Asian American Access to the Vote: The Language Assistance Provisions (Section 203) of the Voting Rights Act and Beyond

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I. INTRODUCTION

United States Supreme Court Chief Justice Earl Warren once wrote, "The right to vote . . . is preservative of other basic human and political rights." The right to vote is one of the most fundamental individual rights guaranteed under the Constitution, and it functions as a major underpinning of the democratic process. However, the voting process ensures democracy only to the extent that all voters have access to and understand how to partake in the electoral franchise. Equal access and the opportunity to vote are only the first steps towards safeguarding this fundamental right.

In the early 1970s, Congress found that limited-English proficiency was a serious barrier to the political participation of Asian Americans, Latinos, Alaska Natives, and Native Americans. It became increasingly clear that Asian American citizens were registered to vote at much lower rates than non-Hispanic whites. In response to this growing problem, Congress enacted in 1975, and strengthened in 1992, the Language Assistance Provisions (hereinafter "Section 203") of the Voting Rights Act.

Section 203 mandates the availability of bilingual ballots and oral language assistance at voting booths and poll sites in certain targeted areas around the country. The legislative enactment aims to ensure that communities of color have equal access to the ballot and equal


2. Id.
opportunities to cast meaningful votes. Since it was enacted, Section 203 has helped tens of thousands of Asian Americans, particularly first-time voters, to fully exercise their right to vote.

This article will explain Section 203's test for jurisdictional coverage, summarize its requirements in making the vote accessible to limited English proficient Asian American voters, and review universal compliance problems through findings gathered in New York, Los Angeles, and the San Francisco Bay Area. Finally, it will recommend improvements to address local deficiencies in Section 203 compliance, suggest ways to strengthen Section 203, and explore other options to expand Asian American access to the vote. This article aspires to serve as a useful tool for community advocates, local election officials, and policy-makers in their continued support and augmentation of voting privileges for Asian Americans.

II. BACKGROUND

A. Need for Language Assistance

Asian Americans are one of the fastest-growing minority groups in the nation, numbering almost twelve million. Through the process of naturalization, an increasing number of Asian Americans are becoming citizens. For this growing population, the struggle to gain full citizenship has entailed overcoming various barriers to vote, which include limited-English proficiency, the immigrant experience, and economic status.

Currently, language impediments prevent many Asian Americans from voting. Asian Americans comprise an immigrant and newly naturalized community. Nationally, almost half (43%) of Asian Americans over 18 are limited in their English proficiency and 81% speak a language


other than English in their homes. While 66% percent of Asian Americans are citizens, most (53% percent) have acquired citizenship through naturalization. Therefore, language assistance is essential for many Asian Americans to participate in the electoral franchise.

In New York City, exit polls conducted by the AALDEF found that almost 70% of Chinese Americans and almost 80% of Korean Americans possessed limited English reading abilities. Thus, even though Asian Americans may be citizens, the right to vote is rendered futile when ballots and voting instructions cannot be fully understood.

Aside from language impediments, Asian Americans also experience cultural difficulties with the voting process. Many Asian Americans are "unfamiliar with the American electoral process, having come from Asian countries with political systems that are very different from that of the United States and that may even lack a tradition of voting." It is not surprising that new citizens commonly are not familiar with basic political procedures, such as the need to register by a certain date in order to be eligible to vote in particular elections, the importance of enrolling in a political party in order to vote in primaries, and even how to operate voting machines.

Consider that:

... the Chinatown Voter Education Alliance found that in 1982, 35.2% of Chinatown voters, as compared to 18.9% of voters outside of Chinatown, went to the polls but did not vote—or mistakenly lost their votes through inadvertence—once they were in the voting booths.

Moreover, Asian Americans are oftentimes an economically disadvantaged community. In New York City Chinatown, many Asian Americans are poor or working class, and hold jobs in restaurants and garment factories, which require physical work and long hours. Thus, the struggles for day-to-day survival, coupled with the perception that the political process is removed from their daily lives, severely reduces the ability for some Asian Americans to involve themselves in the political process.

10. Id.
12. ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, ASIAN AMERICAN ACCESS TO DEMOCRACY IN THE 2002 ELECTIONS IN NYC: AN ASSESSMENT OF NEW YORK CITY COMPLIANCE WITH THE LANGUAGE ASSISTANCE PROVISIONS OF THE VOTING RIGHTS ACT, 7 (2003) [hereinafter 2002 AALDEF SECTION 203 REPORT]. The exit poll was pan-Asian but also found that South Asians and Filipino voters in New York City had high levels of English proficiency.
14. Id.
15. Id.
B. The Language Assistance Provisions of the Voting Rights Act (Section 203)

Congress adopted the language assistance provisions of the Voting Rights Act in 1975 and reauthorized them in 1982 and 1992.18 In enacting these provisions, Congress found that:

through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them resulting in high illiteracy and low voting participation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.19

The federal language assistance provisions mandate that "no covered State or political subdivision shall provide voting materials only in the English language."20 In effect, it compels the availability of written translated ballots and all voting materials and oral language assistance in covered jurisdictions.

When Section 203 was reauthorized in 1992, Congress again recognized the strong link between limited English proficiency and low voter participation. It found that "the four language minority groups covered by Section 203—Hispanics, Asian Americans, American Indians, and Alaska Natives—continue[d] to experience educational inequities, high [English] illiteracy rates and low voting participation."21

1. Section 203 test for coverage

Section 203 of the Voting Rights Act mandates language assistance when the census reports that a county or state has five-percent or more than 10,000 voting-age (over 18 years old) citizens who speak the same Asian, Hispanic, or Native American language, have limited English proficiency, and, as a group, have a higher illiteracy rate than the national illiteracy rate.22

The 1992 amendment to Section 203 strengthened voting assistance by including the numeric approach. Prior to 1992, under the five-percent approach, no political subdivision, except for San Francisco and counties in Hawai‘i, were required to provide materials in any Asian language.23 As a result of the 1992 amendment, under the numeric approach, ten counties in New York, California, and Hawai‘i were mandated to provide ballots,
voting materials, and language assistance in Asian languages.24

This change has helped thousands of Asian Americans fully participate in the political process. In New York City, more than 54,000 Chinese Americans in Manhattan and Queens benefited from the availability of Chinese language materials.25 Community exit polls documented that the main beneficiaries of the amended Section 203 were first-time voters, newly-naturalized citizens, and voters with no formal U.S. education or with less than a high school education.26

After the 2000 census, the following counties and Asian languages were covered under Section 203:27

**Alaska**
- Kodiak Island Borough: Filipino

**California**
- Alameda: Chinese
- Los Angeles: Chinese, Japanese, Korean, Filipino, Vietnamese
- Orange: Chinese, Korean, Vietnamese
- San Diego: Filipino
- San Francisco: Chinese
- San Mateo: Chinese
- Santa Clara: Chinese, Filipino, Vietnamese

**Hawai‘i**
- Honolulu: Chinese, Japanese, Filipino
- Maui: Filipino

**Illinois**
- Cook: Chinese

**New York**
- Kings: Chinese
- New York County: Chinese
- Queens: Chinese, Korean

**Texas**
- Harris: Vietnamese

24. See Implementation of the Voting Rights Act Regarding Language Minority Groups, 28 C.F.R. Part 55 (Appendix, 105-107). The counties and languages include Alameda County, CA (Chinese), Los Angeles County, CA (Chinese, Filipino, Japanese, Vietnamese), Orange County, CA (Vietnamese), San Francisco County, CA (Chinese); Honolulu County, HI (Filipino, Japanese), Kauai County, HI (Filipino), Maui County, HI (Filipino); Kings County, NY (Chinese), New York County, NY (Chinese), Queens County, NY (Chinese).


