



ASIAN AMERICANS
**ADVANCING
JUSTICE**
LOS ANGELES

May 23, 2017

To: Little Hoover Commission
From: Deanna Kitamura, Voting Rights Project Director at Asian Americans Advancing Justice-LA
Re: May 25, 2017 Hearing on Increasing Voter Participation in California Elections

Asian Americans Advancing Justice-LA (Advancing Justice-LA) appreciates the invitation to provide testimony regarding voter participation in California. Advancing Justice-LA is the largest civil rights organization in the nation working in the Asian American and Pacific Islander communities. Advancing Justice-LA is part of a national affiliation including affiliate offices in San Francisco, Chicago, Atlanta, and Washington D.C. Advancing Justice-LA maintains an office in Sacramento (Advancing Justice-California) with our San Francisco affiliate. Advancing Justice-LA maintains three projects related to voting and voter participation: (1) Democracy Project, (2) Demographic Research Project, and (3) Voting Rights Project. Our Voting Rights staff is part of the California Secretary of State's (SOS's) Language Accessibility Advisory Committee and Voter's Choice Act task force, Future of California Election's Voter Choice California Steering Committee, Los Angeles County's Voting Systems Assessment Project and Community Voting Outreach Committee and Orange County's Community Election Working Group.

This submission is written in conjunction with the testimony of NALEO Educational Fund, ACLU of California, and the League of Women Voters. As with the other organizations, we hope that California's election policy efforts will increase and expand our democracy.

Advancing Justice-LA's testimony will focus on four issues:

- Voter Registration at the DMV
- California Voter's Choice Act
- Language Access on Election Day
- Voter Engagement in the Asian American and Pacific Islander Communities

BACKGROUND¹

According to the U.S. Census Bureau, California is home to 6.8 million individuals over 5 years old who are limited-English proficient.² California's two fastest-growing populations – Asian Americans and Latinos – are the groups least likely to vote and the groups most likely to be limited-English proficient. Just 18 percent of eligible Asian Americans turned out to vote in the 2014 general election, compared to 40 percent of eligible non-Asian Americans and Latinos.³

A number of factors play a role in generating these stark turnout disparities; one is language barriers. Of California's Asian Americans, 72 percent speak a language other than English at home and 34 percent speak English less than very well.⁴ In recent elections in Los Angeles County, 32 percent of Asian Americans used language assistance to vote: 50 percent of Korean American voters, 46 percent of Chinese American voters, 11 percent of Filipino American voters. For some in this rapidly growing segment of the electorate, having adequate language assistance in the voting process may determine whether they are able to cast an effective ballot and exercise their most basic right.

Language Assistance under Federal Law (Section 203 of the VRA)

Ten years after its passage, the Voting Rights Act (VRA) was expanded to include protections for language minorities, at a time when institutional language barriers resulted in extremely low voter turnout among immigrant communities. Within the halls of Congress the effort to expand the Voting Rights Act was spearheaded by Congresswoman Barbara Jordan, the first Black woman elected to Congress from the South. Jordan argued that the failure to provide language assistance constituted “a literacy test” comparable to those that disenfranchised Black voters in the South for decades.⁵

¹ Portions of the Background section are taken from Advancing Justice-California's Voices of Democracy: The State of Language Access in California's November 2016 Election. The report can be found at: <https://advancingjustice-la.org/media-and-publications/publications/voices-democracy-state-language-access-califorinas-november-2016>.

² U.S. Census Bureau, 2010-2014 American Community Survey 5-Year Estimates.

³ 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.

⁴ U.S. Census Bureau, 2014 American Community Survey 1-Year Estimates.

⁵ Jorge Chapa, "Expansion and Contraction in LBJ's Voting Rights Legacy," *LBJ's Neglected Legacy: How Lyndon Johnson Reshaped Domestic Policy and Government*, University of Texas Press, 2015, 106.

