



Voting Rights Act NEWS ALERT

December 8, 2021

Acting Census Director Identifies Jurisdictions that Must Provide Language Assistance under Section 203 of Voting Rights Act

On December 8, 2021, the Acting Director of the U.S. Census Bureau issued a notice of determination identifying the jurisdictions subject to the language assistance provisions of Section 203 of the Voting Rights Act. *See* Voting Rights Act Amendments of 2006, Determinations Under Section 203, 86 Fed. Reg. 69,611 (Dec. 8, 2021) (to be codified at 28 C.F.R. pt. 55). The Director of the Census is authorized by statute to make the determinations. The Director's determinations are not reviewable in any court and are effective upon publication in the Federal Register. *See* 52 U.S.C. § 10503(b)(4). The new determinations are based upon the most recent five years of American Community Survey (ACS) census data.

Language Assistance under the Voting Rights Act

The Voting Rights Act has two language assistance provisions. A permanent provision in the 1965 Act, Section 4(e), requires that Spanish-speaking Puerto Rican voters be provided with voting materials and assistance in Spanish. In 1975, Congress amended the Act to add temporary language assistance provisions including those in Section 203 to help millions of non-English speaking voting-age U.S. citizens overcome language barriers to political participation resulting from discrimination in education and voting. The requirements apply to four language groups: Alaska Natives; American Indians; Asian-Americans; and persons of Spanish Heritage, as well as the distinct languages and dialects within those groups.

How the New Language Assistance Determinations Were Made under Section 203

Under Section 203(c) of the Voting Rights Act, a state or political subdivision is covered and required to provide language assistance if it has a sufficient number of "limited-English proficient" voting-age U.S. citizens (persons 18 years and older) who experience a higher illiteracy rate than the national average. "Limited English proficient" is defined as the inability "to speak or understand English

adequately enough to participate in the electoral process." 52 U.S.C. § 10503(b)(3)(B).

The Census Director determines Section 203 coverage using three population formulas (or "triggers") applied to each jurisdiction: (1) more than five percent of the voting-age U.S. citizens are members of a single language minority and are limited-English proficient; (2) more than 10,000 voting-age U.S. citizens are members of a single language minority and are limited-English proficient; or (3) in a political subdivision containing any part of an Indian reservation, more than five percent of the American Indian or Alaska Native voting-age U.S. citizens residing on the reservation belong to a single language minority and are limited-English proficient. *See* 52 U.S.C. § 10503(b)(2)(A).

The use of the term "single language minority" means that to meet the population threshold, the population triggering coverage must be from the same language group. In other words, American Indians cannot be combined with persons of Spanish Heritage to obtain coverage under Section 203.

The new Section 203 determinations replace the previous Section 203 determinations made in December 2016.

Number of Section 203 Jurisdictions

As a result of the new determinations made by the Director of the Census, a total of 331 political subdivisions nationwide are now covered by Section 203 (see Figure 1). This is an increase of 68 jurisdictions from the 263 political subdivisions covered by the 2016 determinations.

Demographic changes have led to four states having fewer covered political subdivisions than in 2016. Likewise, 19 states now have more covered political subdivisions than under the 2016 determinations.

The number of states covered in whole or in part by Section 203 has increased from 29 states to 30 states.

Three states continue to be covered in their entirety by Section 203 (California, Florida, and Texas for Spanish).

One state that previously was covered in part by Section 203, Iowa, no longer is covered.

Section 203 coverage has been extended to political subdivisions of two states not covered under the previous 2016 determinations: Minnesota for an American Indian language (all other American Indian Tribes) and Hmong, and Ohio for Spanish.

Los Angeles County, California, continues to be required to provide assistance in the most languages, six languages, which is no change from 2016: Cambodian, Chinese, Filipino, Korean, Spanish, and Vietnamese.

Federal regulations provide that “[w]here a political subdivision (e.g., a county) is determined to be subject to” the language assistance provisions of the Voting Rights Act, “all political units that hold elections within that political subdivision (e.g., cities, school districts) are subject to the same requirements as the political subdivision.” 28 C.F.R. § 55.9.

Therefore, the number of jurisdictions covered by Section 203, identified above, does not include the total number of jurisdictions that must provide language assistance in voting. The actual number of “political units” covered by Section 203 is likely many times greater.

