



Asian American Center for Advancing Justice

HELP ASIAN AMERICANS PROTECT THEIR VOTING RIGHTS

A Guide to Ensure Language Assistance During Elections

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 ASIAN AMERICAN CENTER
 FOR ADVANCING JUSTICE

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TABLE OF CONTENTS

Introduction 2

What Does This Handbook Offer? 3

What Is Section 203 Of The Voting Rights Act? 4

What Communities Can Receive
 Bilingual Voting Assistance Under Section 203? 5

What Kind Of Assistance Can We Expect To Receive Under Section 203? 6

How Is Section 203 Enforced? 7

What are the Key Issues In How Section 203 Is Implemented and
 What Can I Do to Ensure That Bilingual Voting Assistance Is Properly Provided? 8

What If My Community Is Not Large Enough To Be
 Covered Under Section 203? 12

How Can My Community Use Section 2 Of The Voting Rights Act? 13

What Kind Of Bilingual Assistance Would Be Available Under Section 2? 15

What Is Section 208 Of The Voting Rights Act? 16

Conclusion 16

Contact Us 16

References 17

Appendix: Suggested Implementation Checklist For Jurisdictions
 Covered By Section 203 Of The Voting Rights Act 18

ASIAN AMERICAN CENTER FOR ADVANCING JUSTICE



The Asian American Center for Advancing Justice (Advancing Justice) is a leading Asian American civil rights and social justice organization comprising four equal and independent affiliates: the Asian American Justice Center (AAJC), Asian Pacific American Legal Center (APALC), Asian American Institute (AAI), and Asian Law Caucus (ALC). Its mission is to promote a fair and equitable society for all by working for civil and human rights and empowering Asian Americans and Native Hawaiians and Pacific Islanders (NHPs) and other underserved communities.

Each affiliate's staff has valuable expertise and deep experience. AAJC is one of the nation's leading experts on issues of importance to the Asian American community and has enacted a sweeping range of programs on critical national concerns. APALC is the nation's largest legal organization addressing the needs of Asian Americans and NHPs by advocating for civil rights, providing legal

services and education, and building coalitions. AAI is the Midwest's leading pan-Asian organization dedicated to empowering the Asian American community through advocacy, research, education, and coalition building. ALC is the oldest legal organization in the country defending the civil rights of Asian American and NHP communities and focuses on the needs of low-income, immigrant, and underserved communities.

While well known in their individual spheres for their work and expertise, the affiliates of Advancing Justice have come together to build a stronger, more cohesive regional and national civil and human rights infrastructure for the Asian American community. We use our resources to provide valuable information to the community, work to address more issues in more places, impact a greater number of public debates, and help the voices of Asian Americans, NHPs, and other marginalized and underserved communities be heard.

Please email any questions regarding the report or any requests for additional copies to: publications@advancingequality.org.

INTRODUCTION

Asian Americans are now the fastest growing racial and ethnic group in the United States. There are over 17.3 million Asian Americans living in the United States, making up 6% of the U.S. total population according to the 2010 Census. This represents a 46% increase in the Asian American population since the 2000 Census.¹ While this growth in population should result in a louder and stronger political voice, this has not been the case. A significant voter participation gap between Non-Hispanic White voters and Asian American voters continues to exist. For the 2008 election, only 55.3% of Asian American voting-age citizens were registered to vote and 47.6% of Asian American voting-age citizens turned out to vote, compared to 72.0% and 64.4% of Non-Hispanic White voting-age citizens respectively.² Double-digit disparities in voter registration and turnout have been consistent between non-Hispanic White voting-age citizens and Asian American voting-age citizens.³ And while we have been making strides in taking leadership positions, we are still one of the most underrepresented groups in governmental decision-making bodies. This lack of political power and representation has limited our ability to challenge discriminatory governmental policies and to proactively set forth our own agenda to address our community's needs and concerns.

The discriminatory policies that have faced the Asian American community since the first wave of Asian immigration started in the 1840s are one reason that Asian Americans have not been able to fully participate politically. In fact, it was

not until 1952 that all foreign-born Asians were eligible to become naturalized citizens⁴ and it was not until 1965 that discriminatory quotas against immigration from Asian countries were lifted.⁵ Asian Americans have been subject to many discriminatory practices, some directed specifically to Asian Americans, such as the wholesale evacuation and internment of over 120,000 Japanese Americans during World War II,⁶ restrictions on immigration from Asian countries,⁷ and limits on land ownership rights,⁸ and others that were directed to all communities of color, such as segregated public facilities⁹ and bans on interracial marriages.¹⁰ Indeed discriminatory treatment of Asian Americans continues today, with unequal access to government services, unfair employment practices, and restrictive immigration policies targeted at Asian immigration.

Language barriers are another reason that Asian Americans are not fully participating politically – a significant correlation exists between low voter participation rates and limited English proficiency. Asian Americans speak dozens of languages and dialects, and many have difficulty speaking English, resulting in lower voter participation and turnout. Nearly three out of four Asian Americans speak a language other than English at home, and roughly one-third is limited-English proficient (LEP), meaning that they have some difficulty speaking or reading English. Among Asian American ethnic groups, over half of Vietnamese and nearly half of Bangladeshi Americans are LEP. Over 40% of Cambodian, Hmong, Taiwanese,

¹ Asian American Center for Advancing Justice, *A Community of Contrasts: Asian Americans and Pacific Islanders in the United States Demographic Profile 2011 6-7* (2011).

² U.S. Census Bureau, *Voting and Registration in the Election of November 2008*, May 2010, at 4, available at <http://www.census.gov/prod/2010pubs/p20-562.pdf>.

³ U.S. Census Bureau, Table A-1. Reported Voting and Registration by Race, Hispanic Origin, Sex, and Age Groups: November 1964 to 2008 (2009), available at <http://www.census.gov/hhes/www/socdemo/voting/publications/historical/tabA-1.xls>. It is important to note that these data are national in nature. When Section 203 has been properly implemented, language minority voters have increased their voter participation rates.

⁴ The McCarran-Walter Act, Pub. L. No. 82-414, 66 Stat. 163 (1952). The Act applied only to naturalization of foreign-born persons. Persons born in the United States automatically are citizens, through the Fourteenth Amendment.

⁵ Immigration Act of 1965, Pub. L. 89-236, 79 Stat. 911 (1965).

⁶ The internment was executed by Executive Order 9066, signed by President Roosevelt and sanctioned by the U.S. Supreme Court. See *Hirabayashi v. United States*, 320 U.S. 81 (1943); *Korematsu v. United States*, 323 U.S. 214 (1944) (upholding the internment).

⁷ See, e.g., Tydings-McDuffie Act of 1934, ch. 84, 48 Stat. 456 (1934) (amended 1946) (imposing annual quota of fifty Filipino immigrants); Immigration Act of 1924, ch. 190, 43 Stat. 153 (1924) (repealed 1952); Immigration Act of 1917, ch. 29, 39 Stat. 874 (repealed 1952)

(establishing an "Asiatic barred zone"); Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, 58-61 (repealed 1943) (prohibiting Chinese workers from entering the United States).

⁸ See, e.g., *Webb v. O'Brien*, 263 U.S. 313 (1923) (upholding California Alien Land Law prohibiting land rights for "aliens ineligible for citizenship"); *Terrace v. Thompson*, 263 U.S. 197 (1923) (upholding similar Alien Land Law in Washington); see also Keith Aoki, *No Right to Own?: The Early Twentieth-Century "Alien Land Laws" as a Prelude to Internment*, 40 B.C. L. Rev. 37 (1998) (describing history of Alien Land Laws, which, while facially race-neutral, were passed in response to Japanese immigrants competing for agricultural land).

⁹ *Plessy v. Ferguson*, 163 U.S. 537 (1896) (upholding the constitutionality of state laws mandating racial segregation in private businesses under the doctrine of "separate but equal").

¹⁰ *Pace v. Alabama*, 106 U.S. 583 (1883) (affirming that Alabama's anti-miscegenation statute was constitutional). Bans on interracial marriages were not found to be unconstitutional until 1967 when the Supreme Court declared Virginia's anti-miscegenation statute unconstitutional, thereby ending all restrictions on interracial marriages in *Loving v. Virginia*, 388 U.S. 1 (1967).

Chinese, Korean, and Laotian Americans are LEP. Even among Asian American ethnic groups with higher rates of English proficiency, including Japanese and Filipino Americans, nearly one in five are LEP.¹¹ To address this problem, Congress in 1975 enacted a bilingual voting assistance law known as Section 203 of the Voting Rights Act. Section 203 applies to jurisdictions, such as counties, if the size of the LEP population in

the jurisdiction exceeds certain figures. These jurisdictions are known as “covered jurisdictions.” Section 203 requires these covered jurisdictions to provide language assistance to LEP voters, including translated materials and bilingual poll workers. When implemented properly by election officials, Section 203 has provided Asian American communities with access to the ballot and has contributed to their political empowerment.

WHAT DOES THIS HANDBOOK OFFER?

This handbook is intended to be an advocacy tool that provides an introduction to language voting assistance and to the role you can play to ensure that Section 203-covered jurisdictions are complying with the law so that Asian American citizens can freely exercise their right to vote. The handbook will discuss how to determine whether your community qualified for language voting assistance under Section 203, how to obtain such assistance, and the types of assistance you can expect to receive. It also lays out how to monitor and enforce compliance with Section 203 in conjunction with the appropriate authorities. Finally, for communities not covered by Section 203, the handbook will discuss how to use other provisions of the Voting Rights Act to secure language assistance at the polls.

The handbook also provides resources to help you ensure language assistance is provided. Not only does the handbook present information about relevant governmental agencies, statutes and regulations, it also offers the assistance of the Asian American Center for Advancing Justice (“Advancing Justice”). Advancing Justice has advocated for laws requiring bilingual voting assistance. In addition, Advancing Justice works with community groups to monitor local jurisdictions’ efforts to comply with Section 203 and/or collect data on Asian American voting patterns. For more information or assistance, please contact one of the affiliates of the Asian American Center for Advancing Justice (contact information available on p. 16).

¹¹ Asian American Center for Advancing Justice, *A Community of Contrasts: Asian Americans and Pacific Islanders in the United States Demographic Profile 2011* 24-28 (2011).

WHAT IS SECTION 203 OF THE VOTING RIGHTS ACT?

Originally enacted by Congress in 1965, the Voting Rights Act contains a number of provisions designed to protect minority voting rights.¹² In 1975, Congress added Section 203 to the Voting Rights Act's array of protections after recognizing the strong link between limited English proficiency and low voter participation. Section 203 applies to jurisdictions if the size of the LEP population in the jurisdiction exceeds certain figures and requires these covered jurisdictions to make bilingual voting assistance available. By requiring jurisdictions with large numbers of LEP individuals to make bilingual voting assistance available, Congress intended to break down the language barriers that have prevented certain citizens from exercising their fundamental right to vote.

Some provisions of the Voting Rights Act are permanent, such as Section 2 which is a nationwide prohibition against racial discrimination in voting. Other provisions, including Section 203, are temporary and will sunset unless periodically renewed by Congress. Section 203 protects "language minority" voters, defined as Asian Americans, Alaskan Natives, American Indians, and Latinos. While other populations also have significant LEP rates, Congress did not include them within the scope of Section 203.

Until 1992, most Asian American communities on the mainland United States were too small to meet the coverage threshold set forth under Section 203. After extensive lobbying and data collection by Asian American organizations, including Advancing Justice affiliates and

other minority civil rights organizations, Congress passed the Voting Rights Language Assistance Amendments of 1992. In addition to renewing Section 203 for an additional period of time, the Amendments changed the formula for determining which jurisdictions are subject to Section 203's requirements in a way that enabled Asian Americans in several additional jurisdictions to benefit from Section 203.

In 2006, Congress reauthorized expiring provisions of the Voting Rights Act, including Section 203. In addition to extending Section 203's term to 2032, Congress made a number of changes to the provision. One change made was to link the Section 203 determinations to the American Community Survey (ACS). Section 203 determinations were historically based on data collected through the decennial census long-form. After the 2000 Census, the Census Bureau stopped taking the decennial long-form and replaced it with the ACS, which is a continuous survey with data reported on an annual basis. With the replacement, Congress decided to explicitly link Section 203 determinations to the new ACS data. Additionally, Congress stated that the 2010 ACS census data were to be the first data set used to make the initial determinations under the reauthorized statute and that determinations are to be made every five years. With the continuing rapid growth of the Asian American community, having more frequent Section 203 determinations should help ensure that our communities get the language assistance they need more quickly than under the previous Section 203 determinations.

¹² Voting Rights Act, 42 U.S.C. §1973 et. seq.

WHAT COMMUNITIES CAN RECEIVE BILINGUAL VOTING ASSISTANCE UNDER SECTION 203?

A community will qualify for bilingual voting assistance if it meets both (a) and (b) below:

- a) i. More than 5% of the voting-age citizens in a jurisdiction belong to a single language minority community and are Limited English Proficient (“LEP”)¹³
 - OR
 - ii. More than 10,000 voting-age citizens in a jurisdiction belong to a single language minority community and are LEP
 - OR
 - iii. Exceeds 5% of all reservation residents on an Indian reservation and are LEP
 - AND
- b) The illiteracy rate of the citizens in the language minority community (as a group) is higher than the national illiteracy rate.¹⁴

If the Director of the Census Bureau determines that a community satisfies both requirements, the jurisdiction must provide language voting assistance in that community’s language. Additionally, the Director’s determinations are final.

Importantly, political subdivisions of covered jurisdictions are also required by Section 203 to provide language assistance. For example, any city within a covered county must also provide language assistance in compliance with Section 203.

In 2011, the Director determined that the following jurisdictions must provide voting assistance in one or more Asian languages under the newly reauthorized Section 203:

ALASKA+	Aleutians East Borough Aleutians West Census Area	Filipino* Filipino*
CALIFORNIA	Alameda County Los Angeles County Orange County Sacramento County San Diego County San Francisco County San Mateo County Santa Clara County	Chinese, Filipino*, Vietnamese* Asian Indian*, Chinese, Filipino, Japanese, Korean, Other Asian – Not specified**, Vietnamese Chinese, Korean, Vietnamese Chinese* Chinese*, Filipino, Vietnamese* Chinese Chinese Chinese, Filipino, Vietnamese
HAWAII	Honolulu County Maui County	Chinese, Filipino, Japanese Filipino
ILLINOIS	Cook County	Asian Indian*, Chinese
MASSACHUSETTS	Quincy City	Chinese*
MICHIGAN	Hamtramck City	Bangladeshi*
NEVADA	Clark County	Filipino*
NEW JERSEY	Bergen County	Korean*

* Asian American language groups marked with an asterisk are newly covered under Section 203.

+ Kodiak Island Borough in Alaska (Filipino) is no longer covered under Section 203.

▲The Los Angeles County Registrar-Recorder/County Clerk has determined that it will provide language assistance in Khmer and Thai for this category.

¹³ The Census Bureau defines limited English proficiency as speaking English less than very well.

¹⁴ The Census Bureau defines illiteracy as having less than a 5th grade education.

NEW YORK	Kings County New York County Queens County	Chinese Chinese Asian Indian*, Chinese, Korean
TEXAS	Harris County	Chinese*, Vietnamese
WASHINGTON	King County	Chinese, Vietnamese*

As noted above, under the newly reauthorized Section 203, determinations are to be made every five years. With the most recent Section 203 determinations made in 2011, the Census Bureau is expected to make the next determinations in 2016. In addition to advocating with local election officials to ensure compliance with Section 203, it will be important for organizations to educate and conduct outreach on the importance of filling out the American Community Survey (ACS). If LEP Asian Americans do not respond to the ACS, then their numbers will be undercounted and

they risk missing the threshold cutoff even where the need and numbers for Section 203 coverage exist. Because the Census Bureau provides limited in-language assistance to Asian American LEP respondents, Asian American community organizations must play a significant role in helping Asian Americans to understand why they need to respond if they receive an ACS questionnaire and where they can go for help. For further assistance in this matter, please contact affiliates of the Asian American Center for Advancing Justice (see contact information on p. 16).

WHAT KIND OF ASSISTANCE CAN WE EXPECT TO RECEIVE UNDER SECTION 203?

The assistance provided should be based on the particular needs of your community. The purpose of Section 203 is to provide non-English speaking citizens with the same information and opportunities to participate in the electoral process as the general electorate. A covered jurisdiction may be required to provide the following types of assistance:

- a) **Translations of written materials provided to the general electorate.** Examples include: ballots, sample ballots, provisional or affidavit ballots, voter registration forms, voter guides, websites maintained by election officials, and informational materials concerning the opportunity to register, the deadline for voter registration, upcoming elections, and absentee voting.
- b) **Oral assistance at polling sites.** Sufficient numbers of poll workers or interpreters should be available, based on the

number of registered voters who need such assistance. Depending on the language needs of your community, poll workers or interpreters in more than one language or one dialect of a language may be provided.

- c) **Publicity regarding the availability of bilingual assistance.** Examples include: bilingual notices at voter registration and polling sites, announcements in language minority radio, television and newspapers, and direct contact with language minority community organizations.

Note: The community plays a critical role in monitoring the jurisdiction's actions. If your community is not being effectively served by the bilingual assistance offered by your jurisdiction, you should identify the types of assistance that would be "effective" and then take steps, discussed below, to enforce Section 203.

HOW IS SECTION 203 ENFORCED?

The jurisdiction, based on its particular needs, decides how it will provide bilingual assistance; however, its actions are still subject to review. You should consider whether the election officials in your jurisdiction have taken all reasonable steps to provide **effective** bilingual assistance. If you think the jurisdiction is not complying with Section 203, there are several steps you can take. For example:

1) Contact the election officials in your jurisdiction.

Communicate your concerns in writing to the representative of the Board of Elections or to the office responsible for implementing Section 203. This documentation is a very important record of the history of your efforts to work with the jurisdiction and its level of responsiveness to your concerns. Also, request a meeting with the representative to voice your concerns and to get answers.

The jurisdiction has an affirmative duty to work with the community as it implements Section 203. In fact, one of the factors that the Department of Justice considers in reviewing the adequacy of a jurisdiction's compliance efforts is whether it worked "to the satisfaction of organizations" representing a covered language minority.¹⁵

2) Contact the Department of Justice (DOJ), Civil Rights Division. Ask them to investigate and monitor your jurisdiction's activities. DOJ will consider the "effectiveness" of the jurisdiction's efforts. If it determines the jurisdiction is not in compliance with Section 203, DOJ can initiate a civil action in federal court to obtain appropriate relief.¹⁶

Regardless of whether DOJ is already involved or not, it is a good idea for the community to contact DOJ. The information and feedback you can provide will significantly enhance the quality of DOJ's investigations.

3) Criminal prosecution. DOJ can criminally prosecute anyone who deprives any person of any right secured under Section 203.¹⁷

4) Civil lawsuit. An aggrieved person or a group of persons can also sue the jurisdiction to enforce Section 203.¹⁸

5) Contact the Asian American Center for Advancing Justice. Contact one of the Advancing Justice affiliates to get assistance with your advocacy efforts.

¹⁵ Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 C.F.R. §§ 55.16.

¹⁶ 42 U.S.C. §1973aa-2. Depending on your jurisdiction, DOJ may play an additional role in Section 203 enforcement. Some Section 203-covered jurisdictions are also subject to another provision of the Voting Rights Act known as Section 5. Section 5-covered jurisdictions are required to get DOJ approval of proposed changes in their election procedures before being allowed to implement those changes (alternatively, Section 5-covered jurisdictions may seek approval from a federal court in Washington, DC). Jurisdictions covered by both Section 5 and Section 203 must get DOJ or federal court approval of any proposed change to their plans for implementing their Section 203 requirements.

¹⁷ 42 U.S.C. §1973aa-3.

¹⁸ 42 U.S.C. §1973a.

WHAT ARE THE KEY ISSUES IN HOW SECTION 203 IS IMPLEMENTED AND WHAT CAN I DO TO ENSURE THAT BILINGUAL VOTING ASSISTANCE IS PROPERLY PROVIDED?

When Section 203 is implemented well, the benefits to LEP voters are substantial. When Section 203 is implemented poorly, LEP voters often experience difficulty in casting votes, as observed in poll monitoring efforts carried out by Advancing Justice affiliates over the years.

Based on our experience in working with election administrators and observing poll sites on Election Day, here is a description of some important issues in how Section 203 is implemented and some things you can do to help ensure that language assistance is effectively provided. Additionally, included as an appendix to this handbook is a suggested checklist for Section 203 implementation; the checklist is intended as both a resource for your advocacy efforts and also as something that you can provide to your Registrar of Voters.

The language(s) or dialect(s) that the Section 203-mandated assistance will be provided in.

Some Asian American ethnic groups are linguistically diverse, with multiple languages spoken, multiple dialects of a language spoken, and/or multiple written forms of a language used. DOJ's Section 203 regulations permit jurisdictions to choose one language (or one form of a language) in which to provide written assistance in. For oral assistance (such as poll workers and interpreters), DOJ's regulations require jurisdictions to provide assistance in the language or languages (or dialects) that are commonly used by the covered Asian American population. This may mean that poll workers or interpreters for multiple languages or dialects must be provided at the poll site.

It is important that the jurisdiction provide assistance in the languages or dialects that are commonly used by LEP voters. Where usage varies by geography within a jurisdiction, it is important that assistance in the appropriate language or dialect be provided at the proper polling sites. You can provide input on the language(s) and dialect(s) that assistance will be provided in and explain nuances in how languages and dialects are used by members of your community.

[Efforts to increase awareness that language assistance is available.](#) Language assistance does not result in tangible benefits if LEP voters are unaware that the assistance is available. It is important for both jurisdictions and community organizations to conduct outreach and publicity to increase awareness among LEP voters that language assistance is available.

Many jurisdictions allow voters to sign up to receive translated materials in the mail; voters who do so are automatically mailed translated voting materials prior to each election. Because many voters are typically unaware that they can do this, you should encourage your Registrar of Voters to conduct outreach to community organizations and other institutions that serve as access points to the community and that can help spread the word about language assistance being available. As part of this, you can help your Registrar of Voters identify community organizations and institutions to conduct outreach to, as well as common gathering places for the community. This community outreach can include:

- 1) bilingual workshops targeting community social service and civic organizations and providing them with election and voting-related information, with ethnic media present;
- 2) participation by election officials at community events to conduct voter registration drives and answer election-related questions from Asian Americans; and
- 3) distribution of information to community service organizations and media regarding the election process, the availability of language assistance, and the rights of voters.

You can also encourage your Registrar of Voters to conduct direct outreach to voters. This can take the form of a mailing to registered voters with ethnic-specific surnames informing them of the availability of translated ballots and election materials and providing a bilingual form to request such materials.

You should encourage your Registrar of Voters to use ethnic media outlets to help spread the word that language assistance is available. If you have contacts with ethnic media outlets, you can help connect your Registrar of Voters with those outlets and get your Registrar to add the outlets to its media distribution list. Depending on your relationship with ethnic media outlets in your area, you may be able to work with your Registrar to secure earned media opportunities, such as getting ethnic media to run public service announcements letting the community know that language assistance is available.

Training poll workers on language assistance and cultural sensitivity. Poll worker trainings should place adequate emphasis on how to provide language assistance, including the proper display of translated materials and the appropriateness of bilingual poll workers helping LEP voters cast ballots. Additional information about what poll worker trainings should cover is included below. Poll workers should also be trained on cultural sensitivity so that they interact with LEP voters appropriately.

To help ensure that poll workers are properly trained, you can provide input to your Registrar of Voters. You can ask your Registrar of Voters to provide you with its poll worker training materials, e.g., powerpoint handouts, videos, and training manuals. You can review these materials to see whether they include an adequate emphasis on language assistance and cultural sensitivity and provide input to your Registrar about the materials. Similarly, you can also ask your Registrar of Voters to permit you to observe, and provide input on, poll worker trainings.

Opportunities for community members to provide input on election practices. Election officials should seek input from community members both on Section 203-mandated language assistance and on election practices in general. Election officials in many jurisdictions maintain standing advisory bodies that provide a mechanism for community members to provide input on election administration and ballot access issues. If it does not already have one in place, you should ask your Registrar of Voters to form such a body and recommend knowledgeable community members to serve on the body.

Accurate, culturally appropriate and readable translations of election materials. It is important that election officials translate all materials provided to voters generally and that translations be done accurately, using culturally appropriate terms. In past elections, Section 203 advocacy efforts have uncovered issues in the quality of translations, with translations containing significant errors, done at a higher reading level than is understandable by the average voter, and using awkward structure and grammar that affects readability. You should ask your Registrar of Voters to provide a list of all election-related materials that it prepares and to indicate which materials it translates or plans to translate. You should encourage your Registrar to translate all election-related materials, including your Registrar's website, and to use a certified translation vendor. Election officials should not rely on translation software without any process for human review. Community review of translation drafts is important; you should ask your Registrar of Voters to provide community members with an opportunity to review drafts of translated materials. However, election officials should not use community translators and reviewers as a substitute for certified translators and paid reviewers. You should also encourage your Registrar of Voters to develop a translation glossary of commonly used election terms in consultation with ethnic media.

Display of translated materials at poll sites on Election Day. A common issue seen in poll monitoring efforts carried out by Advancing Justice is poor display of translated materials at poll sites on Election Day, or in some cases no translated materials being displayed at all. Poll monitors have observed instances where translated materials were placed in such a way that voters were unable to see or reach them. For example, poll monitors have observed translated ballots and other materials hidden under other materials, not taken out of their shrinkwrap or other packaging or out of the poll site supply box, or placed behind poll workers where voters could not reach them. In other instances, translated materials were not available at all either because the poll site ran out of translated materials or the poll site supply box did not have any translated materials included.

Based on poll monitoring observations, one reason for poor display or non-display of translated materials is reluctance by poll workers to display translated materials or a misunderstanding of LEP voters' rights to have access to translated materials. For example, poll monitors have encountered poll workers who stated the mistaken belief that a voter must affirmatively ask for translated materials as a justification for failing to display translated materials. In other instances of poor display observed by poll monitors, poll workers have articulated a reluctance to provide language assistance, including statements to the effect that voters should speak English or that English is the American language.

Another reason for poor display or non-display of translated materials is that poll workers arrive at the poll site late and fail to display translated materials in their haste to set up the site. Additionally, some poll workers have trouble identifying translated materials by language or have received less than optimal training on where to display translated materials so that they are visible and reachable.

To deal with these issues, you should encourage your Registrar of Voters to improve how poll site supply kits are organized. For example, each poll site supply kit should include a "quick start" guide that reminds poll workers of what materials are included in the supply kit and where they should be displayed. Another successful practice for election officials is to color-code materials by language to make it easier for poll workers to recognize translated materials, with materials in one language printed in one color, materials in another language printed in another color, and so forth.

You can ask your Registrar to make sure that time is devoted during poll worker trainings on how to display multilingual materials in a visible and accessible manner. The training should incorporate a demonstration of proper setup of poll sites with appropriate language materials, and staff should hold up examples of translated materials for poll workers to see during poll worker trainings. Poll workers should be trained about

the importance of bilingual assistance to LEP voters, as well as on the rationale and necessity for Section 203 compliance to ensure sensitive and non-discriminatory treatment toward Asian American voters.

Poll site inspectors should be trained to periodically check that multilingual materials are sufficiently stocked as well as visible and accessible. In their preparations for Election Day, election officials should make sure that sufficient quantities of multilingual materials are included in the supply box for each polling site.

Recruitment of bilingual poll workers and interpreters. Recruiting sufficient numbers of bilingual poll workers can be a challenge for election officials, but there are several practices that election officials can adopt to successfully recruit bilingual poll workers. You should encourage your Registrar of Voters to develop a comprehensive plan for recruiting bilingual poll workers that includes several strategies, including: (1) forming partnerships with other government agencies in its jurisdiction to identify and recruit bilingual government employees to serve as poll workers; and (2) working with high schools and colleges to recruit bilingual students to serve as poll workers, including through academic credit arrangements.

You can also help your Registrar recruit bilingual poll workers by encouraging community organizations and institutions to help identify bilingual individuals to serve as poll workers.

You should encourage your Registrar of Voters to, as part of its poll worker recruitment plan, establish a reserve pool of bilingual poll workers who can be sent to poll sites where bilingual poll workers are missing on Election Day. You can also encourage your Registrar to use ethnic media to recruit bilingual poll workers (in addition to using ethnic media to increase the availability of language assistance as described above).



Targeting of poll sites for language assistance.

DOJ's Section 203 regulations allow covered jurisdictions to provide targeted assistance, meaning that assistance is provided at less than all poll sites. Providing targeted assistance helps jurisdictions manage costs by allowing assistance to be provided at poll sites where there is a need, but not at poll sites where there is no need.

However, if a covered jurisdiction engages in language assistance targeting, the methodology used to target assistance must effectively identify where there is a need for language assistance. In various community-based poll monitoring efforts, poll monitors have observed poll sites where bilingual poll workers were not present, either because they failed to show up or because no bilingual poll worker was assigned to the poll site. Poll monitors have also observed poll sites where a bilingual poll worker was present, but additional bilingual poll workers were needed because of the large number of LEP voters at the poll site. Sometimes these issues arise because of the jurisdiction's targeting methodology. If your Registrar of Voters provides targeted assistance, you should ask your Registrar to explain how it determines which poll sites to assign bilingual poll workers to. Commonly used data to target assistance include census data, voter requests for language assistance on file, surname matching of voter registration lists, place of birth, and information provided by community members. You should encourage your Registrar to use multiple methods of targeting since no one method may accurately identify all areas of need.

You can also provide your Registrar with anecdotal information about where community members need language assistance. This includes letting the Registrar know where there is a significant community presence, including locations that have a prevalence of ethnic community centers, such as nonprofit organizations, faith-based institutions, and ethnic-focused businesses.

Quality of bilingual oral assistance provided at poll sites. Poll monitors have observed poll sites where bilingual oral assistance was ineffectively provided despite the presence of bilingual poll workers. In some instances, bilingual poll workers were not actually proficient in their Section 203 language. In other instances, bilingual poll workers did not wear identification informing the LEP voters

that they were bilingual and the poll site did not have adequate signage to let LEP voters know that language assistance was available. In some other cases, bilingual poll workers were passive and did not help LEP voters who needed assistance. Poll monitors have also observed bilingual poll workers being told by other poll workers not to help LEP voters, and non-bilingual poll workers insisting on helping LEP voters instead of calling upon bilingual poll workers who were present.

You should encourage your Registrar of Voters to have poll worker trainings devote time on how poll workers can best assist LEP voters who need help in casting their ballots. Poll workers should be trained about the need to actively assist voters with language barriers or other barriers to voting. Both bilingual and non-bilingual poll workers should be trained on what role bilingual poll workers should play and how to maximize their contribution. You should encourage your Registrar of Voters to develop trainings and handouts for bilingual poll workers that emphasize their particular role, commonly encountered problems, and how to best serve the public. Bilingual poll workers should also be given a translation glossary of commonly used election terms.

Additionally, you should encourage your Registrar of Voters to include materials in poll site supply boxes that can be used to clearly identify the language spoken by poll workers. For example, bilingual poll workers should be given badges indicating their language ability that are enlarged in size, text, and otherwise distinct from those of English-only speakers to make bilingual workers more conspicuous to LEP voters. Poll sites should also have signs posted to indicate what languages are spoken by poll workers at the poll site.

Also, election officials should ensure that bilingual poll workers are truly proficient in both English and their Section 203 language. Difficulties in communication among poll workers can result in delays in the voting process or misunderstandings on how to handle problem situations.

Hiring of election administration staff to focus on language assistance. Election offices should hire staff focused on developing and carrying out language assistance programs. You should encourage your Registrar of Voters to hire a language assistance coordinator if your Registrar

does not already have someone in such a position. Election officials in jurisdictions with multiple language requirements should be encouraged to hire language-specific outreach staff. You can also help your Registrar identify potential candidates for these positions.

Troubleshooting problems that arise on Election Day. Problems arise on Election Day despite careful election planning. You should encourage your Registrar of Voters to have a troubleshooting system in place to address problems such as missing translated materials or bilingual poll workers. This should include a team of precinct coordinators or troubleshooters who are equipped with back-up supplies and who can be dispatched to poll sites with missing materials. This should also include a pool of bilingual poll worker reservists who can be sent to poll sites where bilingual poll workers are needed.

Community members can play a key role in identifying problems on Election Day. You can organize volunteers to monitor poll sites on Election Day to make sure that poll sites have

translated materials and bilingual poll workers, and that voters generally are receiving the assistance they need to cast ballots. You should ask your Registrar for a dedicated telephone number that your organization can call to report issues observed by your poll monitors. Advancing Justice affiliates have conducted numerous poll monitoring efforts and can provide guidance on carrying out such efforts; more information is available at www.advancingequality.org/section-203.

Multilingual voter hotline and website.

Election officials should ensure that their points of contact with the public, including their voter hotline and website, are accessible to LEP voters. You should ask your Registrar to staff its hotline with multilingual staff year-round, and if that is not feasible, at least starting several weeks prior to the registration deadline for each election and leading up to and through Election Day. You should also ask your Registrar to translate all content on its website so that LEP voters have the same level of access to election information provided on the website as English-speaking voters.

WHAT IF MY COMMUNITY IS NOT LARGE ENOUGH TO BE COVERED UNDER SECTION 203?

Even if your community falls short of the numerical threshold to qualify for assistance under Section 203, it might still qualify to receive bilingual voting assistance under Section 2 of the Voting Rights Act if you show that lack of language assistance prevents Asian American or Native Hawaiian and Pacific Islander (NHPI) citizens in your community from voting on account of limited English proficiency.¹⁹

Additionally, LEP voters have the right under Section 208 of the Voting Rights Act to bring a helper of their choice into the voting booth to help them vote (see p. 16 for more information). Also, some state or local governments may provide bilingual voting assistance voluntarily, while others may have relevant state or local laws that can be used to secure language assistance in elections.

¹⁹ U.S. v. Cibola County, No. 93-1134 (D.N.M. March 4, 1994) (joint stipulation and order granting settlement).



HOW CAN MY COMMUNITY USE SECTION 2 OF THE VOTING RIGHTS ACT?

Using Section 2 to obtain bilingual voting assistance requires a significant amount of data collection, data which grassroots community organizations are well-situated to obtain because of their community involvement. The following are some factors used to determine whether bilingual voting assistance is necessary:

1. Whether many of your community's voting age citizens do not speak English well enough to participate in elections held solely in English;
2. Whether a language minority community has suffered a long history of official discrimination in areas such as voting, education, health, housing and employment, and whether the minority community continues to bear the effects of such past discrimination;
3. The degree to which a language minority community is isolated from the processes of election and government; such isolation could be manifested in terms of language and culture, geographical distance, poor road conditions, and community members' lack of access to automobiles and telephones; and
4. Whether the problems associated with the community's geographical isolation are worsened by depressed socioeconomic conditions.

You can assist the Department of Justice by collecting information, monitoring your jurisdiction's language assistance efforts, and documenting its progress. It is important, therefore, that you actively begin gathering data that demonstrate a need for bilingual assistance.

Essentially, you must show that there is a need for bilingual assistance and that lack of language assistance has resulted in low voter participation and other problems. Examples of information that is important to collect including the following:

1. **Anecdotal accounts of incidents of discrimination.** Such accounts might include:
 - a. Incidents of community leaders or politicians making racially derogatory remarks;
 - b. A pattern of Asian Americans being told, "Go back to where you came from" or other racially-motivated comments;
 - c. A pattern of Asian Americans being sent to the back of the line or placed into a separate line at the polling location;
 - d. Laws that city councils have passed, or even considered, that have a discriminatory effect on your community, such as zoning laws that burden businesses primarily owned by Asian Americans;
 - e. Incidents of racially-motivated violence;
 - f. Services provided by courts, hospitals, schools, social service agencies, or other institutions in a discriminatory fashion as a result of the failure to provide language assistance; and
 - g. Location of undesirable structures, such as toxic waste sites or prisons, near or in your community.

Reports of such incidents alone will not be sufficient, but will provide important background factors to be considered in combination with other factors for a Section 2 claim. Moreover, the process of collecting this information can generate awareness within the community about the need to take action. It demonstrates the ongoing discrimination Asian Americans face in terms that are easy to understand.

2. **Data from the Census Bureau.** This information shows the socioeconomic profile of your community, its geographic concentration, and its isolation. For example, the lack of a community college campus or transportation centers close to your community can be a factor that impedes your community's ability to participate in elections and other necessary activities.

Generating maps and analyzing demographic data often requires technical assistance.

Your community's local university is a good place to contact for assistance. The Asian American Center for Advancing Justice also may be able to provide technical assistance or referrals.

3. **Exit polls and poll monitoring surveys.**

These devices are used to monitor actual voter turnout and behavior, and assess the bilingual needs of voters at polling sites. Important information includes: ethnicity, gender, age, income level, political party affiliation, bilingual assistance needed or received, how the voter was treated by election officials, whether translated materials are made available to voters, number of bilingual election officials, and how they voted on issues or candidates.

4. **Voter Registration and Citizenship Drives.**

Data regarding the number of persons who need interpreters to fill out voter registration or citizenship application forms may be useful. The types of questions asked by persons you assist may also be relevant. For example, the following questions indicate the level of need for such information to be translated by official sources: questions about the voting process and candidates; citizenship and voting requirements; and where one can vote.

5. **Official claims of racial discrimination.**

Throughout the United States, claims of racial discrimination in employment can be filed with your local Equal Employment Opportunity Commission (EEOC). In addition, many states have state and local government agencies where claims can be filed. You can also ask these agencies, under the Freedom of Information Act, to give you statistics on claims of racial discrimination filed with them. If you need help with this, you can contact the affiliates of the Asian American Center for Advancing Justice (for contact information, see p. 16).



WHAT KIND OF BILINGUAL ASSISTANCE WOULD BE AVAILABLE UNDER SECTION 2?

Once a violation of Section 2 is found, the jurisdiction may be required to correct the violation by offering language assistance. The exact forms of language assistance depend on the needs of your community and would be similar to the types of assistance available under Section 203.

For example, the Department of Justice (DOJ) brought a Section 2 case against the City of Boston on behalf of Chinese- and Vietnamese-speaking voters in 2005. While the Chinese and Vietnamese populations were not sufficiently numerous to meet the Section 203 threshold, DOJ found in the course of its investigation that Boston discriminated against Chinese and Vietnamese voters, denying them the equal opportunity to participate in the political process. As a result, the City of Boston agreed to the additional provision of language assistance to Chinese and Vietnamese voters to remedy the violations of Section 2.²⁰ This language assistance includes, but is not limited to:

- Providing in Chinese and Vietnamese all of those “registration or voting notices, forms, instructions, assistance or other materials or information relating to the electoral process, including ballots” that the City provides in English, so that such materials are equally available in Chinese, Vietnamese, and English;
- Making available by telephone, without cost, trained bilingual election personnel able to speak Chinese and Vietnamese to answer voting-related questions on election days;
- Recruiting, hiring, and assigning available bilingual election officers to assist Chinese-speaking and Vietnamese-speaking voters at the polls on election days;
- Having available on election days bilingual persons, trained in Chinese-language and Vietnamese-language election terminology and all election procedures, who are on call to travel to polling places not staffed by a bilingual election officer to provide any necessary assistance to any Chinese-speaking or Vietnamese-speaking voter;
- Posting signs prominently in English and Chinese and in English and Vietnamese at all polling places in the City, indicating that assistance in either Chinese or Vietnamese, as appropriate, is available by a telephone in the polling place;
- Employing trained translators who are familiar with Chinese-language and/or Vietnamese-language election terminology to produce clear and accurate written translations;
- Disseminating all bilingual election information, materials, and announcements produced (whether in Chinese or Vietnamese) to the same extent and on comparable terms as they are disseminated by the City in English, including distributing bilingual election information, materials, and announcements in newspapers, radio, and/or other media that exclusively or regularly publish or broadcast information in Chinese or Vietnamese, as appropriate;
- Providing official and absentee ballots bilingually in Chinese and English and Vietnamese and English, including on electronic voting machines;
- Employing an individual to coordinate the City’s minority-language election programs for all elections administered in whole or in part by the City of Boston and appoint from among the members of the Mayor’s Advisory Task Force a Community Liaison for each of the language-minority communities covered under the Agreement – Chinese-speaking community and Vietnamese-speaking community.

²⁰ Order, *United States v. City of Boston, MA* (D. Mass. 2005), available at http://www.justice.gov/crt/about/vot/sec_203/documents/boston_cd2.php (the enforcement action and order also addressed the Latino community through a Section 203 claim for Spanish and thus the order applies equally to Spanish as it does for Chinese and Vietnamese).

WHAT IS SECTION 208 OF THE VOTING RIGHTS ACT?

Even if Section 203 does not provide your community with language assistance in your jurisdiction, you still have the right to have someone help you in the voting process, including the right to bring someone with you into the voting booth. Section 208 of the Voting Rights Act provides you with this right. Section 208 applies in both Section 203-covered jurisdictions and non-Section 203 covered jurisdictions and gives you the right to receive assistance by a person of your choice, as long as the person assisting you is not your employer (or an agent of your employer) or an officer or agent of your union.

Section 208 applies to voters requiring assistance to vote by reason of blindness, disability, or inability to read or write. This includes LEP voters. For example, if you feel uncomfortable with the

voting process, do not understand the ballot, or do not know how to operate the voting machine because of your limited English ability, Section 208 applies to you and allows you to receive help from a person of your choosing. This means that you can go to a poll site with a family member, friend, or anyone else of your choosing, go into the voting booth with that person, and receive help in casting your ballot.

Unfortunately, many election officials are not aware of Section 208 and often poll workers incorrectly refuse to let voters use a helper of their choice. You can talk with your Registrar of Voters to make sure that poll worker trainings place sufficient emphasis on the rights of voters under Section 208.

CONCLUSION

The staff of the Asian American Center for Advancing Justice hope that this handbook is useful to you. It was created to be a tool for Asian American and NHPI community members to help ensure that language assistance is available

during the voting process. In addition to this handbook, Advancing Justice has made additional voting-related resources available at www.advancingequality.org/section-203.

CONTACT US

For assistance with Section 203 advocacy, please contact one of the Advancing Justice affiliates.

Asian American Justice Center
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Washington, DC 20036
T (202) 296-2300
F (202) 296-2318
votingrights@advancingequality.org
www.aajc.advancingjustice.org

Asian Pacific American Legal Center
1145 Wilshire Blvd, 2nd Floor
Los Angeles, CA 90017
T (213) 977-7500
F (213) 977-7595
votingrights@apalc.org
www.apalc.advancingjustice.org

Asian Law Caucus
55 Columbus Avenue
San Francisco, CA 94111
T (415) 896-1701
F (415) 896-1702
vote@asianlawcaucus.org
www.alc.advancingjustice.org

Asian American Institute
4753 N Broadway St., Ste. 502
Chicago, IL 60640
T (773) 271-0899
F (773) 271-1982
votingrights@aaichicago.org
www.aai.advancingjustice.org

REFERENCES

List of Election Office Websites for Jurisdictions Containing Asian American Populations Covered by Section 203:

ALASKA²¹

Aleutians East Borough

www.aleutianseast.org/index.asp?Type=B_BASIC&SEC=%7B029815F1-22EF-44B6-AEB1-53A793C73CA5%7D

CALIFORNIA

Alameda www.acgov.org/rov

Los Angeles www.lavote.net/VOTER_ELECTIONS

Orange County www.ocvote.com

Sacramento www.elections.saccounty.net

San Diego www.sdvote.com

San Francisco

www.sfgov.org/site/elections_index.asp

San Mateo www.shapethefuture.org

Santa Clara www.sccvote.org

HAWAII

Honolulu County www.honoluluelections.org

Maui County

www.co.maui.hi.us/index.aspx?NID=657

www.hawaii.gov/elections

ILLINOIS

Cook County www.cookcountyclerk.com

MASSACHUSETTS

Quincy City

www.quincyma.gov/Government/CITYCLERK/election.cfm

MICHIGAN

Hamtramck City www.hamtramck.us/clerk/vote.php

NEW JERSEY

Bergen County

www.co.bergen.nj.us/countyclerk/elections_voting.html

NEW YORK

Kings, New York & Queens Counties

www.vote.nyc.ny.us

NEVADA

Clark County www.clarkcountynv.gov/vote

TEXAS

Harris County www.harrisvotes.com

WASHINGTON

King County www.kingcounty.gov/elections.aspx

RELEVANT GOVERNMENT AGENCIES:

- U.S. Department of Justice

Civil Rights Division

950 Pennsylvania Avenue, N.W.

Office of the Assistant Attorney General,

Main Washington, DC 20530

T (202) 514-4609 (TTY) (202) 514-0716

F (202) 514-0293 • (202) 307-2572 •

(202) 307-2839

www.justice.gov/crt/about/vot

- U.S. Election Assistance Commission

1201 New York Avenue, N.W.

Suite 300

Washington, DC 20005

T (866) 747-1471 (toll free) or (202) 566-3100

F (202) 566-3127

www.eac.gov

- U.S. Census Bureau

4600 Silver Hill Road

Washington, DC 20233

Call Center: (301) 763-INFO (4636) or

(800) 923-8282

www.census.gov

- U.S. Equal Employment Opportunity Commission (EEOC)

T (800) 669-4000

info@eeoc.gov

www.eeoc.gov

²¹Please note that the Aleutians West Census Area does not have a website for this information.

APPENDIX: SUGGESTED IMPLEMENTATION CHECKLIST FOR JURISDICTIONS COVERED BY SECTION 203 OF THE VOTING RIGHTS ACT

The following is a list of best practices that the Asian American Center for Advancing Justice (Advancing Justice) believes jurisdictions should consider adopting to ensure that the language assistance they provide pursuant to Section 203 “enable[s] members of applicable language minority groups to participate effectively in the electoral process.” 28 CFR § 55.2(b). These best practices are categorized into four categories: written materials; publicity and outreach; poll worker targeting, recruitment and training; and general practices.

Advancing Justice and its partner organizations share the goal of helping election officials to make the voting process accessible to all members of the electorate. Advancing Justice believes that election officials will enhance their ability to provide effective language assistance in compliance with Section 203 if they work with community-based organizations (CBOs) working with and/or serving language minority voters.

I. Written Materials

- a) Conduct comprehensive review of election materials to identify materials that should be (or still need to be) translated, including but not limited to the following:
 1. Ballots
 2. Sample ballot booklets
 3. Vote-by-mail or absentee materials
 4. Provisional ballot materials
 5. Voter registration forms
 6. Poll worker name badges
 7. Polling place signs
 8. Voter information guides
 9. Registrar of voters' website

- b) Ensure accurate translations of election materials
 1. Use certified translation vendor
 2. Provide opportunities for CBOs to review drafts of translated materials
 3. Work with CBOs and ethnic media to establish a glossary of commonly used election terms
- c) For character-based languages, ensure complete translation of ballot information by using translations, including phonetic translations (transliterations), of candidate names

II. Publicity and Outreach

- a) Use ethnic media to publicize the availability of language assistance
 1. Ask ethnic media outlets to run public service announcements
 2. Work with CBOs to identify earned media opportunities
 3. Add ethnic media outlets to press list
- b) Conduct outreach to community members
 1. Form partnerships with CBOs to publicize the availability of language assistance
 2. Send outreach staff to community events and gathering places
- c) Conduct direct outreach to language minority voters
 1. Mail in-language postcards to voters within a covered language minority group to let them know about the option to receive translated election materials prior to Election Day



III. Poll Worker Targeting, Recruitment, and Training

- a) If targeting poll sites for language assistance, use sound methodology for identifying poll sites where language assistance is needed
 1. Consult with CBOs on methodology for poll site targeting
 2. Use variety of methods to identify poll sites, including place of birth, name matching, census data, requests for language assistance, and information provided by community members
- b) Ensure adequate recruitment of bilingual poll workers
 1. Form partnerships with other agencies and departments within the jurisdiction to identify and recruit bilingual government employees
 2. Explore partnerships with high schools and colleges to recruit bilingual students
 3. Ask ethnic media outlets to run public service announcements to let the community know about opportunities to serve as poll workers
 4. Explore partnerships with CBOs to recruit bilingual poll workers through community outreach efforts
 5. Establish reserve pool of bilingual poll workers to be sent to poll sites where bilingual poll workers are missing on Election Day

- c) Ensure adequate training of poll workers on language assistance and cultural sensitivity
 1. Devote sufficient time and emphasis during trainings to the proper delivery of language assistance and cultural sensitivity
 2. Provide CBOs with opportunities to review and comment on drafts of poll worker training curricula
 3. Provide CBOs with opportunities to observe poll worker trainings
 4. Allow CBOs to conduct presentations and workshops as part of poll worker trainings to help educate poll workers on the communities they will be serving
- d) Establish mechanism for handling complaints about poll workers lodged by language minority voters, including addressing Election Day problems on-the-spot as well as post-Election Day counseling of poll workers

IV. General Practices

- a) Establish an advisory committee consisting of CBOs working with and/or serving language minority voters
- b) Hire election staff, such as a language minority coordinator, to coordinate the jurisdiction's efforts to meet its Section 203 requirements
- c) Set up an Election Day troubleshooter team to check poll sites for, and resolve, issues such as missing bilingual poll workers or translated materials
- d) Add multilingual capacity to the jurisdiction's voter hotline

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