
Article

Voting Is a Universal Language: Ensuring the Franchise for the Growing Language Minority Community in Minnesota

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INTRODUCTION

Minnesota has long held a reputation for being proactively pro-democratic and on the cutting edge of breaking down barriers to the ballot box and making voting more accessible.¹ According to MIT Election Data and Science Lab's Election Performance Index, an objective measure that comprehensively assesses how election administration functions in each state, Minnesota has been the second highest-ranked state in each election since 2010 and was the third highest-ranked state in the 2008 election.² In the 2018 election, Minnesota scored

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1. See *MN Scores High for Election Administration*, TWIN CITIES BUS. MAG. (Feb. 16, 2013), <https://tcbmag.com/mn-scores-high-for-election-administration> [<https://perma.cc/LFA3-3R8S>]; see also KENT KAISER, NO LONGER A NATIONAL MODEL: FIFTEEN RECOMMENDATIONS FOR FIXING MINNESOTA ELECTION LAW AND PRACTICE 3 (2009), <https://www.americanexperiment.org/reports/no-longer-a-national-model-fifteen-recommendations-for-fixing-minnesota-election-law-and-practice> [<https://perma.cc/2SMK-6PDG>].

2. See *Elections Performance Index*, MIT ELECTION DATA & SCI. LAB, <https://elections.mit.edu/#/data/map> [<https://perma.cc/Q6J8-2CQZ>] (interactive map of election data).

better than the national average on many indicators such as voter registration and turnout, low wait times, and minimal problems for voters, as well as scoring high for ensuring the availability of voting information and services to voters.³ At the same time, no matter how well a state is doing, its election administration can always be improved. Addressing a major barrier to voting for a growing segment of the Minnesota electorate—the language barrier—is one necessary improvement. For voters who speak English as a second language, and who have some difficulty with the English language, the complex and somewhat confusing election process can be daunting and difficult to navigate.⁴ This can lead to depressed voting participation rates for this community.⁵

Despite the fact that Minnesota has higher than average voter participation overall, parsing the voter participation data across different racial and ethnic groups shows a disparity in participation between communities of color and White voters that is due in part to the language barrier.⁶ There is a persistent gap in voter registration and voter turnout between communities of color and White voters in Minnesota. The average gap between Black voters and White voters for voter registration is -11.6% and for voting is -13.7% for elections from November 2006 through 2018.⁷ Further, the average gap between Asian voters and White voters for voter registration is -19.5% and for voting is -17.8% for elections from November 2008 through 2018.⁸ Lastly, the average gap between Latino voters and White voters for voter registration is -28.8% and for voting is -27.0% for elections from November 2010 through 2016.⁹

3. *Id.*

4. See, e.g., Richard Salame, *Across the Country, Limited-English-Proficiency Voters Faced Obstacles*, NATION (Nov. 12, 2018), <https://www.thenation.com/article/archive/limited-english-proficiency-voters-midterms> [<https://perma.cc/R5CU-58ME>].

5. *Id.*

6. David Schultz, *Minnesota's Other Racial Disparity: Voting*, MINNPOST (Oct. 24, 2016), <https://www.minnpost.com/community-voices/2016/10/minnesota-s-other-racial-disparity-voting> [<https://perma.cc/M4Y4-2DZV>]; see also *Language Barriers, YOUR VOTE YOUR VOICE*, <https://www.yourvoteyourvoicemn.org/language-barriers> [<https://perma.cc/E6AG-3BQB>] (“Removing language barriers to voting and full citizen participation would be a simple and effective way to increase voter turnout and political power.”).

7. See *infra* Table 1.

8. See *infra* Table 2.

9. See *infra* Table 3.

Election	Registered	Registration Gap with Non-Latino Whites	Voted	Voting Gap with Non-Latino Whites
Nov. 2018	66.1%	-11.2%	54.7%	-10.1%
Nov. 2016	74.7%	-4.0%	66.3%	-4.7%
Nov. 2014	53.6%	-21.0%	21.7%	-33.0%
Nov. 2012	66.9%	-13.2%	62.1%	-12.4%
Nov. 2010	60.9%	-12.9%	44.5%	-12.3%
Nov. 2008	73.2%	-7.8%	69.0%	-7.5%
Nov. 2006	69.4%	-11.2%	51.4%	-16.0%

Table 1: Black Alone Voter Participation Rates in Minnesota¹⁰

Election	Registered	Registration Gap with Non-Latino Whites	Voted	Voting Gap with Non-Latino Whites
Nov. 2018	49.7%	-27.6%	43.3%	-21.5%
Nov. 2016	63.7%	-15.0%	51.6%	-19.4%
Nov. 2014	43.7%	-30.9%	37.1%	-17.6%
Nov. 2012	87.6%	7.5%	78.1%	3.6%
Nov. 2010	40.4%	-33.4%	24.5%	-32.3%
Nov. 2008	63.7%	-17.3%	57.1%	-19.4%
Nov. 2006	N/A	N/A	N/A	N/A

N/A = the base is less than 75,000 and therefore too small to show the derived measure.

Table 2: Asian Alone Voter Participation Rates in Minnesota¹¹

10. Data gathered from *Voting and Registration: Data Tables*, U.S. CENSUS BUREAU, <https://www.census.gov/topics/public-sector/voting/data/tables.html> [<https://perma.cc/3U8G-7QK4>] (using Table 4b: Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States, Nov. 2006–2018).

11. Data gathered from *Voting and Registration: Data Tables*, *supra* note 10 (using Table 4b: Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States, Nov. 2006–2018).

Election	Registered	Registration Gap with Non-Latino Whites	Voted	Voting Gap with Non-Latino Whites
Nov. 2018	N/A	N/A	N/A	N/A
Nov. 2016	39.6%	-39.1%	36.6%	-34.4%
Nov. 2014	47.8%	-26.8%	33.5%	-21.2%
Nov. 2012	56.1%	-24.0%	45.7%	-28.8%
Nov. 2010	48.5%	-25.3%	33.2%	-23.6%
Nov. 2008	N/A	N/A	N/A	N/A
Nov. 2006	N/A	N/A	N/A	N/A

N/A = the base is less than 75,000 and therefore too small to show the derived measure.

Table 3: Latino Voter Participation Rates in Minnesota¹²

The good news is that effective language assistance can bridge these gaps in voter participation. When language assistance has been properly implemented under section 203 of the Voting Rights Act (VRA),¹³ Latino, Asian American, American Indian, and Alaska Native voter participation increased.¹⁴ For example, when San Diego County began to properly provide language assistance as a result of Department of Justice (DOJ) enforcement actions during the mid-2000s, voter registration among Latinos and Filipinos (whose languages are covered by section 203) rose by over 20%, and Vietnamese registrations increased by 40% after the county decided to voluntarily provide language assistance in Vietnamese.¹⁵ Between 2000 and 2004, Navajo voter turnout increased by 26% after Apache County, Arizona, entered into a consent decree with DOJ to address failure to provide language assistance.¹⁶

This Article will discuss the demographics of Minnesota's language minority population, the obstacles language minority voters face, and the different ways in which Minnesotans can access language assistance, including through available federal protections for language minority Minnesotans, as well as through state-based opportunities for increased language access.

12. Data gathered from *Voting and Registration: Data Tables*, *supra* note 10.

13. See discussion *infra* Part II.A.1.a.

14. H.R. REP. NO. 109-478, at 18-19 (2006). For example, the House committee report notes that "the number of registered Latino voters grew from 7.6 million in 2000 to 9 million in 2004." *Id.* at 19-20.

15. Alberto R. Gonzales, U.S. Att'y Gen., Prepared Remarks at the Anniversary of the Voting Rights Act (Aug. 2, 2005), <http://www.justice.gov/archive/ag/speeches/2005/080205agvotingrights.htm> [<https://perma.cc/N3ZJ-KDZC>].

16. See JAMES T. TUCKER, *THE BATTLE OVER BILINGUAL BALLOTS* 229 (2009).

I. DEMOGRAPHICS OF MINNESOTA

While 78.9% of Minnesota's total population is White, communities of color drive population growth.¹⁷ The next largest demographic in Minnesota is Black, followed by Latino, Asian American, multiracial American, American Indian and Alaska Native, Minnesotans who identify as "some other race," and then Native Hawaiian Pacific Islander.¹⁸ Other than American Indians and Alaska Natives, the growth rates of the other groups significantly outpace that of White Minnesotans.¹⁹ Growth rates for Black and Asian Americans are 35.2% and 35.9%, respectively, and 26.5% for Latinos, compared to 0.9% for White Americans.²⁰ As Minnesota becomes more diverse, language access will become more of an issue for voters across the state.