These counties correspond to the jurisdictions with the largest Asian American populations and Asian ethnic groups.  

2. Section 203 requirements

Section 203 mandates that covered jurisdictions provide bilingual assistance to voters. Because local voting procedures vary, each covered jurisdiction determines the precise details of compliance with Section 203 in accordance with the jurisdiction's current voting procedures. However, the regulations enforcing Section 203 state that a covered jurisdiction may be required to provide the following types of assistance:

- **Translations of written materials provided to the general electorate.**
  Examples include machine ballots, sample ballots, affidavit ballots, petitions, notifications, announcements, and other informational materials concerning the opportunity to register, the deadline for voter registration, upcoming elections, and absentee voting.

- **Oral assistance.**
  Examples include a bilingual registrar or deputy registrar to assist with voter registration, a sufficient number of trained interpreters at poll sites, including interpreters in more than one dialect of a language, based on the number of registered voters who need such assistance and the right of the voter to be assisted by a person of his or her own choice.

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

The statute lays out criteria for the Attorney General to consider in determining whether a jurisdiction's language assistance is sufficiently "effective" to comply with Section 203. The Attorney General should consider: (1) whether the materials and assistance are provided in a way

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29. See generally 28 C.F.R. § 55.
30. In addition to the language requirements of Section 203, the covered jurisdiction may be required to use decentralized places of voter registration with translated voter registration materials to give the language minority group an effective opportunity to register to vote. See 28 C.F.R. § 55.18(c).
32. See 28 C.F.R. §§ 55.18, 55.20.
33. The covered jurisdiction can devise a system to "target" certain areas to receive translated materials or language assistance. The targeting system will fulfill the Section's requirements if it is designed and implemented in such a way that the language minority group members who need language assistance receive such assistance. See 28 C.F.R. § 55.17.
34. See 28 C.F.R. § 55.20.
designed to allow members of the applicable language minority group to be effectively informed of and participate in voting connected activities; and (2) whether the affected jurisdiction has taken all reasonable steps to achieve that goal.\textsuperscript{35}

Since its original implementation, all covered jurisdictions have made substantial efforts to fully comply with Section 203 and provide bilingual assistance and translations of voting materials at poll sites. Nevertheless, recurring problems still exist. Some of the major problem areas include incorrect ballot translations, poorly translated materials and signs, insufficient oral language assistance, and discrimination by poll workers. To document and provide solutions for these problems, Asian American civil rights groups have monitored local compliance of Section 203 in regard to Asian languages.\textsuperscript{36} This article focuses on the findings published by these groups. Additionally, at times the U.S. Department of Justice has also dispatched federal observers to monitor and assess local compliance with Section 203.\textsuperscript{37}

III. SECTION 203 IMPLEMENTATION AND COMPLIANCE

The AALDEF, along with other Asian American civil rights groups across the country, regularly monitors elections in order to ensure compliance with the Voting Rights Act and to document other voting problems.\textsuperscript{38} Notwithstanding Section 203's federal mandate, AALDEF has discovered many troubling instances of local non-compliance.

Monitoring groups have exposed a number of recurring problems. On many occasions, they find both that ballots have been mistranslated and that translated materials and signs have been missing, hidden, or otherwise unavailable to voters.\textsuperscript{39} Furthermore, many poll sites have too few interpreters or they speak the wrong language or dialect.\textsuperscript{40} Sometimes, poll

\textsuperscript{35} See 28 C.F.R. § 55.2 (b)(1), (2).

\textsuperscript{36} See generally 2001 AALDEF SECTION 203 REPORT, supra note 7; Nat'l Asian Pacific American Legal Consortium, Access to Democracy: Language Assistance and Section 203 of the Voting Rights Act (July 2000) [hereinafter 2000 NAPALC SECTION 203 REPORT].


\textsuperscript{38} In addition to AALDEF in New York, other leading groups include the Asian Pacific American Legal Center of Southern California (APALC) in Los Angeles, and Asian Law Caucus (ALC) in San Francisco. Local monitoring of local compliance with Section 203 in New York has been coordinated by AALDEF, along with the Chinatown Voter Education Alliance and Young Korean American Service and Education Center; in the Bay Area by the Asian Law Caucus; and in Southern California by the APALC along with APIA Vote!, Vision 21, Chinese American Citizens Alliance, FilVote, National Korean American Service and Education Consortium, Japanese American Citizens League, and Organization of Chinese Americans.

\textsuperscript{39} 2001 AALDEF SECTION 203 REPORT, supra note 7, at 10; Letter from Glenn D. Magpantay, Staff Attorney, AALDEF, to Daniel DeFrancesco, Exec. Dir., New York City Board of Elections (Feb. 5, 2002) (on file with author) (reviewing missing materials during the New York 2001 elections) [hereinafter Letter from Glenn D. Magpantay].

\textsuperscript{40} 2001 AALDEF SECTION 203 REPORT, supra note 7, at 8-9; Letter from Kathay Feng, Voting Rights Unit Dir., Asian Pac. Am. Legal Ctr., to Conny B. McCormack, Registrar-Recorder/County Clerk 2-3 (Jan. 13, 1999) (on file with author) [hereinafter Letter from Kathay Feng]; 2000
workers have resisted or even thwarted the rendering of language assistance, and in extreme cases poll workers themselves have discriminated against Asian American voters because of their race, language, or nativity.

A. Ballots

Bilingual ballots are the cornerstones to making the vote accessible to language minorities. Yet, translations on ballots are often faulty, too small to read, contain misleading layouts, and incorrectly transliterate candidates’ names.

1. Ineffective or faulty ballots translations

The most serious and widely publicized violation of Section 203 occurred during the 2000 Presidential Elections. Ballots in at least six poll sites in Queens, New York flipped the Chinese translations of the party headings so Democratic candidates were listed as Republicans and vice versa.

Even before the 2000 election, voters in New York have long complained that the Chinese characters on ballots have been too small to read. This has been a particular problem for the elderly who rely heavily on translated ballots to cast their votes. Local elections officials offered magnifying sheets to help voters read the ballot. However, the magnifier was often missing and most voters were not instructed about its use.

