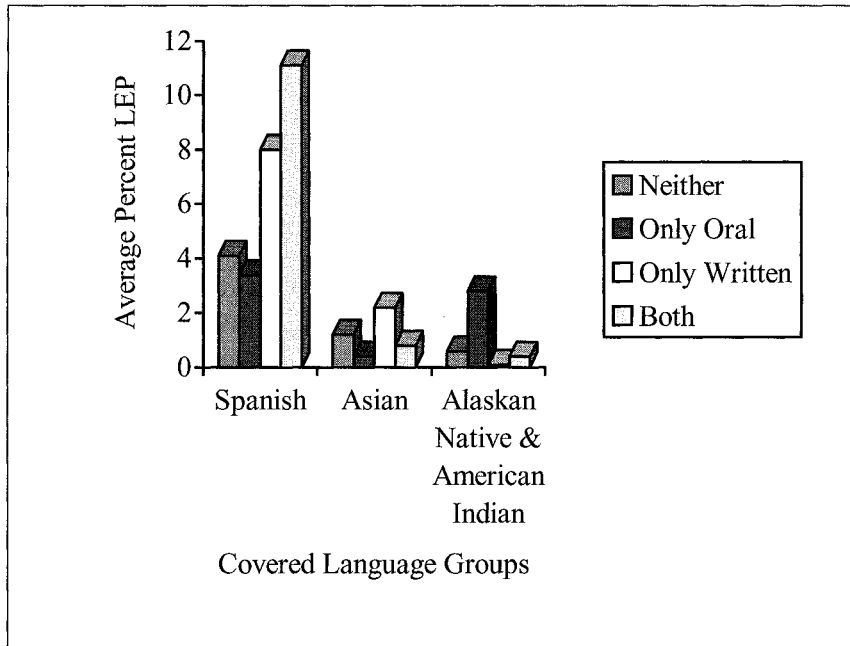
Figure 3 depicts the average LEP for responding jurisdictions, by language, for the type of language assistance offered. The availability of both oral and written language assistance increased as the Spanish-speaking LEP increased. Jurisdictions with the lowest Spanish-speaking LEP were more likely to provide only oral language assistance or no language assistance. Jurisdictions with the highest Asian language-speaking LEP reported that generally only written language assistance was available. Jurisdictions with the highest Alaska Native or American Indian language-speaking LEP reported that they typically only provided oral language assistance. Jurisdictions providing language assistance were more likely to be covered under Section 4(f)(4) or Section 203 in their own right than those that did not, which tended to be covered sub-jurisdictions such as counties or cities. There was no relationship between the jurisdiction's total population and whether that jurisdiction provides assistance.

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181. See *infra* notes 337–43 and accompanying text.

182. See *infra* notes 356–74 and accompanying text.

FIGURE 3: TYPES OF LANGUAGE ASSISTANCE AVAILABLE, BY LEP OF COVERED LANGUAGE GROUPS.<sup>183</sup>



#### 1. SPANISH.

Of the responding jurisdictions, 308 were covered for Spanish, among other languages. Of these 308 jurisdictions, 13.3% (N = 41) reported providing no assistance, 2.9% (N = 9) reported providing only oral language assistance, 15.3% (N = 47) reported providing only written language assistance, and 68.5% (N = 211) reported providing both oral and written language assistance. The percentages were slightly different when jurisdictions covered only for Spanish were considered. Excluding Spanish covered jurisdictions that also were covered for Asian or American Indian languages, 14% of the 243 responding jurisdictions (N = 34) reported providing no language assistance, 2.5% (N = 6) reported providing only oral language assistance, 13.2% (N = 32) reported providing only written language assistance, and 70.4% (N = 171) reported providing both oral and written language assistance.

183. See responses to ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Questions E-4 and F-1 and 2000 Census, STF-3 and STF-4 (on file with authors).

## 2. ALASKA NATIVE AND AMERICAN INDIAN LANGUAGES.

Sixty-two of the responding jurisdictions were covered for an Alaska Native or American Indian language, among other languages. Of these jurisdictions, 30.7% (N= 19) reported providing neither oral nor written language assistance, 24.2% (N = 15) reported providing only oral language assistance, 3.2% (N = 2) reported providing only written language assistance, and 41.9% (N = 26) reported providing both oral and written language assistance.<sup>184</sup> Among the thirty-four responding jurisdictions covered only for Alaska Native or American Indian languages, 55.9% (N = 19) reported providing no language assistance, 38.2% (N = 13) reported providing only oral language assistance, and 5.9% (N = 2) reported providing both oral and written language assistance. None of the thirty-four jurisdictions reported providing only written language assistance. This finding is consistent with the fact that these languages are historically unwritten and generally do not require bilingual written materials.

## 3. ASIAN LANGUAGES

Thirty-seven responding jurisdictions were covered for an Asian language. Of these thirty-seven jurisdictions, 18.9% (N = 7) reported providing no language assistance, 2.7% (N = 1) reported providing only oral language assistance, 35.1% (N = 13) reported providing only written language assistance, and 43.2% (N = 16) reported providing both oral and written language assistance.<sup>185</sup>

### B. AMOUNT OF LANGUAGE ASSISTANCE OFFERED

The amount of language assistance offered varied greatly among respondents. Many jurisdictions did not provide any language assistance. Among those that did, it often failed to meet the specific requirements for the covered language. This section briefly summarizes

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184. Jurisdictions that provided bilingual written materials did so for other covered languages, and not the covered Alaska Native or American Indian languages. Twenty-eight responding jurisdictions covered for Alaska Native or American Indian languages also are covered for at least one other language group, generally Spanish.

185. All responding jurisdictions covered for Asian languages also were covered by another language, generally Spanish. As a result, it is not possible to provide data for jurisdictions covered only for Asian languages.

Census data describing the amount of language assistance by the demographics of the jurisdictions providing it.

## 1. NO ASSISTANCE

Every covered language group is affected by the lack of assistance available in the sixty-nine jurisdictions reporting no assistance. According to the 2000 Census, 59.4% (N = 41) are covered for Spanish with an average Hispanic voting age population (VAP) of 18.8%, of whom 39.4% are LEP. Approximately 27.5% (N = 19) are covered for Alaska Native or American Indian languages with an average Alaska Native or American Indian VAP of 17.4%, of whom 6.0% are LEP. About 10% (N = 7) are covered for Asian-American languages with an average Asian VAP of 13.8%, of whom 40.7% are LEP. A few jurisdictions that reported they do not provide any language assistance are no longer covered under either Section 4(f)(4) or Section 203.

Among the jurisdictions providing no language assistance, the mean Hispanic voting age population (VAP) is 12.7% with a mean LEP of 32.0%, yielding a Hispanic LEP of 4.1% of all VAP. The mean Asian VAP is 3.2% with a mean LEP of 37.3%, yielding an Asian LEP of 1.2% of all VAP. The mean Alaska Native/American Indian VAP is 6.7% with a mean LEP of 8.7%, yielding an Alaska Native/American Indian LEP of 0.6% of all VAP.

## 2. ORAL LANGUAGE ASSISTANCE ONLY

Over two-thirds of the twenty-two jurisdictions (N = 15) that only offer oral language assistance are covered for Alaska Native or American Indian languages, which generally do not require written materials.<sup>186</sup> These fifteen jurisdictions had an average American Indian voting age population of 27.7%, of whom 15% were LEP. Only one of the sixty-three respondents covered for Alaska Native or American Indian languages report receiving voter requests for bilingual election materials. Jurisdictions providing only oral language assistance also included 40.9% (N = 9) covered for Spanish with an average Hispanic VAP of 23.5%, of whom 37.2% were LEP; and 4.5% (N = 1) covered for Asian languages with an Asian VAP of 7.6%, of whom 48.5% were LEP.

According to the 2000 Census, of the jurisdictions providing only oral language assistance, the mean Hispanic VAP was 12.4% with a mean LEP of 27.7%, yielding a Hispanic LEP of 3.4% of all VAP. The

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186. See *supra* notes 49–50 and accompanying text; *Enfranchising Language Minorities*, *supra* note 6, at 123–25.

mean Alaska Native/American Indian VAP was 19.1% with a mean LEP of 14.9 %, yielding an Alaska Native/American Indian LEP of 2.8 % of all VAP. The mean Asian VAP was 1.4% with a mean LEP of 24.1%, yielding an Asian LEP of 0.4% of all VAP.

### 3. BILINGUAL WRITTEN MATERIALS ONLY

Fourteen percent of responding jurisdictions (N = 50) reported providing only bilingual written materials.<sup>187</sup> Those jurisdictions generally had large numbers of limited-English proficient voters in one or more of the covered languages. Ninety-four percent (N = 47) of this group was covered for Spanish, with an average Hispanic VAP of 18.3%, of whom 45.4% were LEP. Twenty-six percent (N = 13) were covered for Asian-American languages, even though these jurisdictions had higher percentages of Asian VAP and LEP voters than the sixteen Asian-covered jurisdictions providing both oral and written language assistance. According to the 2000 Census, these 13 jurisdictions have an average Asian VAP of 17.0%, of whom 44.6% are LEP.

According to the 2000 Census, the fifty jurisdictions providing only bilingual written materials had a mean Hispanic VAP of 17.5% and a mean LEP of 45.7%, yielding a Hispanic LEP of 8.0% of all VAP. The mean Asian VAP was 5.5% with a mean LEP of 39.6%, yielding an Asian LEP of 2.2% of all VAP. The average percentages of both Spanish Heritage and Asian voting age citizens in all fifty jurisdictions were high enough to require full compliance with Section 203. Moreover, the absence of bilingual oral language assistance in these jurisdictions could be a significant deterrent to LEP voters seeking to participate in elections.

### 4. BOTH ORAL AND WRITTEN LANGUAGE ASSISTANCE

Among the 60.4% of jurisdictions (N = 215) that reported providing both oral and written language assistance, 98.1% (N = 211) were covered for Spanish with an average Hispanic VAP of 29.0%, of whom 39.0% were LEP; 12.1% (N = 26) were covered for Alaska Native or American Indian languages with an average VAP of 12.4%, of whom 20.5% were LEP; and 7.4% (N = 16) were covered for Asian-American languages with an average VAP of 13.8%, of whom 43.3% were LEP. According to the 2000 Census, of the jurisdictions providing both oral and written

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187. Two responding jurisdictions were covered for Alaska Native or American Indian languages, but have been excluded because those languages are historically unwritten and the bilingual materials were provided in other covered languages.

language assistance, the mean Hispanic VAP was 28.6% with a mean LEP of 38.7%, yielding a Hispanic LEP of 11.1% of all VAP. The mean Alaska Native/American Indian VAP was 2.2% with a mean LEP of 17.2%, yielding an Alaska Native/American Indian LEP of 0.4% of all VAP. The mean Asian VAP was 2.2% with a mean LEP of 35.7%, yielding an Asian LEP of 0.8% of all VAP.

### C. TYPES OF ELECTION ACTIVITIES FOR WHICH LANGUAGE ASSISTANCE WAS OFFERED

To accurately assess the extent to which language assistance was available in covered jurisdictions, respondents were asked whether they offered assistance for several common election activities. This assessment included the availability of oral language assistance, bilingual written election materials, bilingual election workers, and bilingual telephone assistance.

