

**TESTIMONY BY CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS  
BEFORE THE ILLINOIS STATE ADVISORY COMMITTEE TO THE  
U.S. COMMISSION ON CIVIL RIGHTS  
MARCH 9, 2017**

Submitted By:

Ryan Cortazar, Redstone Legal Fellow  
Chicago Lawyers' Committee for Civil Rights  
100 North LaSalle Street, Suite 600  
Chicago, Illinois 60602  
Phone: (312) 888-4196  
E-mail: [rcortazar@clccrul.org](mailto:rcortazar@clccrul.org)

**I. INTRODUCTION**

Thank you for the opportunity to testify today. The Chicago Lawyers' Committee for Civil Rights (Chicago Lawyers' Committee) has operated as Chicago's preeminent nonprofit, nonpartisan civil rights legal organization since 1969, and we work to secure racial equity and economic opportunity for all. The Chicago Lawyers' Committee provides legal representation through partnerships with the private bar, including our nearly 50 member law firms. We collaborate with grassroots organizations to implement community-based solutions that advance civil rights, and we participate in coalitions such as Just Democracy Illinois.

The Voting Rights Project of the Chicago Lawyers' Committee was established to eliminate, reduce, and prevent barriers to voting for communities of color and low-income residents in Illinois. We advocate for expanded voter access for all communities, regardless of race, ethnicity, socioeconomic, or disability status. A major component of our work is Election Protection, the nation's largest non-partisan voter protection program, which operates the 866-OUR-VOTE hotline and supports

companion lines at 888-VE-Y-VOTA and 888-API-VOTE. Partnering with area law firms and nonprofit organizations, Election Protection hotline and poll watcher volunteers have answered thousands of voter questions and resolved numerous problems at the polls.

Because Illinois has elections of some kind every year, the Chicago Lawyers' Committee for Civil Rights works year-round with local election authorities to make sure that the officials who run our elections comply with federal and state voting rights laws and know about voting barriers experienced by community members. Our voting rights work often involves open communication and collaboration with election officials to address voters' concerns on Election Day and throughout the year. Our voting rights attorneys meet with election officials in the months leading up to Election Day to assess their plans and provide any assistance that we can in improving training materials, recruiting poll workers, assisting voters, and facilitating community input about areas where language assistance is needed. An important part of this outreach is helping election authorities meet their bilingual election requirements and expand language access in the voting process.

Every American citizen has the right to cast an informed ballot in the language they are most comfortable speaking and reading. Congress first planted the seed of this right in the Voting Rights Act of 1965,<sup>1</sup> and it blossomed in subsequent amendments in

---

<sup>1</sup> Pub. L. No. 89-110, 79 Stat. 437 (1965).

the 1970s<sup>2</sup> as Congress recognized the growing need of language access and the substantial language barriers that had been erected to discriminate against American based on national origin, educational level, and language ability in exercising their voting rights. Although there are administrative determinations about language needs every few years, Congress has not revisited these language access requirements since the 1970s, even as the needs of our country's language minority communities have significantly evolved over the last forty years. It is past time for the federal government to revisit its language access laws to ensure every citizen's right to vote. Any expansion of language access rights must take into account past and current discrimination against voters based on their English-language proficiency, current Voting Rights Act requirements for bilingual elections, how local governments implement or fail to implement bilingual elections, and the sufficiency of the government's data analysis to meet community needs, including U.S. Census Bureau methodologies. Any future action must also take into account America's growing diversity both in terms of the geographic distribution of individuals with limited English proficiency as they move to new areas outside of core cities as well as the growing number of languages that these individuals speak.

---

<sup>2</sup> Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, 84 Stat. 314; Act of Aug. 6, 1975, Pub. L. No. 94-73, Tit. I, 89 Stat. 400.

## II. HISTORY

For generations, states have erected language access barriers to discriminate against a broad swath of eligible voters with limited English proficiency, from natural born Americans to naturalized immigrant citizens. When Congress banned literacy tests in jurisdictions that historically disenfranchised black voters through the Voting Rights Act of 1965, it also banned discrimination against Puerto Rican voters in New York.<sup>3</sup> Section 4(e) of the Act forbade states from disenfranchising voters based on English literacy tests if a voter had completed sixth grade in a school in the United States and its territories.<sup>4</sup> The direct attack on New York's history of discrimination is apparent from the statute itself, which specifically names Puerto Rico as a covered jurisdiction.<sup>5</sup> The Supreme Court, in declaring the provision unconstitutional, noted that prejudice against Southern and Eastern European immigrants "played a prominent role in the enactment" of New York state's literacy test,<sup>6</sup> and the Court emphasized that the requirement "may be viewed as a measure to secure for the Puerto Rican community residing in New York nondiscriminatory treatment."<sup>7</sup>

From this tiny but important intervention, recognition of this type of discrimination grew, and Congress revisited this issue in 1970 when it included additional protections in the Voting Rights Act. Although some courts and election

---

<sup>3</sup> See *Katzenbach v. Morgan*, 384 U.S. 641, 643–45 & n.1 (1966).