2. Misleading and confusing ballots

The layout of ballots has also been misleading or difficult to understand. In New York during a 2002 election, certain candidates’ transliterated Korean names were placed too close to the lever for the next candidate. AALDEF informally surveyed ten poll workers at those poll sites, asking them to identify the corresponding lever to the Korean names of candidates. Nine pointed to the lever for the wrong candidate. In a

CAA/ALC/ELC POLL MONITORING REPORT 1, 4-5 (2000).

41. One could argue that under the Voting Rights Act, this falls under the prohibition of racial discrimination barred by Section 2. 42 U.S.C. § 1973 (2004). But it also demonstrates intent to violate Section 203 compliance.

42. Letter from Kathay Feng, supra note 40, at 1, 3; 2001 AALDEF SECTION 203 REPORT, supra note 7, at 9; Letter from Margaret Fung, Exec. Dir., and Glenn D. Magpantay, Staff Att’y, AALDEF, to Daniel DeFrancesco, Exec. Dir., New York City Board of Elections 4 (Dec. 20, 2001) (on file with author) [hereinafter Letter from Margaret Fung].


44. 2001 AALDEF SECTION 203 REPORT, supra note 7, at 10; 2002 AALDEF SECTION 203 REPORT, supra note 12, at 6.

45. 2001 AALDEF SECTION 203 REPORT, supra note 7, at 10; 2002 AALDEF SECTION 203 REPORT, supra note 12, at 6.

46. 2002 AALDEF SECTION 203 REPORT, supra note 12, at 6.
2000 San Francisco election, the first election in which optical scanning devices were used, many Asian Americans voters complained that they did not know how to complete the ballot and make their selections.47

Translations of ballot proposals have also been inadequate. In 1998 in New York, there was a proposal to amend the City Charter to include a campaign finance reform proposal. The Chinese translation was misleading. In the actual text, the English reading of "prohibiting corporate contributions" was translated into Chinese as "prohibiting contributions from community organizations" (emphasis added for clarity). The mangled translation was so severe that voters who would have agreed with the English version, may have voted against the amendment.48

3. Ballot transliterations of candidates' names

The most important aspect of any ballot is the display of candidates' names. Among limited English proficient voters, candidates are typically only known by the transliteration of their English names. These names are usually carried through candidate materials and ethnic/community media outlets, such as newspapers, radio, and television. Sometimes, Asian candidates also have specific Asian ethnic names that are different from their English names.

The Department of Justice has concluded that the translation of names of candidates is required under Section 203. Yet, transliterations of candidate names have often been faulty or altogether omitted.

In San Francisco and Honolulu, elections officials have entirely refused to transliterate candidates' names and place them on the ballots. The Hawai'i Office of Elections maintained that some Native Hawaiian names cannot be translated into Ilocano or Japanese.49 Though the names may be long they can still be transliterated. Similarly, in San Francisco, until 2000, the Department of Elections deemed the transliteration of Chinese names to be voluntary and too much of a burden.50

Another problem has been using candidates' actual Asian names or the names by which they are known in the community. In 1998 in San Francisco, the Department of Elections mistranslated the Chinese names of two Chinese American candidates for office, using a transliteration of their English names despite the fact that both candidates submitted their Chinese

47. CHINESE FOR AFFIRMATIVE ACTION, ASIAN LAW CAUCUS, EMPLOYMENT LAW CENTER, INCREASING ACCESS TO THE BALLOT FOR NEW CITIZENS 6 (2000), available at www.caasf.org. [hereinafter 2000 INCREASING ACCESS TO THE BALLOT FOR NEW CITIZENS]


name in their registration of candidacy forms.\textsuperscript{51}

In 2002 in New York, the Korean transliteration of an Asian candidate’s name was different from his name as it appeared in the Korean media. The candidate had submitted the Korean transliteration of his name to elections officials, but that name was not used.\textsuperscript{52}

Finally, even when elections officials have transliterated names, the names used were often awkward. During the New York elections, \textit{World Journal} newspaper reported that candidate names in English were oddly transliterated, and sometimes it was even comical.\textsuperscript{53} In one example, Mary O’Donohue was translated as “Mary O’ Party.” As a result of these faulty transliterations, voters complained that it was difficult to connect the candidates with the transliterations of their names.\textsuperscript{54}

Elections officials need to take more care in translating and typesetting ballots. Translations should be correct and sufficiently large enough for voters to read, especially the elderly. Candidates’ names must be transliterated, and the names they go by in the community should be used on the ballots.

\textbf{B. Translated Materials and Signs}

Translated voting materials and signs are required under Section 203 to inform voters of the voting procedures.\textsuperscript{55} These materials and signs also help Asian American voters cast their votes independently and in the privacy of the voting booth. However, many materials have often been missing or unavailable to voters, and signs, if posted at all, were frequently placed in obscure locations.

Local elections officials provide a variety of voting materials and signs at poll sites and election precincts/districts, all of which must be translated. These materials include provisional ballots, voting instructions, flyers with statements of voters’ rights, and voter registration forms. Officials also provide large translated signs suitable for posting that include instruction on how to operate voting machines or how to cast a vote, placards announcing “Vote Here” and “Interpreters Available,” and directional arrows.

\begin{itemize}
\item \textsuperscript{52} 2002 AALDEF SECTION 203 REPORT, \textit{supra} note 12, at 6-7.
\item \textsuperscript{53} Candidate’s translased names into Chinese on the ballot make people laugh. Name have no meaning, hard to understand, and creates confusion in voting, \textit{WORLD JOURNAL}, Sept. 6, 2002, at C1.
\item \textsuperscript{54} 2002 AALDEF SECTION 203 REPORT, \textit{supra} note 12, at 6-7.
\item \textsuperscript{55} See 28 C.F.R. §§ 55.15, 55.19.
\end{itemize}
1. Unavailable, hidden, and ineffective use of translated materials and signs

A number of Election Day workers reported that their poll sites did not receive any or enough translated materials.66 Even at those sites where there were sufficient translated materials and signs, poll workers disregarded them.57 For example, in Los Angeles, the materials were hidden, left in boxes under tables, and altogether unavailable to voters.58 In New York, poll workers kept translated materials hidden in compartments behind voting machines. Often, the translated materials were not even taken out of their supply kits.59

In 2000, twenty-nine New York election districts during the primary elections and forty election districts during the general election were missing specific Chinese language materials.60 In 1999, of the thirty-five Los Angeles precincts inspected during the general election, approximately one-third were missing certain translated materials.61

There were also several irregularities in the posting of translated placards and signs. In New York, the most frequently missing or not readily visible signs were “Interpreter Available,” voting machine instructions, and directional arrow signs. These three types of signs are instrumental in notifying voters that the site is language accessible. Without such signs, voters did not know where to go, whether they would receive assistance, whether they could understand the ballot, or how to operate the voting machine.62 In 2001, the translated voting machine instructions poster at one New York poll site was senselessly hung on the back door of the voting machine where voters could not see it.63

Sample ballots have also been frequently posted in obscure locations. These ballots are essential to the voting process because voters not only refer to them before they vote, but more importantly, interpreters use the sample ballots to help voters understand the ballot.64 In 1999, Los Angeles poll sites were also inconsistent in posting “Interpreter Available” signs.65 The same problem occurred in Alameda County where only street signs in English identifying locations as polling places were posted.66 Even some poll sites that posted non-English signs, failed to place signs in other