#### 1. ORAL LANGUAGE ASSISTANCE

Slightly more than two-thirds of the 328 responding jurisdictions (N = 237) reported that they provide at least some oral language assistance in public elections. However, the scope of oral language assistance provided was limited. Respondents were asked to identify whether they provide oral language assistance for fourteen types of common election activities, including voter registration, voter purges, polling place information, absentee and early voting, and casting a ballot on election day.<sup>188</sup> Nearly all covered jurisdictions acknowledged that they did not provide oral language assistance at all stages of the election process. Only 32.9% (N = 108) reported that they provide language assistance for more than half of all election activities. Jurisdictions that translated more than half of all election materials were more likely to provide oral language assistance for election activities than those translating less than half of all election materials.

The absence of oral language assistance at all stages of the election process is inconsistent with Department of Justice guidelines. According to the guidelines, Section 203:

[S]hould be broadly construed to apply to all stages of the electoral process, from voter registration through activities related to conducting elections, including for

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188. See LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix D, reprinted in H. HRG. 109-103, at 2296-2307.

example the issuance ... of notifications, announcements, or other informational materials concerning the opportunity to register ... the time, places and subject matters of elections, and the absentee voting process.<sup>189</sup>

Nevertheless, less than one-third of responding jurisdictions report that they do so. Figure 4 summarizes the election activities for which jurisdictions reported providing oral language assistance. Only four of the fourteen activities were provided in the covered languages by at least half of the jurisdictions: reading the ballot, election day information, explaining ballot questions, and absentee voting. No activity was provided in the covered language by more than two-thirds of the jurisdictions. The absence of oral language assistance is worsened by the lack of poll worker recruitment in the covered languages by three-quarters of all jurisdictions.

FIGURE 4: ELECTION ACTIVITIES FOR WHICH JURISDICTIONS REPORTED PROVIDING ORAL LANGUAGE ASSISTANCE.

<b>Election Activity</b>	<b>Number Providing</b>	<b>Percent</b>
Reading the ballot	199	61.6%
Election Day information	194	60.1%
Explaining ballot questions	164	50.8%
Absentee voting	163	50.5%
Early or mail-in voting	156	48.3%
Polling place locations and changes	150	46.4%
Checking in at the polling place	146	45.2%
Voter registration	132	40.9%
Voting machine instructions	104	32.2%

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189. 28 C.F.R. § 55.15.



Poll worker recruitment	79	24.5%
Election results	69	21.4%
Candidate qualification	63	19.5%
Voter purges	23	7.1%
Other (specify)	15	4.6%

Moreover, a majority of responding jurisdictions reported that oral language assistance was unavailable for activities likely to have the greatest impact upon persons attempting to vote for the first time. Only 40.9% indicated that assistance was available for voter registration. Similarly, only 46.4% of jurisdictions provided oral language assistance on polling place locations and changes, 45.2% for checking in at the polling place, and 32.2% for voting machine instructions. Few jurisdictions reported providing oral language assistance for candidate qualification. Of the responding jurisdictions, only 19.5% (N = 63) provided language assistance for potential candidates. Nearly the same number of jurisdictions indicated that election results were provided in English-only.

Only 7.1% reported providing oral language assistance for voter purges. The absence of assistance may result in the removal of minority language voters who are not informed of what they must do to remain on the active voter registration list. Lack of notice for purges is inconsistent with Section 203 and may violate the National Voter Registration Act (NVRA), or federal “motor-voter” law.<sup>190</sup>

High illiteracy rates may make it impossible for many minority language voters to utilize any bilingual written materials that may be available.<sup>191</sup> The absence of oral language assistance for these voters may prevent them from casting a meaningful ballot. Moreover, requiring an illiterate voter to rely upon written materials may constitute a “test or device” in violation of Section 201 of the Voting Rights Act.<sup>192</sup>

190. 42 U.S.C. §§ 1973gg, *et seq.*

191. *See supra* notes 91–97, 118–22, 131–32, 157–60, 174–75 and accompanying text.

192. Section 201 defines a “test or device” as including “any requirement that a person as a prerequisite for voting or registration for voting demonstrate the ability to read, write, understand, or interpret any matter.” 42 U.S.C. § 1973aa(b).

## 2. BILINGUAL WRITTEN MATERIALS

Approximately three-quarters of the 361 jurisdictions providing complete responses (N = 265) reported that they provide at least some bilingual written materials for public elections. Respondents were asked to identify whether they provide bilingual written materials for eighteen types of common election materials listed below. Generally, jurisdictions reported providing bilingual versions of most election materials, as depicted in Figure 5. A majority of the 279 jurisdictions that provided information on their written election materials indicated that they provided bilingual versions of thirteen types of written election materials.<sup>193</sup> However, less than one-fifth of the responding jurisdictions (N = 55) reported that they used bilingual poll worker recruitment materials. The failure to provide bilingual poll worker publicity materials may exacerbate the general absence of oral language assistance.

FIGURE 5: TYPES OF BILINGUAL WRITTEN MATERIALS JURISDICTIONS REPORTED PROVIDING.<sup>194</sup>

Election Material	Number Providing	Percent
Sample ballots	254	91.0%
Ballots	229	82.1%
Early voting or mail-in voting materials	224	80.3%
Absentee ballots	222	79.6%
Instructions on provisional ballots	218	78.1%
Polling place signs	213	76.3%

193. Most jurisdictions covered for only Alaska Native or American Indian languages did not respond to questions on bilingual written election materials because their languages are historically unwritten. See *supra* notes 49–50 and accompanying text; *Enfranchising Language Minorities*, *supra* note 6, at 123–25.

194. See Responses to 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question F-2 (on file with authors).

Instructions on using voting machine or ballot	211	75.6%
Voters' rights or other information pamphlets	205	73.5%
Voter registration materials	201	72.0%
Election day information	196	70.3%
Election day forms (challenge paperwork, etc.)	185	66.3%
Publicity regarding polling place locations	172	61.7%
Communications from elections office	141	50.5%
Check-in information	96	34.5%
Internet or web-based information	59	21.2%
Election results	58	20.8%
Poll worker recruitment	55	19.7%
Other (please specify)	15	5.4%

Four jurisdictions reported that they did not offer ballots, sample ballots, or provisional ballots in covered languages.<sup>195</sup> Four jurisdictions indicated that they did not offer instructions, polling place signs, and other election day materials.<sup>196</sup> Two jurisdictions did not offer voter registration and materials required by the National Voter Registration Act, or "motor-voter" law.<sup>197</sup> One jurisdiction with an election office webpage acknowledged that it was not translated.<sup>198</sup> Seven jurisdictions reported that they did not offer candidate qualifying information and forms in the covered languages.<sup>199</sup> Six jurisdictions noted that they did not provide election results in the covered languages.<sup>200</sup>

195. Respondents 350, 395, 412 & 714.

196. Respondents 395, 441, 451 & 639.

197. Respondents 350 & 672.

198. Respondent 441.

199. Respondents 350, 571, 760, 833, 839, 857 & 901.

200. Respondents 299, 441, 639, 709, 786 & 987.

Two-thirds of respondents (N = 189) reported that they translated more than half of all election materials. The jurisdiction's population had no relationship to whether bilingual materials were provided. Some jurisdictions reported that they intended to provide required bilingual written materials in the future.<sup>201</sup> Other jurisdictions reported that they will not provide bilingual materials for multiple reasons including cost,<sup>202</sup> technological issues,<sup>203</sup> the failure of vendors to offer translation services,<sup>204</sup> and redundancy due to bilingual poll workers who translated materials for voters.<sup>205</sup> Eighteen respondents reported that only Alaska Native or American Indian languages were covered in their respective jurisdictions and that bilingual written materials were not needed. Only one respondent reported that bilingual materials had been requested for an American Indian language.

### 3. FULL-TIME BILINGUAL ELECTION WORKERS

Respondents were asked whether their jurisdiction employed at least one full-time employee who is fluent in a language besides English, regardless of whether it was a covered language. Of the jurisdictions that responded to this question, 57.1% (N = 192) reported having no full-time employees fluent in another language. The percentage of jurisdictions with at least one full-time worker in a covered language was less than 42.9%.<sup>206</sup> Of the 391 responding jurisdictions covered for one or more languages, 39.1% (N = 153) reported having at least one full-time worker who is fluent in a covered language.<sup>207</sup>

Among the 299 responding jurisdictions covered for Spanish, 55.8% (N = 167) did not employ a Spanish-speaking full-time worker.<sup>208</sup> Among the sixty-one jurisdictions for Alaska Native or American Indian languages, 81.9% (N = 50) had no full-time employees fluent in the

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201. Respondents 431 & 839.

202. Respondents 486, 561, 760 & 888.

203. Respondents 709 & 786.

204. Respondents 672 & 833.

205. Respondent 421.

206. The respondents' answers were correlated with the languages for which they were covered under either Section 4(f)(4) or Section 203 of the Voting Rights Act.

207. The 391 jurisdictions are the aggregate of all data. If a jurisdiction was covered for two distinct language groups (e.g., Spanish Heritage and American Indian), it was counted for each of those language groups. This approach was used to better depict whether a bilingual full-time worker was available for each of the covered language groups. It did not depict whether a bilingual full-time worker was available in each language in the covered language group (e.g., Chinese, Filipino, Japanese, Korean, and Vietnamese for Asian language coverage), and therefore still may have overestimated the extent of full-time bilingual workers available.

208. Among the forty-eight jurisdictions not covered for Spanish, 6.2% (N = 3) employed at least one full-time worker fluent in Spanish.

covered language.<sup>209</sup> Fifty-two respondents were covered for an American Indian language but not an Alaska Native language. Among those fifty-two jurisdictions, 81.8% (N = 42) did not employ a full-time worker fluent in an American Indian language. Of the ten responding jurisdictions covered for an Alaska Native language, only 10% (N = 1) reported having a full-time employee fluent in a covered language.<sup>210</sup> Among the thirty-one responding jurisdictions covered for at least one Asian language, over two-thirds (N = 21) had no full-time employees fluent in an Asian language.<sup>211</sup>

There was a strong positive relationship between the percentage of LEP voters and whether jurisdictions employed bilingual full-time workers in the covered languages. Jurisdictions employing at least one full-time, Spanish-speaking employee had a higher average LEP than jurisdictions that do not. Among respondents with at least one full-time Spanish-speaking employee, the mean Spanish VAP was 31.5%, with an average LEP of 37.9%, meaning that approximately 11.9% of all VAP was LEP in the covered language. By contrast, of respondents that did not employ at least one full-time Spanish-speaking employee, the mean Hispanic VAP was 17.4% with an average LEP of 37.5%, meaning that approximately 6.5% of all VAP was LEP in the covered language.

A similar pattern emerged for Alaska Native and American Indian covered jurisdictions. Among respondents employing at least one full-time American Indian or Alaska Native-speaking employee, the mean Native language-speaking VAP was 31.3% with an average LEP of 20.9%, meaning that approximately 6.5% of VAP was LEP in the covered language. In comparison, among respondents that did not employ at least one full-time, American Indian or Alaska Native-speaking employee, the mean Native language-speaking VAP was 3.0% with an average LEP of 14.3%, meaning that approximately 0.4% of VAP was LEP in the covered language.

Likewise, jurisdictions employing at least one full-time Asian language-speaking employee had higher LEP rates than jurisdictions that did not. Respondents employing at least one full-time Asian language-speaking employee had a mean Asian-language VAP of 9.8% with an average LEP of 38.8%, meaning that approximately 3.8% of VAP was LEP in the covered language. On the other hand, among respondents that did not employ at least one full-time Asian language-speaking employee, the mean Asian-language VAP was 2.1% with an average LEP of 35.2%, meaning that 0.7% of the VAP was LEP in the covered language.