<sup>4</sup> Voting Rights Act of 1965, 79 Stat. 439, 52 U.S.C. § 10303(e) (2012).

<sup>5</sup> See *id.*

<sup>6</sup> *Katzenbach*, 384 U.S. at 654, 654 n.14 (1966).

<sup>7</sup> *Id.* at 652.

authorities read the original law expansively to provide bilingual voting resources, Congress recognized that a legislative fix was needed because the original law had been drafted too narrowly to only apply to certain jurisdictions and certain ethnic minorities.<sup>8</sup> In particular, the growing Chicano movement and civil rights litigation brought attention to voting discrimination against Mexican Americans in Texas and California that fell outside of the original Voting Rights Act protections.<sup>9</sup> To better protect the rights of language minorities nationwide, Congress adopted a nationwide ban on literacy tests and passed several provisions aimed at assisting language minorities at the polls. These protections developed as a result of crosspollination between social movements as civil rights advocates and minority communities saw commonality between discriminatory literacy tests aimed at African American communities throughout the South and literacy tests directed at language minorities in other parts of the country. The most important of these provisions for Illinois are sections 203 and 208.

### III. LEGAL REQUIREMENTS

With this context in mind, we can better understand the legal requirements of the Voting Rights Act. Section 203 requires covered states and political subdivision —

---

<sup>8</sup> James Thomas Tucker, *Enfranchising Language Minority Citizens: The Bilingual Election Provisions of the Voting Rights Act*, 10 N.Y.U. J. LEGIS. & PUB. POL'Y 195, 203–04 (2006).

<sup>9</sup> David H. Hunter, *The 1975 Voting Rights Act and Language Minorities*, 25 CATH. U. L. REV. 250, 254-57 (1976); *id.* at 255 n.29.

typically counties<sup>10</sup> – to provide election materials in minority languages. A jurisdiction is covered by section 203 when it meets one of the following two thresholds:

- (1) five percent of the voting age population of the jurisdiction are members of a single language minority and limited-English proficient; *or*
- (2) more than 10,000 citizens in a political subdivision are members of a single language minority and are limited-English proficient.<sup>11</sup> Additionally, the illiteracy rate of the citizens of the language minority as a group must be higher than the national illiteracy rate.<sup>12</sup>

Once the federal government determines that a jurisdiction meets these requirements, that jurisdiction must provide written and oral assistance in the designated minority language for voters. There are currently 263 covered jurisdictions.<sup>13</sup> Although this is just 3.3 percent of the country's political subdivisions, these areas have 68,800,641 eligible voters, or 31.3 percent of the total eligible voters in the country.<sup>14</sup> In other words, nearly one in three eligible voters lives in a community that is mandated by law to provide bilingual election resources.

Section 203 is a practical provision that measures the community need for bilingual resources in light of the administrative concerns of election authorities.

Because of this, section 203 does not assist every voter who has language access needs.

---

<sup>10</sup> In Illinois, these subdivisions include some cities that have election authorities that operate independently of county authorities. For example, Chicago and Cook County both execute their bilingual election requirements independently.

<sup>11</sup> 52 U.S.C. § 10503 (2014).

<sup>12</sup> *Id.*

<sup>13</sup> U.S. Census Bureau, *Census Bureau Releases 2016 Determinations for Section 203 of the Voting Rights Act* (Dec. 5, 2016), <https://www.census.gov/newsroom/press-releases/2016/cb16-205.html>.

<sup>14</sup> *Id.*

For voters not residing in section 203-covered jurisdictions, section 208<sup>15</sup> is critical. In section 208, Congress provided that any eligible voter may receive language assistance from any person that the voter chooses so long as that person is not an agent of the voter's employer or union.<sup>16</sup> This means that voters who require language assistance can bring their relatives, including their children, friends, or neighbors to help them vote. This provision is an essential part of the regulatory scheme not only for individuals who live in areas without significant language minorities but also for voters who reside areas that have significant need for bilingual resources but that Census Bureau studies have concluded do not meet section 203 criteria.

