



**Written Testimony of the American Civil Liberties Union Of Pennsylvania  
submitted by**

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**to**

**The Council of the City of Philadelphia  
Committee on Law and Government**

**Public Hearing On Resolution No. 210657**

**February 15, 2022**

Chair Parker, Vice Chair Green and members of the Committee, thank you for the invitation to testify and submit written testimony to the Committee on Law and Government on election reform, including expanding language access for Philadelphia voters who are not proficient in English.

The ACLU-PA fully supports and endorses the efforts of the coalition Citizens for Language Access who have taken a leadership role in advocating for expanded resources in voting for those who are not proficient in English. The ACLU-PA joins the coalition in urging City Council to take the necessary steps, including allocating adequate budget resources towards: 1) ensuring that the City of Philadelphia is in full compliance with its obligations under the Voting Rights Act; 2) adopting best practices generally accepted in other jurisdictions for implementing language access; and 3) taking voluntary measures to expand language access to the tens of thousands of Philadelphia voting age citizens who are not proficient in English and speak another language that is not within the current coverage formula of section 203.

Additionally, the ACLU-PA's testimony will highlight the national, federal and state resources available to assist the city in its effort to expand language access for Philadelphia voters, and will emphasize the need for the City to allocate adequate funding to implement generally accepted best practices for creating a welcoming and language accessible voting experience.

The American Civil Liberties Union of Pennsylvania is a nonprofit, nonpartisan, membership organization that works to protect Pennsylvanians' civil liberties and constitutional rights through litigation, legislative advocacy, and grassroots organizing. The ACLU-PA supports public policies that remove barriers to voting and encourage full participation in our democracy especially among historically underrepresented communities.

## 1. Philadelphia's Legal Obligations Under the Voting Rights Act

Section 203 of the Voting Rights Act requires jurisdictions that meet certain population and literacy thresholds to provide language assistance during elections.<sup>1</sup> Section 203 does not apply to all language minorities; Congress defined language minorities to include only Latinos, indigenous Americans, Alaska Natives, and Asian Americans because these groups historically have faced significant barriers to voting. Another section of the Voting Rights Act, Section 208, permits *any voter* who needs assistance because of blindness, disability or the inability to read and write to receive assistance from *any person* of their choice, with a few exceptions.<sup>2</sup> Congress has determined that the protection for the inability to read and write extends to voters who are unable to read and write English.<sup>3</sup> Protection under section 208 is not dependent on any numerical threshold: it is available to any voter.

Philadelphia is already covered under section 203 for Spanish and Chinese language. According to the December 8, 2021 US Census designations, those two language designations afford language assistance to more than 150,000 limited English proficient voting age US citizens in Philadelphia.<sup>4</sup> Philadelphia's legal obligation to provide all election related materials in Spanish and Chinese is not the only legal obligation, however. As mentioned above, voters are entitled to choose an assistor who is permitted to accompany the voter into the polling place and provide interpretation and translation help at the sign in table and in the voting booth. Failure to permit such assistance or actions that limit the ability of a voter to receive assistance could lead to liability under section 2 of the Voting Rights Act. Discrimination against any language minority voter that denies that person the right to vote is illegal. Behaviors such as treating language minority voters differently and disrespectfully, improperly influencing ballot choices, coercion or ignoring such voters are actions that the US Department of Justice has successfully challenged under the Voting Rights Act.<sup>5</sup> The remedies in these types of suits include expanding language assistance services. But the best outcome is to avoid these legal pitfalls by building effective programs at the outset.

Implementing compliance with language accessibility law can be accomplished in collaboration with community groups, the Citizens for Language Access, the Pennsylvania Department of State. We encourage Philadelphia to collaborate with the Department of State and other counties who are also covered under section 203 to share information and resources and to centralize some of the core requirements for language assistance, such as:

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<sup>1</sup> See 52 U.S.C. § 10503.

<sup>2</sup> The assistor may not be an agent or officer of the person's employer, or the employer themselves or an agent or officer of a labor union. Note that under Pennsylvania law, the assistor may not also be the Judge of Elections. See 25 Pa. Stat. Ann. § 3058 (West).

<sup>3</sup> Senate Judiciary Committee Report on the Voting Rights Act Amendments of 1982, S. REP. NO. 97-417, 97th Cong, 2d Sess., reprinted in 1982 USCCAN 177.