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209. One of the non-covered jurisdictions employed a full-time worker fluent in an Alaska Native or American Indian language.

210. One responding jurisdiction was covered for both Alaska Native and American Indian languages.

211. Seven jurisdictions not covered for an Asian language reported having a full-time worker fluent in one or more of those languages.

#### 4. PART-TIME BILINGUAL ELECTION WORKERS

Respondents were asked to estimate the percentage of part-time election workers who were fluent in a language besides English and to specify the languages. Respondents reported that an average of 12.2% of part-time workers was fluent in Spanish, an average of 0.6% was fluent in an Alaska Native or American Indian language, and an average of 0.1% was fluent in an Asian language. However, the median percentages for part-time workers fluent in those language groups were substantially lower. Among responding jurisdictions, the median percentage of part-time workers fluent in Spanish was 2%, and the median percentages for Alaska Native/American Indian and Asian languages was 0%.

It appears that the lower median percentages were caused by a small group of jurisdictions. The outlying 1% of Spanish-covered jurisdictions reported that 90—100% of their part-time employees were fluent in Spanish. Similarly, the outlying 1% of Alaska Native and American Indian covered jurisdictions reported that 15—25% of their part-time employees were fluent in a covered language. For Asian languages, the outlying 1% reported having 3.3—8% of part-time employees fluent in an Asian language.

There was a strong relationship between the availability of bilingual part-time employees and coverage under either Section 4(f)(4) or Section 203. Among jurisdictions covered for Spanish, the mean percentage of part-time employees fluent in Spanish was 14.0%, compared to 0.5% for jurisdictions not covered for Spanish. Among jurisdictions covered for Alaska Native or American Indian languages, 2.7% of part-time employees spoke a covered language fluently, in contrast to 0.1% in jurisdictions not covered for those languages. Jurisdictions covered for an Asian language reported that 1% of their part-time employees were fluent in an Asian language, compared to 0% for jurisdictions not covered for Asian languages.

There also was a strong positive relationship between the percentage of LEP voters and whether jurisdictions employed bilingual part-time workers in the covered languages. Jurisdictions employing at least one part-time Spanish-speaking employee had a higher average LEP than jurisdictions that did not. Among respondents with at least one part-time Spanish-speaking employee, the mean Spanish VAP was 29.0% with an average LEP of 38.9%, meaning that approximately 11.3% of all VAP was LEP in the covered language. By contrast, among respondents that did not employ at least one part-time Spanish-speaking employee, the mean Hispanic VAP was 19.5% with an average LEP of 41.9%, meaning that approximately 8.2% of VAP was LEP in the covered language.

A similar pattern emerged for Alaska Native and American Indian covered jurisdictions. Among responding jurisdictions employing at least one part-time Native American or Alaska Native-speaking employee, the mean Native language-speaking VAP was 29.7% with an average LEP of 15.5%, meaning that approximately 4.6% of VAP was LEP in the covered language. In comparison, among respondents that did not employ at least one part-time American Indian or Alaska Native-speaking employee, the mean Native language-speaking VAP was 7.4% with an average LEP of 13.7%, meaning that approximately 1% of all VAP was LEP in the covered language.

Likewise, jurisdictions employing at least one part-time Asian language-speaking employee had a higher LEP than jurisdictions that did not. Respondents employing at least one part-time Asian language-speaking employee had a mean Asian-language VAP of 17.2% with an average LEP of 44.1%, meaning that approximately 7.6% of VAP was LEP in the covered language. On the other hand, among respondents that did not employ at least one full-time, Asian language-speaking employee, the mean Asian-language VAP was 13.1% with an average LEP of 40.2%, meaning that 5.3% of the VAP was LEP in the covered language.

## 5. LANGUAGE ASSISTANCE FOR TELEPHONE INQUIRIES.

Less than half of the responding 326 jurisdictions reported providing assistance for telephone inquiries from voters in all of the covered languages: 39% (N = 127) provided assistance in all covered languages; 26.4% (N = 86) in some covered languages; and 34.7% (N = 113) in none of the covered languages. Although two-thirds of all jurisdictions reported providing some oral language assistance for telephone inquiries, only one-half of those did so for all covered languages. Spanish language assistance was the most available, but one-quarter of all Spanish-covered jurisdictions did not provide telephone assistance to voters in Spanish.

The percentage of jurisdictions that provided no telephone assistance decreased as the population of the jurisdiction increased. Generally, the percentage of jurisdictions that reported providing telephone assistance in all of their covered languages slowly increased with population size until the population was greater than 100,000, when there was a large increase in the availability of telephone assistance. Jurisdictions with a higher percentage of LEP voters were more likely to provide telephone assistance in the covered languages.

Among jurisdictions that did not provide telephone assistance, the Spanish LEP was lower than the Spanish LEP for jurisdictions that provided at least some telephone assistance. The same effect was not as

notable for Asian-speaking LEP and Native-speaking LEP. Instead, while Asian-speaking LEP increased only slightly as the availability of telephone assistance increased, American Indian and Alaska Native LEP actually decreased.

## VI. THE QUALITY OF LANGUAGE ASSISTANCE IN PUBLIC ELECTIONS

Each covered jurisdiction must “determine what actions by it are required for compliance with the requirements of Section 4(f)(4) and Section 203(c).”<sup>212</sup> Compliance is assessed by an “effectiveness” standard, which ensures that a language assistance program “is designed and implemented in such a way that language minority group members who need minority language materials and assistance receive them.”<sup>213</sup> Covered jurisdictions need to make certain that election information, materials, and announcements are as readily available in the covered language(s) as they are in English, and must ensure public awareness about the jurisdiction’s minority language assistance program.<sup>214</sup> Assessing the quality of language materials, assistance, outreach, and publicity is essential to determine whether jurisdictions are fully complying with the language assistance provisions of the Voting Rights Act.

The Department of Justice offers guidance on how to comply with Section 203. Because election systems and minority language needs vary widely between covered jurisdictions, the Department “has identified both guiding principles and practical suggestions for local election officials to pursue with their local language minority communities to serve them effectively and efficiently.”<sup>215</sup> These guidelines suggest that election officials talk to a broad range of organizations and individuals in the minority community to identify the most effective program possible. There are several common ways in which covered jurisdictions may assess and improve the quality of their language assistance programs, which are discussed in this section.

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212. 28 C.F.R. § 55.14(c).

213. 28 C.F.R. § 55.17.

214. 42 U.S.C. § 1973aa-1a(c); 28 C.F.R. §§ 55.18–.20.

215. United States Department of Justice, Civil Rights Division, Voting Section, *About Language Minority Voting Rights*, [http://www.usdoj.gov/crt/voting/sec\\_203/activ\\_203.htm#langguide](http://www.usdoj.gov/crt/voting/sec_203/activ_203.htm#langguide).



## A. BILINGUAL COORDINATORS

Bilingual coordinators act as a liaison between election officials and members of covered language groups to improve the availability and quality of language assistance that is provided to voters who need it. Bilingual coordinators often train election officials and poll workers about the jurisdiction's language assistance program and federal, state, and local requirements for providing assistance. They frequently recruit bilingual voters to serve as poll workers and confirm their spoken and written language abilities. They can identify locations where voters require language assistance and ensure adequate bilingual poll worker staffing on election day. They can engage in outreach and publicity with members of covered language groups about the jurisdiction's language assistance program. Bilingual coordinators can be volunteers or paid employees. They typically are fluent in both English and the covered language. It also is helpful if they have established contacts in the covered language groups. As the liaison with the local elections office, they should be fully trained on all federal and state election procedures.

Bilingual coordinators are not required by statute or regulation. However, jurisdictions that use them are much more likely to comply with the language assistance provisions of the Voting Rights Act than those that do not. Therefore, bilingual coordinators are routinely required in consent decrees and as part of judicial remedies for Section 203 violations.<sup>216</sup>

### 1. AVAILABILITY

Among the 338 responding jurisdictions, 38.2% (N = 129) reported that they use bilingual coordinators, while 61.8% (N = 209) did not. Among the jurisdictions that reported using bilingual coordinators, 91.5% (N = 118) were covered for Spanish, 19.4% (N = 25) for Alaska Native or American Indian languages, and 12.4% (N = 16) for Asian languages. Among the jurisdictions that reported that they do not use bilingual coordinators, 82.3% (N = 172) were covered for Spanish, 16.8% (N = 35) for Alaska Native or American Indian languages, and 7.7% (N = 16) for Asian languages.

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216. For examples of bilingual coordinator requirements in consent decrees in Azusa and Ventura, California, and Osceola County, Florida, among others, go to <http://www.usdoj.gov/crt/voting/litigation/caselist.htm#sec203cases>.

There was little difference between the LEP of jurisdictions that used bilingual coordinators and those that did not. In jurisdictions using bilingual coordinators, the average percent of voters who were LEP in the covered languages was 38.4% among Hispanic voters, 15.4% among Alaska Native and American Indian voters, and 34.6% among Asian voters. By comparison, in jurisdictions that did not use bilingual coordinators, the average percent of voters who were LEP in the covered languages was 37.0% among Hispanic voters, 14.4% among Alaska Native and American Indian voters, and 36.7% among Asian voters.

There was a positive correlation between the population of covered jurisdictions and whether they reported using bilingual coordinators. Generally, jurisdictions with larger populations were more likely to use bilingual coordinators than those with smaller populations. Bilingual coordinator use was highest among jurisdictions with populations of more than one million. Specifically, of the seventeen responding jurisdictions with over one million people, 52.9% (N = 9) reported using a bilingual coordinator. By contrast, of the fifty smallest jurisdictions with populations of 5,000 people or less, only 30% (N = 15) reported using bilingual coordinators.

## 2. EMPLOYMENT STATUS.

Out of the 129 jurisdictions reporting that they used a bilingual coordinator, 89.1% (N = 115) identified the status of their coordinator. While slightly more than one-third (38.2%) of the jurisdictions reported that they used bilingual coordinators, 49% (N = 57) of those jurisdictions used full-time employees instead of part-time employees or volunteers. The use of full-time employees may have resulted from several factors, such as election offices with more full-time staff, particularly in more populous jurisdictions; requirements to employ full-time bilingual coordinators under consent decrees or other court orders; requirements under state or local law; or jurisdictions searching for professionally trained bilingual coordinators who have the time to manage language assistance programs.

Among the remaining jurisdictions, 20.9% (N = 24) used part-time employees, 12.2% (N = 14) used bilingual coordinators appointed to the position, 11.3% (N = 13) used unpaid volunteers, 7.0% (N = 8) used bilingual coordinators who were elected to the position, and 1.7% (N = 2) used unpaid students. In addition, 22.6% (N = 26) of jurisdictions marked "other" to describe the status of their bilingual coordinators.

### 3. RECRUITMENT

Jurisdictions recruited bilingual coordinators through a number of methods.<sup>217</sup> Direct solicitation and use of community organizations were the most common methods at 41.4% (N = 48) and 25.9% (N = 30), respectively. Community-based recruitment made it more likely that bilingual coordinators who are hired understand the needs of covered language groups. Furthermore, recruiting with the assistance of community organizations facilitated the ability of bilingual coordinators to work with those organizations after retention. Other recruitment methods included government or school employees by 19.8% (N = 23), political parties by 18.1% (N = 21), newspaper advertisements by 15.5% (N = 18), election materials mailed to voters by 6% (N = 7), television advertisements by 3.5% (N = 4), translation agencies and temporary services each at 2.6% (N = 3), and radio advertisements at 1.7% (N = 2). No jurisdictions reported recruiting bilingual coordinators through flyers.