#### IV. IMPLEMENTATION

The Voting Rights Act delegates to the Census Bureau the work of determining whether counties meet the demographic requirements for section 203-coverage outlined above. The Census Bureau collects data for this determination through the American Community Survey. The survey asks individuals what languages other than English the person speaks at home and how well they speak English. All responses that rank below "very well" are categorized as limited-English proficient.<sup>17</sup> The survey has substantial sampling error in small populations, so it uses regression techniques and weighting to get more accurate estimates of language minority populations.<sup>18</sup>

---

<sup>15</sup> 52 U.S.C. § 10508.

<sup>16</sup> *Id.*

<sup>17</sup> See U.S. Census Bureau, Voting Rights Act Section 203 Determinations 23 (2011), [https://www.census.gov/2010census/news/pdf/20111011\\_203slides.pdf](https://www.census.gov/2010census/news/pdf/20111011_203slides.pdf).

<sup>18</sup> *Id.* at 25.

In the last decade, the Census Bureau has prioritized improving the quality of data from individuals with limited English proficiency. Despite improvements, challenges remain.<sup>19</sup> According to its own data, the Census estimated undercounts for Black, Hispanic, and American Indian and Alaskan Native populations while it estimated an overcount for the Non-Hispanic white population.<sup>20</sup> Based on qualitative observations of the changing demographics in the Chicago metropolitan area, advocates and community members have expressed concern that the determinations made by the Census Bureau do not match demographic changes that they have witnessed over the years. These advocates have highlighted a number of factors that may lead to the Census underestimating the number of limited English proficient voters, including lower response rates and incomplete responses from these voters as well as overestimation of the level of English proficiency since the survey does not explicitly tie its English proficiency questions to voting needs. For example, a voter may think she speaks English “very well” but still be uncomfortable navigating confusing election procedures and ballot language without language assistance. In fact, many voters who use bilingual voter resources do speak English and have passed a citizenship test in English but feel more comfortable voting in their native language. Additionally, many voters using bilingual resources are actively working to improve their English fluency.

---

<sup>19</sup> See U.S. Census Bureau, American Community Survey Design and Methodology (January 2014), at 98–102, [http://www2.census.gov/programs-surveys/acs/methodology/design\\_and\\_methodology/acs\\_design\\_methodology\\_report\\_2014.pdf](http://www2.census.gov/programs-surveys/acs/methodology/design_and_methodology/acs_design_methodology_report_2014.pdf).

<sup>20</sup> U.S. Census Bureau, DSSD 2010 Census Coverage Measurement Memorandum Series #2010-G-01, at 1–2 (May 22, 2012), [https://www.census.gov/coverage\\_measurement/pdfs/g01.pdf](https://www.census.gov/coverage_measurement/pdfs/g01.pdf).



Effective language access does not automatically materialize after the federal government makes its section 203 designations. In practice, providing language access at the polls requires relationship-building and coordination between election administrators and language minority communities, often with the input of civil rights advocates. Election authorities often have tight budgets that limit their resources. Although some election authorities like the Chicago Board of Election Commissioners and the Cook County Clerk's office have retained staff to aid in bilingual election assistance, others do not. Decisions on whether to hire professional staff devoted to language assistance should not be made only by considering additional labor costs because noncompliance and litigation may end up being more costly in the long run. These decisions should also take into account equitable factors like the importance of serving all members of a constituency and the increased voter participation that can result from greater bilingual resources.<sup>21</sup> But even those election authorities that have hired translation, interpretation, and outreach staff must work closely with community groups to ensure effective implementation.

Other presenters today will provide more details on how to leverage the relationships between public officials and civic groups to improve the efficiency and effectiveness of language access, but I want to highlight the key types of assistance that government agencies can obtain from community groups. Covered jurisdictions must

---

<sup>21</sup> See DEMOS, MILLIONS TO THE POLLS: PRACTICAL POLICIES TO FULFILL THE FREEDOM TO VOTE FOR ALL AMERICANS 63 (2014).

provide translated informational materials and ballots. These documents often contain specialized language that requires professional, context-sensitive translation – something that tools like free web translation tools are ill equipped to provide. Community groups have often facilitated connections between election authorities and professional translators to make sure that the translators retained by the government are high quality. Election authorities also struggle to recruit and retain poll workers of any type, but bilingual poll workers can be particularly difficult although not impossible to recruit. Community groups often play a crucial role in helping the government recruit and retain high-quality bilingual poll workers to provide oral assistance at the polling place. This involvement in the political process also leads to greater political empowerment. Studies have shown that higher rates of voting also correlate with higher levels of civic and community engagement.<sup>22</sup>