Coverage formulas

For a minority language community to receive “coverage” under Section 203 of the VRA, the following threshold must be met:

- There must be more than 10,000 limited-English proficient voting age citizens in the minority language community in the jurisdiction, or the limited-English proficient voting age citizens in the minority language community must be more than five percent of all voting age citizens in the jurisdiction; and
- The illiteracy rate of the minority language community must be higher than the national illiteracy rate.⁶

The U. S. Census Bureau determines language coverage every 5 years. The last determination was released December 2016.

Election provisions under federal law

- According to the Department of Justice, if a county is covered for a minority language under Section 203, “All election information that is available in English must also be available in the minority language so that all citizens will have an effective opportunity to register, learn the details of the elections, and cast a free and effective ballot.”⁷ This means that everything from voter registration cards, to ballots, to informational signs, to voter guides must be translated accurately into the covered language. Essentially, Section 203 coverage makes an election fully bilingual.
- Oral language assistance is mandated as well, though the law contains no hard formula for provision of bilingual poll workers. The US Department of Justice (DOJ) states that in its enforcement actions it seeks to determine if counties have provided a “sufficient number” of bilingual poll workers who speak covered languages to assist LEP voters on Election Day.⁸

Language Assistance under California Law

The vast majority of Californians who need language assistance when voting receive it under Section 203 of the federal Voting Rights Act. But in a state as populous and diverse as California, the thresholds needed to receive Section 203’s coverage are so high that they leave unprotected some of California’s very sizable immigrant communities, including for example Filipino Americans and Punjabi Americans in the Central Valley and Latinos on much of the coast. The California Elections Code has language access requirements that seek to serve the communities that are not large enough to qualify for Section 203 coverage. But while the thresholds needed to receive coverage are lower, the assistance state law guarantees is far less meaningful.

⁶ 52 U.S.C. § 10503

⁷ “About Language Minority Voting Rights.” Department of Justice. Accessed February 15, 2017.

⁸ *Id.*

Coverage formula

For a minority language community to receive coverage under the California Elections Code, the following threshold must be met:

- Three percent or more of the voting age residents within a precinct must be members of the minority language community and have difficulty voting in English without assistance.⁹

The California SOS determines the language coverage by the January of every gubernatorial election. The last determination was released December 2013.

Election provisions under state law when a community is covered

- California Elections Code Section 14201 requires that a copy of the ballot, translated into the language of the LEP language minority, be posted in a “conspicuous” location in the polling place where the 3 percent threshold is met. This translated copy of the ballot is known as a “facsimile” ballot. It cannot be voted on; a voter can only view it while voting on an English ballot.
- California Elections Code Section 12303(c) requires the elections office to make “reasonable efforts” to recruit poll workers bilingual in the language of the LEP language minority to work the polling place where the 3 percent threshold is met. The term “reasonable efforts” is not defined.

Coverage in California

- 56 of the 58 counties in California were covered by at least one language
- 27 counties are covered under Section 203 of the VRA
 - all are covered for Spanish
 - 9 are covered for at least one Asian language
 - 2 are covered for at least one Native American language
- In November 2016, Los Angeles County was covered for Asian language
 - In November 2016, Los Angeles County was covered for Asian languages (Chinese, Hindi, Japanese, Khmer (the Cambodian language), Korean, Tagalog, Thai, and Vietnamese)
- 50 counties are covered under state law for at least one language

⁹ Cal. Elec. Code § 14201. A precinct can be as large as a neighborhood, with hundreds of people, or as small as a city block, with just a few dozen.