### 4. RESPONSIBILITIES

Jurisdictions with bilingual coordinators identified several responsibilities for their coordinators.<sup>218</sup> Approximately two-thirds of respondents reported that their bilingual coordinators provided voter instruction (N = 87), election day troubleshooting (N = 84), or translated written election materials (N = 84). However, approximately one-third or fewer jurisdictions used bilingual coordinators to prepare written election materials (N = 43), recruit poll workers (N = 42), engage in community outreach (N = 37), train poll workers (N = 35) or other election officials (N = 24). Overall, it appeared that most jurisdictions underutilized the knowledge, experience, and contacts that bilingual coordinators had within the covered language communities.

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217. Jurisdictions were given twelve choices for methods of recruiting their bilingual coordinators. Among the 116 responding jurisdictions, seventy-two jurisdictions selected one recruitment method, twenty-three selected two, twelve jurisdictions selected three, six selected four, two selected five, and one jurisdiction selected six. Seventeen jurisdictions did not report any method of recruiting bilingual coordinators.

218. Jurisdictions were given eleven choices for bilingual coordinator responsibilities. Among the 115 responding jurisdictions, twenty-six jurisdictions selected one option, twenty-one selected two options, twenty-one selected three options, twelve selected four options, nine selected five options, eleven selected six options, ten selected seven options, six selected eight options, four selected nine options, and five selected ten options.

## B. ELECTION DAY POLL WORKERS

Poll workers are the only election officials with whom most voters have contact. They typically are part-time contractors who only work on election day and a few hours before to prepare for the election. Their compensation is usually set by statute at little more than minimum wage for what can amount to a fourteen to sixteen hour workday. The low wages and long hours make it difficult to recruit people. Yet, poll workers are on the front line of elections and frequently are the weak link in providing effective language assistance to voters in covered jurisdictions. This section describes poll worker practices and procedures that often result in a low quality language assistance program.

### 1. CONFIRMATION OF LANGUAGE ABILITIES.

Even where oral language assistance is provided at the polls, it may be impaired if bilingual election workers are not actually fluent in the covered languages. Respondents were asked how they confirmed the language abilities of part-time election workers. Approximately 90% (N = 324) of respondents providing complete responses to the survey responded.<sup>219</sup> Nearly two-thirds (N = 210) of those respondents did not require any confirmation of the language abilities of part-time poll workers. Part-time workers may overestimate or inaccurately report their oral or written language abilities.<sup>220</sup> Where this occurs, language assistance may be unavailable at polling places where election officials believe it is being provided.

Among the minority of responding jurisdictions that reported confirming language abilities, conversations with the worker in the covered language was the most common method used. Of the 114 jurisdictions that confirmed language abilities, 48.2% (N = 55) employed this method. Bilingual full-time election workers and bilingual coordinators may perform this method of confirmation, at no additional expense to the jurisdiction other than the time that it takes them to do so. Nevertheless, 83% of responding jurisdictions failed to use this confirmation method.

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219. Respondents were offered eight options and were instructed to select all that applied. Among the 324 responding jurisdictions, all but twenty-two selected only one option. Of the twenty-two respondents that checked more than one method of confirming language abilities, sixteen selected two methods, five selected three methods, and one selected five methods.

220. There are several problems relying on self-reported language ability. See Paul Siegal et al., U.S. Census Bureau, *Language Use and Linguistic Isolation: Historical Data and Methodological Issues* 6-8 (Feb. 12, 2001).

A small number of jurisdictions confirmed language abilities through an oral or written exam (N = 11 for each), outside agency (N = 9), community organization (N = 8), or through an education requirement (N = 4). Approximately 10% of the 324 responding jurisdictions (N = 32) reported that they use some “other” method of confirmation. Among the respondents checking “other,” eleven indicated that they confirmed the language abilities of part-time election workers by asking the election worker about his or her language abilities or that the language abilities were self-reported by the election worker or another person.<sup>221</sup> For example, one respondent replied, “They tell me (if I ask) if they can speak [the covered language].”<sup>222</sup> Relying upon the self-reported abilities of the part-time workers is not an independent means of confirmation, and places these eleven jurisdictions in the same category as the 210 jurisdictions reporting that no confirmation was required. As a result, two-thirds (N = 221) of jurisdictions required no confirmation.

Seven respondents indicated that part-time election workers were hired by local election officers or by another office or jurisdiction subsequently responsible for confirming the workers’ language abilities.<sup>223</sup> Six respondents reported that language abilities were confirmed by their own personal knowledge of the election workers’ language abilities.<sup>224</sup> Two respondents reported that other election officials tested part-time election workers to confirm their language abilities.<sup>225</sup> Two respondents indicated that a tribal government or organization confirmed the language abilities of part-time election workers fluent in Alaska Native or American Indian languages.<sup>226</sup>

## 2. CONTENT AND FREQUENCY OF TRAINING

Responding jurisdictions generally provided regular training for poll workers. Of the 316 responding jurisdictions, 67.4% (N = 221) required a training session before each election, 19.2% (N = 63) required annual training sessions, 7.6% (N = 25) responded “other,” and 6.4% (N = 21) did not provide any training. Most jurisdictions reported that they trained part-time election workers before each election.<sup>227</sup> Most respondents (N = 328) identified the content of poll worker training.<sup>228</sup>

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221. Respondents 234, 272, 306, 322, 334, 418, 672, 859, 869, 887 & 926.

222. Respondent 272.

223. Respondents 729, 812, 861, 886, 905, 968 & 1009.

224. Respondents 245, 664, 714, 821, 889 & 940.

225. Respondents 691 & 909.

226. Respondents 347 & 706.

227. Of the 316 responding jurisdictions, 95.9% (N= 303) selected one option, 3.8% (N = 12) selected two options, and 0.3% (N = 1) selected three options.

228. Respondents were presented nine options and were asked to select all that applied. Most of the 328 responding jurisdictions selected more than one option: eight selected one option,

Nearly all respondents covered basic information about setting up polling places and most forms of voter assistance in English. Ninety percent (N = 295) provided written materials, 83.5% (N = 274) instructions on voter assistance, 81.7% (N = 268) on polling place setup, and 78.7% (N = 258) on ballot instructions.

On the other hand, two-thirds of all respondents (N = 217) reported that their poll worker training did not include information on the languages covered in the jurisdiction. This number may be due to the lack of information included about language assistance in instructional videos, which were used by 63.8% (N = 208) of all respondents. In several cases, jurisdictions reported that videos were provided by the state's chief elections officer and did not include information about language assistance. Furthermore, the absence of training might be attributable in part to the failure of two-thirds of jurisdictions with bilingual coordinators to include those coordinators in election official training designed to provide information about language assistance.<sup>229</sup>

Furthermore, two-thirds of respondents (N = 110) reported that they did not use role-playing demonstrations as part of their poll worker training. Role-playing can provide an effective way to educate poll workers on common problems experienced by LEP voters in the covered language groups, such as problems checking in, locating their name on the voter registration list (a common problem where voters often use more than one surname), voting machine instructions, and assistance. Role-playing also allows poll workers to observe firsthand the proper way to treat voters and respond to inquiries.

A little more than half of the responding jurisdictions (N = 174) provided training on how to use the voting machine. The absence of such training can make it difficult for all poll workers, including bilingual poll workers, to provide assistance to first-time voters or voters using new voting equipment. Thirty jurisdictions provided some "other" form of training, including ten using PowerPoint presentations,<sup>230</sup> six using hands-on exercises,<sup>231</sup> and two using audio tapes, CDs, or other media.<sup>232</sup>

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fifteen selected two options, twelve selected three options, thirty-three selected four options, seventy-three selected five options, sixty-nine selected six options, fifty-nine selected seven options, thirty selected eight options, and ten selected nine options.

229. See Figure 5.5 in LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, reprinted in H. HRG. 109-103, at 2210.

230. Respondents 234, 334, 600, 767, 831, 839, 857, 883, 884 & 887.

231. Respondents 224, 299, 311, 384, 386 & 920.

232. Respondents 460 & 862.

### C. VOTER ASSISTANCE TRAINING

Although 83.5% of jurisdictions (N = 274) reported providing training to poll workers on voter assistance, that training did not necessarily include accurate training on federal requirements. Respondents were asked, “Who of the following may accompany voters who need assistance in the voting booth?” Jurisdictions could select one or more of the nine choices provided.<sup>233</sup> A total of 263 jurisdictions responded.

Section 208 of the VRA provides that “[a]ny 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,” except for the voter’s employer or union representative.<sup>234</sup> Section 208 provides nationwide coverage, independent of the language assistance provisions. Unlike Section 203, Section 208 does not require that a jurisdiction provide language assistance to voters who need it.<sup>235</sup> On the other hand, Section 208 complements the language assistance provisions by describing the extent to which jurisdictions must permit voters to receive assistance, regardless of whether the jurisdiction has an affirmative obligation under Section 203 to provide it.<sup>236</sup>

None of the responding jurisdictions selected the “none” option, indicating that all allowed at least some form of assistance in the voting booth. However, only 10.3% (N = 27) of respondents reported voter assistance practices at least as protective as Section 208: 1.9% (N = 5) correctly stated the federal standard, and 8.4% (N = 22) permitted voters to receive assistance from their person of choice, even if it fell into one of the two exceptions in Section 208.

It appears that in many cases, limits on voter assistance practices resulted from jurisdictions complying with state laws more restrictive than what is allowed under Section 208. For example, over half of respondents reported that they did not permit voters to receive assistance from their own children, which paralleled state requirements that only eligible voters were qualified to be poll workers. Nevertheless, minors frequently can provide effective assistance (whether language or otherwise) to their parents.

Only 11% of respondents (N = 29) permitted voters to receive assistance from campaign workers. The reluctance of many jurisdictions

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233. Of the 263 responding jurisdictions, thirty-nine jurisdictions selected one option, twenty-eight selected two options, forty selected three options, fifty-three selected four options, forty-seven selected five options, eighteen selected six options, eighteen selected seven options, and seven selected eight options.

234. 42 U.S.C. § 1973aa-6.

235. Compare 42 U.S.C. § 1973aa-6 (Section 208) with 42 U.S.C. § 1973aa-1a (Section 203).

236. *Id.*

may have resulted from concerns about voting fraud or electioneering by campaign workers in the polls. Nevertheless, under Section 208, a voter is entitled to receive assistance from a campaign worker as long as it is the voter's choice.<sup>237</sup> Concerns about assistance from campaign workers can be addressed by observing the manner in which assistance is provided.

Approximately 30% of respondents (N = 81) indicated that bilingual poll workers were not permitted to provide assistance to voters in the voting booth. Similarly, about one-half of respondents (N = 130) did not allow a voter to receive assistance in the voting booth from a translator. In some cases, the failure to permit assistance from these individuals was due to requirements that assistance only be provided by certain election officials such as a presiding judge.<sup>238</sup>

Approximately 90% of responding election officials identified voter assistance measures more restrictive than Section 208. As a result, it is likely that poll workers in those jurisdictions did not receive voter assistance training that accurately stated federal requirements. Restrictions on voter assistance under Section 208 have a correspondingly negative impact on the ability of voters to receive language assistance under Section 203.

