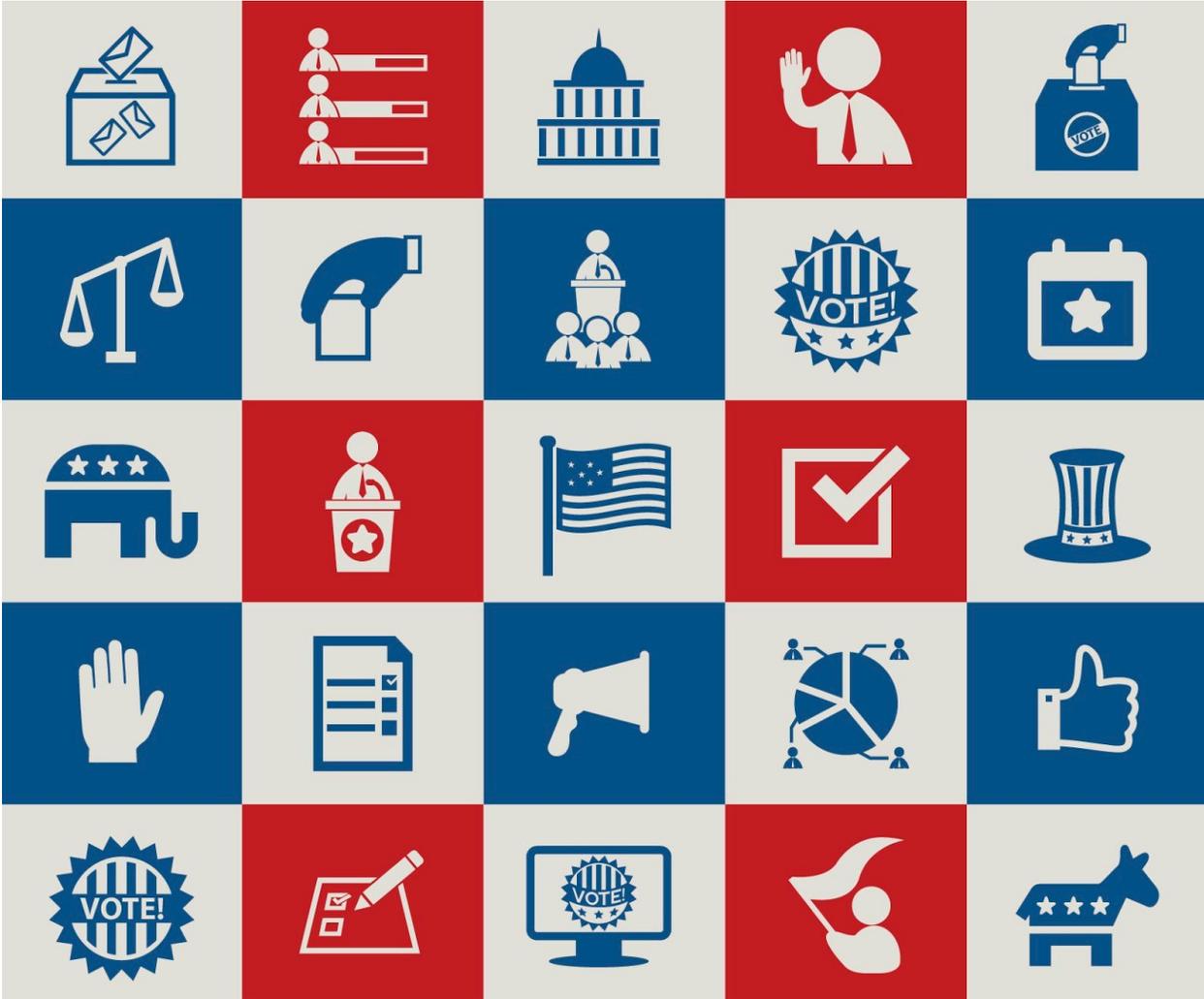

Language Minorities & The Right to Vote

KEY PROTECTIONS UNDER THE VOTING RIGHTS ACT



INTRODUCTION

The path to ensuring all eligible voters in the United States have a political voice at the polls has been an arduous and constant one. From poll taxes and literacy tests, to voter intimidation, racial gerrymandering, and other obstacles to the ballot box, America has long struggled with the concept of electoral democracy.