Voter Registration at the DMV

We have been an active participant in the stakeholder group meeting with the DMV and SOS regarding the voter registration process at DMV offices. DMV has created a two-step process. On the driver's license application (DL 44), DMV customers are asked a series of questions related to eligibility to vote and whether they want to register. If they properly answer, the voter information they provide will be sent electronically to the Secretary of State. However, the voter's language preference, party, and whether they want a vote-by-mail ballot are not captured until step 2. Those questions are provided on the DMV's touchscreen in English, Spanish, Chinese, Hindi, Japanese, Khmer, Korean, Tagalog, Thai, and Vietnamese. DMV customers are sent to the touchscreen in order to take their driver's knowledge test. DMV customers who do not need to take the knowledge test and are not specifically informed (in their language) of the benefits to going to the touchscreen will not know that they must complete the second step in order to select a language preference.

The DMV provides its driver's license test in English and 31 other languages. However, the touchscreen provides the driver's license test in English and Spanish, not the other 30 languages. For those who wish to take the knowledge test in any of the other languages, they must take a paper test. Those individuals have no reason to visit the touchscreen except to answer the optional voter registration questions. Unless DMV customers taking a paper test are specifically told that they can indicate their language voting preference (for 9 languages) on the touchscreen, they would not know of the option. Logic tells us that those who opt to take the driver's license in one of the federally covered voting rights languages would likely opt for voting materials in those language if they knew they had the choice. Yet, the customers taking one of the Asian language tests are the least likely to go to the touchscreen because of the current process.

One-third of voter registrants do not complete the second step. Because those taking the paper driver's test in a language other than English or Spanish do not have to go to the touchscreen, they are likely to be represented in higher percentages among the DMV customers who skip the second step. However, because the DMV does not capture the language a test is taken in, we do not have the statistic to verify this logical assumption.

For those voter registrants who do not complete the second step, the SOS sends a follow-up letter. Because language use is not captured in the DMV process as noted above, the SOS notice is in English and 9 other languages. In order for a

voter to indicate a language preference or party, or sign up to be a permanent vote-by-mail voter, the voter must re-register to vote by either going to the SOS's online registration page or by going to an agency that has voter registration cards. Given the process, those taking the test in a language other than English or Spanish are likely to be disproportionately represented among the voters receiving the SOS's follow-up letter and will need to re-registered to receive translated election materials.

Recommendations:

- Voter registration at DMV should be a seamless process. Registrants should be able to select their language and vote-by-mail preferences when they initially register to vote. Given California's diverse electorate, language preference should not be contained in an optional secondary step. It places an undue burden on LEP registrants, particularly those who take a paper driver's test.
- DMV should track the languages their customers use for the driver's test. While not all the languages are required under the federal Voting Rights Act or state elections statute, the SOS will have the information for those that are covered and be able to conduct outreach in targeted languages. Moreover, the SOS will have an initial database of voters for languages that may be covered in the future.

New Motor Voter

When implemented, AB 1461, the New Motor Voter bill, will create an automated voter registration process. DMV customers who attest their eligibility will be automatically registered to vote unless they opt out. We understand that the New Motor Voter process may not be implemented until the summer of 2018 at the earliest. However, we recommend that the New Motor Voter statute be implemented in early 2018. The current opt-in language and related voter registration questions are confusing. Implementing a redesigned DL 44 to comply with the New Motor Voter statute will likely result in less confusion and more voter registrations.

California Voter's Choice Act

Advancing Justice-LA was part of the stakeholder group that provided input on SB 450 as it worked through the legislative process. As noted above, the voter participation rate among Asian Americans is relatively low. While the Voter's Choice Act may make voting easier and more accessible for some, Advancing Justice-LA is concerned that it could have the unintended affect of further disenfranchising groups if it is not implemented in a way that deliberately

addresses the needs of all voters. We are actively participating in various stakeholder groups related to the Voter's Choice Act in the hopes that the new system will benefit all voters, including Asian American and limited English proficient (LEP) voters.

Public input among Asian American voters is vital to ensure that the location of the vote centers and drop boxes does not discourage voting. Election officials must take into account that non-English speaking voters, particularly seniors, living in an ethnic enclave may rarely leave their neighborhood. Therefore, even if a vote center or drop box is located a few miles from the enclave, it will not be used by some living there. And without postage paid envelopes, low-income voters are likely to be reluctant to vote by mail.

Robust outreach and education to all communities is vital. According to California Civic Engagement Project, LEP voters have a higher vote-by-mail rejection rate compared to voters at large due to lack of signature.¹⁰ The Voter's Choice Act model not only necessitates wide scale education on voters' options, election officials must also conduct in-depth education on the process to successfully cast a vote-by-mail ballot.

Recommendations:

- It is vital that election officials gather input from a wide swath of the electorate on the location of vote centers and drop boxes.
- Election official should conduct robust outreach and education, including using ethnic and social media, to publicize the new system and how to cast a vote-by-mail ballot.
- To encourage a successful rate of return, funding should be provided to election officials in order to provide paid postage for vote-by-mail ballots.
- Current law requires counties to contact voters whose ballots are rejected due to lack of signature (in order for the voter to cure). However, there is no comparable requirement for signature mis-match, one of the top rejection reasons. Some counties already provide such notice. Because vote-by-mail voting will increase under the VCA model, all VCA counties should provide notice and the opportunity to correct for signature mis-match.
- Election officials should investigate how to make private the signature required on the vote-by-mail envelopes.

¹⁰ <http://explore.regionalchange.ucdavis.edu/ourwork/projects/ccep/UCDavisVotebyMailBrief3.pdf>

- Legislators should investigate a vote-by-mail process that has an alternative to the current signature requirement.
- Election officials Counties should coordinate outreach with other government agencies within their counties. For example, before an election, counties could add a VCA factsheet with any notices sent out by the county Department of Public Social Services or in a customer's local public utility bill.

Language Access on Election Day

For the November 2016 election, we and our sister affiliate, Advancing Justice-ALC teamed up with local partners to conduct poll monitoring in 25 counties and went to nearly 1300 poll sites. The focus of our poll monitoring was compliance with state and federal language access laws. We found 3.7% of translated ballots mandated by federal law were missing. However, roughly 22% of supplemental materials, such as the Voter's Bill of Rights, were missing at the poll sites we monitored. Compliance with the state language access statutes was lower. Nearly 25% was missing a translated copy of the ballot under state law and 62% lacked a state language bilingual poll worker.

Further data, include county-by-county summaries can be found at:

<https://advancingjustice-la.org/media-and-publications/publications/voices-democracy-state-language-access-californias-november-2016>

Recommendations:

Pages 47-53 of our report contain extensive recommendations to improve language access on Election Day. Some of the recommendations are based on best practices already used by some jurisdictions. Others are recommended statutory changes to increase language access for vote-by-mail voters and voters who vote at the polls. Many of the statutory changes are in AB 918 (Bonta - Gomez), a bill that we are co-sponsoring. The text of the bill can be found at: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB918

Voter Engagement

Advancing Justice-LA coordinates an ongoing Your Vote Matters campaign. The campaign works with community based organizations to empower and mobilized Asian American and Pacific Islander communities. In addition to providing voter education materials, Your Vote Matters conducts phone banking during major elections. For the November 2016 election, Your Vote Matters conducted get out the vote efforts in 14 languages/dialects (Bangladeshi, Cantonese, English, Hindi, Japanese Khmer, Korean, Mandarin, Samoan, Tagalog, Thai, Tongan, Urdu, and Vietnamese) to 12 ethnic groups.

Over the years, some voters have reported to our phone bankers that our in-language outreach has been the only contact they received for a given election. Although often ignored, we have seen voter turnout increase even among low propensity voters when in-language outreach is conducted. In the November 2016 election, we saw increased voter turnout in all 3 of our contact categories: 9.07% increase in voters who were contacted in English, 4.06% increase in voters who were contacted in an Asian or Pacific Islander language, and 8.16% increase in voters who were left a voicemail.