



## **The Need for Stronger Language Access Protections in the California Elections Code**

In support of proposed legislation from Assemblymember Rob Bonta and  
Asian Americans Advancing Justice – California

### **I. Introduction**

As California's population grows and continues to diversify, the state must update its laws guaranteeing language access in voting in order to ensure all Californians have equal access to our democracy. Through the legislation we propose, the state has an opportunity to lead the nation by offering robust but cost-effective language assistance at the polls to limited-English proficient (LEP) voters not covered by Section 203 of the Voting Rights Act.

According to the U.S. Census Bureau, California is home to 6.8 million individuals over 5 years old who are limited-English proficient.<sup>1</sup> The vast majority of Californians who need language assistance when voting receive it under Section 203 of the federal Voting Rights Act, which mandates fully bilingual elections when minority language populations reach certain thresholds in any given county. The federal Department of Justice actively enforces Section 203 in California,<sup>2</sup> ensuring access to the ballot for the portion of LEP Californians covered by federal law.

But California fails the 534,000 LEP residents, including 327,000 Asian Americans and 207,000 Latinos,<sup>3</sup> who live in precincts not covered by Section 203 and who instead receive language access protections under the terms of state law. The California Elections Code's language access requirements are not sufficient to provide meaningful language assistance to LEP in-person voters, provide zero assistance for LEP vote-by-mail voters, and are lacking any reporting or oversight mechanisms. The shortcomings of state law's language access requirements are underscored by the findings from Advancing Justice – Asian Law Caucus' November 2016 poll monitoring program, which sent volunteers to 787 polling places across 17 counties. Compliance with the language access requirements in state law was substantially worse than compliance with the language access requirements of federal law.

The expanded set of state law language access requirements we propose would be the first of its kind in the nation and would help to build a California electorate that reflects the full diversity of California itself. A summary of our bill and bill language is in an accompanying document.

### **II. Language access requirements in the California Elections Code**

If Section 203 covers a county for a language, that county is required to provide fully bilingual elections in that language. However, many minority language communities around the State are not

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<sup>1</sup> U.S. Census Bureau, 2010-2014 American Community Survey 5-Year Estimates.

<sup>2</sup> Since 2000, the federal Department of Justice has brought actions to enforce Section 203 against Napa County, Alameda County, San Diego County, Riverside County, Ventura County, and San Benito County. It has also brought actions against several California cities for failure to provide adequate language assistance in city elections.

<sup>3</sup> Data provided by the Statewide Database & Election Administration Research Center at the University of California, Berkeley, via the California Secretary of State.



large enough to meet Section 203's population thresholds.<sup>4</sup> State law fails to provide adequate language assistance to these communities.

Under California Elections Code Section 14201, when a LEP minority language community comprises 3 percent of the residents of a precinct, the relevant county elections office must translate only one thing: a "facsimile" copy of the ballot that is posted in a "conspicuous" location in the polling place for that precinct. The facsimile ballot is a translated replica of an English ballot that the voter cannot vote on; he or she can only view it while voting on an English ballot. Section 14201 does not provide for any translated signage or other voting materials, does not mandate training of poll workers on its requirements, does not require voter education to inform voters that the facsimile ballot is available, and does not offer anything to vote-by-mail voters.

When a LEP minority language community reaches 3 percent of a precinct, the elections office must also make "reasonable efforts" to recruit bilingual poll workers to work the polling place associated with that precinct on Election Day, pursuant to California Elections Code Section 12303(c). The term "reasonable efforts" is not defined.

### **III. Weaknesses of the language access requirements in the California Elections Code**

- a. Facsimile ballots are too easily missed, are frequently forgotten by poll workers, do not allow for casting of a private ballot, and provide no assistance to vote-by-mail voters.

Voters have no reason to expect, look for, or ask about a facsimile ballot when arriving at the polling place. Nothing in the voter's sample ballot lets the voter know he/she should look for a facsimile ballot and no county we have spoken to claims to do any voter education or outreach to LEP voters to inform them about facsimile ballots. Over 40 percent of polling places we visited in November 2016 had no signage alerting voters to the presence of facsimiles and multiple poll workers told our poll monitors that they were not aware what a facsimile ballot was and/or did not know when they were supposed to provide a facsimile ballot to a voter. County elections officials have admitted to us they are skeptical anyone uses facsimiles, even in diverse communities.

