



Partnership for the
Advancement of
New Americans



February 11, 2022

The Honorable Shirley Weber
Secretary of State of California
1500 11th Street, 6th Floor
Sacramento, CA 95814
Secretary.Weber@sos.ca.gov
Elections@sos.ca.gov

Via Electronic Mail

RE: Request for Immediate Designation of Previously Covered 14201 Languages

Dear Secretary of State Dr. Shirley Weber:

The undersigned organizations are concerned about the massive rollback of language assistance that will result from your language minority determinations under Section 14201 of the California Elections Code (“Section 14201”),¹ which were recently published in County Clerk/Registrar of Voters Memorandum (“CC/ROV”) No. 21221.² The determinations completely eliminate assistance in many languages and in many jurisdictions even though there is no evidence that the drop in coverage reflects an actual drop in the needs of California voters. While your office works to find solutions so that you can make accurate language determinations, **we request that you immediately use your discretionary authority to extend the effectiveness of CC/ROV No. 20096.**³ This will ensure that, in addition to any new determinations in CC/ROV No. 21221, all mandatory and discretionary languages and corresponding precincts that were covered in 2021 continue to be covered in 2022.⁴ Your immediate action is needed so that counties can effectively budget and plan to provide language services. If your office does not update the language minority determinations well ahead of the June 2022 primary, limited-English proficient (“LEP”) voters across the state will lose access to the language assistance they need to fully exercise their right to vote during elections this year.

Providing California voters with language assistance is especially critical in an era experiencing an all-out assault on voting rights. In an unprecedented year for voting legislation, nineteen states enacted thirty-

¹ All further statutory references are to the Elections Code unless otherwise indicated.

² Memorandum No. 21221 from the Secretary of State to All County Clerks/Registrars of Voters (Dec. 31, 2021), <https://elections.cdn.sos.ca.gov/ccrov/2021/december/21221sr.pdf> [hereinafter “CC/ROV No. 21221”].

³ Memorandum No. 20096 from the Secretary of State to All County Clerks/Registrars of Voters (May 21, 2020), <https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/may/200961a.pdf> [hereinafter “CC/ROV No. 20096”].

⁴ Note that we are not requesting that you withdraw coverage for the languages and precincts listed in CC/ROV No. 21221.

four laws in 2021 that make it harder for Americans to vote.⁵ The assault is continuing in 2022 with the introduction of at least thirteen bills that would restrict access to voting in four states.⁶ The reduction of covered languages similarly creates new obstacles for LEP voters. With so much at stake, California cannot backslide. We must continue to lead and take bold steps to protect voting rights and remove barriers to the ballot box for all eligible voters, including voters who are members of language minority groups.

1. Section 14201 imposes critical language assistance requirements to facilitate voting for LEP voters.

All communities, regardless of their ability to speak English proficiently, deserve equitable access to the ballot box. The importance of equitable access is particularly pronounced in California which is home to 6.55 million LEP individuals over the age of five.⁷ The 2020 Census also reveals sharply growing numbers of Latinx and Asian Americans in California—a growth that accounts for nearly all of the state’s population gains.⁸ These two populations are the least likely to vote and the most likely to have limited-English proficiency.⁹ While there are several reasons and obstacles contributing to lower turnout at the polls of Latinx and Asian Americans, lack of language assistance is a significant factor. The California Legislature has for decades recognized this problem and expanded the assistance available to LEP voters as recently as 2018.¹⁰

To address the needs of LEP residents and facilitate voting, state law requires counties to provide specified language assistance to voters who are members of a covered language minority group that meets Section 14201’s population thresholds.¹¹ A county with covered precincts must provide translated copies of the ballot, known as facsimile ballots, and conspicuously post them in the polling place. § 14201(a).¹² Counties with covered precincts must also provide other language assistance, including sending a facsimile ballot upon request to a vote-by-mail voter who is registered in a covered precinct (*see* § 13400(a)); posting signs at the polling place informing voters of the availability of facsimile ballots (§ 14201(c)(3)); posting on the county’s website at least fourteen days before an election a list of all polling places where facsimile ballots will be available and the languages in which they will be available (§ 14201(d)); and requiring that poll workers in covered precincts be trained on the purpose and proper handling of facsimile ballots (§ 14201(c)(1)). County election officials must also “make reasonable efforts to recruit election officials who are fluent” in the covered language. § 12303(c).

⁵ *Voting Laws Roundup: December 2021*, Brennan Center for Justice (Jan. 12, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021>.

⁶ *Id.*

⁷ 2019 5-year American Community Survey (“ACS”) data.

⁸ Andrea Briseño and Phillip Reese, *California Latino Population Grew in the Last Decade While Number of Whites Fell, Census Shows*, THE SACRAMENTO BEE (Aug. 24, 2021), <https://www.sacbee.com/news/politics-government/capitol-alert/article253446644.html>.