<sup>4</sup> United States Census, Section 203 Determinations Public Use Dataset, available at <https://www.census.gov/data/datasets/2021/dec/rdo/section-203-determinations.html>.

<sup>5</sup> See e.g., *United States v. City of Boston, Mass*, No. 05-11598 (D. Mass. 2005)

available at [https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/boston\\_comp.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/boston_comp.pdf);

*United States v. Salem County and the Borough of Penns Grove, NJ* No. 1:08-cv-03276 (D.N.J. July 28, 2008), available at

<https://www.justice.gov/crt/case-document/united-states-v-salem-county-and-borough-penns-grove-nj-complaint>;

See Second Amended Consent Order and Decree, *United States v. Hamtramck* (E.D. Mich. Jan. 29, 2004), available at

[https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/hamtramck\\_cd04.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/hamtramck_cd04.pdf).

- Creating a language access committee of county election offices and Department of State staff that meets periodically to advance the goals of language accessibility.
- Encouraging the Department of State to establish centralized translation services for written materials for all counties who need or want them.
- Leveraging Department of State resources to translate websites in section 203 counties rather than relying on AI technology like Google Translate.
- Building on existing national glossaries for translation of election terms, create a centralized election word bank at the Department of State that includes understandable translations of Pennsylvania-specific election terminology.
- Establishing a centralized vetting process for translators to ensure that translation services are competent.
- Seeking out language accessibility efforts that already exist at the state level, e.g., language accessibility in the Pennsylvania court system.

Additionally, we encourage Philadelphia to adopt accepted best practices developed nationally to help jurisdictions implement language accessibility for voting. These efforts, however, need a funding commitment from City Council to realize the goal of improving voting for all Philadelphia voters.

## **2. Best Practices Will Facilitate an Effective Language Access Program**

Fortunately, national nonprofits, government agencies and other jurisdictions have, through their experience, achieved consensus on a set of practices that facilitates implementation of successful language accessibility programs.<sup>6</sup> Among these recommendations, the ACLU-PA suggests prioritizing the following measures:

- Hiring one or more full-time bi-lingual employees whose role is to address the needs of language minority voters who speak the Section 203 covered languages. These staff will be able to advise on language minority voter outreach and education, review translations, respond to inquiries from voters who do not speak English and recruit and train bi-lingual poll workers and interpreters.
- Encouraging the creation of a Language Assistance Advisory Committee within the City Commissioners to institutionalize the process of identifying the needs and communications channels of the community. Members of the Advisory Committee can include a broad cross-section of

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<sup>6</sup> See e.g., Election Assistance Commission *Clearinghouse Brief: Language Accessibility*, Apr. 2019, available at [https://www.eac.gov/sites/default/files/eac\\_assets/1/6/EAC-ClearinghouseBrief-LanguageAccessibility.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/6/EAC-ClearinghouseBrief-LanguageAccessibility.pdf); Election Assistance Commission, *Language Access Program Checklist*, Dec. 2021, available at [https://www.eac.gov/sites/default/files/languages/Language\\_Access\\_Program\\_Checklist.pdf](https://www.eac.gov/sites/default/files/languages/Language_Access_Program_Checklist.pdf); Dept. of Justice, *Language Minority Citizens*, <https://www.justice.gov/crt/language-minority-citizens> (last visited Feb. 13 2022); Asian Americans Advancing Justice, Fair Elections Center, NALEO Educational Fund, *Community Leaders' Guide to Providing Language Access in Elections*, July 2018, available at <https://www.advancingjustice-aajc.org/sites/default/files/community-full-6%283%29.pdf>; The Center for Civic Design, *Designing Election Systems for Language Access*, August 2017, available at <https://civicdesign.org/wp-content/uploads/2017/07/Language-Access-V10-17-0710b.pdf>.

members of the language minority community in addition to leaders of social service organizations, churches, social clubs, professional organizations and in-language media outlets.

- Ensuring adequate and appropriate translation of election-related materials, especially information provided online via the City Commissioners' website. All information that is provided in English must be provided in the minority language covered under section 203. Ensuring that translations are understandable by the intended audience is critical. Starting with English language materials that are simple and understandable will make the translation of those materials even easier. A language access advisory committee can also be invaluable in reviewing materials and identifying errors in them.
- Engaging in regular and robust outreach, education and poll worker recruitment. It should go without saying that voters who need language assistance cannot take advantage of services of which they are unaware. All of these listed priority measures involve a common theme: making sure that the community whose needs are served are engaged and involved in the process and are aware of the services. An important aspect of this is the recruitment and training of bi-lingual poll workers. Bi-lingual poll workers, over and above any in person translators, can advance the goals of a more welcoming and accessible voting experience for those voters who are not English speakers. The City can collaborate with the Language Assistance Advisory Committee to identify, recruit, and train poll workers.