	Estimate	Growth Rate
Total Population	5,639,632	6.2%
Hispanic or Latino (of any race)	314,217	26.5%
NH White alone	4,451,938	0.9%
NH Black alone	362,789	35.2%
NH American Indian and Alaska Native alone	51,930	-3.6%
NH Asian alone	283,422	35.9%
NH Native Hawaiian and Other Pacific Islander alone	2,618	32.6%
NH Some other race alone	12,703	118.8%
NH Two or more races	160,015	42.1%

Table 4: Racial and Ethnic Communities in Minnesota²¹

Similar trends are seen at the county level in Minnesota. For all counties with populations greater than 250,000, growth rates for Black Americans, Latinos, and Asian Americans far outpaced that of White Americans, with an average growth rate of 50.1%, 29.1%, and 35.4%, compared to 1.6%, respectively.²² Additionally, seven other counties with less than 250,000 people for which data are available

17. See *infra* Table 4.

18. *Id.*

19. *Id.*

20. *Id.*

21. Data gathered from *ACS Demographic and Housing Estimates: Table DP05*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?q=DP05&tid=ACSDP1Y2019.DP05&hidePreview=false> [<https://perma.cc/RL2B-R5Z4>] (using data from 2019 and 2010 ACS 1-Year Estimates Data Profiles).

22. *Id.*

show similar trends, with communities of color all growing faster than the White population.²³ In all these counties, the Latino population, with an average growth rate of 31.1%, grew faster than the White population, with an average growth rate of 4%.²⁴ The Black population grew faster than the White population in six out of the seven counties, with an average growth rate of 44.4%, while the Asian American population grew faster than the White population in three counties, with an average growth rate of 25.6%, and the Native American population grew faster in two counties, with an average growth rate of 39.2%.²⁵

	Hennepin County (Total Pop: 1,265,843)	Ramsey County (Total Pop: 550,321)	Dakota County (Total Pop: 429,021)	Anoka County (Total Pop: 356,921)	Washing- ton County (Total Pop: 262,440)
Total Population	9.6%	8.1%	7.5%	7.7%	9.9%
Hispanic or Latino (of any race)	13.0%	12.7%	34.3%	42.9%	42.4%
NH White alone	4.4%	-1.4%	0.4%	0.5%	4.3%
NH Black alone	24.3%	19.0%	72.9%	75.5%	58.6%
NH American In- dian and Alaska Native alone	-27.3%	-24.3%	-30.6%	16.7%	-35.4%
NH Asian alone	29.5%	41.6%	35.2%	38.5%	32.5%
NH Native Hawai- ian and Other Pa- cific Islander alone	59.5%	-47.4%	-100.0%	-27.6%	-29.8%
NH Some other race alone	85.2%	67.8%	68.6%	336.3%	237.2%
NH Two or more races	32.8%	45.9%	14.9%	32.7%	49.9%

Table 5: Growth Rate of Racial and Ethnic Communities in Minnesota Counties with Total Population > 250,000²⁶

The growth in communities of color in Minnesota has been driven in large part by its immigration and refugee history. While the first large groups of immigrants to arrive in Minnesota were European, the majority of today's immigrants to Minnesota come from Mexico,

23. *See id.*

24. *See infra* Table 5.

25. *See infra* Table 5.

26. Data gathered from *ACS Demographic and Housing Estimates: Table DP05*, *supra* note 21 (using data from 2019 and 2010 ACS 1-Year Estimates Data Profiles).

Somalia, India, and Laos.²⁷ A large number of refugees settled in the state, including Hmong refugees, who began arriving in Minnesota in the mid-1970s, and Somali refugees, who began coming to Minnesota in the early 1990s.²⁸ In fact, Minnesota is home to the largest Somali population and the second largest Hmong population in the United States.²⁹ Of the state's foreign-born population, which makes up over 8% of the entire state's population, 38.1% are born in Asia, 26.7% in Africa, and 22.9% in Latin America.³⁰

This explosive growth in the immigrant population has naturally led to an increased growth rate of the language minority population in the state. While the total population five years of age and older grew at a rate of 6.8%, the language minority population (that is, those who spoke a language other than English at home) grew at a rate of 24.6%.³¹ Similarly, in the counties with a total population five years and older of 200,000 or more, the average growth rate of the language minority population compared to that for the total population five years and older was 28.5% versus 9.1%.³² Of those counties, Anoka County saw its language minority population grow by 43.5%, compared to the overall growth rate of 8.4%.³³ Furthermore, more than one in three language minority Minnesotans is limited English proficient (LEP), or, in other words, has some difficulties with the English language.³⁴ Further, for the counties with total populations of five years or older of 200,000 or more, the average LEP rate for the language minority population was 36.8%, with highs of 43.9% and 41.5% in Ramsey County and Dakota County, respectively.³⁵ This is an ever-expanding community in Minnesota that has unique and specific needs and concerns when it comes to voting.

27. *Minnesota Issues Resources Guides: Immigrants in Minnesota*, MINN. LEGIS. REFERENCE LIBR. (Aug. 2020), <https://www.lrl.mn.gov/guides/guides?issue=immigration> [<https://perma.cc/FF73-MVVL>].

28. *Id.*

29. *Id.*

30. *Selected Social Characteristics in the United States: ACS 1-Year Estimates 2019, Table DP02*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?q=ACSDP1Y2019.DP02&tid=ACSDP1Y2019.DP02&hidePreview=true> [<https://perma.cc/MZC4-CX4U>].

31. *See infra* Table 6.

32. *See infra* Table 6.

33. *See infra* Table 6.

34. *See infra* Table 6.

35. *See infra* Table 6.

Jurisdiction	Total Pop 5 Years and Over (2019)	Growth Rate from 2010	Speak Language other than English	Growth Rate of Language Minority Pop from 2010	Percent of Language Minority Pop = LEP (2019)
Minnesota	5,290,011	6.80%	649,366	24.60%	35.90%
Hennepin County	1,185,742	9.90%	215,120	21.20%	31.70%
Ramsey County	512,658	8.00%	122,845	28.90%	43.90%
Dakota County	401,628	8.10%	54,267	20.60%	41.50%
Anoka County	334,741	8.40%	44,891	43.50%	36.40%
Washington County	248,047	11.00%	26,080	28.40%	30.70%
St. Louis County	188,918	-0.20%	8,434	22.80%	22.80%
Stearns County	151,179	8.20%	15,903	54.70%	28.40%
Olmstead County	146,171	9.60%	21,341	44.00%	45.60%
Scott County	139,187	16.60%	18,288	16.20%	35.30%

Table 6: Language Minority Community in Minnesota³⁶

II. ADDRESSING BARRIERS FACING LANGUAGE MINORITY VOTERS

The voting process in the United States can be complicated and daunting for native English speakers and becomes even more difficult for LEP citizens.³⁷ An analysis of voting materials showed that they are written at a twelfth-grade level or higher, making voting more challenging for voters with language barriers.³⁸ Thus, LEP voters can have difficulty understanding the different steps required to vote, including, but not limited to, registration processes, registration deadlines, absentee voting rules, and voting procedures for primary elections.³⁹

36. Data gathered from *Language Spoken at Home: Table S1601*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?q=S1601&tid=ACSST1Y2019.S1601&hidePreview=false> [<https://perma.cc/Y2SQ-U7RM>] (using data from 2019 and 2010 ACS 1-Year Estimates Subject Tables).

37. See also NATIVE AM. RTS. FUND, OBSTACLES AT EVERY TURN: BARRIERS TO POLITICAL PARTICIPATION FACED BY NATIVE AMERICAN VOTERS (2020), https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf [<https://perma.cc/ZDT7-Y4NP>] (discussing the unique issues facing LEP American Indian and Alaska Native voters).

38. Ana Henderson, English Language Naturalization Requirements and the Bilingual Assistance Provisions of the Voting Rights Act 3-5 (2006) (unpublished manuscript) (on file with author).