Number of Jurisdictions Required to Provide Assistance in the Covered Languages

There are a number of states and political subdivisions identified in the Census determinations to provide assistance in the four covered language groups:

- Spanish language assistance must be provided statewide in California, Florida, and Texas, and a total of 232 political subdivisions in 26 states, an increase from the 214 political subdivisions covered in 26 states under the 2016 determinations (see Figure 2);
- Alaska Native language assistance must be provided in 12 political subdivisions of Alaska (see Figure 3), which is a decrease of three political subdivisions from 2016;
- American Indian language assistance must be provided in 94 political subdivisions in twelve states, up from the 35 political subdivisions of nine states covered in the 2016 determinations (see Figure 3);

- Language assistance must be provided in Asian languages in 32 political subdivisions in 14 states, up from the 27 political subdivisions in 12 states covered in the 2016 determinations (see Figure 4).

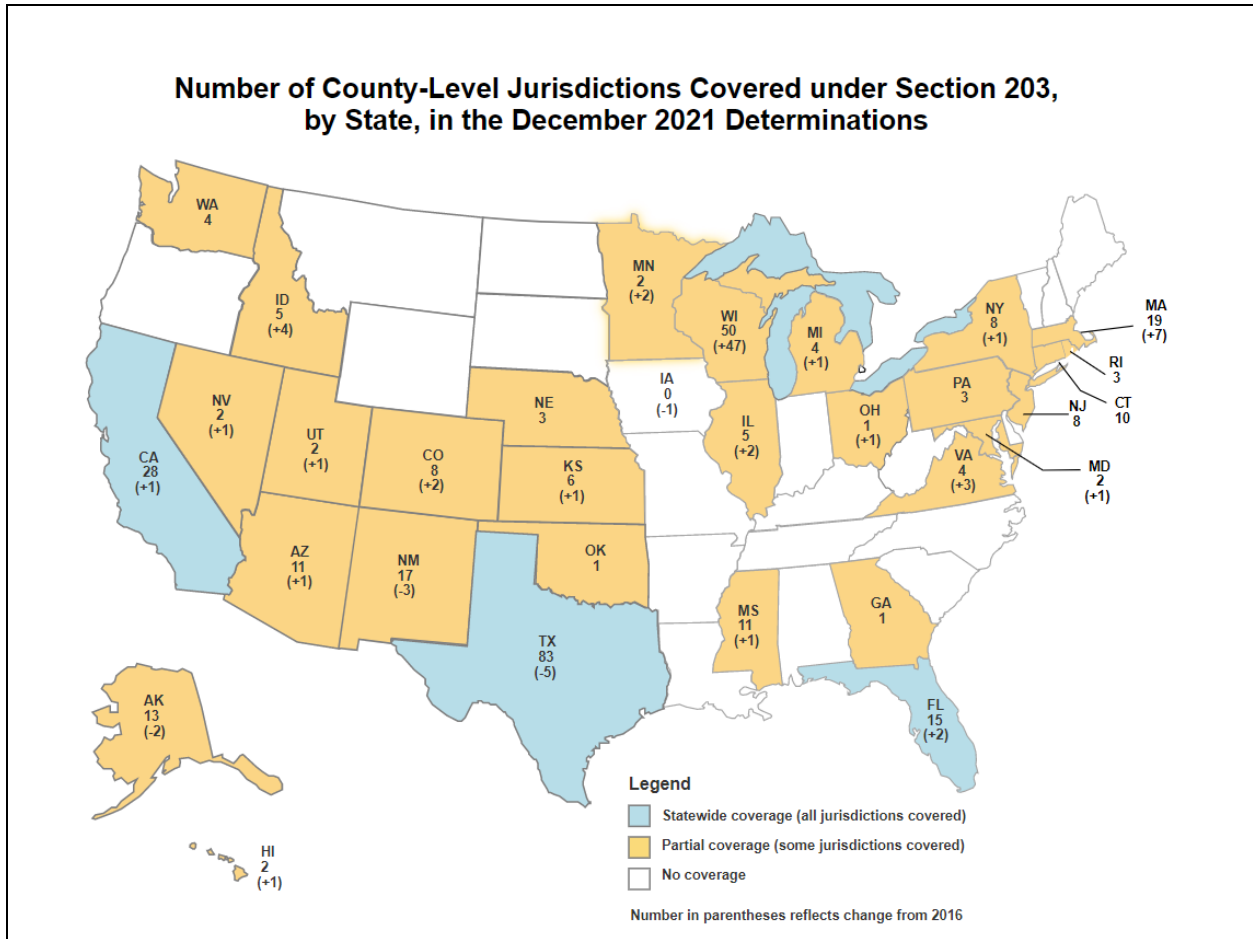
Language assistance is required in jurisdictions covered for one or more of thirteen languages included in the Alaska Native and American Indian language groups:

- Language assistance for “All other American Indian Tribes,” which encompasses several dialects, must be provided in a total of 51 political subdivisions of four states. That language experienced the single greatest increase of any language covered by Section 203, with most of that coverage coming in 44 tribal areas of Wisconsin;
- Language assistance for Seminole, which was required in past Section 203 determinations, was restored in Glades County, Florida;
- Language assistance in the Shoshone language, which was required in past Section 203 determinations, was restored in Nye County, Nevada;
- The most widely covered languages continue to be Choctaw, Navajo, and Yup’ik.

Language assistance is required in jurisdictions covered for one or more of eight languages included in the Asian language group:

- Chinese language assistance must be provided in a total of 19 political subdivisions of eight states;
- Vietnamese language assistance must be provided in 12 political subdivisions of five states;
- Filipino language assistance must be provided in 10 political subdivisions of four states;
- Korean language assistance must be provided in four counties in three states;
- Asian Indian (including Sikh) language assistance must be offered in three political subdivisions of three states;
- Bangladeshi language assistance must be offered in two political subdivisions of two states;
- Cambodian language assistance must be offered in two political subdivisions of two states;
- Hmong language assistance must be offered in Ramsey County, Minnesota.

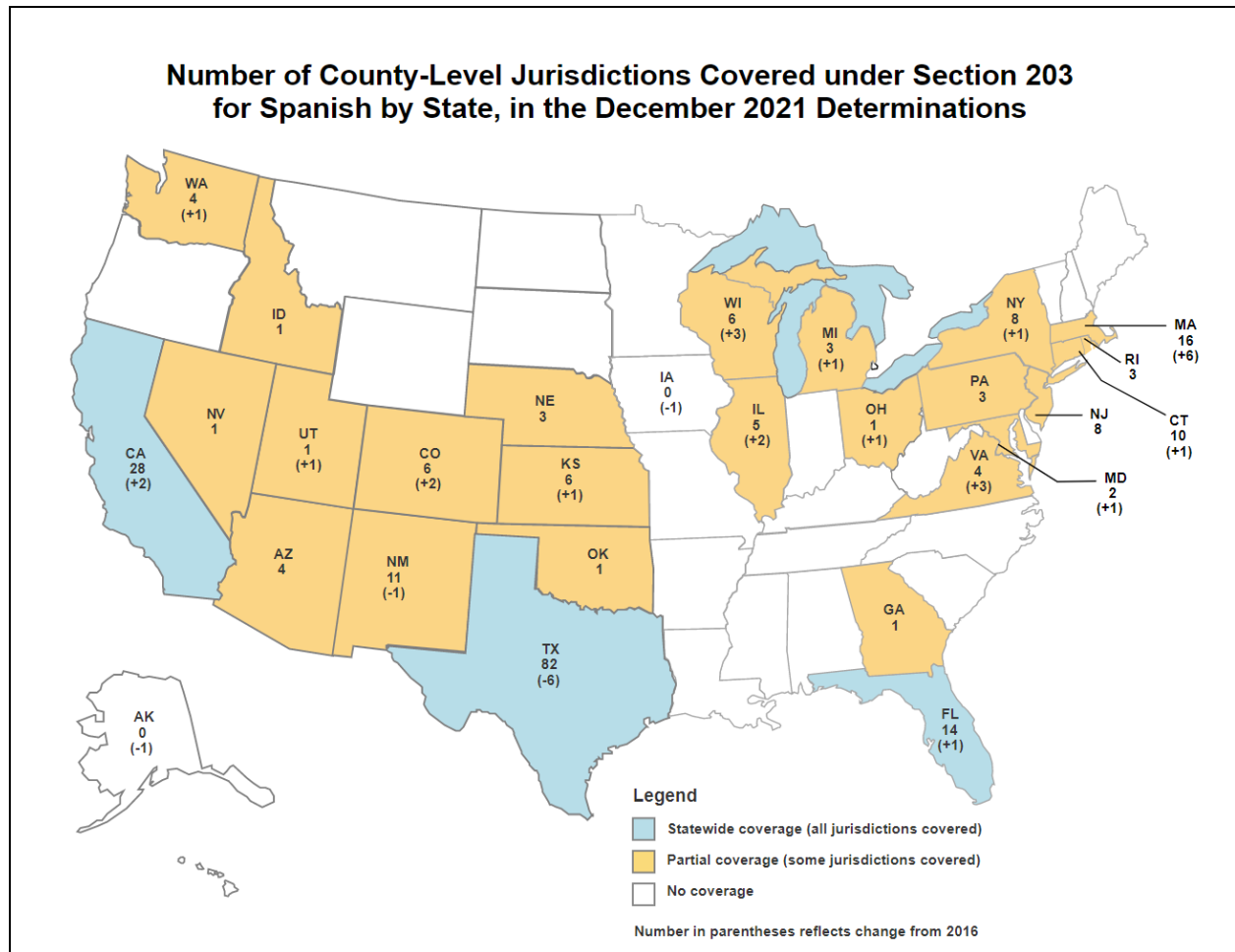
Figure 1. Jurisdictions Covered under Section 203 of the Voting Rights Act