### **3. Philadelphia Should Consider Voluntary Measures to Increase Participation of Other Language Minorities**

The obligations under the various provisions of the Voting Rights Act provide the minimum requirements that must be met. Nothing in federal or state law prevents the City of Philadelphia from doing more than the minimum to advance language accessibility.

Other jurisdictions have provided language services over and above those required by Section 203. Cook County, Illinois is a notable example of a municipality who proactively encourages language access. Similarly, the City of Los Angeles, and the states of California, Colorado, Massachusetts, and Minnesota are among jurisdictions who have sought to increase participation among sizable populations of non-English speaking voters even though the Voting Rights Act does not obligate them to do so.

Examples exist here in Pennsylvania. Previously, when I served as Deputy Secretary for Elections and Administration in the Pennsylvania Department of State, we translated the voter registration screens presented to voters who wished to register while renewing their driver's license. The screens are now available not only in English and Spanish but in the following languages: Chinese (simplified), Chinese (traditional), Vietnamese, Russian, Korean, Italian, French, Arabic, Gujarati, Polish, Khmer/Cambodian, French Creole. Moreover, Lancaster County, which is not designated as a section 203 county, nevertheless provides all of its voting information in English and Spanish for its significant population of Spanish-speaking voting citizens.<sup>7</sup>

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<sup>7</sup> Lancaster County Election Information in Spanish  
<https://www.co.lancaster.pa.us/1406/13138/Election-Information-Spanish-Text>.

In addition to limited English proficient Spanish and Chinese speakers, Philadelphia has even more citizens in need of language assistance to fully participate in the most fundamental right of voting.<sup>8</sup> As the Citizens for Language Access coalition has pointed out, these citizens could benefit from the addition of Russian, Vietnamese, Arabic and French to the voting and elections portfolio.<sup>9</sup>

Recognizing that significant populations of voters exist with limited English proficiency in Philadelphia, poll worker training, especially in areas with such populations could go a long way towards ensuring participation by those voters. Such training would involve respectful and welcoming attitudes and greetings, both in the polling place and at election office locations, cultural awareness and sensitivity, and the understanding that voters are legally guaranteed an assistor of their choice in the polling place.

#### **4. Ensuring That All Citizens Can Fully Participate in our Democracy Requires Funding and Resources**

Implementing a successful and sustainable language accessibility program requires a commitment of leadership and funding. While we believe that the City can benefit from the experience of its peers, and that it can leverage state-level resources to improve its programs, some of these measures require long term and sustainable funding sources. For example, additional staff or consultants fluent in the languages of need, whose primary and even exclusive role at the City Commissioners office is to provide language assistance is critical. In addition, every election cycle requires new materials for translation, e.g., ballots, signs, changes in procedures, changes in deadlines. Updating training for bi-lingual poll workers and mono-lingual poll workers will require at least an initial outlay to develop the program.

Elections have historically been underfunded. In the current landscape in which the foundations of our democracy are under attack, it is even more important to shore up the offices and staff that make our elections run smoothly. We urge City Council, as it considers its budget, to allocate resources to meet the City's existing section 203 obligations and an additional \$500,000 to expand language assistance and increase participation among the remaining population of non-English speakers so that they can more fully participate in civic life in Philadelphia.

Thank you again for your support and consideration of these important reforms. We sincerely believe that Philadelphia can serve as a model for other cities and encourage all of its citizens to participate fully in our democracy. With your leadership and commitment to achieving these worthy goals, Philadelphia can pave the way for a more equitable and inclusive democracy.

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<sup>8</sup> The estimate of the number of voting age citizens in Philadelphia who would benefit from expanded language access programs will be more reliable once more of the 2020 decennial census data is released for additional study. These numbers will still be in the tens of thousands in Philadelphia.

<sup>9</sup> Nassef, A. & Toy, A., "In their Own Language" The Philadelphia Inquirer, Dec. 13, 2021.