

Report from the Task Force on Minority Language Voting Materials

Adopted at the task force's meeting on January 21, 2015

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The Legislature's Questions for the Task Force

House Bill 3506-A (2013) established a task force on minority language voting materials and charged it with analyzing and reporting to the Legislature on the following issues:

(2) The task force shall determine the best way to ensure that members of large language-minority communities receive necessary voter materials in the applicable minority language. In reaching this determination, the task force must analyze:

(a) The point at which a language minority community is large enough to warrant voter materials being published in that language;

(b) Which election materials should be provided in one or more minority languages;

(c) Whether minority language voter materials should be provided on the Internet, in printed form or a combination of the two;

(d) Whether minority language voter materials should be published at the state or local level;

(e) How translation services should balance accuracy, differences in dialect and price; and

(f) How to ensure that the state receives accurate and complete data on the number and location of individuals who speak minority languages.

(3) In addition to the issues set forth in subsection (2) of this section, the task force may conduct research and make recommendations on any other issue relating to voting, voting materials or the voting process for language minorities.¹

Task Force Members and Community Participants

The members of the task force were:

- Joe Gallegos, State Representative District 30
- Diane Rosenbaum, State Senator District 21
- Steve Druckenmiller, Linn County Clerk
- Linda Brown, Wasco County Clerk
- Rachele Altman, Legislative Director, Secretary of State
- Codi Trudell, Deputy Director of Voting Services, Elections Division, Secretary of State
- Andrea Miller, Executive Director, Causa
- Salome Chimuku, Director of Public Policy, Center for Intercultural Organizing (CIO)
- Kathy Wai, Community Organizer, Asian Pacific American Network of Oregon (APANO)

In addition to the task force members representing Causa, APANO, and CIO, representatives from Common Cause Oregon, Disability Rights Oregon, League of Women Voters of Oregon, Oregon Advocacy Commission Office, Oregon Student Association, the Slavic community, Oregon Voices, Our Oregon, City of Portland, The Bus Project, Multnomah County participated in task force meetings and helped shape the task force's conclusions and recommendations.

¹ Chapter 755, Sections 1 and 2, Oregon Laws 2013, *available at* https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors254.html.

Task Force Conclusions and Recommendations

This report addresses the issues raised by the Legislature in the order in which they appeared in H.B. 3506-A (2013). Following the main body of this report are three appendices. These appendices provide additional support for and information relevant to the task force's primary conclusions and recommendations, focusing on:

- Federal laws relevant to minority-language voting assistance
- Data regarding minority-language-speaking citizens in Oregon
- The cost of providing minority-language voting materials

The Point at Which a Language Minority Community is Large Enough to Warrant Voter Materials Being Published in that Language

The federal Voting Rights Act (VRA) sets thresholds for when a county becomes covered by the Act and must provide most voting materials in a minority language (see Appendix 1). Oregon currently has no counties covered by this law.

Oregon's next calculation for determining coverage under the VRA will be in 2016—after the General Election—and will be based on 2015 Census data. Predictions for that 2016 calculation, based on current data, put Morrow County slightly above the federal threshold for Spanish. If this is in fact the case after the release of the 2016 estimates, Morrow County will be required to publish most voting materials in Spanish. Other Oregon counties appear unlikely to be covered by the VRA after 2016 (see Appendix 2).

Notably, however, the federal VRA establishes a legal floor, not a ceiling; the Oregon Legislature could pass a state law with a threshold for requiring minority language voting materials that is more easily met. For example, California requires any county where over three percent of adult citizens speak a given language to “make reasonable efforts to recruit deputy registrars” fluent in that language and in English.² Note that this is a requirement to provide in-person assistance with voter registration, not to translate written materials. Of additional note, whereas the federal VRA bases its coverage formula on speakers of a minority language *who have limited English proficiency (LEP)*, California's coverage formula under its state law is based on the percentage of adult citizens in California who speak a foreign language *regardless of English proficiency*.

² California Elections Code § 2103(c)-(d) (2014), *available at* <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=elec&group=02001-03000&file=2100-2124>.

Several members of the task force were interested in learning about the likely effect of Oregon creating a state version of the VRA that had a three percent threshold instead of a five percent threshold. If Oregon adopted this approach, the impact would be quite limited. Current estimates suggest that the requirements to provide minority language voting materials would cover Jefferson and Morrow counties for Spanish and no counties for other languages (see Appendix 2). If Oregon followed California's approach and based coverage on percentage of adult citizens who speak a foreign language regardless of English proficiency, the state law would apply to more counties. This approach would likely cover Hood River, Jackson, Jefferson, Klamath, Malheur, Marion, Morrow, Polk, Umatilla, Wasco, Washington, and Yamhill counties for Spanish and no counties for other languages (see Appendix 2). Several members of the task force noted that if Oregon set an extremely low coverage threshold that might be reasonable today, future immigration of minority language communities into Oregon might result in a very significant burden on the state or counties to provide voting materials in many languages.

It is important to keep in mind that any coverage formula adopted by the Legislature must be based on data that can actually be obtained, and there are real limits on the data that can be obtained (see Appendix 2 for a discussion of challenges related to obtaining necessary data). If the Legislature chooses to create a state coverage formula, the Legislature will need to decide whether the formula should use *county-level* data to determine whether *particular counties* should be required to provide materials in a given language, or whether the coverage formula should use *state-level* data to determine whether *all counties* must provide certain voting materials in certain minority languages.

Recommendations

- The Legislature should consider a long-term approach to addressing minority ballot access. A major component of this approach should be to consider adopting a state coverage formula that more easily triggers mandatory provision of minority-language voting materials than the coverage formula in Section 203 of the federal Voting Rights Act.
- If the Legislature decides to adopt a state coverage formula, it should consider making that formula more broadly applicable, potentially applying it to all minority languages that meet the threshold, rather than limiting application to the exclusive group of languages covered by the Voting Rights

Act.³ Although the minority language communities covered by the federal VRA are Oregon's largest minority language communities that have low English proficiency, Oregon does have additional minority language communities that may continue to grow in the future. (See Appendix 2.)

- Prior to adopting a particular coverage formula, the Legislature should ensure that the data that is necessary to determine actual coverage under that formula can be obtained.