39. Compare *id.* at 3-4, 4 n.10 (discussing the English language grade level of a variety of election-related materials), with ANDREW SUM, IRWIN KIRSCH & KENTARO YAMAMOTO, EDUC. TESTING SERV., A HUMAN CAPITAL CONCERN: THE LITERACY PROFICIENCY OF U.S. IMMIGRANTS 13, 15 (2004) (reporting study results finding that the median

This means that even when the LEP voter can figure out the process and show up to vote, English-only ballots can stymie the voter.⁴⁰

Furthermore, LEP voters are often denied language assistance at the polls, creating numerous barriers to electoral participation. First, problems can arise from poll workers who do not fully understand voting rights laws. In election after election, poll workers have denied LEP voters the ability to get assistance from a person of their choosing, as is their right under section 208 of the Voting Rights Act,⁴¹ or have asked the voter for photo identification when the law does not require it.⁴² For example: in 2012, “a poll worker . . . in New Orleans erroneously thought that only LEP voters of languages covered by Section 203 of the VRA were entitled to assistance in voting” under section 208.⁴³ Since Vietnamese was not a section 203-covered language in that jurisdiction, “the poll worker did not allow LEP Vietnamese voters the assistance of their choice when voting.”⁴⁴ LEP voters have also faced hostile or discriminatory poll workers or challengers at polling sites.⁴⁵

composite English language proficiency score of immigrant adults was twenty-three percent lower than native-born adults with a twelfth-grade education).

40. See Henderson, *supra* note 38, at 4–5 (providing examples of states where ballot measures are written above the twelfth-grade level).

41. 52 U.S.C. § 10508 (“Any voter who requires assistance to vote by reason of . . . inability to read or write may be given assistance by a person of the voter’s choice . . .”).

42. See, e.g., JASMINE JIN & JERRY VATTAMALA, ASIAN AM. LEGAL DEF. & EDUC. FUND, ASIAN AMERICAN ACCESS TO DEMOCRACY IN THE 2014 ELECTIONS 19, 26 (2014), <https://www.aaldef.org/uploads/pdf/2014AccessToDemocracyReport.pdf> [<https://perma.cc/DSA3-N2E8>] (discussing incidents where voters were denied language assistance or unlawfully requested to produce identification documents); ASIAN AM. ADVANCING JUST., VOICES OF DEMOCRACY: ASIAN AMERICANS AND LANGUAGE ACCESS DURING THE 2012 ELECTIONS 14 (2013), <https://www.advancingjustice-aajc.org/sites/default/files/2016-10/Voices%20of%20Democracy.pdf> [<https://perma.cc/56BS-CRSL>] (discussing observed incidents where “a poll worker illegally prevent[ed] a voter from bringing a [language] helper into the voting booth”).

43. TERRY AO MINNIS & MEE MOUA, ASIAN AM. ADVANCING JUST. – AAJC, 50 YEARS OF THE VOTING RIGHTS ACT: THE ASIAN AMERICAN PERSPECTIVE 16 (2015), <https://advancingjustice-aajc.org/sites/default/files/2016-09/50-years-of-VRA.pdf> [<https://perma.cc/7H63-QY3R>].

44. *Id.*

45. See, e.g., *United States v. Berks Cnty.*, 277 F. Supp. 2d 570, 575, 577 (E.D. Pa. 2003) (finding “substantial evidence of hostile and unequal treatment of Hispanic and Spanish-speaking voters by poll officials” and discussing voters who were barred “from bringing their assistors of choice into the voting booth”).

A. LANGUAGE ASSISTANCE DURING ELECTIONS

One way to ensure language minority voters can effectively participate in elections is for a jurisdiction to provide language assistance to voters during the election process. There are several mechanisms by which language assistance can occur, including measures prescribed by federal and state law. Minnesota has a need for both language assistance and different tools with which to address this need.

1. Federal Opportunities for Language Assistance

a. *Section 203*

Protecting four covered language groups—Latinos, Asian Americans, American Indians, and Alaska Natives⁴⁶—section 203 of the Voting Rights Act of 1965 requires language assistance in certain jurisdictions that meet a specific language minority population threshold.⁴⁷ Congress enacted section 203 in 1975 to remedy racial discrimination in the voting process that leads to the disenfranchisement of language minorities from the four abovementioned language groups.⁴⁸ The

46. Section 203 applies only to Latinos, Asian Americans, American Indians, and Alaskan Natives because Congress has continually found that these groups have faced and continue to face significant voting discrimination because of their race and ethnicity. *See, e.g.*, S. REP. NO. 94-295, at 31 (1975) (“The definition of those groups included in ‘language minorities’ was determined on the basis of the evidence of voting discrimination. Persons of Spanish heritage was the group most severely affected by discriminatory practices, while the documentation concerning Asian Americans, American Indians and Alaskan Natives was substantial.”); H.R. REP. NO. 109-478, at 59 (2006) (“Section 203’s assistance is a remedy for the past and present failures of States and jurisdictions to remedy educational disparities, putting language minority citizens on an equal footing in exercising the right to vote.”).

47. *See* 52 U.S.C. § 10503(b) (setting forth the criteria to determine if section 203 covers a jurisdiction); *id.* § 10503(c) (setting forth the requirements for covered jurisdictions to administer bilingual elections).

48. *See* Act of Aug. 6, 1975, Pub. L. No. 94-73, sec. 301, § 203, 89 Stat. 400, 402–03 (codified as amended at 52 U.S.C. § 10503) (amending the Voting Rights Act of 1965 and including a finding that “citizens of language minorities have been effectively excluded from participation in the electoral process”). Two other provisions of the VRA that impact language minority voters are sections 4(e) and 4(f)(4). Section 4(e) was enacted in 1965 and protects the rights of voters who have completed sixth grade in “a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.” *See* Voting Rights Act of 1965, Pub. L. No. 89-110, § 4(e), 79 Stat. 437, 439 (codified at 52 U.S.C. § 10303(e)). Section 4(f)(4) was added to the VRA in 1975 in response to Congress finding “that voting discrimination against citizens of language minorities is pervasive and national in scope” and that English-only elections excluded language minority citizens from participating in the electoral process. Act of Aug. 6, 1975, Pub. L. No. 94-73, sec. 203, § 4(f), 89 Stat. 400,

coverage formula for section 203 is met for a particular single language in a particular jurisdiction when the illiteracy rate of citizens in that language minority is higher than the national illiteracy rate and voting-age citizens of that language minority (1) make up more than five percent of the population, or (2) number more than 10,000, or (3) exceed five percent of all residents on an Indian reservation.⁴⁹ Section 203 determinations are made by the Director of the Census Bureau and are effective upon publication in the Federal Register.⁵⁰ These determinations are final and not subject to review in any court.⁵¹ Thus, jurisdictions must begin complying upon publication.

The current set of section 203-covered jurisdictions was published in December 2016, and almost two out of every three language minority citizens of voting-age live in covered jurisdictions.⁵² Two hundred and sixty-three political subdivisions in twenty-nine states are currently

401-02 (codified as amended at 52 U.S.C. § 10303(f)). This section applied bilingual election requirements to states and localities subject to certain election preclearance conditions under the VRA. *Id.* The specific requirements for language assistance under sections 4(e) and 4(f)(4) have generally been the same as those under section 203 of the Act. *See* 28 C.F.R. § 55.8(a) (2020) (“The statutory requirements of section 4(f)(4) and section 203(c) regarding minority language material and assistance are essentially identical.”). In light of the Supreme Court’s decision in *Shelby County v. Holder*, which invalidated the coverage formula found in section 4(b), 570 U.S. 529, 557 (2013), the Department of Justice is no longer enforcing section 4(f)(4), as its coverage was dependent on a part of the section 4(b) formula. *See* DEP’T OF JUST., FACT SHEET ON JUSTICE DEPARTMENT’S ENFORCEMENT EFFORTS FOLLOWING *SHELBY COUNTY* DECISION 1-2 (2016), <https://www.justice.gov/crt/file/876246/download> [<https://perma.cc/46U8-4R7C>].

49. 52 U.S.C. § 10503(b)(2). For section 203 threshold purposes, “illiteracy” is defined as having less than a fifth-grade education. *Id.* § 10503(b)(3)(E). The levels of English literacy necessary to pass naturalization tests, or possessed by many native-born citizens, are far below the level necessary to fully understand election materials. *See* Henderson, *supra* note 38, at 1-8 (finding that naturalization tests require only a third- or fourth-grade level of English proficiency, while voting materials often require a proficiency level higher than twelfth grade, and that many native-born citizens are limited in their English proficiency).