#### D. LANGUAGE ASSISTANCE PROGRAMS

Effective language assistance programs require that language minorities have the same opportunities to participate in elections as English-speaking voters. An effective program cannot rest just on bilingual election officials and poll workers. Jurisdictions that must provide bilingual written materials need to ensure that materials are translated properly into the language and dialect of the covered languages.<sup>239</sup> The availability of language assistance and need for bilingual poll workers must be publicized. Outreach also must be done to local language groups to ensure that language assistance is being provided properly to those voters who require it.

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237. 42 U.S.C. § 1973aa-6.

238. Respondents 308, 448, 691 & 888.

239. See generally notes 49–50 and accompanying text; *Enfranchising Language Minorities*, *supra* note 6, at 123–25 (observing that historically unwritten Alaska Native and American Indian languages generally do not require bilingual election materials).



## I. TRANSLATION OF WRITTEN ELECTION MATERIALS.

Justice Department guidelines describe the importance of translations in assessing the quality of materials in the covered languages:

It is essential that material provided in the language of a language minority group be clear, complete and accurate. In examining whether a jurisdiction has achieved compliance with this requirement, the Attorney General will consider whether the jurisdiction has consulted with members of the applicable language minority group with respect to the translation of materials.<sup>240</sup>

The Department further explains, “Poor translations can be misleading for voters and embarrassing for local officials. Beyond quality control, there can be significant differences in dialect within a given language group, and it is the responsibility of local [election] officials to provide a translation that local voters actually can use.”<sup>241</sup>

Respondents were asked about the persons or groups who were involved in translating written election materials in their jurisdiction from English to the covered languages.<sup>242</sup> Nearly half of respondents (N = 122) reported using election office employees to translate written materials. Approximately 40% (N = 104) reported that professional translation services translated their election materials. About 15% (N = 38) reported that translations were received from the Secretary of State’s office. Although fifty-one respondents selected “other,”<sup>243</sup> most provided responses that fell into one of the options included in the survey.<sup>244</sup> Six jurisdictions reported using computer or Internet translation programs. Four jurisdictions reported using newspapers for the translation of written election materials. Three jurisdictions reported

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240. 28 C.F.R. § 55.19(b).

241. United States Department of Justice, Civil Rights Division, Voting Section, *Minority Language Citizens: Section 203 of the Voting Rights Act*, [http://www.usdoj.gov/crt/voting/sec\\_203/203\\_brochure.htm](http://www.usdoj.gov/crt/voting/sec_203/203_brochure.htm).

242. Respondents were presented with six options and asked to check all that applied. Most of the 256 responding jurisdictions selected two or fewer options: 135 jurisdictions selected one option, eighty-two selected two options, twenty-five selected three options, thirteen selected four options, and one selected five options.

243. Thirty-eight jurisdictions indicated in response to the “other” option that the Secretary of State’s office was involved in translating written election materials. Those jurisdictions are not included in the fifty-one jurisdictions.

244. Twenty-two jurisdictions reported that vendors are involved in the translation of written materials, ten reported using employees to translate written election materials, nine reported using another office or jurisdiction’s employees, and four reported using paid translators or certified translation services.

using advisory committees or outreach to members of the covered language groups. One jurisdiction reported using school employees.

Less than a quarter of respondents (N = 59) reported that bilingual coordinators (N = 50) or community organizations (N = 9) were involved in translating written election materials. Election officials may be more familiar with election requirements than others involved in translating election materials. Similarly, professional translation agencies routinely provide certified translations for many government functions, including elections. However, the failure of most jurisdictions to include members of the covered language group in the translation process likely has a negative impact on the quality of written translations.

## 2. LANGUAGE PROGRAM PUBLICITY.

The Justice Department's guidelines emphasize the importance of publicizing the availability of language assistance in public elections:

The Attorney General will consider whether a covered jurisdiction has taken appropriate steps to publicize the availability of materials and assistance in the minority language. Such steps may include the display of appropriate notices, in the minority language, at voter registration offices, polling places, etc., the making of announcements over minority language radio or television stations, the publication of notices in minority language newspapers, and direct contact with language minority group organizations.<sup>245</sup>

In other words, it is difficult for language minority voters to use language assistance if they are unaware it is available.

Respondents were asked how voters are informed about the availability of oral language assistance, and 257 jurisdictions provided that information.<sup>246</sup> Polling place signage was the most common method of informing voters about language assistance, with 70.4% of respondents (N = 181) doing so. Jurisdictions also reported informing voters about the availability of language assistance through web advertisements or the Internet,<sup>247</sup> community organizations or

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245. 28 C.F.R. § 55.18(e).

246. Respondents were presented seven options and asked to check all that applied. Three-quarters of the 257 responding jurisdictions selected two or fewer options: 127 selected one option, sixty-four selected two options, twenty-seven selected three options, thirteen selected four options, fourteen selected five options, ten selected six options, and two selected seven options.

247. Respondents 224, 306, 357, 461, 486, 715 & 857.

community centers,<sup>248</sup> public service announcements,<sup>249</sup> and in election materials provided in the covered languages.<sup>250</sup>

A majority of jurisdictions reported that they did not inform voters about the availability of assistance in the covered languages prior to elections. Forty-one percent (N = 105) did so through mailing election materials, 36.6% (N = 94) through newspaper advertisements, 17.9% (N = 46) through radio advertisements, 11.7% (N = 30) through flyers, and 9.7% (N = 25) through television advertisements. Several respondents indicated that voters were not told about language assistance until they arrived at their polling place on election day.<sup>251</sup>

Many jurisdictions reported that the availability of language assistance is not publicized. Eight jurisdictions reported providing oral language assistance upon voter request.<sup>252</sup> For example, one respondent wrote, "They either come in or are on the phone and say they cannot speak English, and we get the person who speaks [the covered language] to help them."<sup>253</sup> Two jurisdictions reported that voters "are not"<sup>254</sup> informed except by "word of mouth."<sup>255</sup> Two jurisdictions reported that no publicity was necessary because it is "common knowledge."<sup>256</sup> One jurisdiction reported that it only publicized the availability of language assistance in "election worker training," and did not inform voters who did not serve as poll workers.<sup>257</sup> Jurisdictions that do not inform voters of the availability of oral language assistance may decrease participation among language minority voters who are unaware that they can receive help at the polls.

### 3. LANGUAGE MINORITY OUTREACH.

The Justice Department stresses the importance of engaging in outreach to community organizations and members of the covered language groups to ensure that effective language assistance is provided:

The cornerstone of every successful [language assistance] program is a vigorous outreach program to identify the needs and communication channels of the minority community. Citizens who do not speak English

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248. Respondents 393, 461, 462, 767, 810 & 857.

249. Respondents 311, 334, 563 & 600.

250. Respondents 575, 693 & 940.

251. Respondents 319, 347, 394, 441, 449, 460, 526, 807, 871 & 1012.

252. Respondents 238, 272, 277, 416, 500, 581, 616 & 870.

253. Respondent 272.

254. Respondent 766.

255. Respondent 725.

256. Respondents 550 & 820.

257. Respondent 987.

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>258</sup>

Jurisdictions that consult with community organizations in the preparation of election assistance in the covered languages are more likely to have a better understanding of the needs of minority language voters. Consulting with community organizations also may be one non-controlling factor that a jurisdiction has taken steps to comply with Section 203.<sup>259</sup>

Respondents were asked whether they consulted with community organizations and individuals from covered groups about their language assistance program. Among the 322 responding jurisdictions, only 37.3% (N = 120) reported consulting with community organizations, while the remaining 62.7% (N = 202) did not. For those respondents that did consult with local groups, fifty worked with schools, fifty-three with clubs, forty-seven with churches, forty-three with civil rights groups, and thirty-one with the League of Women Voters.<sup>260</sup> Other methods of community outreach included consulting with tribal governments (N = 15), election officials or other governmental employees (N = 9), office holders or leaders from the covered language group (N = 8), community activists (N = 6), political parties (N = 4), bilingual advisory committees (N = 4), the Chamber of Commerce (N = 3), a state agency (N = 3), media outlets (N = 3), senior citizen groups (N = 2), contractors (N = 2), employers (N = 1), and homeowners associations (N = 1). The variety of responses demonstrates the extent to which outreach must be tailored for each community. At the same time, the failure of nearly two-thirds of all covered jurisdictions to engage in any community outreach likely has a negative effect on the quality of the language assistance that is offered.

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258. *Minority Language Citizens*, *supra* note 241.

259. 28 C.F.R. § 55.19(b).

260. Respondents were presented with six options and asked to check all that applied. Of the 113 respondents, 30.1% (N = 34) selected one option, 24.8% (N = 28) selected two options, 21.2% (N = 24) selected three options, 6.2% (N = 7) selected four options, 13.3% (N = 15) selected five options, and 4.4% (N = 5) selected all six options.

## VII. THE COST OF PROVIDING LANGUAGE ASSISTANCE IN PUBLIC ELECTIONS

Some commentators criticize language assistance because they believe it imposes high costs on local election officials.<sup>261</sup> Their assertion is unsupported by the evidence. The costs of compliance are modest if there are any costs at all. A majority of respondents reporting costs indicated that they only incurred costs either for oral language assistance or bilingual written materials, but not both.

Among the 154 jurisdictions reporting oral language assistance expenses, 59.1% (N = 91) incurred no extra costs. Similarly, of the 144 jurisdictions reporting written language material expenses, 54.2% (N = 78) did not incur any additional costs. Of the 158 jurisdictions reporting complete election expenses, 39.5% (N = 60) did not incur any added costs for either oral or written language assistance. Other jurisdictions provided narrative responses indicating no additional expenses for the following: twenty-three for oral language assistance; thirteen for written language materials; and six for both.

### A. BARRIERS TO DETERMINING COST

A majority of respondents reported that they were unable to provide the costs of their language assistance programs. Of the 361 respondents providing complete responses to the survey, 42.7% (N = 154) were able to provide complete cost data for oral language assistance, and 39.9% (N = 144) were able to provide complete cost data for bilingual written materials. The GAO encountered similar problems in its own language assistance studies. The GAO reported in its 1984 study that, “nearly two-thirds (191) of the 295 responding jurisdictions that reported providing written assistance did not know their additional costs for the assistance.”<sup>262</sup> Likewise, the GAO reported in its 1997 study that, “About 76% of the jurisdictions and 42% of the states that provided bilingual voting assistance were unable to determine the costs of doing so.”<sup>263</sup>

A total of 175 respondents reported that could not provide any cost data. Many did not have a language assistance program and therefore had no costs. Some indicated that they were not required to provide language assistance to voters.<sup>264</sup> Others stated that they had few, if any,

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261. See *supra* note 6 and accompanying text.

262. 1984 GAO Study, *supra* note 69, at 16.

263. 1997 GAO Study, *supra* note 70, at 16.

264. Respondents 207, 232, 279, 353 & 810.

voters who needed assistance.<sup>265</sup> The remaining respondents indicated they did not provide assistance,<sup>266</sup> with one respondent reporting, “We do our best to muddle through if services are requested.”<sup>267</sup> Some jurisdictions did not provide cost data because they did not incur costs for their language assistance programs. Approximately 19% (N = 33) reported that they did not have any costs for their oral language assistance programs. Nearly 17% (N = 29) reported that they did not have any added costs for providing bilingual written materials. The reasons that these jurisdictions did not incur additional expenses are discussed below.

