

# Language Access and Voting Rights

## An Overview of Federal, State, and Local Policies

**T**he right to vote is fundamental to our democracy. But for voters who are not highly proficient in English, meaningful access to the ballot can be elusive. As one district court judge put it, “Voting in a language you do not understand is like asking this Court [to] decide the winner of the Nobel Prize for Chemistry – ineffective, in other words.”<sup>1</sup>

While a patchwork of federal, state, and local laws provides for some language assistance in elections, thousands of voters who prefer a language other than English remain without a real opportunity to cast a ballot. Demos’s analysis of federal, state, and local language access laws shows a strong need for more policies and practices that remove language as a barrier to political participation. Our recommendations include improvements to existing laws, as well as best practices for expanding language access in areas with significant and growing numbers of limited-English-proficient (LEP) voters.

**Millions of voters require language access in elections.** According to Census Bureau data, nearly 70 million Americans speak a language other than English at home. And

nearly 40 percent of these individuals – roughly 26 million people – are considered LEP. While many LEP Americans were educated outside the U.S., large numbers of U.S.-born individuals are also LEP, making clear that discrimination and inequities in the American educational system contribute to a persistent language gap.

And this persistent gap in language translates into a persistent gap in electoral participation. Although gaps in electoral participation cannot be attributed solely to language barriers, Asian American and Latino communities – both of which have high rates of limited English proficiency – consistently turn out at much lower rates than other communities. Moreover, multiple studies have shown that these gaps can be closed by increasing language access.

### **The federal Voting Rights Act’s language access provisions fall short in addressing the diverse language needs of Americans.**

Since 1975, several provisions of the federal Voting Rights Act (VRA) have protected access to the ballot for “language minority” voters. Section 2 of the VRA prohibits discrimination based on race, color, and language minority status while Section 203 requires language access (including written translations of ballots and election materials

1. Order for Preliminary Injunction, *Rivera Madera v. Dentzner*, No. 1:18-cv-152-MW/GRJ (N.D. Fla 2018) p. 14.

and oral interpretation services) when there are sufficiently sizeable language minority communities in particular jurisdictions. In addition, Section 208 establishes the right of LEP voters to have a personal interpreter accompany them to the polls to help cast a vote.

Both the limited coverage of Section 203 and lack of full compliance with the law have left major shortfalls for LEP voters. The federal definition of “language minority” omits major language groups, including those from Africa, the Caribbean, the Middle East, various Pacific Island nations, and most of Europe. Even language minority populations that are covered by Section 203 can fall just short of the law’s numerical benchmarks, leaving thousands without language assistance. And it is not unusual for jurisdictions to fail to fully comply with federal mandates by, for example, providing faulty translations or poor interpreter services.

**State and local language access policies have emerged to address some of the shortcomings of federal law.** The gaps in federal language access laws have led many states and localities to enact their own policies to better address the diverse language needs of voters. These policies commonly focus on expanding the language groups eligible for assistance and relaxing the mathematical formulas for eligibility.

The Connecticut Voting Rights Act, for example, lowers the population threshold for triggering mandatory language assistance while also empowering the secretary of state to provide additional language access based on need. And unlike the federal VRA, the Connecticut

VRA does not categorically exclude entire language groups from eligibility. Cook County, Illinois, similarly avoids using the federal VRA’s narrow definition of “language minority” and greatly expands the base of coverage by using a numerical benchmark based on the number of LEP *residents*, rather than voting-eligible citizens. Another approach, such as the one used in Oregon, is to apply a ranking system that extends coverage to the top-five or top-ten languages in a jurisdiction.

But state and local laws can also often contain serious limitations. The New York Voting Rights Act, for example, extends coverage using smaller numerical formulas but still relies on the limited federal “language minority” definition. In California, state law has enabled more languages to be covered, but the types of written materials are more limited and do not include translated votable ballots.

**State and local policymakers should enact robust policies responsive to the language needs of their communities.**

In the absence of robust federal language access protections, state and local policymakers can implement stronger practices to expand and improve language access. These include:

**Codifying Policies.** Most language assistance policies are codified as statutes or ordinances, but some are merely reflected in grants of discretionary power to election officials or in nonbinding resolutions. Policies should be codified and amendable through a clear legislative process.

**Providing Mechanisms to Revisit Core Eligibility.** A significant weakness in the federal VRA is the static nature of the “language minority” definition. Building in mechanisms for revisiting core eligibility is critical as populations change over time.

**Tailoring Benchmarks to the Demographics of Each Jurisdiction.** The language access provisions of the VRA should be considered a floor, not a ceiling. Jurisdictions should strongly consider expanding language group definitions beyond federal law and attempt to provide language assistance to a broader number of groups.

**Creating Clear Mechanisms and Responsibilities for Enforcement.** Well-developed lines of authority are necessary for ensuring compliance. The importance of having sufficient staff who are bilingual goes without saying. Both administrative and judicial mechanisms for enforcement, including private rights of action, are essential.

**Ensuring Sufficient Oral and Written Services.** There should be clear expectations regarding what services must be provided, and services should be tailored to the local populations. To ensure high-quality translations, jurisdictions should allocate sufficient time and resources and rely on competent and trusted sources.

**Providing Adequate Funding for Compliance.** If states are committed to providing extensive language assistance in voting, they must allocate funds for local governments as well as community organizations and local tribes that may be able to assist with outreach and translations.

**Fostering Community Engagement and Transparency.** Requiring the creation of advisory committees that include members of language groups has been effective for monitoring compliance and improving overall services. Moreover, engaging covered-language speakers in the community is critical to ensuring accurate translations.

**Conducting Data Analysis and Periodic Updating.** Having sufficient support for data analyses and recordkeeping is essential. Data compilations of actual usage of translated materials can also be critical in assessing the effectiveness of language assistance services and identifying opportunities for improvement.

**Read the full report:**  
[demos.org/language-access](https://demos.org/language-access)

## About Dēmos

Dēmos is a non-profit public policy organization working to build a just, inclusive, multiracial democracy and economy. We work hand in hand to build power with and for Black and brown communities, forging strategic alliances with grassroots and state-based organizations.

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