50. 52 U.S.C. § 10503(b)(4); *see also* S. REP. NO. 94-295, at 47 (1975) (discussing the determination and promulgation process, as well as the lack of review, for section 203 coverage).

51. 52 U.S.C. § 10503(b)(4); *see also* S. REP. NO. 94-295, at 47.

52. *See Language Spoken at Home: Table S1601*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?q=S1601&tid=ACSST1Y2019.S1601&hidePreview=false> [<https://perma.cc/Y2SQ-U7RM>] (using data from 2015 ACS 1-Year Estimates Subject Tables of total language minority citizens of voting age in the United States); *Section 203 Determinations Table*, U.S. CENSUS BUREAU (Dec. 5, 2016), <https://www.census.gov/data/tables/2016/dec/rdo/section-203-determinations.html> [<https://perma.cc/Z6F5-43KF>] (using 2015 data for total language minority group citizen voting age population in section 203 jurisdictions).

covered.⁵³ A total of 214 political subdivisions in twenty-six states—including the entire states of California, Florida, and Texas—have Spanish language requirements.⁵⁴ This represents an increase from the 212 political subdivisions covered in twenty-three states under the previous 2011 determinations.⁵⁵ A total of fifteen political subdivisions, all in Alaska, have Alaska Native language requirements, representing an increase from seven in 2011.⁵⁶ A total of thirty-five political subdivisions in nine states have American Indian language requirements, representing an increase from thirty-three subdivisions in five states in 2011.⁵⁷ Finally, twenty-seven political subdivisions in twelve states have Asian language requirements, representing an increase from twenty-two subdivisions in eleven states in 2011.⁵⁸

Section 203 requires that any English-language information offered to voters must also be offered in the covered languages.⁵⁹ These required translations include any “registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots.”⁶⁰ Covered jurisdictions must publicize the availability of language assistance and provide bilingual poll workers at polling locations during the voting period.⁶¹ Language assistance, both written and oral, must be

53. See U.S. CENSUS BUREAU, SUMMARY AND COMPARISON TABLES OF THE DECEMBER 5, 2016 SECTION 203 DETERMINATIONS (2016), <https://www.census.gov/data/tables/2016/dec/rdo/section-203-determinations.html> [<https://perma.cc/5EV2-Z7XD>] (click hyperlink to spreadsheet) (totaling state and jurisdiction counts in the “Jurisdiction Count By State” tab); see also ASIAN AMS. ADVANCING JUST. – AAJC, NAT’L ASS’N OF LATINO ELECTED & APPOINTED OFFS. & NATIVE AM. RTS. FUND, CENSUS DIRECTOR IDENTIFIES JURISDICTIONS THAT MUST PROVIDE LANGUAGE ASSISTANCE UNDER SECTION 203 OF VOTING RIGHTS ACT 1–3 (2016) [hereinafter AAJC, NALEO & NARF], <https://advancingjustice-aajc.org/sites/default/files/2016-12/Section%20203%20Coverage%20Update.pdf> [<https://perma.cc/F6R4-ZCAX>].

54. See AAJC, NALEO & NARF, *supra* note 53, at 3 (discussing totals of jurisdictions with Spanish language section 203 requirements under the 2016 determinations).

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. 52 U.S.C. § 10503(c) (requiring that whenever a jurisdiction provides election-related materials “it shall provide them in the language of the applicable minority group as well as in the English language”).

60. *Id.*; see also 28 C.F.R. § 55.19 (2020) (providing instructions on how to administer the translation requirements in § 10503(c) and count such translated ballots).

61. The provision of minority language materials and assistance includes ensuring that the following are accessible to the applicable language minority group(s): materials provided by mail (or by some comparable form of distribution), public notices,

provided throughout the entire voting process in a way that “allow[s] members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities.”⁶²

Enforcement of section 203 compliance can be brought by the DOJ or by private parties.⁶³ In 2011, the DOJ brought a section 203 lawsuit against Alameda County, California, for failing to effectively provide language assistance in Spanish and Chinese, including failing to provide effective written and oral language assistance.⁶⁴ This lawsuit resulted in a consent decree that required more robust language assistance in Spanish and Chinese.⁶⁵ In 2013, the Native American Rights Fund filed a case against Alaska election officials for ongoing violations under section 203 and the Fourteenth and Fifteenth Amendments of the U.S. Constitution for their failure to provide language assistance in Yup’ik, a covered language.⁶⁶ Finding that Alaska violated section 203 by failing to provide LEP Alaska Native voters with voting

a registration system, polling place activities (such as providing bilingual poll workers and translated signage and materials at the polling place), and publicity (of the availability of language assistance to the applicable language group(s) through effective means, such as using ethnic media). 28 C.F.R. § 55.18 (2020).

62. 28 C.F.R. § 55.2(b)(1) (2020).

63. See Navajo Nation Hum. Rts. Comm’n v. San Juan Cnty., 215 F. Supp. 3d 1201, 1219 (D. Utah 2016) (“[T]here is an implied private right of action under Section 203.”); see also Terry Ao Minnis, *No Longer Invisible: Engaging the Growing Asian American Electorate in the South*, 85 Miss. L.J. 1333, 1346 (2017) (claiming that both the private parties and the DOJ have litigated alleged violations of section 203).

64. See *United States v. Alameda Cnty.*, No. C-11-3262, slip op. at 3 (N.D. Cal. Oct. 19, 2011).

65. *Id.* at 7–10 (describing the aid and support that Alameda County must provide to Spanish- and Chinese-speaking groups).

66. For example, English speakers in Alaska received a 100-page Official Election Pamphlet before every election while Yup’ik-speaking voters only received information about the date and time of the election and a notice that language assistance would be available at the polls. Press Release, Native Am. Rts. Fund, Alaska Natives Win Landmark Voting Rights Lawsuit (Sept. 4, 2014), <http://www.narf.org/2014/09/alaska-natives-win-landmark-voting-rights-lawsuit> [<https://perma.cc/T2B5-CTWB>]; see also Amended Complaint at 13–15, *Toyukak v. Treadwell*, No. 3:13-cv-00137 (D. Alaska Jan. 10, 2014) (listing Alaska’s failures in servicing its native-speaking communities during elections). This lawsuit was filed three and a half years after the state of Alaska settled a similar section 203 case, *Nick v. Bethel*. See generally Complaint at 4–9, *Nick v. Bethel*, No. 3:07-cv-00098 (D. Alaska June 6, 2007) (providing a factual background of the case). The comprehensive settlement agreement in *Nick* included translation and interpretation assistance for all Yup’ik-speaking voters throughout the registration and voting process. See Press Release, ACLU, State of Alaska, NARF, Northern Justice Project and ACLU Reach Settlement in Yup’ik Language Voter Assistance Case (Feb. 19, 2010), <https://www.aclu.org/press-releases/state-alaska-narf-northern-justice-project-and-aclu-reach-settlement-yupik-language> [<https://perma.cc/PYK4-ATYU>] (listing the requirements imposed on Alaska’s Division of Elections).

information substantially equivalent to what voters received in English, the court permanently enjoined the state from violating section 203 and ordered the state to enact a series of improvements.⁶⁷

In another example, the NYC Board of Elections failed to provide language assistance in Bengali over four elections after Queens County in New York became covered for Asian Indian language assistance.⁶⁸ The Asian American Legal Defense and Education Fund (AALDEF) sued the NYC Board of Elections for violating section 203, and the case was settled with the Board agreeing to provide Bengali language assistance to Asian Indian voters in Queens.⁶⁹

Currently, no counties in Minnesota are covered under section 203.⁷⁰ However, it is important to note that LEP rates of Latinos and Asian Americans in Minnesota are quite sizeable, with almost 25% of Latinos across the state, and over 31% of Asian Americans, being LEP.⁷¹ Most of the counties in Minnesota have an Asian LEP rate of 25% or more (or, in other words, 1 in 4 Asian Americans) and a Latino LEP rate of 20% or more (or, 1 in 5 Latinos).⁷² Looking at the publicly-

67. See Native Am. Rts. Fund, *supra* note 66; see also *Toyukak v. Mallott*, No. 3:13-cv-00137, slip op. at 9–25 (D. Alaska Sept. 8, 2015) (describing the remedies that were agreed to by both parties); *Toyukak v. Treadwell*, No. 3:13-cv-00137 (D. Alaska Sept. 22, 2014) (order regarding interim remedies) (tasking the Alaska Division of Elections with numerous requirements).