Other respondents reported a variety of reasons for why their cost data could not be provided. “Costs are not separated”<sup>268</sup> in the budgets of many jurisdictions that were unable to provide cost data. Nearly a third (N = 54) reported that they do not track the costs in their respective budgets. As one respondent explained, “Many costs related to elections are not itemized separately from other activities. Oral language costs are not tracked separately or itemized. All election items are printed in English and [the covered language] in the same document. No estimates are available for one language only.”<sup>269</sup> About 15% (N = 26) reported that their vendors printed written language materials on the same forms as English materials and did not break out the costs attributed to the covered languages. Approximately the same number (N = 24) indicated that another office provided the assistance, incurred any costs, or otherwise had any cost information that was available. Three percent (N = 5) reported that they did not incur any additional costs by providing language assistance under the Voting Rights Act because the law required they provide it. One respondent observed, “It does not cost any extra [money]. . . . [O]ur state law requires everything to be in [the covered language] as well as English.”<sup>270</sup> Four respondents indicated that they could not provide estimates of their language assistance costs because they varied too much between elections.<sup>271</sup> The remaining respondents provided a variety of other reasons for the unavailability of their cost data.

These reasons are consistent with the GAO’s earlier findings. In the 1997 study, the GAO reported that jurisdictions could not identify the costs of their language assistance programs for the following reasons: they were not tracked because assistance had been provided for several

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265. Respondents 585 & 646.

266. Respondents 421, 561, 854 & 1029.

267. Respondent 854.

268. Respondent 750.

269. Respondent 693.

270. Respondent 773.

271. *See generally* Respondent 474 (“Each election is different and there are various factors in place based on the number of polling places used, the number of staff used, and the assistance that we may get from a contracting entity that provides their own translators or material already in [the covered language].”).

years; printers did not provide itemized statements; their accounting systems or budgets did not itemize costs; and the inability to separate federal from state assistance requirements.<sup>272</sup> The GAO reached the same conclusions in its 1984 study, observing that there “are no federal requirements that such information be collected and maintained.”<sup>273</sup>

## B. ORAL LANGUAGE ASSISTANCE COSTS

The 59.1% of jurisdictions reporting no oral language assistance expenses attributed the lack of additional costs to several factors. A number of jurisdictions in New Mexico and Texas reported that state laws have language assistance requirements similar to Section 203, resulting in no additional cost for federal compliance. Many jurisdictions reported hiring bilingual poll workers who were paid the same wages as other poll workers. One respondent explained, “The bilingual poll workers we hire are filling positions that would have to be filled by another individual.”<sup>274</sup> Another jurisdiction indicated, “We do not pay any extra . . . if you are bilingual and helping with the election.”<sup>275</sup> Some respondents also reported that full-time employees often were bilingual and available to provide oral language assistance at every stage of the election process.<sup>276</sup> Other jurisdictions used unpaid volunteers to provide oral language assistance whenever necessary.<sup>277</sup>

Among the 154 jurisdictions reporting complete data for oral language assistance, the average cost was 4.9% of all election expenses with the mean jurisdiction incurring no additional costs. However, the top 10% of respondents (N = 16) skewed this result by reporting average costs of 34%. By contrast, the remaining 138 jurisdictions reported average costs of only 1.5%. Two factors contributed to the disparate results. Some of the sixteen jurisdictions attributed all of their election expenses, including costs for hiring permanent staff and election day poll workers who have to be hired regardless of Section 203, to oral language assistance. Second, those sixteen jurisdictions were less populated, with an average total population of 40,262, compared to an average total population of 170,439 in the remaining jurisdictions. When these factors were taken into consideration, oral language costs actually were close to the average of 2.9% reported by the GAO in 1984.<sup>278</sup>

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272. 1997 GAO Study, *supra* note 70, at 16–18.

273. 1984 GAO Study, *supra* note 69, at 17.

274. Respondent 615.

275. Respondent 822.

276. Respondents 280, 317, 488, 710, 742, 749, 767, 790, 816, 915 & 925.

277. Respondent 725.

278. See 1984 GAO STUDY, *supra* note 69, at 20.

The average cost of oral language assistance remained approximately the same, regardless of the percentage of voters who needed language assistance. Similarly, the average cost of providing oral language assistance remained approximately the same regardless of the percentage of LEP voters in the responding jurisdiction. Generally, there was no relationship between the percentage of LEP voters in the responding jurisdiction and the costs the jurisdiction incurred to provide oral language assistance. Respondents indicated that the low cost of providing oral language assistance was attributable to the use of bilingual election workers who were paid at the same rate as other election workers.

### C. BILINGUAL WRITTEN MATERIAL COSTS

Among the 144 jurisdictions reporting bilingual written material expenses, 54.2% (N = 78) incurred no extra costs. Thirteen additional jurisdictions provided narrative responses indicating that they did not incur any additional costs for providing bilingual written materials. Respondents reported several reasons for why they did not incur costs. Jurisdictions with Alaska Native and American Indian voters reported that bilingual materials were not provided because the covered languages were unwritten.<sup>279</sup> Some jurisdictions providing bilingual written materials used election officials or community volunteers to translate materials, resulting in no additional costs.<sup>280</sup> In many cases, printing costs did not increase as a result of having bilingual written materials. One respondent observed that, “materials are printed in both languages—there is no added cost for this service.”<sup>281</sup> Another jurisdiction reported, “All election materials are preprinted in English and [the covered language]. We do not pay a separate charge for the . . . translations.”<sup>282</sup> Several respondents indicated that their vendors did not have any additional charges for providing election materials in the covered languages.<sup>283</sup>

The average cost for providing bilingual written materials in the responding jurisdictions was 8.1% of all election expenses. The average cost remained approximately the same regardless of the responding jurisdiction’s population. Approximately 10% of all responding jurisdictions reported costs far exceeding the average cost reported by the remaining 90% of respondents. Those fifteen outliers skewed the results by reporting average bilingual written costs of 51.8%. By contrast, the

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279. Respondents 319, 347, 349, 395, 402, 453, 460, 617, 652, 690, 862, 881, 887 & 993.

280. Respondents 238 & 889.

281. Respondent 284.

282. Respondent 306.

283. Respondents 284, 306, 339, 340, 418, 488, 933 & 938.



remaining 129 jurisdictions reported average bilingual written material costs of only 3.0%.

The disparate results for bilingual written costs occurred for the same reasons reported for oral language assistance. Three jurisdictions attributed all election material expenses to bilingual written materials assistance, including ballots, signs, public notices, and other publicity that would be incurred regardless of Section 203. In addition, the fifteen outliers had an average total population of 35,664, compared to an average total population of 180,529 for the other 129 jurisdictions. All of the outliers also attributed most, if not all, of their total written costs to bilingual election materials. When these factors were taken into consideration, the average cost of providing written language materials was substantially below the 7.6% reported by the GAO in 1984.<sup>284</sup> Overall, the average cost of providing bilingual written materials remained approximately the same regardless of the percentage of LEP voters in the responding jurisdiction. Generally, there is no relationship between the percent of LEP voters in the responding jurisdiction and the costs the jurisdiction incurs to provide bilingual written materials.

Approximately 40% of all respondents (N = 145) reported their annual written language assistance expenses. Among those respondents, 93.8% (N = 136) reported costs for translating materials. Of those respondents, two-thirds (N = 90) reported incurring no translation costs. Reported costs for translating materials ranged from no cost at all to \$300,000. The average translating cost was \$4,981.29, with a median cost of \$0.

Ninety-one percent of the 145 jurisdictions (N = 132) reported costs for printing bilingual materials. Over half (N = 71) reported incurring no additional printing costs. Reported costs for printing materials ranged from no cost at all to \$1,092,000. The average printing cost was \$23,957.17, with a median cost of \$0.

Over 81% of the 145 jurisdictions (N = 118) reported other costs that might be incurred in translating and printing bilingual written materials. Of those respondents, 85.6% (N = 101) reported incurring no other costs. Reported costs for other bilingual material expenses ranged from no cost at all to \$493,000. The average cost was \$9,848.86, with a median cost of \$0.

#### D. MISCELLANEOUS LANGUAGE ASSISTANCE COSTS

Seventy-two respondents reported costs for a bilingual coordinator program. The small number of responses was attributable, at least in part, to the absence of a bilingual coordinator program in approximately

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284. See 1984 GAO STUDY, *supra* note 69, at 17.

two-thirds of responding jurisdictions. Reported costs for bilingual coordinators ranged from no cost at all to \$464,000. The average reported cost for bilingual coordinators was \$29,099.86, with a median cost of \$1,300.

Among the 116 jurisdictions providing telephonic language assistance that reported their costs, the average cost was only 0.6% of total election expenses.<sup>285</sup> Seventy-four percent (N = 86) reported incurring no costs at all. Many jurisdictions reported that their low costs were attributed to their use of full-time election workers or volunteers who were fluent in the covered languages.

#### VIII. RESPONDENT OPINIONS ON THE LANGUAGE ASSISTANCE PROVISIONS

The quantitative data from our study only tells a part of the story. Respondents offered extensive narrative comments describing their experiences with the language assistance provisions, criticisms of how they operate and are enforced, and ways they can be improved. In addition, respondents offered candid opinions about criticisms leveled by the English-only movement and whether they supported a continued language assistance mandate. This section describes their comments.

##### A. OPINIONS ON THE SELECTION OF JURISDICTIONS FOR LANGUAGE ASSISTANCE COVERAGE

Among all completed surveys, 3.3% (N = 12) of respondents made suggestions regarding how jurisdictions should be selected for language assistance coverage. Five indicated that the coverage formulas for the language assistance provisions be changed. One noted that in his jurisdiction, the "Indian language requirement seems unnecessary because no one can speak it any more."<sup>286</sup> Another observed that language assistance is "not necessary in all areas."<sup>287</sup> Two asked that less populated counties be exempted from coverage,<sup>288</sup> such as places where language minorities comprised less than 5%.<sup>289</sup> Another indicated they believed that the Census determinations overestimated the need for language assistance in his jurisdiction.<sup>290</sup>

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285. The average cost was calculated from the ninety-five jurisdictions submitting complete cost data that responded to this question.

286. Respondent 238.

287. Respondent 239.

288. Respondents 311 & 663.

289. Respondent 311.

290. Respondent 974.

Seven respondents suggested that language assistance should be targeted to only those areas where it is needed. Four of those respondents noted that areas should not be selected for coverage on the basis of Spanish surnames.<sup>291</sup> One explained, “The majority of our voters speak English fluently, even those with Spanish surnames. To determine the percentage of Spanish voters based on Spanish surnames is not a very good formula for determining that percentage.”<sup>292</sup> The remaining three respondents suggested an “actual assessment of the need to provide minority language assistance”<sup>293</sup> that included asking “the community leaders if they need interpreters or printed materials in their language.”<sup>294</sup>

#### B. OPINIONS ON HOW THE FEDERAL GOVERNMENT CAN IMPROVE LANGUAGE ASSISTANCE

Several respondents suggested ways in which the federal government could facilitate language assistance in public elections. Eleven suggested that the federal government provide more guidance on complying with Section 203, including the following: establishing a “hotline, Internet site, or phone bank”;<sup>295</sup> identifying “their required response under Section 203”;<sup>296</sup> creating “a clearinghouse for best practices”;<sup>297</sup> and a “list of local bilingual resources and organizations”;<sup>298</sup> and training about the language assistance provisions for election officials<sup>299</sup> and bilingual election workers.<sup>300</sup>

Ten respondents requested that the federal government offer the tools necessary for their respective language assistance programs. Their requests included providing “federal mandate posters” translated in the covered languages, for example for wage and EEO laws;<sup>301</sup> translating all bilingual written materials<sup>302</sup> and providing professional translation services;<sup>303</sup> offering “computerized voice recognition/language software” and “audio recordings” in the covered languages;<sup>304</sup> and providing

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291. Respondents 624, 693, 892 & 935.