56. 2001 AALDEF SECTION 203 REPORT, supra note 7, at 10.
58. Letter from Kathay Feng, supra note 40, at 4-5.
59. 2001 AALDEF SECTION 203 REPORT, supra note 7, at 10.
61. Letter from Kathay Feng, supra note 40, at 4.
63. Id. at 10.
64. Id.; Letter from Kathay Feng, supra note 40, at 4.
65. See Letter from Kathay Feng, supra note 40, at 4.
languages. Some poll sites were targeted for more than one Asian language for assistance, but many of those had poor signage in all the required languages. For example in New York, sites had either the Korean or Chinese voting machine instructions signs, but not both. Likewise, if materials were placed for public viewing, they were typically Chinese or Korean materials, not both. Poll workers were often unable to differentiate between Chinese and Korean materials and signs. In 2002, some New York poll workers thought the Korean and Chinese translated signs were interchangeable. When an AALDEF monitor asked whether there were Chinese voting machine instructions signs, the poll worker pointed to a Korean sign. The AALDEF monitor mentioned that it was a different language, to which the poll worker responded, "Is there a difference?"

2. Training

The failure of poll workers to accommodate limited English proficient voters often resulted from their own unfamiliarity with basic election processes or discriminatory attitudes. An alarmingly high number of poll workers had no idea that any form of language assistance was available for voters or even how to provide them with assistance. At other times, they did not know what to do with translated materials.

One common misconception held by poll workers was the erroneous assumption that translated materials only had to be produced if requested. However, if the materials were not out, voters did not know that they were even available to request them. Moreover, the poll workers were usually not bilingual and needed voters to make the request for translated materials in English. In 2002, a poll site supervisor in New York said he knew that they had signs and materials in Chinese and Korean but did not know that they had to be posted and made available for voters. At another site, poll workers described translated materials as "clutter." Poll workers were cavalier about posting translated signs and making bilingual materials available for voters. They often kept materials hidden from view for inadequate reasons, such as their concern for tidiness. Throughout its monitoring process, AALDEF has made numerous complaints about poll worker disregard for translated materials. This attitude is especially detrimental to the voting process because it undermines the accessibility of elections to limited English proficient voters.

67. 2002 AALDEF SECTION 203 REPORT, supra note 12, at 8.
68. Id. at 10.
69. Id.
70. See, e.g., 2001 AALDEF SECTION 203 REPORT, supra note 7, at 10; 2002 AALDEF SECTION 203 REPORT, supra note 12, at 10; Letter from Kathay Feng, supra note 40, at 3.
71. 2002 AALDEF SECTION 203 REPORT, supra note 12, at 10.
72. Id.
73. Id. at 8.
One solution to this glaring problem is to provide poll workers with better training and supervision in the use of translated materials and posting of translated signs. Many of the current training procedures inadequately cover language assistance. At one training for poll workers in New York, the trainer glossed over the entire section on translated signs and materials.\(^7\) This problem can also be improved through the adoption of Election Day quality-control procedures. Elections officials should dispatch staff to inspect sites for all translated language materials and signs. This procedure is now used in New York and has helped to ensure that materials are taken out of their supply kits, made available to voters, and that signs are adequately posted.\(^7\) These relatively simple reforms can help local elections administrators fully meet the requirements of Section 203 and facilitate access to the vote.

C. Oral Language Assistance

Section 203 requires that jurisdictions provide oral language assistance, often through bilingual poll workers, typically called interpreters, to assist voters and poll workers.\(^7\) Occasionally, however, poll sites had too few interpreters to assist voters, or the interpreters spoke the wrong languages or dialects, performed their duties poorly, if at all, and were not trained.\(^7\) Sometimes, poll workers interfered with language assistance and blocked interpreters from assisting voters.

1. Interpreter shortages and performance

There have been many problems with the insufficient availability of interpreters. In New York, most of the 2001 poll sites that AALDEF inspected for language assistance lacked the required number of interpreters. In total, approximately 150 interpreters were assigned, but only roughly 100 showed up on Election Day.\(^7\) Likewise, in Los Angeles, though the number of bilingual poll workers has steadily increased over the years, the number has still remained insufficient to provide full coverage to sites needing bilingual oral assistance.\(^7\) The same deficiency in bilingual poll worker numbers occurred in San Francisco and Alameda Counties.\(^8\)

Another problem was the lack of coordination in meeting voter language needs. In some cases, interpreters spoke non-English languages or dialects that were not needed at the specific poll sites. In Los Angeles’

\(^7\) Id. at 17.

\(^7\) 2001 AALDEF SECTION 203 REPORT, supra note 7, at 11.

\(^7\) See 28 C.F.R. §§ 55.18(a), 55.20.

\(^7\) See, e.g., 2001 AALDEF SECTION 203 REPORT, supra note 7, at 8-9; Letter from Kathay Feng, supra note 40, at 1.

\(^7\) Letter from Kathay Feng, supra note 40, at 1.

\(^7\) Letter from Frank Tse, supra note 50 (regarding Bay Area Section 203 Monitoring 1998-99 Report).
Chinatown, some interpreters only spoke Mandarin when Cantonese and Fujianese were needed.\footnote{81}{Letter from Kathay Feng, \textit{supra} note 40, at 1 (discussing bilingual precinct workers).}

The last recurring problem was interpreters' inaccessibility or outright refusal to carry out their duties. In New York, the Chinese interpreters at one site did not approach voters and provided only minimal assistance. A poll worker came to the interpreter table seeking assistance for a voter and the interpreters declined to assist them. The site supervisor had to seek bilingual partisan poll watchers for candidates to translate for the Chinese voters.\footnote{82}{2001 AALDEF \textit{SECTION 203 REPORT}, \textit{supra} note 7, at 9.}

On Election Day, interpreters were often assigned tasks other than assisting limited English proficient voters. For example, interpreters were found looking up non-Asian voters names in the book of registered voters while Asian American voters were waiting for language assistance.\footnote{83}{2002 AALDEF \textit{SECTION 203 REPORT}, \textit{supra} note 12, at 12.} A number of interpreters did not wear nametags or badges indicating that they could assist voters with language translations. Nametags are important because they inform voters from whom they can obtain nonpartisan assistance. In past elections, bilingual candidate poll watchers were found improperly influencing voters through their language interpretations. The poll watchers were observed as not only showing voters how to vote but also who to vote for. Therefore, it is important to ensure that nonpartisan interpreters both receive a sufficient number of name tags and clearly wear their identifying badges.\footnote{84}{\textit{Id.}}

2. \textit{Interpreter trainings}

Poll monitoring groups found that in many cases interpreters were not trained or were poorly trained. At a New York interpreter training in 2001, the trainer gave inspirational words about working as a team, but provided only a scant review of election procedures and confusing instructions about assisting voters.\footnote{85}{2001 AALDEF \textit{SECTION 203 REPORT}, \textit{supra} note 7, at 8.}

Some interpreters could not be trained because local municipalities failed to provide notice of the trainings. In 2001, New York interpreter applicants were notified of trainings after the training had occurred. In another case, one interpreter was assigned to attend a training session on August 6. The postcard about the training was postmarked on August 8 and received on August 16.\footnote{86}{\textit{Id.}} AALDEF observed the effects of the lack of training through witnessing interpreters who were unfamiliar with election rules regarding provisional ballots. When voters were not listed in the book, instead of having them vote by provisional ballot to preserve their votes, the interpreter turned the voters away depriving them of their right to vote.
vote.  