Election Materials that Should Be Provided in One or More Minority Languages

Besides the ballot, the key voting materials in Oregon are the official Oregon Voters' Pamphlet⁴ produced by the Secretary of State, the Voter Registration Card, and instructions for completing and returning a ballot. The State Elections Division already provides an abridged voters' pamphlet in Spanish online, as well as voter registration cards in Spanish. For the 2014 General election, the abridged Oregon Voters' Pamphlet included information about candidates for the U.S. Senate, U.S. House, Governor, and Oregon ballot measures.⁵

The Legislature should provide appropriate funding to allow the Secretary of State to provide voter registration cards and the online abridged Oregon Voters' Pamphlet in the five minority languages most needed by Oregonians with low English proficiency. The Secretary of State estimates that it would cost \$3,000 to \$4,000 per language, per year to provide the printed voter registration card in additional languages, and it would cost \$5,000 per language, per election to publish the online abridged Oregon Voters' Pamphlet in additional languages.

Community organizations and County Clerks could easily share electronic abridged Oregon Voters' Pamphlets with their constituents, through posting on their own websites and through printing PDF files for voters. In addition, County Clerks could use tablet computers to make electronic, translated Voters'

³ As explained in Appendix 1, The Voting Rights Act only covers Spanish, Asian Languages, Native American languages, and Native Alaskan languages. The VRA never requires the provision of voting materials or assistance for speakers of any other languages, such as Russian, German, Somali, Arabic, etc.

⁴ The Voters' *Pamphlet* is the official document Secretary of State produces and mails to every household in Oregon. Statutes govern the content and many other aspects of the pamphlet. The official Voters' Pamphlet should not be confused with voters' *guides*, which are produced by private community groups, news media, etc.

⁵ Oregon Secretary of State. Elections Division. "Guía del Elector en Línea para la Elección General 2014." Available at <http://www.oregonvotes.gov/pages/history/archive/nov42014/guide/spanish/votersguide.html>.

Pamphlets available to minority language speakers who do not have access to the internet at home and who visit the County Clerks' offices.

Should the Legislature provide appropriate funding, Secretary of State Kate Brown would be committed to publishing an online abridged Oregon Voters' Pamphlets in Chinese and Vietnamese, in addition to Spanish, for the 2016 Primary and General Elections. In addition, Secretary Brown plans to make voter registration cards available in Chinese and Vietnamese, in addition to Spanish, leading up to the 2016 Primary Election through the end of her term. Further, Secretary Brown will direct the County Clerks to use tablet computers to make any translated abridged Oregon Voters' Pamphlets available to voters at the County Clerks' offices.

As for instructions regarding how to complete and return a ballot, although the official ballot return envelope currently provides instructions in English regarding how to return a voted ballot, due to limited space, the envelope could not reasonably provide translation of this text in multiple languages. A more effective way to convey such instructions to voters with low English proficiency would be for the Secretary of State to include in the abridged Oregon Voters' Pamphlet more detailed general information related to voter registration, resources for voters with disabilities, and instructions for voters who would like assistance, as well as vote-by-mail frequently asked questions and answers. Secretary Brown is committed to expanding the Spanish-language abridged Oregon Voters' Pamphlet in this way, and to doing the same for translations in other languages if her agency receives appropriate funding from the Legislature to provide this document in additional languages.

Finally, one creative idea proposed by community groups to educate minority language voters about how to complete and submit a ballot was the creation of a short online instructional video that includes subtitles in a number of languages. Regardless of who creates the video and posts it online, community organizations, County Clerks, and the Secretary of State's Office could direct minority language voters to this resource. The Secretary of State's Office estimated that it would cost that agency \$10,000 to \$20,000 for it to create such a video.

Moving on to ballots, the task force recommends that the legislature consider ballots separately from other materials, such as those discussed above, if it considers enacting legislation to require the provision of some voting materials in certain minority languages. The task force's discussions made it clear that ballots

present unique challenges and raise different issues compared to other types of materials for purposes of determining which voting materials should be provided in a minority language. First, County Clerks are the sole entity with the authority to design, print, and distribute ballots. Second, the slightest error or inaccuracy on a ballot—or some citizens' belief in such error or inaccuracy—can cause great problems for election administration and could even invalidate an election. This was one of the key lessons that Linn County Clerk Steven Druckenmiller took away from his experience being the only Oregon County Clerk to have ever issued ballots in another language (Spanish in the 2006 Primary and General Elections). Third, the challenge of providing translated ballots free of controversy, error, or inaccuracy would be multiplied many times due to the fact that Oregon has thousands of ballot styles in every election (due to Oregon's many unique precincts). This means that in order to provide a ballot in a given election in just one minority language, hundreds or thousands of unique versions of the ballot might need to be translated.

For these three reasons, Oregon's elections officials that participated in the task force believe that providing the official ballot in multiple languages would take an extensive amount of resources to successfully execute under Oregon's current voting system. Notably, however, elections officials recognized the significant value of translated ballots to minority communities and agreed that state provision of translated official ballots should be a long-term goal.

On November 6, 2014, two of the community groups with representatives on the task force, APANO and The Center for Intercultural Organizing, held a meeting with other community organizations to discuss minority language voting materials. The other organizations with representatives in attendance were The Bus Project, Oregon Voice, Strategy Works, and the American Civil Liberties Union. The participants at that meeting reached consensus and identified the following five languages as those they believed to be most deserving of translated voting materials (in decreasing order of importance): Spanish, Chinese, Vietnamese, Somali, and Russian. Additionally, the group identified Korean, Arabic, Tagalog, and Hindi as secondary languages (without relative ranking) that also deserved translated voting materials. Finally, the group concluded that, ideally, ballots, voter registration cards, and The Voters' Pamphlet would be printed in the top two languages (Spanish and Chinese), with translations in all five languages offered online. The task force did not reach a consensus to accept these conclusions, but agreed to include a record of these recommendations in the report.