292. Respondent 624 [Question H-3 response].

293. Respondent 993 [Question H-1 response]. Respondent 370 provided a similar response to Question H-1.

294. Respondent 691 [Question H-1 response].

295. Respondent 474. Respondents 206 and 277 provided similar opinions.

296. Respondents 268, 357, and 857.

297. Respondents 344 & 857.

298. Respondent 857.

299. Respondent 320.

300. Respondent 236. Respondent 881 provided a similar opinion.

301. Respondent 393.

302. Respondents 277, 328, 394, 571, 831 & 939.

303. Respondents 226 & 939.

304. Respondents 646 & 989.

bilingual translators on election day.<sup>305</sup> Eight respondents asked that the federal government assist in providing outreach and education to covered language minority voters. Their suggestions included the following: public service announcements;<sup>306</sup> advertisements and pamphlets in the covered languages sent to voters and available at public offices;<sup>307</sup> “voter awareness campaigns”;<sup>308</sup> and special voter registration opportunities and “other proactive outreach activities.”<sup>309</sup>

One respondent explained how a comprehensive language assistance program should be designed:

In order to comply with the Voting Right Act and HAVA, specific outreach needs should be identified and these requirements budgeted for. These needs would encompass multi-lingual election staffing, standardized multi-lingual glossary, outreach materials that are culturally sensitive, educational programs that are embedded into other social services in order to reach a greater number possible voters, identify and advocate for voter-specific issues, tackle the issue of illiteracy as an obstacle for naturalized citizens.”<sup>310</sup>

Others suggested additional ways to enhance their language assistance programs. One noted that the difficulty in recruiting bilingual poll workers could be overcome by paying “enough to get minorities involved.”<sup>311</sup> Another requested legislation “that allows state, federal, and government workers to take election day off to assist at polls.”<sup>312</sup>

### C. OPINIONS ON FEDERAL FUNDING OF LANGUAGE ASSISTANCE

Despite the minimal costs reported by most respondents, many asked for federal funding. Of the 361 respondents providing complete responses to the survey, 12.7% (N = 46) requested that their jurisdictions be given “funds to meet federal obligations.”<sup>313</sup> A majority of those jurisdictions, 60.9% (N = 28), reported at least some cost data for their language assistance programs, with 50% (N = 23) reporting complete

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305. Respondent 328.

306. Respondent 287. Respondents 451, 461, and 908 provided similar opinions.

307. Respondents 299, 451, 461 & 908.

308. Respondents 461 & 1012.

309. Respondents 461 & 1012.

310. Respondent 224. Respondent 208 provided a similar opinion.

311. Respondent 804.

312. Respondent 879.

313. Respondent 259.

cost data.<sup>314</sup> Of these, nearly half (N = 12) reported that their jurisdiction actually incurred no costs.<sup>315</sup>

Nearly half of all respondents that requested federal funding for oral language assistance provided responses indicating it might not be needed. Twenty-five respondents requesting federal funding reported oral language assistance costs. However, 48% (N = 12) of those respondents reported that their jurisdictions did not incur any additional costs for oral language assistance, even though 83.3% (N = 10) reported providing at least some language assistance.

A similar pattern emerged for written language materials. Nearly half of all respondents that requested federal funding for their written language materials apparently did not need it. Twenty-six respondents requesting federal funding reported written language material costs. However, 42.3% (N = 11) of these respondents reported that their jurisdiction did not incur any additional costs for providing those bilingual written language materials.

There are several possible explanations for the discrepancy between the perceived need for federal funding and the lack of additional costs. Failure to provide language assistance did not appear to be one of them. Only two of the twelve respondents not reporting incurring language assistance costs reported that they did not provide oral assistance and/or bilingual written materials. Those two jurisdictions were covered as a result of statewide coverage and did not have a large number of voters who need assistance. Of the ten jurisdictions providing language assistance but not incurring any costs, half (N = 5) provided both oral and written language assistance, and 20% (N = 2) provided only oral language assistance because they were covered for unwritten American Indian languages. The remaining three jurisdictions that reported providing only written assistance included one jurisdiction covered for Spanish and one county subdivision covered for Spanish and Asian languages with large numbers of LEP voting age citizens who also need oral language assistance.

Other respondents indicated that their language assistance programs have suffered because of budget cuts unrelated to federal funding. One respondent explained, "Budgeting limitations frustrate efforts—prior staff cuts hamper efforts. Despite obstacles, all efforts will be made to stay abreast of changing demographics and linguistic challenges presented by same."<sup>316</sup>

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314. A respondent reported complete cost data if they provided their total election expenses and all oral and written language assistance costs, if any, that their jurisdiction incurred for their language assistance program.

315. Among the twenty-three jurisdictions providing complete cost data, 52.3% (N = 12) reported incurring no additional costs for oral language assistance and 47.8% (N = 11) reported incurring no additional costs for written language materials.

316. Respondent 344.

Some jurisdictions incurred unnecessary expenses because of ineffective efforts to target assistance where it was needed. For example, one respondent noted the importance of language assistance, and suggested ways in which targeted assistance might be provided in that jurisdiction:

We agree this bilingual information is important; however, the costs are significant for the number of voters who utilize the information. Possibly coordinating a voter training session for . . . non-English speaking voters would be more effective. If they can't speak or understand English, understanding candidates and their platform will be very difficult as well.<sup>317</sup>

Another respondent highlighted the importance of targeted assistance because otherwise "it is very expensive to provide . . . assistance to a small population of voters."<sup>318</sup>

The respondents suggested several ways that federal funds could be used for language assistance programs, including the following: translation and printing bilingual written materials;<sup>319</sup> hiring bilingual poll workers and election officials;<sup>320</sup> advertising the availability of assistance through television, radio, and newspaper advertisements;<sup>321</sup> creating bilingual outreach programs with local universities and community organizations;<sup>322</sup> printing educational materials;<sup>323</sup> providing election worker training in the covered languages;<sup>324</sup> and paying for election worker attendance in language courses.<sup>325</sup>

Several respondents suggested how any federal funds made available to covered jurisdictions should be distributed. Their proposals included uniform funding among the states,<sup>326</sup> providing funding "based on population,"<sup>327</sup> directing funding to jurisdictions with "predominant bilingual populations,"<sup>328</sup> and funding "small populated" jurisdictions that "do not have the tax base to fund the assistance that may be needed."<sup>329</sup> One respondent suggested that if federal funding were provided, local jurisdictions should be permitted to "decide how to

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317. Respondent 857.

318. Respondent 311.

319. Respondents 287, 388 & 846.

320. Respondents 322, 388, 442, 553, 853 & 929.

321. Respondent 367.

322. Respondent 715.

323. Respondent 767.

324. Respondent 881.

325. Respondent 442.

326. Respondent 399.

327. Respondent 215.

328. Respondent 306.

329. Respondent 342.

administer the programs.”<sup>330</sup> Another recommended that “if we are to continue the efforts in providing [language assistance] it should be funded” because “it is difficult for jurisdictions to build an effective program with non-existent local resources.”<sup>331</sup>

Ten respondents suggested that the federal government provide more funding for English as a Second Language (ESL) programs. One respondent opined that the “government and community groups could encourage citizens to learn English through civil and educational support.”<sup>332</sup> Another asserted that the government should “mandate” an “ESL certificate” for language minority voters.<sup>333</sup> Others suggested greater federal support for “teaching English to voters”<sup>334</sup> and providing “more ESL program money.”<sup>335</sup> One respondent explained, “The federal government could better use funds to set up programs in communities to help people learn the English language. I think it would better serve them in all areas of their lives.”<sup>336</sup>

#### D. OPINIONS ON ENGLISH-ONLY ELECTIONS

Only 3.3% of jurisdictions providing complete responses indicated that elections should be conducted entirely in English.<sup>337</sup> One maintained, “I do not think that it is our responsibility to provide different languages. I think everything should be in English only! That is their (the voters’) responsibility. Go to Mexico or other countries you have to learn their language. You come here and we have to learn theirs.”<sup>338</sup> Another argued, “A voter is required to be a citizen of the United States. A citizen of the United States should be required to read and write the English language before obtaining . . . citizenship.”<sup>339</sup>

Some of the twelve English-only respondents expressed opinions on the availability of language assistance. One indicated that the burden should be on the language minority voter, and not the jurisdiction, to “provide their own interpreter” if they cannot understand English.<sup>340</sup> Another suggested that the jurisdiction would refrain from recruiting bilingual election day workers without the language assistance

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330. Respondent 780.

331. Respondent 879.

332. Respondent 402.

333. Respondent 500.

334. Respondent 253. Respondents 370, 402, 767, 830, 917, 938, and 1003 provided similar opinions.

335. Respondent 288.

336. Respondent 830.

337. Respondents 239, 319, 343, 379, 437, 449, 558, 609, 816, 872, 876 & 889.

338. Respondent 558.

339. Respondent 889. Respondent 609 provided a similar opinion.

340. Respondent 872.

provisions, noting, “We have had to get bilingual workers instead of experienced election personnel to accommodate the law.”<sup>341</sup>

Most of the respondents, 96.7% (N = 349), did not express support for English-only elections. Three respondents stated that all voters should learn English, but that it should not be a condition of voting.<sup>342</sup> One respondent asked that the language assistance provisions “be reenacted in order for them not to be denied their right to vote—but [they] should have to learn the official language of the United States.”<sup>343</sup>

#### E. OPINIONS ON THE FEDERAL GOVERNMENT AND JUSTICE DEPARTMENT

A handful of jurisdictions gave negative opinions of the federal government and/or the United States Department of Justice. In several instances, the respondents indicated they were under a federal consent decree or were sued or under investigation by the Justice Department. Three opined that the “federal government has already done too much in the world of elections” and “complicates things.”<sup>344</sup> Others noted that the local government is the exclusive “point of service” and should determine on its own whether to provide language assistance.<sup>345</sup> A few respondents were more emphatic, stating, “[W]e believe in states rights” and any oversight should “be at the state level.”<sup>346</sup> One respondent explained, “[T]he results of this questionnaire would be a moot issue since the federal government will do what they want to anyway.”<sup>347</sup> Similarly, four respondents criticized enforcement efforts by the Department of Justice.<sup>348</sup> One indicated that the “DOJ acts like we’re Mississippi.”<sup>349</sup> Another explained the Justice Department deals “with jurisdictions with an unsympathetic approach” including “threats to sue rather than cooperate.”<sup>350</sup> One respondent declared his support for reauthorization even while complaining that “dealing with the U.S. Department of Justice is like being captive in a Kafka novel.”<sup>351</sup>

On the other hand, most respondents expressing opinions on the federal government rejected these views. Many respondents commended the Justice Department’s enforcement efforts. One asked the federal government to “help us come up with the means of getting rid of the ‘this

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341. Respondent 816.