68. Press Release, Asian Am. Legal Def. & Educ. Fund, South Asian Voters Sue NYC Board of Elections for Violations of the Voting Rights Act (July 2, 2013), <http://aaldef.org/press-releases/press-release/south-asian-voters-sue-nyc-board-of-elections-for-violations-of-the-voting-rights-act.html> [<https://perma.cc/DT3H-N8B2>] (explaining that translated ballots were not provided during the 2012 elections).

69. See Press Release, Asian Am. Legal Def. & Educ. Fund, NYC Board of Elections Settles Lawsuit on Bengali Ballots in Queens (Mar. 24, 2014), <http://aaldef.org/press-releases/press-release/nyc-board-of-elections-settles-lawsuit-on-bengali-ballots-in-queens.html> [<https://perma.cc/NDW7-CF9G>] (“The formal settlement provides final written assurance that much needed assistance will be brought to Asian Indian voters in Queens, New York.”). The Board agreed to: provide written materials in Bengali; translate relevant sections of its website; employ two staff members as Bengali translators; recruit bilingual poll workers for Bengali, Hindi, and Punjabi; operate a toll-free information hotline, with Bengali- and Hindi-speaking operators; conduct annual training regarding language assistance for poll workers and other election day workers; and establish a Coordinator of the Language Assistance Program position on its full time staff, among other activities. MINUTES FROM MEETING OF THE COMMISSIONERS OF ELECTIONS IN THE CITY OF NEW YORK 6–8 (2014), <https://vote.nyc/sites/default/files/pdf/minutes/2014/021114meet.pdf> [<https://perma.cc/7XWG-FY5L>].

70. See Voting Rights Act Amendments of 2006, Determinations Under Section 203, 81 Fed. Reg. 87,532, 87,535 (Dec. 5, 2016) (showing that Minnesota counties are excluded from coverage).

71. See *infra* Table 7.

72. See *infra* Table 7.

available data file from the last set of determinations in 2016, two Minnesota counties just missed section 203 coverage: Houston County for American Indian (“All other American Indian Tribes”) (with LEP voting-age citizens of a single language minority at 4.41% of a jurisdiction) and Ramsey County for Hmong (with 8,575 LEP Hmong voting-age citizens).⁷³ It is possible the growth over these last five years could result in section 203 coverage when the next set of determinations are made, currently scheduled for December 2021.⁷⁴

	% Latino LEP	% Asian LEP	% AIAN LEP
Minnesota	24.4%	31.4%	2.0%
Anoka County	29.1%	35.4%	N/A
Carver County	19.5%	40.1%	N/A
Dakota County	25.6%	20.9%	N/A
Hennepin County	24.5%	25.5%	N/A
Olmsted County	22.2%	39.0%	N/A
Ramsey County	25.9%	38.8%	N/A
Rice County	11.8%	18.5%	N/A
St. Louis County	19.1%	N/A	N/A
Scott County	34.0%	36.4%	N/A
Sherburne County	25.9%	N/A	N/A
Stearns County	9.9%	N/A	N/A
Washington County	14.2%	24.0%	N/A

Table 7: LEP Rates of Section 203-Covered Groups in Minnesota⁷⁵

73. ASIAN AMS. ADVANCING JUST. – AAJC, JURISDICTIONS AND LANGUAGES THAT JUST MISSED COVERAGE IN 2016 SECTION 203 DETERMINATIONS (I.E., 7,500-9,999 LEP OR 3.9-4.99 PERCENT LEP), <https://advancingjustice-aajc.org/sites/default/files/Just%20Missed%20Section%20203%20Coverage%20jurisdictions%20factsheet%202016%20determinations.pdf> [<https://perma.cc/Y8KU-CZ5N>].

74. See *Section 203 Language Determinations*, U.S. CENSUS BUREAU (May 5, 2017), <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/voting-rights-determination-file.html> [<https://perma.cc/MT9S-83NV>] (explaining that determinations are made every five years).

75. Data gathered from *Nativity by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over (Asian Alone): Table B16005D*, U.S. CENSUS BUREAU [hereinafter *Nativity by Language (Asian Alone)*], <https://data.census.gov/cedsci/table?q=B16005D&tid=ACSDT1Y2019.B16005D&hidePreview=true> [<https://perma.cc/45Z6-VNMV>] (using data from 2019 ACS 1-Year Estimates Detailed Tables); and *Nativity by Language Spoken at Home by Ability To Speak English for the Population 5 Years and Over (Hispanic or Latino): Table B16005I*, U.S. CENSUS BUREAU [hereinafter *Nativity by Language (Hispanic or Latino)*], <https://data.census.gov/cedsci/table?q=B16005I&tid=ACSDT1Y2019.B16005I&hidePreview=true> [<https://perma.cc/KM5C-ZBJA>] (using data from 2019 ACS 1-Year Estimates Detailed Tables).

b. *Section 2*

Section 203 does have a number of limitations with respect to ensuring LEP voters are protected and have access to language assistance. First, voters of other language groups that are not covered by the four section 203 groups can never receive mandated language assistance as a result of section 203 coverage.⁷⁶ Second, LEP voters of the covered language groups that live in jurisdictions that do not meet the coverage threshold do not have access to language assistance, although they may be able to in the future if their population group grows to the requisite level.⁷⁷ Section 2 is a tool that can protect the voting rights of all LEP voters, including those that section 203 does not cover. Section 2 of the VRA applies nationwide and prohibits any voting standard, practice, or procedure that results in the denial or abridgement of the right of any citizen to vote on account of their race, color, or membership in a language minority group.⁷⁸ This means that section 2 can be used to combat voting discrimination against LEP voters.

Section 2 has been used to address the first limitation of section 203, securing language assistance for LEP voters whose language could never be covered under section 203. For example, a section 2 case was brought in Hamtramck, Michigan, in 2000 on behalf of Arab American voters, when challenges were made against voters who allegedly “looked” Arab, had Arab- or Muslim-sounding names, or had dark skin.⁷⁹ After DOJ got involved, the city agreed to appoint at least two Arab Americans or one Arab American and one Bengali American election inspector to provide language assistance at each of the nineteen polling places where the voter challenges occurred.⁸⁰

Section 2 has also been used to address the second limitation and has resulted in language assistance for communities that are not yet large enough to trigger section 203 coverage. For example, in 2005, DOJ brought a section 2 lawsuit on behalf of Chinese- and Vietnamese-speaking voters who were not covered under section 203, alleging that the city of Boston discriminated against them and thereby denied

76. See 52 U.S.C. § 10503(e) (defining “language minorities” and “language minority group” as “persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage”).

77. See *id.* § 10503(b)(2) (describing when a state or political subdivision is a “covered State or political subdivision”).

78. *Id.* § 10301.

79. Complaint ¶¶ 1, 8, 16, *United States v. City of Hamtramck*, No. 00-73541 (E.D. Mich. Aug. 7, 2000).

80. *City of Hamtramck*, No. 00-73541.

them the equal opportunity to participate in the political process.⁸¹ As a result, the city of Boston agreed to provide Chinese and Vietnamese language assistance.⁸² In 2008, DOJ used section 2 to secure Spanish language assistance for Latino LEP voters in the borough of Penns Grove, New Jersey.⁸³

2. State and Local Opportunities for Language Assistance

Another way to address the limitations of section 203 is taking proactive steps at the state or local level, including voluntary language assistance and expansion of state and local laws, to ensure that LEP communities have access to the voting process. Where a sizeable language minority population is found, jurisdictions can and should take steps to ensure they can effectively vote. Minnesota could utilize any of the following tactics to expand the assistance provided to LEP voters within the state.

For example, jurisdictions can decide to provide language assistance to groups outside of the four covered section 203-language groups. This becomes more important as the language minority population grows exponentially, especially in comparison to the general population, as seen in Minnesota.⁸⁴ For example, nationally, the number of African language speakers more than doubled during the 2000s, and those speaking Russian at home increased by almost 400%, Armenian-speakers by almost 140%, and Persian-speakers by almost 260% between 1980 and 2010.⁸⁵

Additionally, jurisdictions can voluntarily decide to provide language assistance to any size group of LEP voters that they believe requires such assistance. In 2015, community groups advocated for, and

81. *Cases Raising Claims Under Section 2 of the Voting Rights Act*, U.S. DEP'T JUST., <https://www.justice.gov/crt/cases-raising-claims-under-section-2-voting-rights-act-0#boston> [<https://perma.cc/95G4-PY48>]; Complaint ¶¶ 19–21, *United States v. City of Bos.*, 497 F. Supp. 2d 263 (D. Mass. 2005) (No. 1:05-cv-11598), 2005 WL 3616748. DOJ also brought a section 203 enforcement claim against the city of Boston for non-compliance in providing language assistance in Spanish. Complaint ¶¶ 15–16, *United States v. City of Bos.*, 497 F. Supp. 2d 263 (No. 1:05-cv-11598).

82. *United States v. City of Bos.*, 497 F. Supp. 2d 263.

83. *United States v. Salem Cnty.*, No. 1:08-cv-03726, 2008 WL 11513214, at *1 (D.N.J. July 29, 2008); *Justice Department Announces Agreement Protecting Puerto Rican and Spanish-Speaking Voters in Penns Grove, New Jersey*, WEBWIRE (July 29, 2008), <http://www.webwire.com/ViewPressRel.asp?ald=71216> [<https://perma.cc/FT5T-AVS2>].

84. *See supra* Table 6.

85. Camille Ryan, *Language Use in the United States: 2011*, U.S. CENSUS BUREAU (Aug. 2013), <https://www2.census.gov/library/publications/2013/acs/acs-22/acs-22.pdf> [<https://perma.cc/29CL-9JQ8>].

secured, Korean language assistance in Chicago's highest areas of need, first from the Cook County Clerk's Office and then subsequently the Chicago Board of Elections.⁸⁶ This voluntary language assistance benefitted 37,000 Korean Americans in Cook County, over 40% of whom are limited-English proficient.⁸⁷ Following this effort, 2019 saw the passage of the Voting Opportunity and Translation Equity (VOTE) ordinance by the Cook County Board of Commissioners, which mandated fully translated ballots and voting materials in as many as eight additional languages in suburban Cook County in 2020, for up to a total of twelve languages available.⁸⁸ In addition to the 203-covered languages of Spanish, Chinese, and Hindi, the new languages added are Korean, Tagalog, Polish, Russian, Ukrainian, Arabic, Gujarati, and Urdu.⁸⁹

In the lead-up to the 2020 general elections, advocates in Georgia were able to secure voluntary language assistance from DeKalb County, the first time ever in the state.⁹⁰ Working with Asian Americans Advancing Justice – Atlanta, DeKalb County, representing Georgia's third most populous county, provided “translated sample ballots, frequently asked questions . . . , absentee ballot guides and drop box location maps” in Spanish and Korean—a first in Georgia for Korean translations.⁹¹ In DeKalb County, which is approximately 6.3% Asian American and 8.6% Latino,⁹² 87.6% of Asian Americans and 85.8% of Latinos are language minorities, with around 44% of Asian Americans and Latinos in DeKalb County being LEP.⁹³ This was followed by another win before the 2020 runoff election in Georgia with the announcement by Cobb County, Georgia, that it would provide and make

86. ASIAN AMS. ADVANCING JUST. – AAJC, FAIR ELECTIONS CTR. & NALEO EDUC. FUND, COMMUNITY LEADERS' GUIDE TO PROVIDING LANGUAGE ACCESS IN ELECTIONS 6 (2018) [hereinafter LANGUAGE ACCESS GUIDE], https://642cf75b-6e65-4c0d-82e2-11357e0523f7.filesusr.com/ugd/85cfb4_67c95ad9efcd496283a5e7d06dfaed74.pdf [https://perma.cc/AS7F-NKRY].

87. *Id.*

88. *Vote Ordinance Passes!*, COOK CNTY. COMM'R KEVIN B. MORRISON, DIST. 15 (Oct. 24, 2019), <http://commissionerkevinbmorrison.org/2019/10/24/vote-ordinance-passes> [https://perma.cc/B5KC-WRP2].

89. *Id.*

90. Zachary Hansen, *DeKalb Becomes First County To Voluntarily Offer Voting Info in Korean, Spanish*, ATLANTA J.-CONST. (Oct. 29, 2020), <https://www.ajc.com/news/dekalb-becomes-first-county-to-voluntarily-offer-voting-info-in-korean-spanish/HOPLEK5KJVHJVM2GXHS4QNL52U> [https://perma.cc/RMS4-B34W].

91. *Id.*

92. *Id.*

93. *Nativity by Language (Asian Alone)*, *supra* note 75; *Nativity by Language (Hispanic or Latino)*, *supra* note 75.

available to all voters at the polling stations for early voting and election day the following in-language resources: translated sample ballots and posting of Advancing Justice – Atlanta’s multilingual hotline in Korean and Spanish.⁹⁴

State voter registration forms have been translated even absent legal requirement. For example, the Pennsylvania Department of State translated (and made available online) the state’s voter registration form into two languages beyond Spanish (which was covered by section 203 in three of Pennsylvania’s jurisdictions)—Chinese and Vietnamese.⁹⁵ In 2016, New York City added translations of the state voter registration form in eleven new languages—Russian, Urdu, Haitian Creole, French, Arabic, Albanian, Greek, Italian, Polish, Tagalog, and Yiddish—bringing the total number of translated forms to fifteen languages in addition to English.⁹⁶ With that expansion, 80% of the city’s LEP eligible voters had access to a state voter registration form in their language.⁹⁷ In Florida, county ordinances requiring that Haitian Creole translations of the ballot be posted in voting booths where a significant portion of the electorate is Haitian-American were passed in reaction to the growing population of Haitian Creole-speaking citizens in south Florida in the late 1990s, including in Miami-Dade County and Broward County.⁹⁸

94. James C. Woo, *Georgia’s Voting Rights Advocates Mark Another Language Access Win During Runoff Elections for Korean and Latino Voters*, ASIAN AMS. ADVANCING JUST. ATLANTA (Dec. 23, 2020), <https://www.advancingjustice-atlanta.org/news/cobb-languageaccess-win> [<https://perma.cc/7ARR-JGS2>].

95. *How and Where To Register To Vote*, VOTES PA, <https://www.votespa.com/Register-to-Vote/Pages/How-to-Register-to-Vote.aspx> [<https://perma.cc/YF43-N49T>]; *Language Support*, VOTES PA, <https://www.votespa.com/Voting-in-PA/Pages/Language-Support.aspx> [<https://perma.cc/3642-LLZE>] (explaining that three counties require Spanish assistance under the National Voting Rights Act).

96. Michael D. Regan, *New Languages for NYC Voter Registration Could Expand Access for Immigrants*, PBS (Oct. 9, 2016, 2:35 PM), <https://www.pbs.org/newshour/politics/new-york-city-voter-registration-languages> [<https://perma.cc/DZY3-RVVJ>]. The translated forms are available at *Registering To Vote*, N.Y.C. CAMPAIGN FIN. BD., <http://www.nyccfb.info/nyc-votes/registering> [<https://perma.cc/J6TV-NXLB>]. Also, New York City is required to provide the translation in Russian pursuant to state law. N.Y. ELEC. LAW § 3-506 (Consol. 2021).

97. *Mayor de Blasio Launches Voter Registration Forms in Five New Languages, Expanding Access to Voting*, NYC (July 14, 2016), <https://www1.nyc.gov/office-of-the-mayor/news/615-16/mayor-de-blasio-launches-voter-registration-forms-five-new-languages-expanding-access-voting> [<https://perma.cc/TH4Z-RW35>].

98. See MIA.-DADE COUNTY, FLA. CODE OF ORDINANCES § 12-16 (1999); see also *United States v. Mia.-Dade Cnty.*, No. 02-21698, slip op. at 5–6 (S.D. Fla. June 17, 2002); JoNel Newman, *Ensuring that Florida’s Language Minorities Have Access to the Ballot*, 36 STETSON L. REV. 329 (2007) (advocating for expanding language accessibility in light of Florida’s sizable Haitian Creole-speaking population).