Among the historically disenfranchised in the United States include persons of limited English proficiency (LEP). Throughout the nineteenth and early-twentieth centuries, states employed English-literacy tests and other procedural tactics to effectively exclude immigrant groups and other language minorities from the ballot. Even today, LEP voters confront a range of language barriers during election season. These challenges arise at virtually every stage of the voting process: locating information about elections, deciphering registration forms and other voting materials, navigating the polling place, and even casting a ballot.

Today, over ten million eligible voters—U.S. citizens ages 18 and older—are limited English proficient. Many of these individuals—including Puerto Ricans, Native Hawaiians, inhabitants of Guam, American Indians, and Native Alaskans—are U.S. citizens by birth; a majority of them—approximately 680,000 each year—become citizens through the process of naturalization.

While federal law provides various protections for this segment of the voting population, they remain widely unknown or misunderstood among state and local election administrators, resulting in extensive noncompliance.

To help narrow this gap in knowledge, this guide summarizes those provisions of the federal Voting Rights Act applicable to LEP citizens. This follows with an overview of protections under state and local law and the continuing challenges faced by large segments of this population in exercising the right to vote.

LANGUAGE MINORITY PROTECTIONS UNDER THE VRA

The Voting Rights Act of 1965 offers protections to LEP voters through three primary enforcement mechanisms: (1) the structural remedies under Section 203, (2) the general anti-discrimination provisions of Section 2, and (3) the language-accommodation requirements of Section 208.

Section 203

Section 203 of the VRA requires certain “covered” jurisdictions to provide voting materials “in the language of the applicable minority group” where those same materials are available in English. “Voting materials” include “registration or voting notices, forms, instructions, assistance, or other

materials or information relating to the electoral process, including ballots.” This definition, according to the Department of Justice, “should be broadly construed to apply to all stages of the electoral process.” Moreover, all translated materials must be “clear, complete and accurate.” If a covered language encompasses multiple dialects, the materials should be available in the form most commonly used among voting-age citizens within that language group. In addition, covered jurisdictions must publicize the availability of these materials by means most likely to reach LEP citizens. Such publicity—in addition to posting of notices at voter registration offices and polling sites—may include announcements in various minority-language media (websites, radio, television, newspapers, etc.).

In addition to publishing translated voting materials, Section 203 requires covered jurisdictions to provide effective oral language assistance—through the use of interpreters or bilingual staff—at voter registration and polling sites.

Covered Jurisdictions

As amended in 1992, Section 203 “covers” those jurisdictions where (1), according to the most recent Census data, the number of voting-age U.S. citizens within a single minority language group exceeds either 10,000, or five percent of all voting age citizens; (2) members of that language group are limited in their English proficiency; and (3) the illiteracy rate of that group surpasses that of the national level. Jurisdictions include the states and their political subdivisions, as well as Indian reservations.

The Census Bureau, using American Community Survey data, updates its list of covered jurisdictions every five years. The most recent data, released in December 2016, revealed 263 jurisdictions in the United States required to provide language assistance for LEP persons during elections. Within these jurisdictions reside a combined population of 21,739,327 voting-age citizens from a covered language-minority group, an increase of 2,529,896 from 2011.

Covered Languages

Predicated on congressional findings of past discrimination toward specific language minorities, Section 203 applies only to LEP voters who are American Indian, Asian-American, Alaska Native, or of Spanish descent. Languages spoken among these groups include Spanish, Mandarin, Filipino, Vietnamese, Japanese, Hopi, Apache, Navajo, Choctaw, and Yup’ik, to name a few.

Other language minority groups—especially those speaking French and Arabic—have grown significantly in the years following the 1975 amendments. The U.S. Census, in its 2015 American Community Survey (ACS), reported nearly two million Arab Americans living within the United States, a 60% increase in population size from 2000. For Haitian-Americans, the ACS estimated a population size of just over one million in 2015, up from 290,000 in 1990. Nevertheless, absent

congressional action, these and other language minorities fall outside the scope of Section 203's coverage.

Section 2

Section 2 of the VRA prohibits a state or political subdivision from imposing a “qualification or prerequisite to voting” which “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color” or limited English proficiency. As with other federal anti-discrimination statutes such as Title VI of the Civil Rights Act of 1964, Section 2 of the VRA requires a determination of either intentional discrimination or discriminatory effect resulting from a challenged practice. Moreover, unlike Section 203, the measure applies nationwide and contains no numerical prerequisite based on group size.