342. Respondents 215, 520 & 901.

343. Respondent 520.

344. Respondents 550, 615 & 951.

345. Respondent 563. Respondents 476, 706, 780, and 897 provided similar opinions.

346. Respondent 550. Respondents 357 and 395 provided similar opinions.

347. Respondent 476.

348. Respondents 311, 395, 402 & 550.

349. Respondent 395.

350. Respondent 402.

351. Respondent 311. Respondent 550 provided a similar opinion.



is America, English only' attitude of many people out there, both voters and election board workers."<sup>352</sup> Another requested that the Department do even more to "enforce existing rules."<sup>353</sup> One jurisdiction suggested that voter assistance requirements also "should be enhanced to let citizens with limited English skills to bring friend or family to help or they should be encouraged to vote absentee."<sup>354</sup> Another applauded the federal government's enforcement efforts by observing that "[t]he federal government has done a lot to provide minority language assistance."<sup>355</sup>

#### F. OPINIONS ON REAUTHORIZATION OF THE LANGUAGE ASSISTANCE PROVISIONS

Over 71% (N = 181) of the 254 respondents expressing an opinion believed that the language assistance provisions should remain in effect for public elections.<sup>356</sup> The percentage of jurisdictions supporting reauthorization was approximately the same, regardless of whether the responding jurisdiction is covered by Section 5 of the Act.<sup>357</sup>

Few respondents suggested that language assistance be eliminated entirely. One noted, "[T]he citizens are split on the issues and have strong feelings that are expressed to election officials . . . I think the laws do a disservice to the ethnic citizen and work as a means of [sic] separate and polarize citizens not unite our voices. I think this message should be expressed to the Congress."<sup>358</sup> Another indicated that language assistance is unnecessary because of the voter assistance provisions in Section 208 of the Voting Rights Act.<sup>359</sup>

Most respondents reported that they support the language assistance provisions. Some respondents explained how they overcame their own doubts about the provisions. One observed:

For the longest time I thought that if you live in the USA, you should learn English. It is very difficult to help someone who doesn't speak the language. My husband hunts in Mexico and the few times I went with him I felt helpless because I didn't understand Spanish.

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352. Respondent 839.

353. Respondent 276.

354. Respondent 402.

355. Respondent 434.

356. See responses to ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question H-2 (on file with authors).

357. See responses to ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question H-2 (on file with authors); LANGUAGE ASSISTANCE PRACTICES, *supra* note 1, at Appendix E, reprinted in H. HRG. 109-103, at 2308-32 (listing surveyed jurisdictions and indicating whether they are covered by Section 5).

358. Respondent 311.

359. Respondent 402A.

It is very overwhelming when you need assistance and can't get it because of the language barrier.<sup>360</sup>

Similarly, another respondent described their family as “multi-ethnic and multi-cultural” and indicated that “although I feel everyone in America should learn the predominate language, I think we should assist them until they have the chance to learn English [and] then we need to always assist them.”<sup>361</sup>

One respondent described language assistance as “common sense.”<sup>362</sup> Others lauded the provisions for being inclusive<sup>363</sup> and their tendency to make “voters feel comfortable coming to the polls knowing there is help there if needed.”<sup>364</sup> One respondent explained the importance of language assistance and the challenges jurisdictions face in providing it:

I believe the language translators are necessary and good. I prefer to have an informed voter casting a ballot rather than uninformed. If that takes providing election materials in their native language then I am all for it. However, it is extremely difficult to find sufficient numbers of bilingual workers. Bilingual workers are also very resistant to travel or work in non-[covered language] areas of the county.<sup>365</sup>

Another respondent echoed this view, observing that “language assistance is extremely important in ensuring the integrity of the U.S. Election process” and the legitimacy of government outcomes.<sup>366</sup> These concerns even caused one respondent to suggest that Congress should “broaden the requirements.”<sup>367</sup>

Several respondents described their “good experience” under the language provisions.<sup>368</sup> One respondent indicated, “I’m all for bilingual helpers to assist the older voters with understanding the whole process of coming to the polls, getting the ballot, reading the ballot, and voting.”<sup>369</sup> Another indicated the personal fulfillment achieved by assisting limited-English voters by noting, “[I] [e]njoy their learning and questions regarding elections” and the “diversity of the language and people who

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360. Respondent 773.

361. Respondent 342.

362. Respondent 652.

363. Respondent 206.

364. Respondent 949.

365. Respondent 234.

366. Respondent 537.

367. Respondent 616.

368. Respondent 259.

369. Respondent 347.

reside together.”<sup>370</sup> In a separate case, a respondent reported using his positive experiences to educate other jurisdictions: “We believe the minority language outreach programs are very important. We are currently working with other [jurisdictions’] election officials to begin a statewide outreach group to share ideas and training.”<sup>371</sup>

Finally, some respondents explained the impact of the language assistance provisions in their jurisdiction. One respondent noted how outreach to language minority voters increased their participation: “A postcard was sent to all registered voters on file. This postcard asked if they wanted their voting materials in [the covered language]. The response increased the voter file of [the covered language] requests from 250 to approximately 1650.”<sup>372</sup> Another described the gratitude of American Indian voters by observing, “Many of our voters of the [covered] tribes have expressed their appreciation of election information and instruction provided in [the covered language], both written and verbal.”<sup>373</sup> For these and other reasons, responding jurisdictions overwhelmingly supported reauthorization. Congress heeded their call by reenacting the language assistance provisions for at least twenty-five years.<sup>374</sup>

## IX. CONCLUSION AND RECOMMENDATIONS FOR MORE EFFECTIVE LANGUAGE ASSISTANCE

The English-only criticisms of the language assistance provisions of the VRA are unfounded. Census data shows the tremendous need for language assistance among LEP voting age citizens with low levels of educational attainment.<sup>375</sup> Where it is available,<sup>376</sup> language assistance is widely used.<sup>377</sup> By participating in the political process, language

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370. Respondent 767.

371. Respondent 462.

372. Respondent 600.

373. Respondent 714.

374. The VRARA adopted two separate coverage dates affecting the language assistance provisions. Section 203 is in effect until August 6, 2032. See VRARA § 7, enacted as Pub L. No. 109-246 § 7, 120 Stat. 581; 42 U.S.C. § 1973aa-1a(b)(1). Section 4(f)(4) was reauthorized for twenty-five years from its effective date of July 27, 2006, when the bill was signed into law, or July 27, 2031. See VRARA § 4, enacted as Pub L. No. 109-246 § 4, 120 Stat. 580. For an additional discussion of the differences in the coverage dates, see generally *Politics of Persuasion*, supra note 4.

375. See supra Part IV. For a further discussion of the educational discrimination that has resulted in high illiteracy rates among language minority citizens, see generally *Enfranchising Language Minorities*, supra note 6, at 140–49; *Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 (Part II): Hearing Before the S. Comm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. (2006) (statement of James Thomas Tucker, Voting Rights Consultant, National Association of Latino Elected and Appointed Officials).

376. See supra Part V.

377. See *Enfranchising Language Minorities*, supra note 6, at 149–54.

minority citizens are better integrated into American society, thereby fostering their assimilation and acquisition of English language skills.<sup>378</sup> The cost for providing language assistance generally is low. Where there is a cost, it averages approximately 5% of total election expenses.<sup>379</sup> At the same time, the results of that assistance are dramatic. Among American Indians, registration and turnout have increased between 50% and 150% in many places as a direct result of language assistance.<sup>380</sup> The Hispanic voter registration rate, which was 34.9% in 1974, has nearly doubled since Sections 4(f)(4) and 203 have been in effect.<sup>381</sup> Similarly, between 1996 and 2004, Asian-American voter registration and turnout increased 58% and 71% respectively, as a direct result of increased coverage that followed the 1992 amendments to Section 203.<sup>382</sup> The language assistance provisions work well where they are implemented properly.

Election officials also provided information refuting the attacks that English-only groups have leveled at the VRA's language assistance provisions, even while identifying compliance issues. An overwhelming majority of election officials supported the recent renewal of Sections 4(f)(4) and 203.<sup>383</sup> Their responses, however, demonstrated some fundamental misunderstandings about the need for language assistance in their jurisdictions. To resolve this problem, the chief elections officer for each state should be more proactive in providing language assistance training to covered political subdivisions and monitoring Section 203 compliance. Likewise, election officials in covered jurisdictions should disseminate more information about language assistance needs to all political subdivisions of their jurisdictions. To provide effective language assistance, it is first necessary for election officials to become better informed about the need for language assistance in their jurisdictions among voting age citizens who are LEP in the covered languages. Then, they will be better positioned to identify what language assistance is necessary in covered areas.

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378. See *id.* at 154–58.

379. See *supra* Part VII.

380. See *Voting Rights Act: Section 203—Bilingual Election Requirements: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. (2005) (statement of Jacqueline Johnson, Executive Director of the National Congress of American Indians (NCAI)); *Voting Rights Act: Sections 6 and 8—The Federal Examiner and Observer Program: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. (2005) (statement of Penny Pew, Elections Director of Apache County, Arizona).

381. See *Continuing Need for Section 203 of the Voting Rights Act: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. (2006) (statement of John Trasviña, Interim President and General Counsel of the Mexican American Legal Defense and Education Fund).

382. See *Continuing Need for Section 203 of the Voting Rights Act: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. (2006) (statement of Margaret Fung, Executive Director of the Asian American Legal Defense and Education Fund).

383. See *supra* notes 356–73 and accompanying text.

Inadequate information about the need for language assistance can result in the lack of available assistance.<sup>384</sup> Once an accurate assessment of needs is completed, covered jurisdictions should provide oral language assistance at every stage of the election process where necessary. They should ensure that all English election materials are available in covered Spanish and Asian languages. To facilitate the availability of Election Day assistance, poll worker recruitment should be done in the covered languages, in addition to English. Covered jurisdictions also should promote hiring and retention of full-time workers who are bilingual in English and one or more of the covered languages. Since many prospective voters only communicate with the elections office by phone, language assistance for telephone inquiries should be available in all covered languages.

Even where language assistance is available,<sup>385</sup> it frequently is inadequate because of the lack of quality control.<sup>386</sup> More covered jurisdictions should utilize bilingual coordinators to implement effective assistance programs in all of the covered languages. Election officials need to confirm the language abilities of all employees and volunteers who provide language assistance. In addition, election worker training must include information about language assistance and the particular needs of voters in the covered languages. States have to do a better job of providing election officials with proper training on the voter assistance requirements in Section 208 of the VRA to facilitate compliance. Election officials should consult with language minority community organizations and individuals to ensure their language assistance programs are effective. They also must advertise at every stage the availability of language assistance to voting age citizens in the covered languages through appropriate outreach and publicity.

Finally, jurisdictions can fully comply with the language assistance provisions in a cost effective manner, contrary to what detractors of the provisions have argued.<sup>387</sup> Covered jurisdictions should recruit and retain bilingual individuals to fill full-time and part-time election worker positions to provide oral language assistance at no added cost. Volunteers from the covered language groups can be used to assist in translating written election materials to minimize costs and improve the accuracy of translations. State elections offices could provide common forms, signs, and other written election materials in Spanish and all Asian languages covered in political subdivisions to minimize duplication of costs. Where some costs are incurred, they can be reduced through effective targeting in consultation with local language minority groups. Additionally, covered jurisdictions should work in partnership

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384. *See supra* Part IV(E).

385. *See supra* Part V.

386. *See supra* Part VII.

387. *See supra* note 6 and accompanying text.

with other local jurisdictions to reduce any common costs that are incurred. A price tag should not be placed on the fundamental right to vote. Nevertheless, any costs incurred for providing language assistance can be reduced through more proactive engagement with language minority citizens and other covered jurisdictions.