Recommendations

- The Secretary of State's Elections Division is the most appropriate entity to contract for any translation services needed for elections materials where the materials provided to voters are the same across the state. This will allow Oregon to maintain a consistent quality of translation throughout the state and will help smaller counties with limited resources.
- If counties are ever required to translate election materials, the Legislature should require them to use translation vendors with which the State Elections Division has a contract. Again, this will ensure a consistently high quality of translation around the state and will avoid the need for counties to spend limited staff resources on researching quality service providers.
- The provision of ballots in minority languages would assist many Oregonians and should be a long-term goal, even if such services are not currently feasible.
- The Legislature should provide appropriate funding for the Secretary of State to produce voter registration cards and an online abridged Oregon Voters' Pamphlet in the five minority languages that would serve the greatest number of voters who have low English proficiency. The Legislature should begin by providing appropriate funding to the Secretary of State to produce these documents in the three languages that would serve the greatest numbers of voters with low English proficiency: Spanish, Chinese, and Vietnamese. Secretary Brown would fully support this step.
- Secretary Brown should provide voter registration cards in Spanish, Chinese, and Vietnamese leading up to the 2016 Primary Election through the end of her term of office. She is committed to doing so.
- The abridged translated Oregon Voters' Pamphlet should be slightly expanded compared to its current form to include more detailed information about how to vote and return a ballot. Legislation could require this change but is not necessary. Secretary Brown is committed to expanding the Spanish-language abridged Oregon Voters' Pamphlet in this way, and to doing the same for translations in other languages if her agency receives appropriate funding from the Legislature to provide this document in additional languages.
- County Clerks should provide voters with access to computers (e.g. tablet computers) at the County Clerks' offices to view translated voting materials that are published online.

- Upon request, County Clerks and the Secretary of State should print and mail to voters translated voting materials available online. They currently do so.
- The Legislature should provide appropriate funding for the Secretary of State's Office to run a statewide telephone hotline for voters requesting assistance in a minority language. The hotline would use a professional phone interpretation service that would allow Elections Division staff to answer questions from minority language voters with low English proficiency.⁶ Secretary of State Kate Brown fully supports this recommendation.

Whether Minority Language Voter Materials Should be Provided on the Internet, in Printed Form or a Combination of the Two

Electronic publication of minority language voting materials offers a variety of advantages for Oregonians. First, they provide a significant cost savings compared to printed materials. They also allow voters with Internet access and basic computer skills to access content on demand. In addition, County Clerks and community organizations can easily share materials with thousands of voters through e-mail and websites.

However, there are still many voters who cannot access online materials, or who are uncomfortable doing so. On-demand printing and distribution of materials could address this need. Community groups, the counties, and the state could print materials and distribute them as needed, regardless of which entity originally produced the materials. Such on-demand printing is far more cost effective than sending materials to households that have not requested them. Currently, several community groups provide their own nonpartisan voters' guides in other languages in electronic and print versions to thousands of Oregonians. For example, the League of Women Voters of Oregon has provided *LWV Voters' Guides* in Spanish for over a decade, and APANO offers voters' guides in multiple Asian and Pacific Islander languages.

If the Legislature concludes that the publication and distribution by community organizations and County Clerks of translated materials—whether online or in print—is effective and efficient, the Legislature should appropriate funds to the Secretary of State to be distributed through grants to support this work. If the Legislature finds that this is not sufficient and wants to invest greater resources in providing voters with

⁶ The Multnomah County Clerk's Office currently operates this type of hotline.

materials in hard copy, the Legislature could direct the Secretary of State to print and distribute these materials upon request, and provide funding for it to do so.

Recommendations

- Provide funding to the Secretary of State to award grants to counties and community organizations to support the publication and distribution of minority language voting materials.
- Allow the state, counties, and any state-funded community organizations to primarily provide electronic, online publications, but direct these entities to distribute printed materials on demand.

Whether Minority Language Voter Materials Should be Published at the State or Local Level

Oregon Revised Statute 246.200 gives County Clerks the exclusive right to design and print ballots.⁷ Consequently, legislative action would be required to alter this exclusive authority. The task force recommends that the Legislature consult the County Clerks prior to making any such change.

The Secretary of State's Elections Division is responsible for producing the voter registration card, the Voters' Pamphlet, and various other instructional materials. It already offers a voter registration card in Spanish and publishes online an abridged version of the Voters' Pamphlet translated into Spanish.

Recommendations

- If the Legislature requires counties to provide any translated election materials, the state should bear the cost of translation, publication, and distribution of those materials. These costs would potentially be significant ones for the counties to bear.
- The Legislature should provide state funding through the Secretary of State to community organizations to produce and distribute nonpartisan voting guides in minority languages, and to print and distribute translated abridged Voters' Pamphlets produced by the Secretary of State.
- Counties that create translated voting materials—whether voluntarily or under a state mandate—should be required to use a translator certified by the Secretary of State's Election Division. This will

⁷ ORS 246.200 provides, "Except as otherwise provided by law, the county clerk is the only elections officer who may conduct an election in this state. For purposes of this section, the conduct of an election includes, but is not limited to, establishing precincts, preparing ballots and sample ballots, and receiving and processing votes."

ensure a consistently high quality of translation services and result in cost efficiencies for the counties.

- If designing a state framework requiring the provision of minority language voting materials, the Legislature should ensure that available processes for the translation of voting materials are legal, practical, cost-effective, and ensure the accuracy of translated voting materials.

How Translation Services Should Balance Accuracy, Differences in Dialect and Price

The slightest error on a ballot causes tremendous problems in the administration of an election. Some errors can even invalidate the results of an election. Printing materials in multiple languages introduces additional possibilities for errors and requires careful thought about how to ensure a consistent quality across voting materials and languages, both to maintain the integrity of elections and because all voters deserve accurate materials.

Members of community groups testified about their experiences producing voters' guides in other languages, and the challenges inherent in that undertaking. That process required finding a quality translator and then finding others to proof that person's work, both to correct errors and potential partisan bias in the translation. Los Angeles County provides voting materials in nine languages. That county hires professional translators, and then has bilingual staff members that verify the work.

If the legislature decides to require voting materials in minority languages, the task force recommends that the Legislature outline clear standards and procedures for translation. The Legislature should answer the following questions. First, will the counties or the state be responsible for overseeing the translation? Second, will the counties or the state pay for the translation of election materials and distribution of any hard-copies? It is important to note that ORS 246.250(2) requires the counties to pay for election expenses incurred by the County Clerk in administering the election laws.⁸ Third, how can Oregon ensure that the quality of all voting materials produced meets the high standards that voters have a right to expect of all voting materials?

⁸ORS 246.250(2) provides, "The necessary expenses incurred by the county clerk in administering the election laws shall be allowed by the county governing body and paid out of the county treasury."

Recommendations

- In designing any legal framework that requires the provision of minority language voting materials by the state or the counties, the Legislature should prioritize accuracy of translation and should establish a process to verify the accuracy of all translated materials.
- If the Legislature requires the counties to produce translated voting materials or to offer oral interpretation services, the Legislature should also allow the counties to take advantage of the vendors and service pricing available to the Secretary of State and other state agencies.

How to Ensure that the State Receives Accurate and Complete Data on the Number and Location of Individuals Who Speak Minority Languages

The Census Bureau's American Community Survey provides information updated annually about the languages that Oregon residents speak. However, Census Bureau's prepared tables do not always include the exact information of interest. Custom tabulations based on publicly available micro data can provide additional information, but these types of custom tabulations are only possible for counties that have populations over 100,000 people, due to privacy concerns. The other option to obtain data of interest is to purchase custom tabulations from the Census Bureau, which can make calculations based on data that is not publicly available.

Another approach is to provide a way for Oregon voters to let election officials know that they would like materials or assistance in a minority language. Many states that are required to comply with the minority language provisions of the federal Voting Rights Act offer websites and voter registration cards that ask whether a voter needs assistance provided in another language.

The Secretary of State's Elections Division could design a version of the voter registration card that allows registrants to request assistance in another language. The card would provide a blank line for listing the specific language spoken, preventing the state from limiting language options. The card could also allow a voter to customize the kinds of voting materials or assistance he or she would like to receive. The Legislature or the Secretary of State would need to define the materials and level of assistance that must be provided once a voter expresses a desire for translated materials, whether the state or the county would provide the materials or assistance, and who would pay for these services. Using the voter registration card to request

materials or assistance should not guarantee assistance regardless of the voter's primary language, given resource constraints of the state and the counties.

At the very least, this option would allow the state to begin collecting additional data about the numbers of registered voters that would like translated materials, and which languages are of greatest interest. Additionally, if resources allowed, this information could be used to provide translated voting materials in key minority languages that will benefit the greatest number of Oregonians.

Of final note, most of the information on a voter registration card currently falls under public records laws. Any information about race, primary language, or requests for minority language materials or assistance entered on a voter registration card would currently be subject to public records law. Moreover, the Secretary of State is concerned that including this information on voter registration cards could jeopardize the confidentiality of how minority voters voted or subject them to harassment if any action is taken without accompanying legislation. For this reason, the task force believes that the voter registration card should not inquire about these types of information so long as they would be subject to disclosure under state public records laws. Additionally, the task force recommends that the Legislature exempt from public records laws any indication of language preference and requests for minority language materials and assistance that are made on a voter registration card.

Recommendations

- Direct the Secretary of State's Elections Division to stay informed of the results of each American Community Survey.
- The Legislature should exempt from public records laws any indication of language preference and any request for minority language voting materials or assistance on a voter registration card.
- Provided the above exemption from public records is enacted, the Legislature should require the Secretary of State and the County Clerks to give eligible voters an opportunity to request minority language voting materials or assistance on a voter registration card or through a voter registration update.

Appendix 1: The Federal Context

Federal Laws

It is necessary to understand what federal law requires Oregon to do in the context of state provision of minority language voting materials. This is because federal law creates a legal floor for required action, and because federal law offers a model approach that some states and counties are following in this field.

Voting Rights Act

There are three key sections of the federal Voting Rights Act (as amended) related to minority language voting rights, which are discussed below. The first section does not apply to Oregon, and the second relevant section applies only to a small degree, because Oregon is a vote-by-mail state. The third section could apply to Oregon in the future and will be central to this discussion.

Section 4(f)(4)

Most scholarly articles and informational materials on voting and minority language communities mention section 4(f)(4) of the Voting Rights Act. In short, this section only applies to states that met particular criteria in 1972, and Oregon is not one of them.

Section 208

Added in 1982, Section 208 of the Voting Rights Act provides, “Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of the employer or office or agent of the voter’s union.”⁹ The legal scholar Angelo Ancheta explains, “Although established primarily as an accommodation measure for disabled and illiterate voters, Section 208 has been applied to limited-English-proficient voters when these voters require assistance to understand an English-only ballot.”¹⁰ Although Section 208 is most often applied to authorize a voter to use an assistant at a polling place, Oregon election officials currently apprise Oregon voters of their right to use an assistant as provided in Section 208 while voting from home.

⁹ http://library.clerk.house.gov/reference-files/PPL_VotingRightsAct_1965.pdf p. 26.

¹⁰ Ancheta, Angelo N. 2007. *Language Accommodation and the Voting Rights Act* in Voting Rights Act Reauthorization of 2006: Perspectives on Democracy, Participation and Power. Henderson, editor. Berkeley Public Policy Press: 303. https://www.law.berkeley.edu/files/ch_11_ancheta_3-9-07.pdf.

The Legislature should keep Section 208 in mind and consider what its requirements mean in the context of Oregon's vote-by-mail system.

Section 203

Section 203 of the Voting Rights Act has applied to parts of Oregon in the past but does not currently apply to any localities in the state. It could potentially apply to certain localities in Oregon again in the future due to absolute increases in minority language population or due to changes in minority language populations relative to the population of total number of voting age citizens in Oregon. The U.S. Department of Justice summarizes Section 203 as follows:

The law covers those localities where there are more than 10,000 or over 5 percent of the total voting age citizens in a single political subdivision (usually a county, but a township or municipality in some states) who are members of a single minority language group, have depressed literacy rates, and do not speak English very well. Political subdivisions also may be covered through a separate determination for Indian Reservations.

Determinations are based on data from the most recent Census, and the determinations are made by the Director of the Census.¹¹

The first thing to note about Section 203 is that it only applies to Native American languages, Spanish, and Asian languages, because Congress created this provision to address historical legacies of discrimination against individuals and communities that speak these particular languages. Section 203 does not apply, for example, to Russian or Arabic minority language communities. Second, under Section 203 only those individuals who speak a certain minority language *and* have limited English proficiency can be counted for purposes of a locality meeting the 10,000 and 5% thresholds. Third, Section 203's mandate to provide voting materials in a minority language can only be triggered when a minority language group has a higher illiteracy rate than the country overall (what the U.S. Department of Justice refers to as "depressed literacy rates" in the passage just quoted).