Perhaps because elections officials do not see value in facsimile ballots or perhaps because they are not required to train poll workers on them, almost one in four required facsimile ballots were missing at the polling places we visited in November 2016. By contrast, only one in 28 required Section 203 ballots was missing.<sup>5</sup>

Even if a facsimile ballot is available and is located by voters, it provides a severely limited form of language assistance. Twelve of the 17 counties Advancing Justice – ALC worked with in 2016 posted their facsimile ballots on the walls of polling places, alongside a plethora of other notices and materials.<sup>6</sup>

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<sup>4</sup> Section 203 applies when a LEP minority language community comprises 10,000 voting age citizens within a county or is more than 5 percent of the voting age citizens within a county.

<sup>5</sup> Our poll monitoring program found that 208 of an expected 878 facsimile ballots were missing (23.7%). By contrast, just 42 of an expected 1211 Section 203 ballots were missing (3.5%).

<sup>6</sup> The others make facsimiles available in some other format. Only one county put facsimile ballots on the main tables of its polling places — the most conspicuous and handy location.



Using these facsimiles requires a voter to vote while standing at the wall, toggling between the English ballot and the translated facsimile, denying the LEP voter the opportunity to cast a private ballot.

Not only is Section 14201 ineffective, it's going out of fashion. As California voters increasingly opt for vote-by-mail, Section 14201 serves fewer and fewer people. California runs the risk of disenfranchising voters in need of language assistance simply because those voters chose one voting method instead of another, likely with no awareness of the consequences for the opportunity for language access. The Voters' Choice Act (SB 450) does allow voters to request a facsimile ballot, but absent voter education on the subject of facsimiles, no voter would have reason to request one because voters have no way of knowing they exist.

- b. Bilingual poll workers are not reliably provided in state law languages and bilingual poll workers are frequently not identified for voters.

The requirement that elections offices make "reasonable efforts" to recruit bilingual poll workers who speak the county's Section 14201 languages is not a concrete standard and thus leads to widely disparate approaches to compliance. Some county elections office operate with the assumption that they must try to have a bilingual poll worker in every polling place that has a facsimile ballot and recruit to meet that goal. Other offices openly admit that they have no contacts in minority language communities and have never done outreach to them. Of the 17 counties our team worked with prior to the June elections, 13 say they have never staff or only irregularly staff bilingual poll workers in precincts covered by Section 12303(c).

Even counties that do consistently recruit bilingual poll workers often do not use simple, cost-effective best practices to inform voters about the language skills of their poll workers. In the polling places we visited in November that had bilingual poll workers, poll workers were not wearing name tags, buttons, or stickers that identified their language skills at 33 percent of them and no signage indicated the languages in which poll workers could assist voters at 40 percent of them.

- c. Tracking and enforcement are absent from Sections 14201 and 12303(c).

Counties are not required to file any reports or data with the Secretary of State documenting if and how they complied with state law's language access requirements. It appears the only way to track whether legally-required language assistance is being provided is to speak with or travel to every county subject to Sections 14201 and 12303(c), or to submit a Public Records Act request to each of them. In addition to hindering public oversight, this status quo can and in practice does result in uneven compliance across counties.

#### **IV. Prior California Legislation on language access in voting**

To our knowledge, there has been only one prior attempt to improve Sections 14201 and 12303, which were passed in 1994. AB 614 (2007, Eng), sponsored by Advancing Justice – Los Angeles, would have required counties to submit reports to the Secretary of State documenting how they comply with state law's language access requirements. It would have also required the Secretary of State to work with an advisory group to develop language access best practices. AB 614 was passed by the Legislature but vetoed by Governor Schwarzenegger.



## **V. Conclusion**

California's two fastest-growing population groups — Asian Americans and Latinos — are also the groups least likely to vote and most likely to be limited-English proficient. Just 18 percent of eligible Asian Americans and 17 percent of eligible Latinos turned out to vote in the 2014 general election, compared to 40 percent of eligible non-Asian Americans and Latinos.<sup>7</sup> Voters' language needs contribute to these stark turnout disparities. Of California's Asian American immigrants, 91 percent speak a language other than English at home and 46 percent speak English less than very well.<sup>8</sup> Of California Latinos, 75 percent speak Spanish at home and 34 percent speak English less than very well.<sup>9</sup>

Meeting the language needs of these populations, at the polls and in the vote-by-mail experience, is central to ensuring equal access to our democracy. The legislation we propose will not just signal California's commitment to a fully inclusive democracy, it will enable the state to lead the nation while doing so.

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<sup>7</sup> California Civic Engagement Project, UC Davis Center for Regional Change, *California's Latino and Asian American Vote: Dramatic Underrepresentation in 2014 and Expected Impact in 2016*, Policy Brief Issue 10, July 2015, 2.

<sup>8</sup> U.S. Census Bureau, *2014 American Community Survey 1-Year Estimates*.

<sup>9</sup> *Id.*