Interpreters must not only be adequately notified of trainings in advance, but they must also be better trained in all election procedures. Also, more concerted efforts must be taken to recruit and assign interpreters. A stand-by pool of interpreters ready to be dispatched on the morning of elections can alleviate interpreter shortages. The New York City Board of Elections implemented this interpreter pool system in 2003. The results were quite startling as monitors found that poll sites were well stocked, sometimes even overstocked, with interpreters during elections.

3. Poll worker interference with language assistance

Sometimes the interference with oral language assistance came from the poll workers themselves. This interference arose mainly when interpreters tried to assist Asian voters. Under Section 203, voters have a right to be assisted by persons of their choice and may have those individuals accompany them inside the voting booth. Too often, poll workers refused to abide by the voters’ wishes and the law.

There were numerous documented instances where poll workers did not trust official interpreters and would not allow voters to bring the interpreters inside voting booths to help them, as the voters requested. Interpreters complained that workers segregated the interpreters, made them feel unwelcome, and tried to keep them far away from voters, making it difficult for them to assist voters. For example, in 2002 in New York, while an interpreter was assisting a Korean voter, a poll worker kept the voting booth curtain wide open so he could monitor the voter placing his ballot. The voter testified that she felt uncomfortable with voting while the poll worker looked over her shoulder and made a complaint. At another site, a voter asked an interpreter to assist her inside the voting booth. After both had entered, a poll worker physically removed the interpreter from the booth, making the voter unable to complete her vote. Sometimes, because of their distrust, poll workers even forbade interpreters from speaking in Chinese or Korean to voters.

Sometimes the reverse occurred, when poll workers would not let
anyone assist voters except official interpreters. Voters have the right to be assisted by persons of their choice. This includes interpreters, but also friends and family members. There were a number of instances where poll workers did not allow voters’ relatives to assist them. For example, in New York, when voters brought friends to assist them and the voters wanted their friends to accompany them inside the booth, the poll workers said it was not allowed and that only official interpreters could accompany voters.

The problem of poll worker interference with language assistance can be partially traced back to poor training. During one training for poll site supervisors, the trainer correctly explained that interpreters may enter voting booths with voters, and without poll workers, if voters ask. However, the trainer seemed uncomfortable with this and after he gave the instruction he made comments suggesting that since poll workers did not know what the interpreters were saying, the interpreters were probably biased and electioneering.

Poll workers need better training in election procedures, voters’ rights to language assistance, and language assistance options. Trainings should also stress voters’ right to be assisted by persons of their choice, who may also accompany voters inside the voting booth at the voters’ requests.

D. Discrimination by Poll Workers

In addition to interfering with language assistance, AALDEF observed and heard complaints that poll workers were illegally creating new voting requirements that only applied to Asian American voters. Furthermore, these complaints alleged rude, hostile, and racist remarks from poll workers. Indeed, anti-Asian voter discrimination, harassment, and intimidation are well documented. Again, some of these problems can be traced back to poll worker trainings, but at some level the only explanation is a deeply ingrained prejudice against Asian Americans. The hostility expressed by poll workers was often coupled with refusals to allow Asian voters to receive language assistance.

In New York, identification is not required to vote. The proper procedure is simply a matching signature and taking an oath. Yet in the 2002 elections, several poll workers illegally required Asian American voters to show identification to check their addresses and confirm their identity. In 2002, over 300 Asian American voters said that they were required to provide identification. AALDEF observed a troubling trend

95. 2002 AALDEF SECTION 203 REPORT, supra note 12, at 13; 2000 INCREASING ACCESS TO THE BALLOT FOR NEW CITIZENS, supra note 47, at 5.
96. Id.
97. Id. at 14-16.
100. Id. at 14.
when a number of times poll workers only demanded identification of Asian American voters, not their white counterparts.\textsuperscript{101} On one occasion, a poll worker even tried turning away a voter because the address on her prescription drug card, which she explained was an old address, did not match the address in the book of registered voters.\textsuperscript{102}

In addition to creating additional voting requirements for Asian Americans, poll workers in New York and Los Angeles were often inconsiderate, rude, hostile, discriminatory, and made disparaging remarks about language assistance and Asian American voters.\textsuperscript{103}

In New York, thirty-five Asian Americans reported that poll workers were “discourteous” and twenty-three said they were “hostile” during the 2002 elections.\textsuperscript{104} AALDEF monitors were present when many of these racist remarks and gestures occurred. One poll worker went so far as to pull the corners of her eyes back and say, “I can tell the difference between a Chinese and a Japanese by their chinky eyes.”\textsuperscript{105} Another referred to Asian American voters as “terrorists.”\textsuperscript{106} A third poll worker said that she believed that only English voting materials should be used “because we’re all Americans.”\textsuperscript{107}

In New York during the 1998 elections, one poll worker scolded four Chinese American sisters for their inability to understand English and for reading the Chinese language voting instructions. They were then told that the polls had suddenly closed early, and a poll worker tried to remove them from the premises.\textsuperscript{108}

In 1999 in Los Angeles, one poll worker was observed as speaking impatiently and rudely to elderly Filipino voters who had difficulty understanding his instructions in English. At another site, poll workers were rude to an Asian American voter who failed to bring in his absentee ballot and complained about finding “Oriental” names in the voter roll book. At a third site, poll workers sent Chinese American voters to the back of the line because they had difficulty finding the voters’ names and believed the extra time needed to assist the voters was holding “everyone else up.”\textsuperscript{109}

These problems were not only observed on Election Day. In 2002 in New York, at a poll worker training class held before the election, the

\textsuperscript{101} Id.
\textsuperscript{102} Letter from Margaret Fung, \textit{supra} note 42, at 4.
\textsuperscript{103} 2002 AALDEF SECTION 203 REPORT, \textit{supra} note 12, at 14-16; Letter from Kathay Feng, \textit{supra} note 40, at 3 (discussing bilingual precinct workers).
\textsuperscript{104} 2002 AALDEF SECTION 203 REPORT, \textit{supra} note 12, at 14-16.
\textsuperscript{105} Id.
\textsuperscript{106} Id.
\textsuperscript{107} Id.
\textsuperscript{108} Letter from Glenn D. Magpantay, NAPIL Equal Justice Fellow, AALDEF, to Daniel DeFrancesco, Exec. Dir., New York City Board of Elections 1-2 (Oct. 21, 1998) (on file with author). Only after a heated argument and after a police officer recognized the Chinese American sisters’ right to vote, were they allowed to enter the voting booth.
\textsuperscript{109} Letter from Kathay Feng, \textit{supra} note 40, at 3.
trainer and two other training assistants made disparaging comments about language assistance. The trainer said that he was resentful that language assistance was provided in Chinese and Korean, while another assistant said that non-English speakers should not be allowed to vote because they could not know about current events or understand politics. The other assistant said that voters needed to learn the "national language," and that he had a problem with upholding a law that required language assistance.¹¹⁰

These discriminatory attitudes have resulted in many Asian American voters being turned away from the polling sites and further discouraged from returning to vote.¹¹¹ Local elections official must stop this discriminatory behavior by investigating all complaints of poll worker hostility and discrimination. Officials should take the appropriate actions against offending poll workers, including retraining, reprimanding, and removing them from their posts.