To restate, Section 203 looks at how many people there are in a state or county¹² who (1) are voting age citizens, (2) have limited proficiency in English, and (3) belong to one of the minority language groups mentioned in the law. The voting age citizen requirement means we are not concerned with the total portion

¹¹ http://www.justice.gov/crt/about/vot/sec_203/203_brochure.php.

¹² Section 203 applies to a state or political subdivision, but since Oregon has counties, this report will discuss the law in those terms.

of the population that speaks a language, just those who are eligible to vote. The limited English proficiency requirement means that it does not matter if someone's native language is a minority language (or if he or she might prefer voting materials in that native language) when he or she is proficient in English.

Required Materials

If a state or county's minority language population triggers Section 203 coverage for a language, generally speaking, the locality must provide all of its voting materials in that language. The U.S. Department of Justice explains:

All information that is provided in English also must be provided in the minority language as well. This covers not only the ballot, but all election information—voter registration, candidate qualifying, polling place notices, sample ballots, instructional forms, voter information pamphlets, and absentee and regular ballots—from details about voter registration through the actual casting of the ballot, and the questions that regularly come up in the polling place. Written materials must be translated accurately, of course. Assistance also must be provided orally. Most Native American languages historically are unwritten, so that all information must be transmitted orally. Oral communications are especially important in any situation where literacy is depressed. Bilingual poll workers will be essential in at least some precincts on election day, and there should be trained personnel in the courthouse or city hall who can answer questions in the minority language, just as they do for English-speaking voters.¹³

Citizenship and English Proficiency

Many people know that the citizenship exam requires applicants for citizenship to demonstrate competency in English. So, some people might assume that anyone who is a citizen is sufficiently proficient in English to use voting materials in English. However, this is not always the case. Some people are born U.S. citizens but have limited English proficiency, most commonly Alaska Natives and American Indians, Puerto Ricans, and people from the Pacific Islands.¹⁴ Additionally, there are exceptions to the citizenship exam's requirement for applicants to demonstrate competency in English. The naturalization laws create an exception for citizenship applicants who are over the age of 50 and have resided in the United States as lawful permanent residents for over 20 years, and who are over the age of 55 and have resided in the U.S. for over 15 years. These individuals need not demonstrate English literacy, but must still fulfill other statutory requirements for obtaining citizenship, including demonstrating knowledge of American government and

¹³ U.S. Department of Justice. "Section 203 of the Voting Rights Act."

http://www.justice.gov/crt/about/vot/sec_203/203_brochure.php.

¹⁴ Ancheta, Angelo N. 2010. *Language Assistance and Local Voting Rights Law*, (Symposium on the Law of Democracy), 44 Indiana Law Review: 167. <http://digitalcommons.law.scu.edu/facpubs/583/>.

civics.¹⁵ Of final note, the proficiency of English required to become a citizen is not necessarily sufficient to understand a ballot or voter pamphlet, especially in a state like Oregon, which frequently has complicated ballot measures.

¹⁵ Ancheta 2007: 307.

Appendix 2: Data on Oregon’s Minority Language Communities

Data about minority language populations in Oregon’s 36 counties helped the task force understand the current population’s needs. The U.S. Census Bureau makes official calculations that determine Voting Rights Act coverage for minority languages once every five years. It released calculations based on the 2010 Census and the American Community Survey (ACS) in October 2011. The next calculations will be based on American Community Survey data for 2011-2015 and should come out after the 2016 election.¹⁶

In December 2014 the Census Bureau released the American Community Survey 5-year estimates for 2009-2013. This survey report makes available a wide range of prepared tables, but does not provide the underlying raw data. Table B16008 in the American Community Survey report is titled “Citizenship status by age by language spoken at home and ability to speak English for the population 5 years and over.” This table provides county-level estimates of U.S. citizens at least 18 years old who speak English to varying degrees, with data broken down by language spoken at home, and by ability to speak English. However, it should be noted that the table’s estimates are calculated using a methodology that differs from that used by the Census Bureau to produce the calculations required by the Voting Rights Act.¹⁷

Spanish

Table B16008 provides estimates for speakers of Spanish and for speakers of “other languages.” The “other languages” category is clearly limiting when the task force or the Legislature is interested in further breakdown of the data by minority language. That being said, the table provides most of the information required to know where Oregon’s counties currently stand in relation to the Section 203 triggers.

Table 1 of this report, below, provides estimates for how many voting age citizens speak Spanish in each county. The “All” column is the total number of voting age citizens in each county. The next two columns give the number of citizens who speak Spanish and the corresponding percentage. This makes it clear that several counties have a substantial percentage of Spanish-speaking citizens, mostly notably Malheur County with 12.5 percent and Morrow County with 11.6 percent. In terms of absolute numbers, it is—not

¹⁶ State Elections Division staff confirmed this with Census Bureau staff via email.

¹⁷ See U.S. Census Bureau. “Statistical Modeling Methodology for the Voting Rights Act Section 203 Language Assistance Determinations.” December 23, 2011. *Available at:* https://www.census.gov/rdo/data/voting_rights_determination_file.html.

surprisingly—the urban counties of Washington (18,290) and Multnomah (17,338) with the greatest number of citizens who speak Spanish. However, Marion County basically ties Multnomah with 17,071 Spanish speakers.

These figures drop sharply in the next two columns, which provide data on Spanish speakers with limited English proficiency (LEP). None of the larger counties come anywhere near the 10,000- speaker threshold. Morrow County is the only one to pass the 5% threshold of Section 203 of the Voting Rights Act, with an estimated 5.3 percent Spanish speaking and LEP. (This represents an estimated 356 LEP Spanish speakers out of 6,664 voting age citizens.) For this reason, the data from the ACS’s prepared tables (included in Table 1 of this report) shows that there is a strong likelihood that Morrow County would be covered by Section 203 of the VRA if the Census Bureau completed new VRA calculations today. ¹⁸

Other Languages

Even though Table B16008 in the American Community Survey 5-year estimates for 2009-2013 combines all other languages into one category, it still provides useful information. Table 2 of this report, below, provides county-level data for the numbers of adult, voting-age citizens in Oregon who are speakers of languages other than Spanish and English. Table 2 makes it clear that these individuals are concentrated in the Portland metro area, particularly in Multnomah and Washington Counties, both in terms of absolute numbers and as percentages. As with Spanish, the LEP subpopulation is smaller, with no county exceeding the 5% threshold. Only Multnomah County and Washington County exceed the 10,000-speaker threshold for speakers of all other languages who are also LEP. This means that if those speakers mostly spoke the same language, those counties might trigger the requirements of section 203 of the Voting Rights Act. Confirming this is not the case requires custom tabulations. The next section of this report provides custom tabulations using public micro data from the American Community Survey.

¹⁸The next calculations will be based on 2015 American Community Survey data and will be released in late 2016, sometime after the 2016 election. The Census Bureau also uses advanced methodologies to complete the official calculations.

Table 1: Voting age citizens who speak Spanish by county, 2009-2013.						
County	All	Spanish	Percentage		Spanish & LEP	Percentage
Baker	12,850	193	1.5		20	0.2
Benton	66,730	1,893	2.8		228	0.3
Clackamas	278,252	7,033	2.5		1,648	0.6
Clatsop	28,398	654	2.3		97	0.3
Columbia	36,890	600	1.6		107	0.3
Coos	50,040	833	1.7		192	0.4
Crook	16,241	385	2.4		153	0.9
Curry	18,467	427	2.3		56	0.3
Deschutes	120,601	2,773	2.3		855	0.7
Douglas	84,393	1,272	1.5		309	0.4
Gilliam	1,486	32	2.2		2	0.1
Grant	5,931	96	1.6		38	0.6
Harney	5,694	56	1.0		29	0.5
Hood River	13,665	1,141	8.3		304	2.2
Jackson	154,382	5,613	3.6		1,152	0.7
Jefferson	15,082	1,099	7.3		502	3.3
Josephine	65,041	1,270	2.0		263	0.4
Klamath	49,607	1,814	3.7		514	1.0
Lake	6,165	80	1.3		7	0.1
Lane	272,549	6,919	2.5		1,242	0.5
Lincoln	36,599	702	1.9		170	0.5
Linn	86,508	2,030	2.3		505	0.6
Malheur	20,689	2,596	12.5		526	2.5
Marion	205,608	17,071	8.3		4,294	2.1
Morrow	6,664	776	11.6		356	5.3
Multnomah	541,235	17,338	3.2		3,948	0.7
Polk	54,871	3,090	5.6		789	1.4
Sherman	1,455	10	0.7		2	0.1
Tillamook	19,377	340	1.8		76	0.4
Umatilla	50,938	4,869	9.6		1,140	2.2
Union	19,438	294	1.5		73	0.4
Wallowa	5,606	37	0.7		2	0.0
Wasco	18,024	919	5.1		282	1.6
Washington	356,120	18,290	5.1		4,424	1.2
Wheeler	1,099	20	1.8		10	0.9
Yamhill	70,101	3,305	4.7		1,164	1.7

Table 2: Voting age citizens who speak other languages by county, 2009-2013.						
County	All	Other	Percentage		Other & LEP	Percentage
Baker	12,850	126	1.0		15	0.1
Benton	66,730	2,569	3.8		460	0.7
Clackamas	278,252	13,609	4.9		5,126	1.8
Clatsop	28,398	582	2.0		220	0.8
Columbia	36,890	590	1.6		83	0.2
Coos	50,040	831	1.7		153	0.3
Crook	16,241	149	0.9		21	0.1
Curry	18,467	254	1.4		69	0.4
Deschutes	120,601	1,619	1.3		368	0.3
Douglas	84,393	1,172	1.4		236	0.3
Gilliam	1,486	8	0.5		-	0.0
Grant	5,931	31	0.5		9	0.2
Harney	5,694	115	2.0		31	0.5
Hood River	13,665	177	1.3		49	0.4
Jackson	154,382	2,781	1.8		686	0.4
Jefferson	15,082	438	2.9		12	0.1
Josephine	65,041	1,026	1.6		109	0.2
Klamath	49,607	788	1.6		83	0.2
Lake	6,165	21	0.3		5	0.1
Lane	272,549	7,308	2.7		1,150	0.4
Lincoln	36,599	522	1.4		165	0.5
Linn	86,508	1,342	1.6		258	0.3
Malheur	20,689	365	1.8		99	0.5
Marion	205,608	7,866	3.8		2,439	1.2
Morrow	6,664	57	0.9		4	0.1
Multnomah	541,235	40,371	7.5		17,688	3.3
Polk	54,871	1,215	2.2		394	0.7
Sherman	1,455	6	0.4		-	0.0
Tillamook	19,377	163	0.8		21	0.1
Umatilla	50,938	868	1.7		179	0.4
Union	19,438	170	0.9		59	0.3
Wallowa	5,606	78	1.4		-	0.0
Wasco	18,024	403	2.2		50	0.3
Washington	356,120	28,948	8.1		10,537	3.0
Wheeler	1,099	4	0.4		-	0.0
Yamhill	70,101	1,569	2.2		249	0.4

Custom Tabulations

The Census Bureau uses data that is not publicly available, due to privacy reasons,¹⁹ to periodically complete the official calculations that determine actual application of Section 203 of the Voting Rights Act to localities. However, the Public Use Microdata Sample (PUMS) allows the public to make custom calculations, with some limitations. The Census Bureau divides the state into Public Use Microdata Areas (PUMAs) of at least 100,000 people, trying to make the borders coincide with counties as much as possible. For smaller counties, several counties are combined into one PUMA. For counties with more than 100,000 people, it is possible to obtain microdata corresponding to the population of that county, but sometimes the borders are only approximate county lines. Using this approach, the PUMS allows for estimates of VRA Section 203 coverage for the following counties in Oregon: Clackamas, Deschutes, Douglas, Jackson, Lane, Marion, Multnomah, and Washington.

Table 3 provides the percentage of adult citizens speaking minority languages, *regardless of English proficiency level*, in the above-named counties. Spanish is the most common minority language. The other most common minority languages are Russian in Marion County (1.3%), Chinese in Washington County (1%), and Vietnamese in Multnomah County (1.7%) and Washington County (1.3%).

Table 4 provides the percentage of adult citizens speaking minority languages *who have limited English proficiency* (LEP), since this is the figure used to calculate coverage under Section 203 of the Voting Rights Act (see Appendix 1). The percentages drop sharply from those in Table 3. None of these counties appear likely to be covered by the 5% threshold anytime soon.

For a larger county, the federal VRA's absolute threshold of 10,000 LEP adult citizens is easier to meet, since this comes to less than 5%. Figure 1 looks at languages spoken by more than 2,000 adult citizens in a county, *regardless of how well they speak English*. Again, Spanish, Vietnamese, Chinese and Russian are the languages with the most speakers.

Figure 2 limits the scope of study to languages spoken by more than 2,000 adult, *low-English-proficiency* citizens in a county. The language with the most LEP adult citizens is Vietnamese in Multnomah

¹⁹ In a county with a small population, it is possible that an individual could figure out that a particular observation in the data set is a particular person, thereby revealing additional information about that person in the data set. This violates basic research ethics and the promise of confidentiality given to all respondents.

County, with 6105 speakers. This is still far short of the 10,000 person threshold. The other languages are all under 4,000 speakers.

**Table 3: Adult citizens by languages spoken,
selected counties 2008-2012, all levels of
English proficiency.**

Language	Percent	95% Confidence Interval	
		Low	High

Clackamas			
English	93.1%	92.5%	93.7%
Spanish	2.4%	2.1%	2.7%
Russian	0.5%	0.3%	0.8%
Chinese	0.5%	0.4%	0.7%
Vietnamese	0.5%	0.3%	0.8%
Other	1.2%	0.9%	1.5%

Deschutes			
English	95.9%	94.7%	96.8%
Spanish	2.8%	2.0%	3.9%
Other	0.4%	0.3%	0.6%

Douglas			
English	96.8%	96.1%	97.5%
Spanish	1.5%	1.1%	2.0%
Other	0.3%	0.2%	0.6%

Jackson			
English	94.5%	93.6%	95.3%
Spanish	3.8%	3.1%	4.5%
Other	0.5%	0.3%	0.7%

Lane			
English	94.1%	93.5%	94.7%
German	0.7%	0.5%	0.9%
Spanish	2.8%	2.5%	3.3%
Other	0.8%	0.6%	1.1%

Marion			
English	88.2%	87.3%	89.2%
Spanish	7.8%	7.1%	8.5%
Russian	1.3%	0.9%	1.8%
Other	1.0%	0.8%	1.3%

Language	Percent	95% Confidence Interval	
		Low	High

Multnomah

English	89.4%	88.9%	90.0%
Spanish	3.3%	3.0%	3.6%
Russian	0.5%	0.4%	0.7%
Chinese	0.9%	0.8%	1.1%
Vietnamese	1.7%	1.4%	1.9%
Other	2.1%	1.8%	2.4%

Washington

English	87.3%	86.60%	88.00%
German	0.50%	0.40%	0.70%
Spanish	4.60%	4.20%	5.10%
Chinese	1.00%	0.80%	1.30%
Korean	0.70%	0.50%	0.80%
Vietnamese	1.30%	1.00%	1.60%
Other	2.70%	2.30%	3.20%

Note 1: "Other" includes all the languages that were smaller than .1% statewide when looking at LEP, adult, citizens.

Note 2: Columns may not add up to 100% because tables only report languages over .5%.

Note 3: The boundaries for these counties are approximate: Clackamas, Multnomah, and Washington.

Note 4: "Chinese" includes those who reported Chinese, as well as Cantonese and Mandarin.

Table 4: Adult citizens with limited English proficiency by languages spoken, selected counties 2008-2012.			
Language	Percent	95% Confidence Interval	
		Low	High

Clackamas

Spanish	0.5%	0.4%	0.7%
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Deschutes

Spanish	0.9%	0.6%	1.4%
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Jackson

Spanish	1.0%	0.7%	1.4%
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Marion

Spanish	2.0%	1.6%	2.4%
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Multnomah

Spanish	0.7%	0.6%	0.8%
Chinese	0.5%	0.4%	0.7%
Vietnamese	1.2%	1.0%	1.4%

Washington

Spanish	1.00%	0.80%	1.20%
Vietnamese	0.90%	0.70%	1.10%

Note 1: The notes from Table 3 all apply to this table.

Note 2: Table only reports languages with over .5%.

Note 3: Douglas County and Lane County both did not have any languages over .5%.

Note 4: The Census definition of Limited English Proficiency (LEP) is anyone who reports speaking English less than "very well." This means responses of "Well," "Not well," and "Not at all" all count as LEP.

Figure 1: Adult citizens by language and by county, total number of speakers.

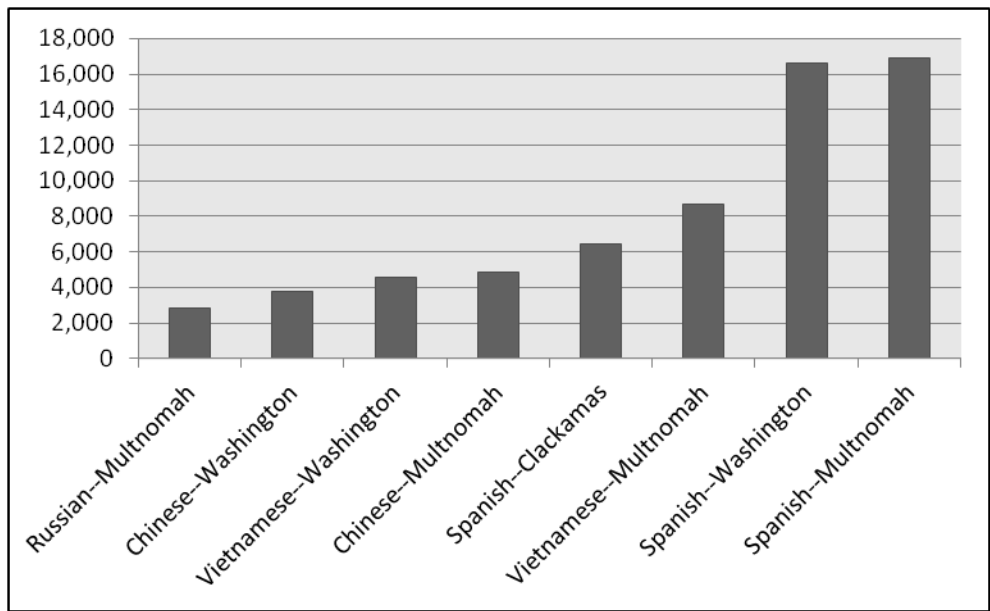
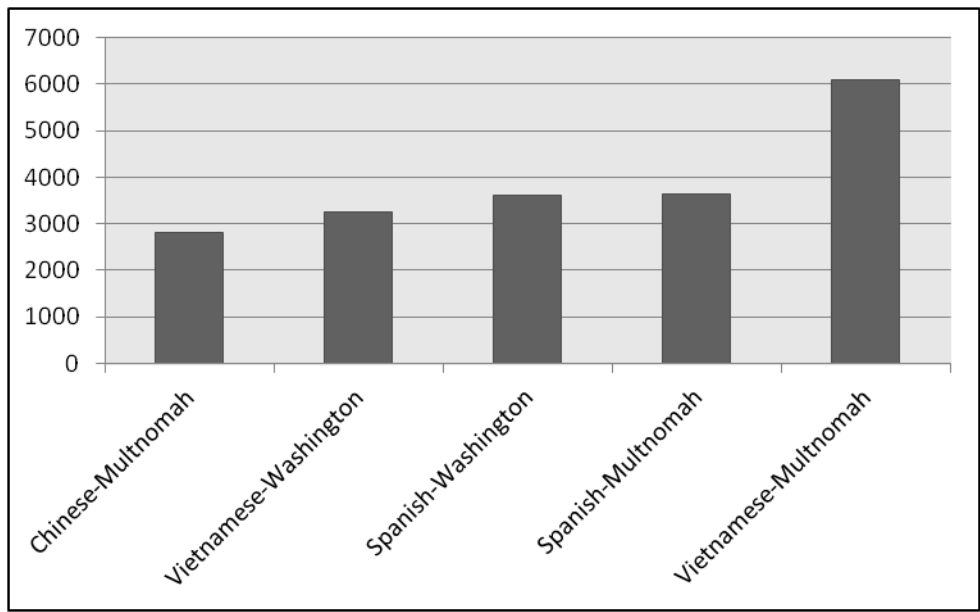


Figure 2: Adult citizens with limited English proficiency by language and by county, total number of speakers.



Appendix 3: Cost of Translation and Printing Services

The two primary costs associated with the provision of minority language voting materials are translation and printing. The following tables from the Secretary of State's Business Services Division show the costs of producing such materials the past.

		Table 3-1: Cost of Translation Services					
			Pca Pca Title	61180	64111	64180	64280
		Translation Services		ELECTIONS ADMINISTRATION	ELT- SPECIAL VOTERS' PAMPHLETS	ELECTIONS- PRIMARY VOTERS' PAMPHLETS	ELECTIONS- GENERAL VOTERS' PAMPHLETS
Eff Date	Doc No	Vendor Name	Invoice Desc	Amount	Amount	Amount	Amount
08/31/08	VP901933	WORK PROCESSORS BUSINESS SERVICES	ELT/PUBLIC HEARINGS 7/29-31/08	96.00			
10/27/08	VP902216	IRCO	ELT/TRANSLATION	65.00			
09/30/09	VP110236	IRCO	ELT/PROGRESSIVE PARTY TO SPANI	65.00			
10/22/09	VP110326	WORK PROCESSORS BUSINESS SERVICES	ELT/TRANSCRIBE REF# 301 & 302	245.00			
11/19/09	BT110190	LEGISLATIVE COUNSEL COMMITTEE	ELT/CONVERT TO PDF & TRANSMITT	500.00			
03/19/10	VP110829	IRCO	ELT/TRANSLATION JAN 2010 SPEC		742.32		
03/31/10	VP110878	IRCO	ELT/SPANISH TRANSLATION	385.71			
04/30/10	VP110961	IRCO	ELT/SPANISH TRANSLATION P-VP			3,618.72	
08/25/10	VP111373	WORK PROCESSORS BUSINESS SERVICES	ELT/TRANS OF HEARING 8/12/10	121.00			
09/07/10	VP111395	WORK PROCESSORS BUSINESS SERVICES	ELT/TRANSCRIPT OF PUBLIC HEARI	77.00			
09/21/10	VP111456	IRCO	ELT/BALLOT TRACKING	65.00			
09/30/10	VP111543	IRCO	ELT/SPANISH VOTER'S PAMPHLET				3,511.86
10/11/11	VP130280	IRCO	SPANISH TRANS-SPECIAL-PRIMARY		865.44		
10/27/11	BT130117	LEGISLATIVE COUNSEL COMMITTEE	ORS TITLE 23 TO PDF & TRANSMIT	650.00			
01/19/12	VP130590	IRCO	SPANISH TRANS=1/12 SP ELECTION		356.64		
04/16/12	VP130871	IRCO	SPAINISH TRANS PRIMARY VP			2,548.08	
08/08/12	VP131251	JAMES K BERG	TRANSCRIPT OF HEARING 8/3/12	235.00			
01/15/13	BT130789	LEGISLATIVE ADMIN COMMITTEE	DVD COPY OF ELECTORATE CEREMON	10.00			
01/17/13	VP131743	IRCO	VOTER'S PAMPHLET - SPANISH				4,744.56
05/08/14	VP151051	IRCO	VOTER PAMPHLET-SPANISH			2,713.68	
Total				\$ 2,514.71	\$ 1,964.40	\$ 8,880.48	\$ 8,256.42

		Table 3-2: Cost of Printing Services		
			Pca	61180
		Printing Services	Pca Title	ELECTIONS ADMINISTRATION
Eff Date	Doc No	Vendor Name	Invoice Desc	Amount
6/30/2011	VP112479	OREGON CORRETIONS ENTERPRISES	ELT/VOTERS REG-SP ELTSEL500A	5,117.91
9/25/2014	VP131394	OREGON CORRETIONS ENTERPRISES	VOTER REG CARDS -SP	3,438.96
10/24/2012	VP131487	OREGON CORRETIONS ENTERPRISES	VOTER REG CARDS SPANISH	6,855.08
				<u>\$ 15,411.95</u>

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