Minnesota has already taken many of these steps to ensure language assistance is provided to its language minority communities, even without section 203 coverage. For example, on the Secretary of State's website, translated elections and voting webpages are available in Spanish, Hmong, Somali, Vietnamese, Russian, Chinese, Lao, Oromo, Khmer, and Amharic.⁹⁹ The Secretary of State has also provided translated state voter registration forms in those same languages, as well as in-language informational videos.¹⁰⁰ Additionally, the jurisdictions in Minnesota that just missed section 203 coverage could begin to provide coverage in those languages, as well as having all jurisdictions assessing the next set of determinations to see who just missed coverage to begin voluntary coverage for those languages in those jurisdictions. Fairfax County, Virginia, followed this tactic after realizing that it just missed the section 203 coverage threshold for Korean following the 2016 section 203 determinations.¹⁰¹ The Fairfax County Electoral Board decided that in addition to the section 203-covered Vietnamese, they would voluntarily provide Korean language assistance, which meant that the county's 35,000 Korean-speaking residents, over half of whom were LEP, would be able to receive assistance.¹⁰²

States can make sure their state laws and election codes expand the provision of language assistance to those who need it beyond the federal protections currently provided to help address the needs of their own specific communities, including through having a lower threshold to trigger language assistance. For example, California state law requires language assistance be provided for precincts in which at least three percent of voting-age citizens are limited-English proficient or where stakeholders can otherwise demonstrate to the satisfaction of county elections officials or the Secretary of State the existence of significant local need for materials and assistance in languages other than English.¹⁰³ California legislation has also expanded the pool of potential bilingual poll workers by allowing legal permanent

99. *Elections & Voting*, OFF. MINN. SEC'Y ST. STEVE SIMON, <https://www.sos.state.mn.us/elections-voting> [<https://perma.cc/ERE3-T832>].

100. *Id.*

101. See *Voter Information Now Available in Four Languages*, FAIRFAX CNTY. (June 2, 2017), <https://www.fairfaxcounty.gov/publicaffairs/voter-information-now-available-four-languages> [<https://perma.cc/LM7D-SB7A>].

102. Jen Fifield, *Yo Voté: Communities Scramble To Translate Ballots*, PEW TRS. (June 28, 2017), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/06/28/yo-vote-communities-scramble-to-translate-ballots> [<https://perma.cc/YBY9-AES6>].

103. CAL. ELEC. CODE § 14201 (West 2020).

residents to serve as poll workers through the passage of AB 817 in 2013¹⁰⁴ and AB 554 in 2015,¹⁰⁵ which help to address the ongoing issue of an insufficient pool of bilingual poll workers.¹⁰⁶

States have also taken steps to ensure some form of language assistance is made available in languages not covered by section 203, either by explicitly naming the language to be served or by having broader statutory language. For example, in Minnesota, state law gives the Secretary of State authority to produce voting instructions in languages other than English, while requiring the State Demographer to “determine and report to the Secretary of State the languages that are so common in this state that there is a need for translated voting instructions.”¹⁰⁷

Finally, municipalities are also voluntarily making translations and interpretation available. For example, Philadelphia County, Pennsylvania, voluntarily provides voter registration applications in Russian and French, as well as languages that could be covered by section 203 such as Korean, Vietnamese, Khmer, Chinese, Japanese, and Tagalog.¹⁰⁸ Los Angeles County must provide section 203 assistance to voters in Cambodian (Khmer), Chinese, Tagalog, Korean, Vietnamese, and Spanish, but the county goes further by including materials translated into Farsi, Armenian, Russian, Hindi, Japanese, and Thai on its website.¹⁰⁹

3. Receiving Language Assistance from Someone of the Voter’s Choosing

Under section 208 of the VRA, voters across the nation “who require[] assistance to vote by reason of blindness, disability, or inability to read or write” have the right to bring someone of their choice to assist them in the voting process so long as the assistor is not one’s

104. Assemb. 817, 2013–14 Reg. Sess. (Cal. 2013) (codified as amended at CAL. ELEC. CODE §§ 12300, 12302).

105. Assemb. 554, 2015–16 Reg. Sess. (Cal. 2015) (codified as amended at CAL. ELEC. CODE § 12302).

106. Press Release, Asian Ams. Advancing Just. – L.A., Governor Signs Law Allowing Immigrant Youth To Be Poll Workers (Aug. 11, 2015), <http://advancingjustice-la.org/sites/default/files/20150811%20-%20MR%20-%20AB554%20Release.pdf> [<https://perma.cc/F4AX-FZ76>].

107. MINN. STAT. § 204B.27 (2020).

108. *Register To Vote*, OFF. PHILA. CITY COMM’RS, <https://www.philadelphiavotes.com/en/voters/registering-to-vote> [<https://perma.cc/G7NK-C83W>].

109. See *Los Angeles City Clerk - Election Division*, L.A. CITY CLERK, <http://clerk.lacity.org/Elections/index.htm> [<https://perma.cc/YE4B-AJRN>] (displaying multilingual election services).

employer or union representative.¹¹⁰ Added to the VRA in 1982, Congress found that citizens with language barriers were “more susceptible . . . to having their votes unduly influenced or manipulated” and, thus, more likely to face discrimination.¹¹¹ This was the crux for ensuring the voter has the freedom to choose their assistor rather than having a stranger appointed by election officials.¹¹² Congress saw this as the best way to ensure that voters with a language barrier (or disability) have the right to vote without “intimidation or manipulation.”¹¹³ Section 208 addresses the limitations of section 203 coverage and is particularly important to language minority voters across the country as it provides them the opportunity to choose who they take with them into the voting booth to help them understand the ballot.¹¹⁴

Unfortunately, while simple in concept, section 208 is often not properly implemented at polling sites, with many poll workers unaware of this federal law.¹¹⁵ Poll workers have refused to allow language minority voters to take an assistor of choice into the voting booth, which violates the VRA.¹¹⁶ Poll workers also often express suspicion toward the voter for even asking to bring a person in to assist them.¹¹⁷ DOJ and private parties have filed numerous lawsuits to

110. 52 U.S.C. § 10508; *see also* JEANETTE LEE, TERRY AO MINNIS & CARL HUM, THE RIGHT TO ASSISTANCE OF YOUR CHOICE AT THE POLLS: HOW SECTION 208 OF THE VOTING RIGHTS ACT SHOULD WORK TO PROTECT OUR VOTE AND OUR DEMOCRACY 5 (2014), <https://advancingjustice-aajc.org/sites/default/files/2016-09/Section%20208%20Report.pdf> [<https://perma.cc/K68F-94MV>] (“The assistor can even be a teenage child or a non-U.S. citizen.”).

111. S. REP. NO. 97-417, at 62 (1982) (stating that such citizens “run the risk that they will be discriminated against at the polls and that their right to vote in state and federal elections will not be protected”).

112. *See id.* (“[T]he manner of providing assistance has a significant effect on the free exercise of the right to vote by . . . people who need assistance. . . . [M]any such voters may feel apprehensive about casting a ballot in the presence of, or may be misled by, someone other than a person of their own choice.”).

113. *Id.* (“[T]he only kind of assistance that will make fully ‘meaningful’ the vote of the blind, disabled, or those who are unable to read or write, is to permit them to bring into the voting booth a person whom [they] trust and who cannot intimidate [them].”).

114. *See supra* notes 15–16 and accompanying text.

115. *See LEE ET AL., supra* note 110, at 1 (“[M]any LEP citizens are not even aware of [their] right to assistance. And poll workers are too often unfamiliar with Section 208, refusing to allow LEP voters to bring someone into the voting booth.”).