## V. RECENT DEVELOPMENTS

Because of the periodic nature of elections, election officials and community groups must constantly engage each other to guarantee that advancements in bilingual services are not lost in the space between elections and that election authorities appropriately address any demographic changes that occur within the jurisdiction. If

---

<sup>22</sup> E.g. Jennifer Oser, *Assessing How Participants Combine Acts in Their "Political Tool Kits": A Person-Centered Measurement Approach for Analyzing Citizen Participation*, J. SOC. INDICATORS RES. (2016), <https://link.springer.com/article/10.1007/s11205-016-1364-8>; Seth H. Werfel, *Voting and Civic Engagement: Results from an Online Field Experiment*, RES. & POLITICS 1–3 (Jan.-Mar. 2017), <http://journals.sagepub.com/doi/pdf/10.1177/2053168017690736>; RGK Center, *The Investigator #2: Volunteering by States*, <http://rgkcenter.org/research/4/investigator/2>.

these details fall through the cracks, eligible voters are excluded from elections, and the discriminatory effects of language-based disenfranchisement fall along lines of national origin, language ability, education level, and race.

Because all communities are mobile and language minority communities are particularly mobile, the nature and location of bilingual election services should evolve from election to election. Other factors can also complicate the effective administration of bilingual election services. For example, election authorities sometimes change polling places based on projected turnout needs. Since far fewer voters turn out for local elections than for presidential elections, some election authorities reduce the number of polling places for local elections. This means that the locations having bilingual poll workers are not stable, and the election authorities have to adjust their recruitment of bilingual poll workers accordingly.

Beyond these inevitable polling place changes, demographic changes also complicate bilingual election needs. Over the past few decades, immigrant communities have expanded outside of urban centers and moved to more suburban and rural locales. In addition to the City of Chicago, Suburban Cook County, Kane, Lake, and DuPage counties have all met the requirements for section 203 coverage in the last ten years.<sup>23</sup> Several jurisdictions in Illinois currently fall just short of federal language access coverage despite significant language access needs in those areas, such

---

<sup>23</sup> Voting Rights Act Amendments of 2006, Determinations Under Section 203, 76 Fed. Reg. 63,602, 63,604 (Oct. 13, 2011), [https://www.census.gov/rdo/pdf/2011\\_26293.pdf](https://www.census.gov/rdo/pdf/2011_26293.pdf).

as DuPage and Will counties, and we expect those areas to meet the requirements for bilingual election coverage in the future.<sup>24</sup> In addition to greater geographic coverage, language diversity has greatly increased over time. In Chicago and suburban Cook County, the Census Bureau requires bilingual language access for Hispanic, Chinese, and Indian voting populations. In practice, written materials are provided in Spanish, Chinese, and Hindi, and oral assistance is provided in Spanish, Mandarin, Cantonese, Hindi, Gujarati, and Urdu. Additionally, Kane and Lake counties must provide language access services in Spanish.

And beyond federal requirements, election authorities also provide voluntary language access in certain circumstances. Chicago and suburban Cook County election officials also provide language access in Polish and Korean, and DuPage County will continue to provide Spanish language access services even though it is not required to do so after the most recent December 2016 section 203 determinations. We applaud these efforts and welcome the opportunity to collaborate with jurisdictions looking to expand their language access in the future.

These concrete data points can obscure more subtle changes that complicate language access programs every year. Although we know what counties must provide these language services, determining what specific communities in these massive counties require language assistance is a more difficult determination. Continuous

---

<sup>24</sup> See U.S. Census Bureau, Public Use Data File and Technical Documentation (Dec. 5, 2016), [https://www.census.gov/rdo/data/voting\\_rights\\_determination\\_file.html](https://www.census.gov/rdo/data/voting_rights_determination_file.html).

population shifts mean that every year some polling places might need bilingual election judges or materials that they did not carry in previous elections.<sup>25</sup> And while the demographics of these communities are changing, often many of the poll workers have worked the precincts for much longer periods of time and have not been trained fully on the changes to the law or regulations and how to implement them.