⁹ Asian Americans Advancing Justice – California, *Voices of Democracy: The State of Language Access in California’s November 2016 Elections* at 9 (2017), https://www.advancingjustice-alc.org/wp-content/uploads/2017/05/05042017_AJ_State_of_Language_Report_DIGITAL_FINAL.pdf.

¹⁰ *See* Assemb. Bill No. 918 (2017-2018 Reg. Sess.).

¹¹ The Secretary of State makes mandatory language coverage determinations based on “the number of residents of voting age in each county and precinct who are members of a single language minority, and who lack sufficient skills in English to vote without assistance . . . equals 3 percent or more of the voting-age residents of a particular county or precinct.” § 14201(b)(1).

¹² If a covered language minority group exceeds “exceeds 20 percent of the voting-age residents in that precinct,” the county must also provide “at least four facsimile copies of the ballot in the language of that language minority,” and “at least three of which shall be made available for voters at the polling place to use as a reference when casting a private ballot.” § 14201.

2. Under the Secretary of State’s recent language minority determinations, most California counties have no Section 14201 language assistance coverage.

Since 2016, the number of LEP voters has increased.¹³ Although the LEP population increased, the language determinations in CC/ROV No. 21221 drastically reduced the number of covered languages and precincts.¹⁴ This reduction was caused by the Census Bureau’s implementation of new privacy-related rules that have made the census tract data in the Bureau’s special tabulation even more incomplete than in the previous determinations reflected in CC/ROV Nos. 17148¹⁵ and 20096. The 2017 and 2021 special tabulation methodologies detail three restrictions that the Census Bureau applied to both sets of data.¹⁶ After the first restriction was applied, CC/ROV No. 17148 describes that the Census Bureau identified 101 languages that met the Secretary of State’s request.¹⁷ Once the Census Bureau applied the other two restrictions, however, this number dropped to fifty-six.¹⁸ CC/ROV No. 21221 describes that the Census Bureau identified 120 languages after it applied the first restriction, but this dropped to twenty languages after the Census Bureau applied the other two restrictions.¹⁹ The 2021 privacy-related rules are thus suppressing more data than the privacy-related rules used for the 2017 special tabulation even though there is no evidence that this reduction in languages represents a reduction in need.

Major deficiencies in the data underlying the determinations in CC/ROV No. 21221 are evident when the data are compared with data on LEP populations provided by the Census Bureau for the federal Voting Rights Act Section 203 (“Section 203”) language determinations, which provide LEP citizen voting age population by county. For example, the data tables for the 2021 determination show zero Tagalog-speaking adult LEP residents in Orange County, while the Section 203 data identify 9,228 LEP citizen voting-age Filipino residents in Orange County.²⁰ This issue occurs in other counties and with other languages. For Sacramento county, Section 203 data identify 6,574 Hmong LEP citizen voting-age residents, while the Section 14201 data tables for Sacramento do not even list Hmong speakers.²¹

¹³ See Press Release: Census Bureau Releases 2021 Determinations for Section 203 of the Voting Rights Act, U.S. Census Bureau (Dec. 8, 2021), <https://www.census.gov/newsroom/press-releases/2021/section-203-voting-rights-act.html> (showing a 22.3% increase in national Section 203 covered population since 2016); compare The 2016 Section 203 Public Use Dataset, U.S. Census Bureau (Jul. 25, 2017), <https://www.census.gov/data/datasets/2016/dec/rdo/section-203-determinations.html> with The 2021 Section 203 Public Use Dataset, U.S. Census Bureau (Dec. 8, 2021), <https://www.census.gov/data/datasets/2021/dec/rdo/section-203-determinations.html> (showing the number of Latino, Chinese, and Vietnamese voters in California increased between 2016 and 2021).

¹⁴ The 2021 methodology also reads that: “The Secretary of State has followed the previous practice of interpreting ‘single language minority,’ as used under Section 14201(c), to encompass language minority groups *expressly identified* in the most recent 2021 Section 203 language access determinations.” CC/ROV No. 21221 at 10 (emphasis added) (page 4 of methodology). This is directly contrary to the court of appeal’s order in *Asian Americans Advancing Justice—Los Angeles v. Padilla*, 41 Cal. App. 5th 850, 876 (2019). If the Secretary limited her analysis to groups identified in the recent Section 203 language access determinations, the Secretary must conduct a new analysis that includes all Asian, Native American, and Native Alaskan languages.

¹⁵ Memorandum No. 17148 from the Secretary of State to All County Clerks/Registrars of Voters (Dec. 29, 2017), <https://elections.cdn.sos.ca.gov/ccrov/pdf/2017/december/17148sr.pdf> [hereinafter “CC/ROV No. 17148”].

¹⁶ CC/ROV No. 17148 at 9 (page 2 of the methodology); CC/ROV No. 21221 at 8 (page 2 of the methodology).

¹⁷ CC/ROV No. 17148 at 9 (page 2 of the methodology).

¹⁸ *Id.*

¹⁹ CC/ROV No. 21221 at 8 (page 2 of the methodology).

²⁰ Compare 2021 Limited English Special Tabulation County Reports, