



Millions to the Polls

PRACTICAL POLICIES TO FULFILL THE FREEDOM
TO VOTE FOR ALL AMERICANS

**LANGUAGE & DISABILITY
ACCESS**

J. MIJIN CHA & LIZ KENNEDY

LANGUAGE AND DISABILITY ACCESS

Language Access

- Over 25 million residents have limited English proficiency.
- Proper translation procedures and practices can directly increase voter participation.
- States should provide language assistance and translation when three percent or 7,500 persons speak a primary common language other than English.

To function properly, our election system must ensure that all eligible voters are able to access the voting process. In our diverse society, many new Americans who have completed the arduous process for attaining American citizenship may be confronting the opportunity to vote as a new experience. While ballots are often complicated and confusing even for proficient English speakers, those with limited English proficiency face special difficulties in deciphering the ballot and casting their votes.

This experience affects millions of citizens. The Limited English Proficient (LEP) population rose by 80 percent between 1990 and 2010.¹ Currently, there are 25.2 million LEP U.S. residents-- and not just within immigrant communities. Native American communities also have members with limited English proficiency. For example, among Arizona's Navajo voting-age citizens in Apache, Coconino, and Navajo Counties, approximately one-third are considered to have limited English proficiency.² According to the Presidential Commission on Election Administration, "limited English proficiency should not be experienced as a limited or second-class citizenship."³

The Voting Rights Act (VRA) sets the current federal standard for language access in voting. In particular, Section 203 of the VRA targets those language minorities that have suffered a history of exclusion from the political process: Spanish, Asian, American Indian, and Alaskan Native persons.⁴ Language translation requirements under Section 203 are triggered in two ways: 1) when either more than five percent of the citizens of voting age of the State or political subdivision are members of a single language minority and are limited-English proficient or, 2) more than 10,000 of the citizens of voting age of the political subdivision are members of a single language minority and are LEP, whichever is lower.⁵ The LEP group must also have an English literacy rate below the national average.

If a political subdivision contains all or any part of an Indian reser-

vation, Section 203 requires language translation when more than five percent of the Native American or Alaska Native citizens of voting age within the reservation are members of a single language minority and are also LEP.⁶

Section 203 also requires that all covered jurisdictions provide oral assistance when needed in the minority language. Both written and oral assistance must be available throughout the election process from registration to Election Day activities and assistance is required for all Federal, state, and local elections.⁷ For Native Americans and Alaskan Natives whose languages are unwritten, only oral assistance and publicity is required.

In addition to translation services, Section 208 of the VRA allows all limited English proficiency voters throughout the U.S. to obtain assistance in voting from a person of their choice, as long as this person is not the voter's employer, or an agent of the employer or of the voter's union, regardless of the voters' language or the jurisdiction's obligations under Section 203.⁸ The PCEA found that "many poll workers are not aware of or do not comply with this provision of federal law."⁹

The federal requirements of the VRA set a floor for translation requirements and several states have gone above and beyond the federal requirements. California and Colorado both have lower population requirements than the VRA for triggering language translation. Both states consider assistance to be needed when three percent or more of voting age citizens lack sufficient English skills to vote without assistance, or when citizens or organizations provide information supporting a need for assistance.¹⁰

New Jersey and Texas also require bilingual materials when a certain percentage of registered voters speak a primary language other than English. In New Jersey, bilingual sample ballots must be provided for election districts where Spanish is the primary language for 10 percent or more of the registered voters.¹¹ Also, two additional election district board members who are Hispanic in origin and fluent in Spanish must be appointed in these districts.¹²

Texas specifies that bilingual election materials be provided in precincts where persons of Spanish origin or descent comprise five percent or more of the population of both the precinct and the county in which the precinct is located.¹³ While similar to the federal requirement, Texas does not require that the group's English literacy be below the national level. In these covered precincts, the following materials must be presented bilingually: instruction cards, ballots, affidavits, and other forms that voters are required to sign.¹⁴

Beyond translation services, Maricopa County, Arizona makes an effort to have properly trained poll workers by working with the community

college system to recruit bilingual poll workers.¹⁵ The county conducts extensive training with poll workers in Spanish and English on voting procedures. County elections officials also hold monthly outreach meetings with community groups and much of the discussion focuses on recruiting and training bilingual poll workers.

Maricopa County also offers voter registration workshops in Spanish for community groups, political parties, and other groups that conduct voter registration drives within the Hispanic community. Finally, the county utilizes a bilingual coordinator who is a regular presence in Spanish language media and is responsible for minority language outreach.¹⁶

Proper translation procedures and practices can directly increase voter participation. Voter registration among Latinos and Filipino Americans in San Diego County rose by more than 20 percent after the county complied with federal law in 2004.¹⁷ Vietnamese American registrations rose by 40 percent after the county voluntarily added Vietnamese to its list of languages in which it would provide assistance.¹⁸

POLICY RECOMMENDATIONS

The following policies will help ensure that voters who speak another primary language besides English can participate fully in the electoral process.