Source: Voting Rights Act Amendments of 2006, Determinations Under Section 203, 86 Fed. Reg. 69,611 (Dec. 8, 2021) (“2021 Section 203 Determinations”).

The numbers for the three states in Figure 1 that have statewide coverage only include the 124 political subdivisions independently covered by Section 203. If all counties in the three states covered statewide for Spanish are included (California has a total of 58 covered counties, Florida has 67 covered counties, and Texas has 254 covered counties), then language assistance coverage applies in at least some form to a total of 514 political subdivisions.

Figure 2. Jurisdictions Covered for Spanish under Section 203

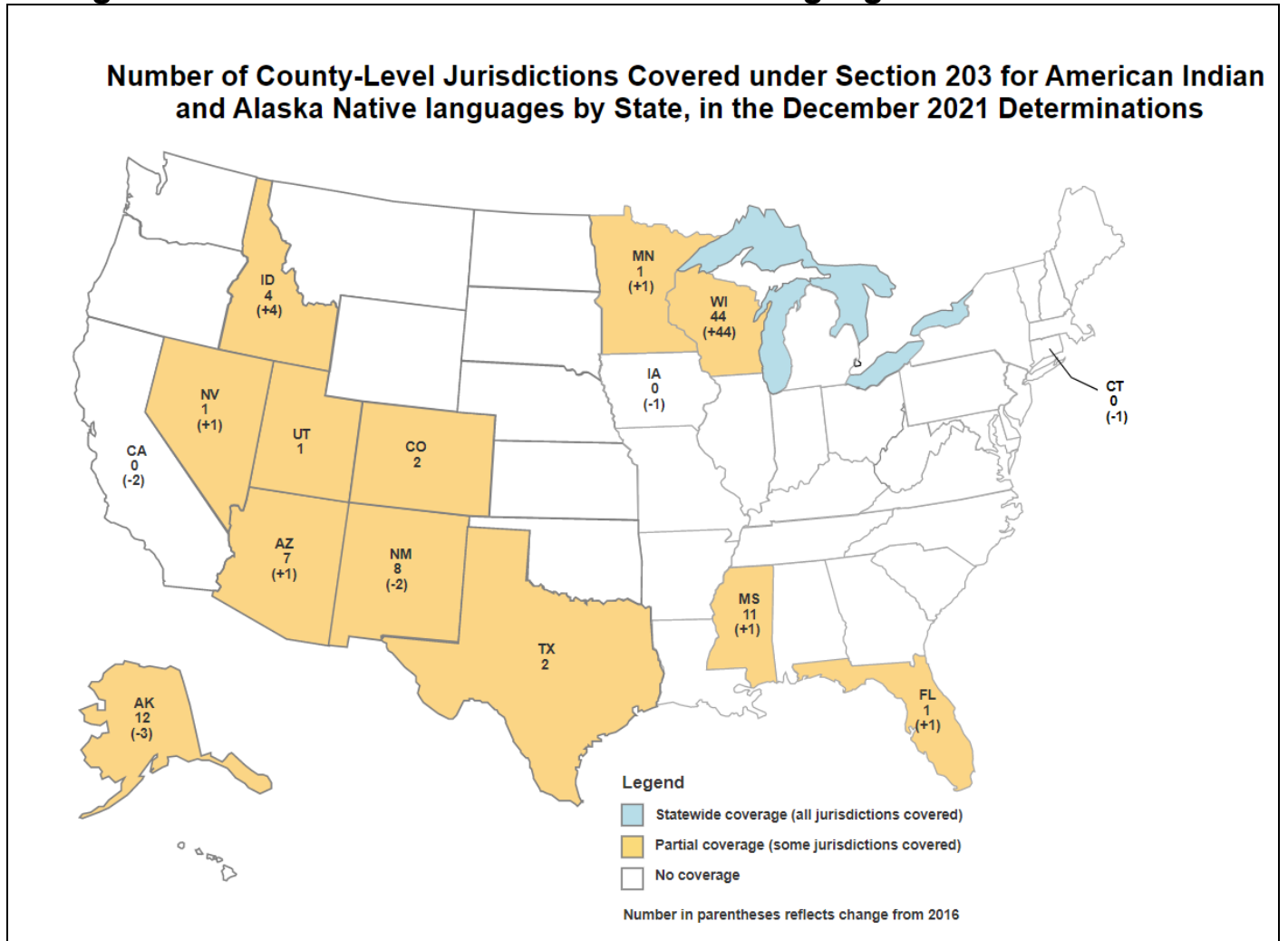


Source: 2021 Section 203 Determinations.

Among the three states covered statewide for Spanish, the following number of political subdivisions are independently covered under Section 203 as a result of the new determinations: 28 in California; 14 in Florida; and 82 in Texas.

Notably, Spanish has been added to one new state – Cuyahoga County in Ohio, and restored to another – Salt Lake County in Utah. Spanish coverage was lost in two states: Alaska and Iowa, each of which previously had just one county-equivalent jurisdiction covered.

Figure 3. Jurisdictions Covered for AIAN Languages under Section 203

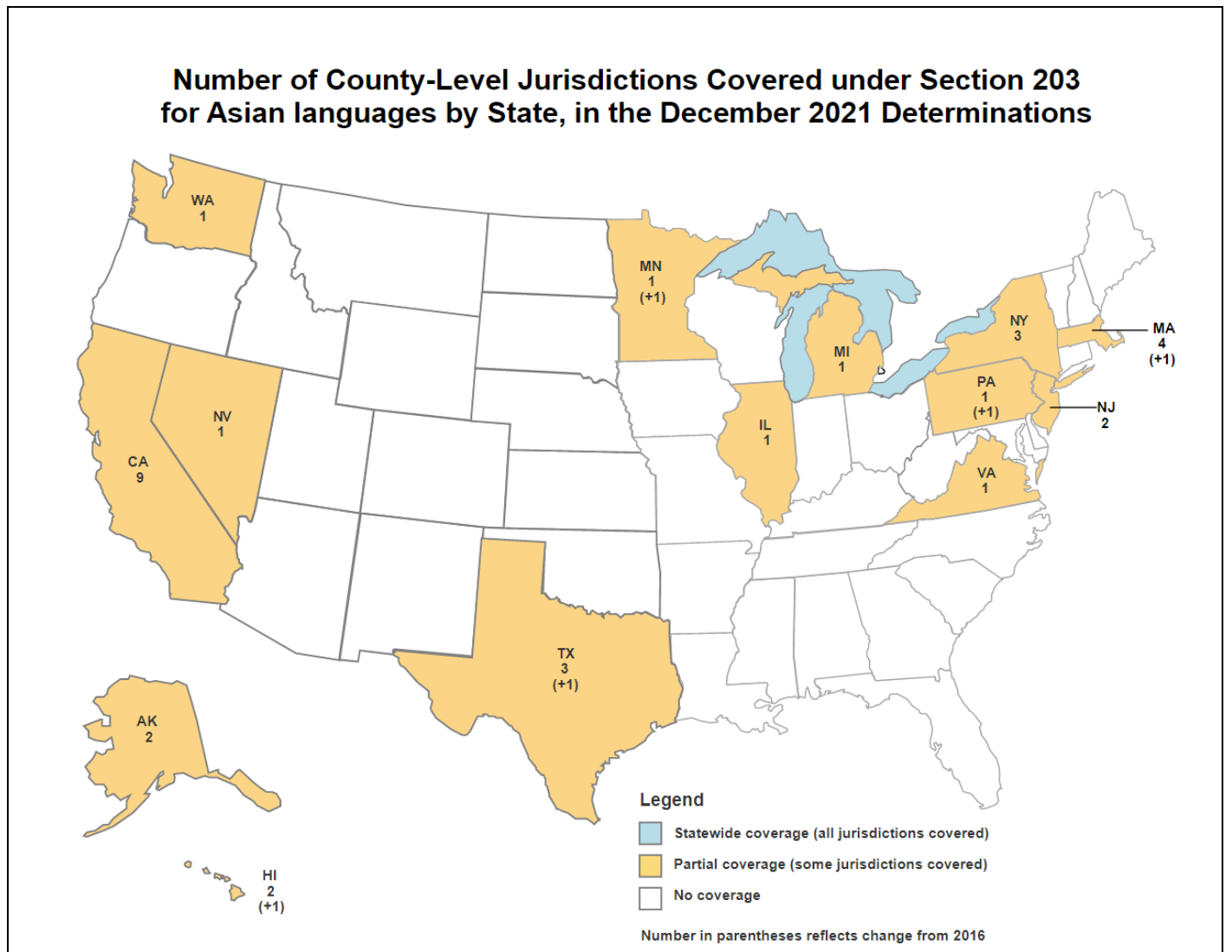


Language	Political Subdivisions Covered	Affected States
All other American Indian Tribes	51	ID, MN, TX, WI
Choctaw	11	MS
Navajo	11	AZ, NM, UT
Yup'ik (Alaska Native)	9	AK
Pueblo	4	AZ, NM
Ute	4	CO, NM, UT
Apache	3	AZ
Inupiat (Alaska Native)	3	AK
Hopi	2	AZ,
Paiute	2	AZ,
Aleut (Alaska Native)	1	AK
Seminole	1	FL
Shoshone	1	NV

Source: 2021 Section 203 Determinations.

Alaska Native coverage was reduced by three political subdivisions. Coverage for American Indian languages was lost in California, Connecticut and Iowa. American Indian language coverage was added to five new states, Florida, Idaho, Minnesota, Nevada and Wisconsin. Wisconsin had the largest increase, adding 44 American Indian reservations.

Figure 4. Jurisdictions Covered for Asian Languages under Section 203



Language	Political Subdivisions Covered	Affected States
Chinese	19	CA, HI, IL, MA, NY, PA, TX, WA
Vietnamese	12	CA, MA, TX, VA, WA
Filipino	10	AK, CA, HI, NV
Korean	4	CA, NJ, NY
Asian Indian (including Sikh)	3	IL, NJ, NY
Bangladeshi	2	MI, NY
Cambodian	2	CA, MA
Hmong	1	MN

Source: 2021 Section 203 Determinations.

The 2021 Determinations have resulted in increased coverage for Chinese (adding one more political subdivision), Vietnamese (adding three more political subdivisions), Filipino (adding three more political subdivisions and losing one political subdivision of Alaska), Bangladeshi (adding one more political subdivision) and Hmong (adding one political subdivision in Minnesota). No states experienced a decrease in Asian language coverage, with Alaska losing coverage in the Aleutian Islands East Borough and gaining coverage in the Kodiak Island Borough. Coverage for Korean, Asian Indian and Cambodian remains unchanged from 2016.