Despite its potentially broad application in protecting LEP voters, Section 2 relies on Section 203 in defining a language minority. Consequently, LEP voters who fall outside of these protected classes (i.e., those who are not American Indian, Asian-American, Alaska Native, or of Spanish descent) lack standing to assert discrimination-based claims, unless their allegations are based on race or color. That said, a court may still decide that language assistance is an appropriate remedy in addressing Section 2 violations. In a 2000 Michigan case, for example, a court ordered language assistance as one of several remedies to address Section 2 violations based on racial discrimination at the polls directed at Arab-American voters.

Section 208

Because Section 203 is limited in both geographic and linguistic scope, its benefits apply to a limited number of LEP voters. However, in 1982, Congress added provisions to accommodate a range of voters with language barriers. Under Section 208 of the VRA, “[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, other than the voter’s employer or . . . agent of the voter’s union.” In formulating this language, Congress emphasized the voter’s freedom to choose as “the only way to assure meaningful voting assistance and to avoid possible intimidation or manipulation of the voter.”

The broad language of Section 208 encompasses all U.S. citizens unable to read or write—whether due to illiteracy or limited English proficiency—no matter where they live or what their native language is. As with Section 203’s mandate, voter assistance under Section 208 must be provided at every stage of the electoral process—from voter registration to ballot casting at the polls.

Although state and local governments are under no obligation to provide language assistance under Section 208, the Department of Justice has authority to enforce this provision of the law if election officials deny or obstruct a voter’s right to use an assistant at the polls.

PROTECTIONS UNDER STATE AND LOCAL LAWS

The federal Voting Rights Act merely establishes a floor for language-minority assistance. In fact, several state and local governments have surpassed these requirements by providing additional protections. Under Colorado law, for example, if a precinct encompasses three percent or more of eligible voters of limited English proficiency (rather than the required five percent under Section 203), “the county clerk and recorder shall take affirmative action to recruit . . . staff members who are fluent in the language used by the eligible electors and in English.” And in New York City, officials recently initiated efforts to translate voter registration forms into several languages beyond those covered by Section 203, including French, Arabic, Russian, Urdu, and Haitian Creole.

Many states have incorporated Section 208 of the Voting Rights Act—either in whole or in part—into their election codes. Some of these states have expanded upon the terms of Section 208 by expressly identifying voters unable to read or write in the English language. For example, the Indiana Voter’s Bill of Rights must include a “statement informing the voter what assistance is available to assist the voter at the polls.” The law also provides that “[a] voter may be assisted in the voting booth” if (1) “[the voter has] a disability (permanent or temporary) or [is] unable to read or write the English language,” and (2) “[b]efore entering the voting booth, [the voter] request[s] assistance.” The law goes further in requiring the Indiana Secretary of State, “or other state agency posting election information,” to publish this document on the state’s website and to advertise it through news media or in public service announcements no later than 30 days before an election.

CONCLUSION

Within the larger debate over civil rights accommodations, language assistance in voting remains especially controversial. On the one hand, “English-only” proponents condemn language assistance as costly and as a deterrent to civic unity. As one congresswoman remarked in 2006, as federal lawmakers prepared to renew the Voting Rights Act, “the bilingual ballot provision has long kept new citizens from increasing their knowledge of our language and from fully integrating into our society. Not only is it expensive to print ballots in a variety of different dialects and tongues, but it reinforces a fractious society.”

On the other side of the debate, advocates of language assistance argue that LEP voter accommodations, by eliminating (or minimizing) barriers to the ballot box, promote democratic participation and political empowerment among the otherwise linguistically-isolated segments of the population. Moreover, these advocates contend, not only does language assistance help assimilate LEP persons into American life, but it also cultivates public support for a multilingual society in an increasingly globalized economy.

The relative merits of both sides warrant careful consideration in formulating policy. However, as a practical matter, the American demographic continues to evolve and linguistic pluralism is a reality we all must face. There is little question that uniformity in language provides a common ground for persons of otherwise disparate backgrounds, but the lack of uniformity should be no basis for disenfranchisement.

Rather than reinforcing a “fractious society,” as some have suggested, the bilingual ballot serves as an accommodative measure, a means of promoting greater civic engagement among those seeking to adopt the American ethos. More importantly, language assistance at the polls helps preserve one of the most fundamental principles of our democratic society: the right to vote for all eligible members of the electorate.

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