- Trigger language assistance and translation when either 7,500 people or three percent of the population of voting age citizens, whichever is smaller, speaks a common language other than English.
- Mandate language access education to all poll workers when the language assistance requirement is triggered.
- Require states to ensure the proper translation in the prevailing dialect and word usage of the non-English speaking group serviced when the language assistance requirement is triggered. ■

Disability Access

- Thirty-five million voting age Americans have disabilities.
- States should create an Accessible Elections Office within the state election administration to facilitate access to voting for voters with disabilities.
- States should also establish mobile voting locations in and around facilities that assist voters with disabilities.

Similar to the challenges facing voters with language barriers, Election Day can be a frustrating and disempowering experience for the 35 million voting-age people with disabilities in the United States. Nearly one out of seven voting-age Americans has a disability.¹⁹ Polling places with stairs to climb, narrow hallways that do not easily permit wheelchair access, darkly lit voting booths, and no alternative voting procedures for persons who have other physical disabilities can present insurmountable barriers for disabled Americans.

Currently, the Voting Accessibility for the Elderly and Handicapped Act requires that all polling places for Federal elections are accessible to handicapped and elderly voters.^{20, 21} It requires any disabled voter assigned to an inaccessible polling place will be provided with an alternate means for casting a ballot on the day of the election. It also requires each state to make registration and voting aids available for Federal elections for handicapped and elderly individuals, including instructions that are printed in large type at each permanent registration facility and telecommunications devices for polling place and information for the deaf population.

In addition, Sections 261 and 291 of the Help America Vote Act (HAVA) set minimum standards for making ballots and polling places accessible. These policies authorize payments to states and local governments to ensure access to the polls for individuals with disabilities.²² They also require each polling place to have at least one fully accessible voting machine that enables confidential voting by people of all abilities, including those with vision impairments.²³ Under HAVA, persons with disabilities must have the same opportunity for participation, including privacy and independence, afforded to other voters.

Another program established by HAVA²⁴ provides financial assistance to support training in how to use voting systems and technologies that individuals with disabilities would use, including non-visual access. This program supports the following: (1) Promoting full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places; (2) Developing proficiency in the use of voting systems and technologies as they affect indi-

viduals with disabilities; (3) Demonstrating and evaluating the use of such systems and technologies by individuals with disabilities (including blindness) in order to assess the availability and use of such systems and technologies for such individuals; and (4) Providing training and technical assistance for non-visual access.

The program also provides funds to make polling places, including the path of travel, “accessible to individuals with disabilities in a manner that provides the same opportunity for access & participation (including privacy & independence) as for other voters.”²⁵ In addition, funds are also provided to implement programs that inform individuals with disabilities, including blindness, about accessibility of polling places. Funds may also be used to support the training of election officials, poll workers, and election volunteers.

Examples of implementing these standards at the state level include California, where the Secretary of State established a State-wide Voting Accessibility Advisory Committee (VAAC) in 2005 to advise, assist, and provide recommendations to the Secretary of State on how voters with disabilities can vote independently and privately.²⁶ Then, in 2010, the Secretary of State contracted with the Department of Rehabilitation to update uniform state-wide Polling Place Accessibility Guidelines.²⁷

The state also established uniform statewide polling place standards for table heights, clearance areas, and pathway flows for disabled persons as well as parking and ramp accommodations.²⁸ Prior to each election, the Secretary of State also asks voters with disabilities to participate in a brief confidential survey to provide information on ways to improve accessibility.²⁹

Maryland provides touchscreen voting units which use a headset and keypad; blind voters and voters with low vision are able to vote by listening to the ballot selections and by using the keypad.³⁰ Voters may also use high contrast and large print functions of the voting unit and the touchscreen for voters who need to sit while voting.³¹

Curbside voting is a method that allows elders and individuals with disabilities the flexibility to vote outside of a polling place if they so desire. According to a recent GAO study, 23 states provided curbside voting on Election Day in 2012.³² Virginia, as an example, allows any voter that is disabled or over the age of 65 to request to vote outside the polling place as long as they are within 150 feet of the entrance.³³

POLICY RECOMMENDATIONS

The following policies and practices will help ensure disabled Americans have equal access and opportunity on Election Day.