IV. RECOMMENDATIONS AND IMPROVEMENTS

There are a number of ways to ensure Asian Americans have access to the right to vote. First, local jurisdictions must endeavor to better comply with the requirements of Section 203 and correct the ground deficiencies. Second, expanded language assistance beyond the languages and jurisdictions already covered under Section 203 should be provided. Third, Congress should strengthen Section 203.

A. Recommendations to Ensure Compliance

In determining whether a jurisdiction has met its obligations under federal law, the Attorney General inquires whether the covered jurisdiction has taken all reasonable steps to achieve the goal of increasing voting participation of a language minority.¹¹² In the jurisdictions discussed herein, it is apparent that not all reasonable steps have been taken. Notwithstanding the progress in implementation, local irregularities and inconsistencies abound, and some jurisdictions still resist fully complying with Section 203's mandates.

First, elections officials in covered jurisdictions should take more care in translating and typesetting ballots and transliterate all names of candidates.¹¹³

Second, training of local Election Day workers must be improved. Trainings should include the obligation, need, availability, and proper use

¹¹¹. See generally Id. at 14-16 (describing incidents of discriminatory attitudes and acts by pollworkers towards Asian American voters).
¹¹². See 28 C.F.R. § 55.2 (b)(1), (2) (describing the Act's objective of enabling language minority groups to effectively participate in the electoral process and the standards for measuring compliance).
¹¹³. 2000 NAPALC SECTION 203 REPORT, supra note 37; 2001 AALDEF SECTION 203 REPORT, supra note 7, at 1, 17 (recommendating translation of voting materials into Korean); 2002 AALDEF SECTION 203 REPORT, supra note 12, at 7.
of bilingual materials and posting of bilingual signs.\textsuperscript{114}

Third, increased efforts are needed to ensure a sufficient number of interpreters are available on the day of election. They must also be able to speak the needed Asian languages or dialects at their designated poll sites.\textsuperscript{115}

Fourth, poll workers who intentionally discriminate, harass, or intimidate Asian American voters or voters using language assistance should be reprimanded and if necessary, removed from their posts.\textsuperscript{116}

Additionally, local election administrators should work closely with advocacy groups to assess the quality of language assistance efforts and avert possible problems.\textsuperscript{117}

To force jurisdictions to take action, the U.S. Department of Justice should continue to send federal observers to monitor local implementation of Section 203.\textsuperscript{118} When there is clear racial animus, the Department should also initiate litigation to compel compliance where jurisdictions are resistant.\textsuperscript{119} Findings from civil rights groups that monitor elections for compliance with Section 203 can provide much of the detailed evidence needed for lawsuits, or threat thereof.

\textbf{B. Limitations of Section 203: Voluntary Assistance}

While Section 203 has significantly helped to increase the accessibility of the voting booth to countless Asian Americans, complete access to the right to vote has yet to come into fruition. One limitation of Section 203 is that it overlooks the needs of many Asian American voters in other parts of the country not covered by the select jurisdictions under the current numerical criteria. To address the greater need for language assistance, advocates have pressed for voluntary assistance for those jurisdictions which are not yet covered.\textsuperscript{120}

Before the 2000 census results were released, some of these campaigns successfully introduced language assistance in jurisdictions that

\textsuperscript{114} Letter from Kathay Feng, \textit{supra} note 40; 2001 AALDEF \textit{SECTION 203 REPORT}, \textit{supra} note 7, at 17; 2002 AALDEF \textit{SECTION 203 REPORT}, \textit{supra} note 12, at 10.

\textsuperscript{115} \textit{Id.}; 2000 \textit{INCREASING ACCESS TO THE BALLOT FOR NEW CITIZENS}, \textit{supra} note 47, at 4.


\textsuperscript{117} Letter from Frank Tse, \textit{supra} note 50, at 1 (on file with author) (regarding Bay Area Section 203 Monitoring 1998-99 Report); 2001 AALDEF \textit{SECTION 203 REPORT}, \textit{supra} note 7; 2002 AALDEF \textit{SECTION 203 REPORT}, \textit{supra} note 12, at 5.

\textsuperscript{118} \textit{See} 42 U.S.C. \textit{§} 1973c.

\textsuperscript{119} The Department of Justice is responsible for enforcement of Section 203 of the Voting Rights Act. 28 CFR \textit{§} 55.2 (b)(1), (2). The Department has already used three jurisdictions for Section 203 compliance for Spanish language assistance. See United States v. Passaic County (D.N.J. June 1999) (Consent Decree); United States v. City of Lawrence, Civ. 98 CV 12256 (WGY) (D. Mass. 1999) (Settlement Agreement and Order); and United v. Bernalillo County, Civ. CV-98-156 (BB, LCS) (D.N.M. April 22, 1998) (Consent Decree).

\textsuperscript{120} After the 2000 census numbers were released, in 2002, Korean was included as a required language in Los Angeles and New York. Voting Rights Act Amendments of 1992, Determinations Under Section 203, 67 Fed. Reg. 144, 48871-77 (July 26, 2002).
were not covered by Section 203, such as Atlanta, Georgia and Boston, Massachusetts. Voluntary assistance also expanded language assistance to other languages in areas which already had some Section 203 coverage, such as Korean in Los Angeles and New York.

1. Local advocacy campaigns

a. Los Angeles, California - Korean

In Los Angeles County, advocacy efforts began as early as 1994 to urge the City of Los Angeles to provide voluntary Korean language assistance. The Asian Pacific American Legal Center and Korean American Coalition successfully mobilized the Korean American community, ethnic media, and broader Asian Pacific Islander community to push to give assistance to Korean voters.\footnote{121}

Under Section 203's test for eligibility the Korean American community exceeded the numerical threshold requirement with 21,611 voting-age citizens of limited-English proficiency,\footnote{122} but fell short of meeting the illiteracy test.\footnote{123} Illiteracy rates for Korean Americans were inaccurately measured by responses to questions regarding education level on the 1990 census form.\footnote{124} Many Korean Americans received their education before immigrating to the United States and were thus not proficient in English. The level of educational attainment of Korean Americans is not an accurate indicator of English proficiency. As a result, a number of Korean Americans in Los Angeles remained disenfranchised from the electoral process.\footnote{125}

The need for bilingual materials in the Korean language has been well-documented by both APALC and KAC.\footnote{126} Results of a 1994 Exit Poll conducted by APALC and the Korean American Voting Project demonstrate that an overwhelming 81% of Korean American respondents felt that Korean language voting materials would increase voter participation in the Korean community. Moreover, 60% of respondents felt that the availability of Korean language ballots would influence their voting behavior. In addition, a June 1997 survey administered by KAC found that 95.8% of Korean American respondents expressed a need for the provision of translated materials at the ballot.