Language Requirements for Covered States and Political Subdivisions

Congress enacted Section 203 to remove obstacles posed by illiteracy and lack of adequate bilingual language assistance for members of language minority groups. Section 203 initially was adopted in 1975, was extended for ten years in 1982, for fifteen years in 1992, and for an additional twenty-six years during the 2006 reauthorization. It is scheduled to expire, unless renewed, on August 6, 2032.

Once a jurisdiction is covered by Section 203, all “voting materials” it provides in English generally must be provided in the language of all groups or sub-groups that triggered covered. Voting materials include the following:

- Voter registration materials
- Voting notices (including information about opportunities to register, registration deadlines, time/ places/locations of polling places, and absentee voting)
- Voting materials provided by mail
- All election forms
- Polling place activities and materials
- Instructions
- Publicity
- Ballots
- Other materials or information relating to the electoral process
- Assistance

See 52 U.S.C. § 10503(c); 28 C.F.R. §§ 55.15, 55.18.

In some cases, courts have found that written materials may not be required for certain Alaska Native and American Indian groups, but only if their languages are “historically unwritten.” Although the term “historically unwritten” is not defined in the statute, the legislative history suggests that Congress intended it to apply to languages that were either not written at all or for which the written language is not commonly used. However, federal courts have determined that even for those languages found to be “historically unwritten,” written translations may still have to be prepared to ensure that translators and election officials provide complete, accurate, and uniform translations of voting materials provided in English.