In addition to the recruiting problems that election officials face in finding new poll workers who can provide bilingual oral assistance, election authorities at times must address ethnic tensions, cultural clashes, and even problems of xenophobia and racism that arise as these communities diversify. As Cook County Clerk David Orr testified, despite training that advises poll workers on the legal rights of limited English proficient voters, some poll workers inject their personal frustration with bilingual voting and limited English proficient voters into the voting process.<sup>26</sup> In early voting for the November 2016 election, we received a report of local poll workers complaining about South Asian and Latino limited English proficient voters to other poll workers and voters. In other circumstances, even years of experience operating bilingual elections has not prevented serious problems arising on Election Day. On November 8, 2016, a local Spanish-speaking voter was improperly turned away from the polls even

---

<sup>25</sup> An appendix to this memorandum contains a list compiled by the Chicago Lawyers' Committee for Civil Rights of polling sites in the greater Chicago area that local election authorities identified as needing bilingual election judges.

<sup>26</sup> See Transcript, U.S. Commission on Civil Rights, Civil Rights and Voting in Illinois 299-300 (Mar. 9, 2017) (comments of Cook County Clerk David Orr).

though she was a registered voter and unsuccessfully tried to find a bilingual election judge to help her explain this fact to other election judges.

## VI. PATHS FORWARD

As mentioned earlier, the most recent Census estimates removed the requirement for Spanish bilingual language access in DuPage County despite the belief from community groups and election officials that the need for language access in DuPage County may actually be growing. This problem raises serious concerns about the adequacy of the Census Bureau's determinations. To improve these processes, we recommend that the Census Bureau open up its section 203 determinations to a notice and comment process for community input and response to its determinations. Section 203's requirements are purely quantitative and based on one data set, but we believe that community input in these determinations would point to how language access can be implemented most efficiently and effectively and also put pressure on the Census Bureau to look more critically at its methodology for weaknesses and areas of improvement that might expand language access to new jurisdictions under section 203.

Information from our Election Protection program also raises serious concerns about the adequacy of section 203 to meet the needs of an increasingly diverse voting population. Through our hotline and poll watchers we received reports of voters unsuccessfully seeking assistance in different languages, beyond the language coverage that the election jurisdiction offered. At least eight states and the District of Columbia

have expanded language access beyond the requirements of section 203.<sup>27</sup> Proposals are currently being considered in Illinois, and while we support increased language access to the polls for all eligible voters, it is essential that state-level language access protections are designed and implemented with input from community members and election administrators so that the on-the-ground implementation of language assistance is successful.

Additionally, while section 208 provides an important failsafe for limited English proficient voters by allowing them to bring the person of their choice to help them translate the ballot, too few voters, poll workers, and observers are aware of this right. As Illinois State Advisory Committee member Tabassum Haleem noted, election authorities throughout the state should create clearer and more accessible voters bills of rights that they distribute widely to inform voters of the availability of personal language assistance at the polls.<sup>28</sup> If necessary, polling sites should post prominent materials that advise voters of this important right.

As I laid out before, in the first ten years after passage of the Voting Rights Act, Congress continuously amended its language access provisions in growing recognition of the barriers to voting encountered by citizens with limited English proficiency. Since then, Congress has allowed these protections to stagnate as the facts on the ground and

---

<sup>27</sup> See Brian J. Sutherland, *The Patchwork of State and Federal Language Assistance for Minority Voters and a Proposal for Model State Legislation*, 65 N.Y.U. ANN. SURV. AM. L. 323, 352-60 (2009).

<sup>28</sup> See Transcript, U.S. Commission on Civil Rights, *Civil Rights and Voting in Illinois 298-99* (Mar. 9, 2017) (comments of Illinois Advisory Committee Member Tabassum Haleem).

the demographics of the electorate have changed. To meet these demands, Congress should examine the voting rights expansions of the several states that have expanded language access beyond federal requirements as well as the technological advances that make the administration of bilingual elections significantly easier since 1975.

In addition to these technological changes, the country has also undergone significant social changes in the last forty years and even the last two years. The damage from false rhetoric about voting fraud and undocumented immigrant votes falls hard on language minorities. Part of this rhetoric undoubtedly comes from ignorance of the language access laws we passed decades ago. Even knowledgeable voters are unaware that section 208 permits eligible voters to bring a friend or relative to help them with translation and interpretation. As we work to expand voting rights on the local and state level and protect the voting rights from an attorney general hostile to the Voting Rights Act and voices amplifying xenophobia, we continue to strive to protect the right of all citizens, regardless of their English proficiency, to cast an informed ballot.