On September 15, 1998, the Korean community was victorious when the County Board of Supervisors unanimously voted to appropriate

\footnote{121} Media Advisory, Asian Pacific American Legal Center, L.A. County Board of Supervisor to Vote on Korean Voting Materials, (Sept. 14, 1998).
\footnote{122} Letter from Stewart Kwoh, Pres. and Exec. Dir., and Bonnie Tang, Staff Attorney, Asian Pacific American Legal Center to Gloria Molina, Supervisor, First District, County of Los Angeles 1 (Sept. 1, 1998) (on file with author) [hereinafter Letter from Stewart Kwoh].
\footnote{124} Id.
\footnote{125} Letter from Stewart Kwoh, supra note 122.
\footnote{126} Id.
sufficient funds to translate written materials into Korean. Such materials became available county-wide.

b. Atlanta, Georgia - seven Asian languages

According to the Census Bureau, the Asian Pacific American community in the South increased 45% from 1990 to 1996, with the greatest population increases occurring in Georgia. In the six year span, Georgia's Asian Pacific American population increased 70%. This population growth has brought a diversity of languages to the area. In some schools in DeKalb County, more than 50 languages and dialects are spoken.

In response to this need, in 1998, the Asian Pacific American Coalition organized meetings with government officials, including then-Assistant Secretary of State Cox and then-Secretary of State Massey. The Coalition organized a state-wide non-partisan advocacy campaign, emphasizing the importance of increased Asian Pacific American participation in the political process.

After many negotiations concerning the budget for the provision of voting assistance materials, Secretary of State Cox agreed to provide over $6,000 in state funds to print voter registration and elections guides in Korean, Chinese, Hmong, Khmer (Cambodian), Thai, Laotian, and Vietnamese. In addition, the State also agreed to use Asian American printing presses to generate these materials. In turn, the Coalition offered free translation services. The group then moved on to work on a state bill to provide absentee ballots for those with limited English proficiency.

c. Boston, Massachusetts - Chinese, Vietnamese, Khmer

To increase the political participation of Asian Americans, the Secretary of State provides state-wide voter registration forms in Chinese, Vietnamese and Khmer. The Boston Election Commission also provides Chinese and Vietnamese speaking interpreters at poll sites in Chinatown and Dorchester, respectively, to assist voters. However, some community groups have raised concerns about the potential for abuse by these individuals who are not always nonpartisan. The Chinese Progressive Association has documented instances where interpreters improperly advised voters on which candidates to vote for and have even pulled the lever of particular candidates for the voter.

To alleviate these concerns, the Election Commissions must improve its training of bilingual poll workers. This entails setting guidelines for how to appropriately render assistance, and developing and enforcing strict

127. Letter from Don Knabe, Supervisor, Fourth District, County of Los Angeles, to Stewart Kwoh, Executive Director, Asian Pacific American Legal Center (Sept. 17, 1998) (on file with author).
128. 2000 NAPALC SECTION 203 REPORT, supra note 37.
procedures for dealing with voter complaints. Translating voting materials into Chinese, Vietnamese, and Khmer, particularly the ballot and instructions on how to operate the voting machine, would greatly help reduce such abuse by making it easier for non-English speaking voters to vote privately and free of undue influence.

d. Queens, New York - Korean

According to the 1990 Census Report, Korean Americans in Queens, New York fell less than three-hundred persons short of meeting Section 203’s numeric threshold of 10,000 voting-age citizens. Notwithstanding the population explosion of the community in Queens, the New York City Board of Elections was resistant to translating materials beyond those that were already mandated under federal law.

In 1995, advocacy efforts spearheaded by AALDEF, Young Korean American Service and Education Center, and Coalition of Korean American Voters, resulted in the Board of Elections voluntarily providing Korean language interpreters at selected poll sites. Korean American community groups also offered to help make more materials available in Korean by translating additional materials such as the voter registration forms and voting machine instructions. Unfortunately, the Board was unwilling to accept this offer before translated materials were required.

e. San Jose, California – Chinese and Vietnamese

The Asian Law Alliance led a coalition of Latinos, Vietnamese Americans and Chinese Americans working to ensure that limited English proficient voters in San Jose had access to the ballot box. In the November 1993 election, Santa Clara County voluntarily provided bilingual ballots in Vietnamese and mailed Vietnamese/English ballots to all voters who indicated that they were born in Vietnam.

Santa Clara County also undertook a needs assessment for the Chinese-speaking community. A citizen’s advisory committee was formed to monitor and provide suggestions on the bilingual voters program. Since 1996, the County voluntarily provided Chinese bilingual ballots. Chinese/English ballots were sent to everyone who indicated that they were born in Taiwan, the Peoples Republic of China, and Hong Kong. In addition, the County hired three bilingual outreach workers who spoke the appropriate languages to register and educate voters.

2. Funding for voluntary assistance

Written translations can be prohibitively expensive. Due to these high costs, elections officials have been unwilling to provide the necessary discretionary money to provide written language assistance. In 2002, Congress enacted the Help American Vote Act (HAVA)\(^\text{130}\) which can help

\(^{130}\) Pub. L. No. 107-252, 107th Cong., 42 U.S.C. 15301-15545 (Oct. 29, 2002). HAVA was
pay for these costs.

HAVA provides federal money to states in order to improve the administration of elections. Money may be used to improve accessibility to the vote and poll sites for "individuals with limited proficiency in the English language."\textsuperscript{131} This, however, is not a specific obligation and states have broad discretion in whether to use the money for language assistance or some other purpose altogether. Nevertheless, if states and localities seek this funding, the federal government will pay for translating voting materials and providing interpreters at the polls. Local advocacy from community groups is essential to ensuring that HAVA is used for these purposes.\textsuperscript{132}

3. Methodologies for voluntary assistance

If states opt to translate materials, they also have the discretion to decide which materials to translate and where such materials should be provided. There are various options to providing language assistance.

One option is that a state can develop a specific methodology to determine which languages and locations to provide language assistance. This could change periodically depending on the size and growth of the language minority group, rates of citizenship, and level of English proficiency. Once languages and locations are identified, all voting materials should be translated, including the ballot, which varies by poll site and election district/precinct.

Another option is to translate only certain materials, but make them available statewide. Because HAVA systematizes many voting operations, voter registration forms, voting instructions, nonpartisan election guides for statewide offices, and voters' rights flyers can all easily be provided in various languages. This would minimize costs because such materials would only need to be translated once and can be used across the state.