Oral instructions, assistance, or other information in the covered language must be available for members of those groups at every stage of the electoral process, regardless of the covered language. *See* 52 U.S.C. § 10503(c).

The language assistance provisions apply to all stages of the electoral process for “any type of election, whether it is a primary, general or special election.” It includes not only elections of officers, but elections on such matters as bond issues, constitutional amendments and referendums. Federal, state, and local elections are covered, as well as special district elections, such as school districts and water districts. 28 C.F.R. § 55.10.

In many cases, the costs of compliance can be greatly minimized by the selective use of “targeting.” Targeting allows a jurisdiction to comply with Section 203 by providing bilingual materials and assistance only to the language minority citizens and not to every voter in the jurisdiction. The availability of oral language assistance requires compliance with an “effectiveness” standard, in which the quality of the assistance is evaluated on whether it provides accurate and complete translations of all voting materials to language minority voters. *See* 28 C.F.R. § 55.20(c). Ultimately, it is the covered jurisdiction’s responsibility for ensuring compliance with Section 203. *See* 28 C.F.R. § 55.2(c).

U.S. Department of Justice and Private Groups Enforce Section 203

The Justice Department and private organizations have been very successful in securing federal consent decrees from jurisdictions that fail to comply with the language assistance provisions of the Voting Rights Act. The costs of noncompliance can be tremendous, both in terms of litigation expenses, bad publicity, and the prospect of federal oversight including, but not limited to, consent orders and the use of federal observers on Election Day.

For example, Passaic County, New Jersey became the first jurisdiction in the country to have its election system taken over by an Elections Monitor, who was appointed by a three-judge federal court. As a result of Passaic County’s violations of Section 203, the County ultimately incurred hundreds of thousands of dollars in additional legal fees and expenses, as well as immeasurable losses in terms of bad press for obstructing and impairing the fundamental right to vote.

Private enforcement also can be costly to a jurisdiction. In places where successful private actions have been brought, covered jurisdictions have in some cases been required to pay millions of dollars in fees and costs to the prevailing language minority plaintiffs.

About Our Organizations



Lawyers' Committee for Civil Rights Under Law:

The Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee), a nonpartisan, nonprofit organization, was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principle mission of the Lawyers' Committee for Civil Rights Under Law is to secure, through the rule of law equal justice for all, particularly in the areas of voting rights, criminal justice, fair housing and community development, economic justice educational opportunities, and hate crimes. For more information, please visit www.lawyerscommittee.org



Asian Americans Advancing Justice | AAJC:

Asian Americans Advancing Justice | AAJC is a nonprofit, nonpartisan organization founded in 1991 to advance the civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. Advancing Justice | AAJC is the voice for the Asian American and Pacific Islander (AAPI) community – the fastest-growing population in the U.S. – fighting for our civil rights through education, litigation, and public policy advocacy. Advancing Justice | AAJC strives to increase the voting power of the Asian American electorate, to protect equal access to the ballot box at the local, state, and national levels, and to strengthen and expand the capacity of local community-based organizations to mobilize against threats to voting rights. For more information about Asian Americans Advancing Justice | AAJC, please visit www.advancingjustice-aaajc.org or call (202) 296-2300 x 144.



NALEO Educational Fund:

The National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund is the nation's leading non-profit, non-partisan organization that facilitates full Latino participation in the American political process, from citizenship to public service. Founded in 1981, the organization achieves its mission through integrated strategies that include increasing the effectiveness of Latino policymakers, mobilizing the Latino community to engage in civic life, and promoting policies that advance Latino political engagement. For more information about NALEO Educational Fund, please visit www.naleo.org or call (213) 747-7606.



Native American Rights Fund:

Founded in 1970, the Native American Rights Fund (NARF) is the oldest and largest nonprofit law firm dedicated to asserting and defending the rights of Native American tribes, organizations, and individuals nationwide. NARF holds governments accountable and fights to protect Native American rights, resources, and lifeways through litigation, legal advocacy, and legal expertise. NARF has successfully achieved significant results in critical areas such as tribal sovereignty, treaty rights, voting rights and language assistance, natural resource protection, and education. NARF is headquartered in Boulder, Colorado, with offices in Washington, D.C., and Anchorage, Alaska. For more information about NARF, visit www.narf.org or call (303) 447-8760.