116. *Id.*

117. *See ASIAN AMS. ADVANCING JUST., supra* note 42, at 5 (“When LEP voters attempt to bring a helper to assist them in the polling booth, they are often met with resistance. If poll workers are not thoroughly trained on Section 208, they may look upon these instances with suspicion and attempt to stop the helper from entering into the booth with the voter.”).

enforce section 208.¹¹⁸ For example, in 2002, DOJ brought a section 208 enforcement action against Miami-Dade County, Florida, on behalf of LEP Haitian American voters who were denied assistance from persons of their choice, including being forced to receive assistance from poll workers who did not speak their language.¹¹⁹ In 2003, DOJ brought a 208 enforcement action against Berks County, Pennsylvania, on behalf of Latino voters.¹²⁰ The court found that poll workers' behavior violated section 208 and contributed to "hostile and unequal treatment of Hispanic and Spanish-speaking voters"¹²¹ and ordered the county to allow voters their assistants of choice to help them in all aspects of the voting process, including inside the voting booth, and to train poll workers on proper implementation of section 208.¹²²

States or municipalities can enact laws to strengthen protections and access to an assistant of one's choice.¹²³ The VOTE ordinance¹²⁴ passed in Cook County, Illinois, also strengthened protections to bring an assistant to the ballot box through a requirement to clearly post signage about a voter's rights under section 208 at all applicable polling locations on days of early voting and election day¹²⁵ as well as incorporating section 208 provisions into election judge trainings.¹²⁶ States or municipalities can also enact laws that violate section 208 and/or impede the ability of voters to choose their assistant of choice.¹²⁷

In 2015, a successful section 208 lawsuit was brought in Texas by AALDEF on behalf of Williamson County, Texas, voter Mallika Das

118. See *supra* notes 63–65 and accompanying text.

119. See *United States v. Mia.-Dade Cnty.*, No. 02-21698, slip op. at 2 (S.D. Fla. June 17, 2002), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/miamidade_cd.pdf [<https://perma.cc/ZD6X-TRN3>] (arguing that the county "denied certain Creole-speaking Haitian-American voters assistance from persons of their choice . . . [and] that oftentimes, the only poll[]workers available to provide assistance did not speak Creole").

120. *United States v. Berks Cnty.*, 250 F. Supp. 2d 525, 530–31 (E.D. Pa. 2003) (illustrating incidents of poll workers denying LEP Latino voters assistants of choice).

121. *Id.* at 575.

122. See *id.* at 583–85 (providing various orders for Berks County to implement to comply with section 208).

123. See LEE ET AL., *supra* note 110, at 6–9 (explaining how section 208 has been implemented in different states).

124. COOK COUNTY, ILL., CODE OF ORDINANCES, ch. 22, art. III, §§ 35–41 (2019).

125. *Id.* § 40(a)(5).

126. *Id.* § 40(c)(2).

127. See, e.g., LEE ET AL., *supra* note 110, at 6 (noting that Idaho's section 208 provision "leaves open the possibility that poll workers would not consider an inability to read or write English as a reason to permit voters to have someone assist them").

challenging state law that differentiated between individuals providing voting assistance and interpreters.¹²⁸ The challenged provision placed restrictions on who could serve as a voter's assistor by requiring assistors who served as interpreters to be registered voters of the same jurisdiction "in which the voter needing the interpreter resides."¹²⁹ In this case, Texas argued that the right to "assistance by a person of the voter's choice"¹³⁰ under section 208 applied only to the literal act of marking the ballot.¹³¹ Under that argument, Texas asserted its assistor provision complied with section 208 and that a right to an interpreter was supplemental because it extended assistance beyond the ballot box, making it beyond section 208's coverage.¹³² In August 2017, the Fifth Circuit Court of Appeals affirmed the district court's decision that Texas Election Code section 61.033 was invalid. The court specifically noted "[t]he unambiguous language of the VRA"¹³³ is clear that voting "plainly contemplates more than the mechanical act of filling out the ballot sheet" and "includes steps in the voting process *before entering* . . . and . . . *after leaving* the ballot box."¹³⁴ As a result, the court "conclude[d] that the limitation on voter choice expressed in Tex. Elec. Code § 61.033 impermissibly narrows the right guaranteed by Section 208 of the VRA" and thus could not be enforced.¹³⁵

In Minnesota, a problematic state law contravenes section 208 by adding more restrictions regarding who is eligible to assist a voter¹³⁶

128. See Press Release, Asian Am. Legal Def. & Educ. Fund, Asian Americans Sue Texas for Denial of Language Assistance Under the Voting Rights Act (Aug. 6, 2015), <https://www.aaldef.org/press-release/asian-americans-sue-texas-for-denial-of-language-assistance-under-the-voting-rights-act> [<https://perma.cc/3PLZ-HNCM>] ("AALDEF's lawsuit challenges a provision of the Texas Election Code that requires interpreters to be registered to vote in the same county as the voter who needs assistance.").

129. See TEX. ELEC. CODE ANN. § 61.033 (West 2021), *invalidated by* OCA-Greater Hous. v. Texas, 867 F.3d 604 (5th Cir. 2017); see also TEX. ELEC. CODE ANN. § 61.032 (West 2021) (permitting voters to communicate to election officers through interpreters).

130. 52 U.S.C. § 10508.

131. See OCA-Greater Hous., 867 F.3d at 614 ("Texas argues that the term ['to vote' in the VRA] refers only to the literal act of marking the ballot.").

132. See *id.* ("The supplemental interpreter right, which extends beyond the ballot box, Texas argues, is beyond Section 208's coverage, meaning that the § 61.033 restriction on voter choice cannot be in conflict.").

133. *Id.*

134. *Id.* at 615.

135. *Id.*

136. See MINN. STAT. § 204C.15, subdiv. 1 (2020) ("[T]he following persons may not provide assistance to a voter: . . . a candidate for election.").

and limiting how many voters can be assisted by a single person.¹³⁷ These additional restrictions are not found in the VRA and thus violate the federal law, which preempts the Minnesota statute.¹³⁸

This Minnesota statute was not in effect for the 2020 election due to a consent decree¹³⁹ entered into by plaintiffs and the Secretary of State in response to *Thao v. Simon*.¹⁴⁰ The consent decree, entered on April 21, 2020, included an agreement that the three-voter-assistance limit is preempted by the VRA and that the Secretary of State would notify election officials that these limits are unenforceable as well as revise election training materials before the general election on November 3, 2020, to eliminate references to these restrictions.¹⁴¹

Additionally, right before the 2020 general elections, the Minnesota Supreme Court held that the statute's three-voter limit on marking ballots¹⁴² was likely inconsistent with section 208 and upheld the temporary injunction ordered in *DSCC v. Simon*.¹⁴³ While the consent decree entered into in *Thao* permanently enjoined the enforcement of the Minnesota statute restricting the number of voters a person could assist to three¹⁴⁴ (as well as prohibiting candidates from assisting voters), the Minnesota legislature should take steps to fix the language in Minnesota Statutes section 204C.15 to remove this violation of section 208 from its code.¹⁴⁵ Even though the consent decree effectively neutered the provision and mandates outreach and notice to elections officials, the possibility of confusion or misapplication is higher when the conflicting language is left on the books. To ensure no confusion as to

137. See *id.* ("No person who assists another voter as provided in the preceding sentence shall mark the ballots of more than three voters at one election.")

138. Compare 52 U.S.C. § 10508, with MINN. STAT. § 204C.15.

139. *Thao v. Simon*, No. 62-CV-20-1044 (Minn. Dist. Ct. Apr. 21, 2020).

140. Complaint, *Thao*, No. 62-CV-20-1044.

141. *Thao*, slip op. at 4.

142. MINN. STAT. § 204C.15, subdiv. 1.

143. See 950 N.W.2d 280, 289 (Minn. 2020) ("Minnesota's three-voter limit on marking assistance can be read to stand as an obstacle to the objectives and purpose of section 208 because it could disqualify a person from voting if the assistant of choice is, by reason of other completed assistance, no longer eligible to serve as the voter's 'choice.'").

144. *Thao*, slip op. at 4.

145. The legislature should also take the opportunity to remove all restrictions on being able to help deliver absentee ballots, which were also challenged in *DSCC v. Simon*. The lower court's temporary injunction with respect to the three-voter limit on ballot collection in Minnesota Statutes section 203B.08, subdivision 1 was reversed by the Minnesota Supreme Court. See *DSCC*, 950 N.W.2d at 290-91 ("[T]he district court did abuse its discretion in finding a likelihood of success that the three-voter limit on delivering marked ballots, Minn. Stat. § 203B.08, subd. 1, is preempted.")

Minnesota law, the statutory language in Minnesota Statutes section 204C.15 should be corrected.

CONCLUSION

Minnesota has made and continues to make voter accessibility and election administration a priority. To remain on the cutting edge, Minnesota should address some existing restrictions and barriers in its state laws as well as proactively provide language assistance voluntarily at the state and county levels. The fastest growing demographics in Minnesota are communities of color, immigrants, and language minorities, with plenty of overlap among these groups. Thankfully, there exist tools, best practices, and models for Minnesota to utilize to ensure that this growing segment of its electorate is able to effectively and efficiently participate in future elections.