Localities not covered under Section 203 with large Asian American populations should provide written and oral language assistance. Some of these localities and Asian languages include:\textsuperscript{133}

California:
  Los Angeles: Khmer, Thai, Somoan\textsuperscript{134}

Hawai‘i
  Honolulu: Korean\textsuperscript{135}
  Hawai‘i Island: Filipino\textsuperscript{136}

\textsuperscript{131} Help American Vote Act (HAVA) § 101 (b)(1)(G).
\textsuperscript{132} Indeed, power concedes nothing without a demand and states are unlikely to seek money for translating voting materials into Asian languages on their own volition.
\textsuperscript{133} ASIAN POPULATION, supra note 6.
\textsuperscript{134} 2001 NAPALC SECTION 203 REPORT, supra note 7.
\textsuperscript{135} Interview with President, Korean American Bar Association, in Honolulu, Haw, (Nov. 20, 2003) (on file with author).
New Jersey:
    Bergen: Korean
    Middlesex: Chinese
Massachusetts:
    City of Boston: Chinese
    Dorchester: Vietnamese
    Lowell: Khmer
Pennsylvania
    Philadelphia: Chinese

Because Asian American populations are so concentrated in these states and localities, states should translate as many voting materials as possible, especially ballots.

Some states have large Asian American populations that are geographically dispersed. These states include Georgia, North Carolina, Maryland, Virginia, and Oregon for Chinese, Korean, Khmer, and Vietnamese. In these states, translating only some voting materials, like voter registration forms, voter rights flyers, and instructions in how to vote, would be most effective, provided they are available statewide.

In the same respect, some localities already covered under Section 203 for one or more languages, may be persuaded to provide assistance in other languages as well. For example, New York City is already covered for Chinese and Korean assistance. Translated voter registration forms in Bengali and Urdu would be helpful to the growing number of Bangladeshi and Pakistani voters.

In provide voluntary assistance based upon need, the nature, amount, and language of the materials to be translated. Because this is all left to the discretion of states and localities, local advocates must be tenacious in persuading them to seek federal funds to provide Asian language assistance to the vote.

Although HAVA itself does not expand language assistance already required under the Voting Rights Act, HAVA can be a tool for states to voluntarily provide or expand language assistance so many more Asian Americans can access the vote.

C. Statutory Improvements to Section 203

Beyond these voluntary efforts, additional systematic efforts are needed to expand the availability of bilingual ballots and voting materials. One important step to realize this goal is through strengthening the Language Assistance Provisions of the Voting Rights Act. Congress should go further and consider ways to ensure that all Americans can fully exercise their right to vote by easing Section 203’s test for coverage and the

137. ASIAN POPULATION, supra note 6.
frequency for testing coverage.

1. Reevaluate the illiteracy test

Section 203 does not require a local jurisdiction to provide language assistance unless the illiteracy rate of the relevant language minority community is less than that of the national average. The requirement or determination of a higher illiteracy rate has denied some Asian American communities bilingual assistance. The current measurement of illiteracy—less than a fifth grade U.S. education—has little to do with English proficiency. Indeed, Section 203 already includes limited English proficiency as a separate element in its test for coverage. Illiteracy is an additional element.

Illiteracy is measured by responses to the educational attainment question on the decennial census form. But, the question is ambiguous and could be interpreted as education received either abroad or in the U.S. As a result of this ambiguity, some professionally educated Asian Americans may be deemed to not need language assistance, even though they may be completely English illiterate or non-English proficient. This same statutory peculiarity excluded many Korean Americans in Los Angeles after the 1990 census.

The achievement of a fifth grade education outside of the U.S. should not be relevant to whether Section 203 coverage is triggered. Congress should amend Section 203 to eliminate the requirement for a higher illiteracy rate than the national average.

2. More frequent testing for coverage

Section 203 coverage should be determined more frequently than once every ten years. Because Section 203 relies exclusively on official data from the decennial census to determine jurisdictions and language coverage, it is too slow to respond to the growing Asian American population. This denies language assistance to emerging Asian American communities, simply because they arrive, naturalize, or reach voting age mid-decade. Even though a language minority group within a jurisdiction would meet the test for coverage mid-decade, the community must wait until the decennial census to be officially covered. In the meantime, many citizens are denied the right to vote.

For example, in New York, the Korean American population grew

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138. 42 U.S.C. § 1973aa-1a (b) (2) (A) (ii) (2004) ("The illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate").
139. H.R. Rep, No. 94-196 (1975) (recommended an amendment of Title III of the Voting Rights Act of 1965 to extend coverage to language minority citizens); 42 U.S.C. Sec. 1973aa-1a (b) (3) (E) ("The term 'illiteracy' means the failure to complete the 5th primary grade").
141. 42 U.S.C. Sec. 1973aa-1a (b)(2)(A) (stating that coverage is determined by the Director of the Census based on census data).
tremendously during the first few years of the 1990s. But only the official
decennial census figures could be used to determine Section 203 coverage.
When the 2000 census results were released, Korean became a covered
language under Section 203. However, before 2000, advocates in New
York had to campaign for local elections officials to voluntarily provide
Korean interpreters.

Congress should expand the methods of determining whether Section
203 has been met beyond using only the official decennial census numbers.
Currently, the U.S. Census Bureau is considering mechanisms for a census
every two or three years. In fact, such censuses, namely American
Community Survey (ACS), will provide more timely and accurate
information. Congress should authorize use of this census and allow
Section 203 coverage to be determined each time the figures are
released.

In order to effectuate the goals of the language assistance provisions
of the Voting Rights Act, and to make the voting booth truly accessible to
America's newest citizens and voters, Section 203 should be
strengthened.

V. CONCLUSION

On the eve of the 2004 Presidential Elections there is an opportunity
to expand the language accessibility of the voting booth. Congress, the
Department of Justice, and local elections administrators should fully
consider the findings and recommendations herein. The important
objectives of safeguarding and expanding the fundamental right to vote for
all Americans can only be achieved through strengthening Section 203 and
ensuring its proper implementation.

142. This is not a replacement for the total population enumeration, codified in the Constitution of
the United States. That census, conducted through a “short form,” only asks a few basic questions,
namely address, age, race, gender, family relationships. Every person in the U.S. must complete this
questionnaire. ACS would simply replace the census “long form” which asks many more detailed
questions, those that are in the “short form” and additional questions about citizenship, the ability to
speak English, housing, income, and a host of other questions.

143. Additionally, the chronic undercount of racial and ethnic minorities in the census also
threatens coverage of jurisdictions and languages. Modern scientific techniques, like statistical
sampling to correct for undercounts, should also be employed to ensure the most accurate census data.

144. Furthermore, the Language Assistance Provisions of the Voting Rights Act should be
defended against attempts to repeal it. Notwithstanding the success of Section 203, Congress continues
to entertain legislation seeking to repeal it. In the 105th Congress, for example, Rep. Bob Barr (R-GA)
proposed an amendment to a bipartisan campaign finance reform bill that would have repealed Section