- Create an Accessible Elections Office within the state elections administration, which monitors problems, receives complaints, assesses compliance, and disseminates best practices throughout the state.
- Provide regular training for poll workers and election officials on current state and federal laws regarding the rights afforded to voters with disabilities.
- Encourage states to establish mobile voting locations in and around long-term care facilities and other places that service the disabled.
- Pursue aggressive monitoring & enforcement of state and federal laws that require disability access by both the Department of Justice Disability Rights and Department of Justice Civil Rights sections and state level counterparts. ■

ENDNOTES

1. Chhandasi Pandya *et al.*, *Limited English Proficient Individuals in the United States: Number, Share, Growth, and Linguistic Diversity*, (Dec. 2011) available at <http://www.migrationinformation.org/integration/LEPdatabrief.pdf>.
2. Tova A. Wang *et al.*, *Voting in 2010: Ten Swing States*, (Aug. 2010), available at <http://www.demos.org/publication/voting-2010-ten-swing-states>.
3. Presidential Commission on Election Administration, *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration* 17 (Jan. 2014) available at <http://www.supportthevoter.gov/>.
4. Wang, *et al.*, *Voting in 2010*.
5. Law Foundation of Silicon Valley, *A Report on the Law Foundation of Silicon Valley Poll Monitoring Project for the November 4, 2008, Presidential General Election*, (Jul. 2009), available at <http://www.lawfoundation.org/repository/PollMonitorReport.Comprehensive.FINAL.pdf>.
6. *Ibid.*
7. United States General Accounting Office, *Bilingual Voting: Assistance Provided and Costs*, (May 1997), available at <http://www.gao.gov/assets/230/224035.pdf>.
8. 42 U.S.C. § 1973 *et seq.*
9. PCEA, *The American Voting Experience* 16.
10. NAACP Legal Defense and Educational Fund, Inc., *Assistance for Language Minorities*, (2013), available at <http://redrawingthelines.sitewrench.com/assistanceforlanguageminorities>.
11. United States General Accounting Office, *Bilingual Voting*.
12. *Ibid.*
13. Texas Secretary of State, *Election Advisory Number 2013-05*, (Jun. 21, 2013), available at <http://www.sos.texas.gov/elections/laws/advisory2013-05.shtml>.
14. *Ibid.*
15. Wang, *et al.*, *Voting in 2010*.
16. *Ibid.*
17. Asian American Legal & Education Defense Fund, *Lowering the Numerical Trigger to Improve the Effectiveness of Section 203 of the Voting Rights Act*, (May 2, 2006), available at http://www.aaldef.org/docs/AALDEF_S203trigger.pdf.
18. *Ibid.*
19. Lisa Schur, *Reducing Obstacles to Voting for People with Disabilities*, (Jun. 22, 2013), available at https://www.supportthevoter.gov/files/2013/08/Disability-and-Voting-White-Paper-for-Presidential-Commission-Schur.docx_.pdf.
20. Congressional Record, *Voting Accessibility for the Elderly and Handicapped Act*, (Sep. 28, 1984), available at <http://www.sos.ca.gov/elections/polling-place-accessibility/guidelines/appendix-a-voting-accessibility-for-the-elderly-and-handicapped-act.pdf>.
21. United States Department of Health & Human Services, *Establish or Improve Voting Access for Individuals with Disabilities*, (2013), available at <http://www.acf.hhs.gov/grants/open/foa/view/HHS-2011-ACF-ADD-DH-0202>.
22. 42 U.S.C. § 15421.

23. Lisa Schur *et.al*, *Disability, Voter Turnout, and Voting Difficulties in the 2012 Elections*, (Jul. 18, 2013), available at <http://smlr.rutgers.edu/disability-and-voting-survey-report-2012-elections>.
24. United States Election Assistance Commission, *Permissible Uses of HAVA Funds Made Available to States*, (February 2005), available at http://www.eac.gov/assets/1/workflow_staging/Page/93.PDF. The full title of the program is, “HAVA Training and Technical Assistance Protection and Advocacy Systems to Establish or Improve Voting Access for Individuals with Disabilities.”
25. *Ibid.*
26. California Secretary of State, *Voters with Disabilities*, (2013), available at http://www.sos.ca.gov/elections/elections_dis.htm.
27. *Ibid.*
28. For example, accessible tables in the voting area shall be between 28 inches to 34 inches from the finished floor. California Secretary of State, *The Voting Area – Sections 1117B, 1118B, 1124B, 1133B*, (March 2010), available at <http://www.sos.ca.gov/elections/polling-place-accessibility/voting-area.htm>.
29. California Secretary of State, *Voters with Disabilities*.
30. Maryland Board of Elections, *Access by Voters with Disabilities*, (Jul. 20, 2013), available at <http://www.elections.state.md.us/voting/accessibility.html>.
31. *Ibid.*
32. United States Government Accountability Office, GAO13538sp, *Voters with Disabilities: Challenges to Voting Accessibility*, (Apr. 23, 2013), available at <http://www.gao.gov/assets/660/654099.pdf>.
33. VA Code (Annotated) § 24.2-649.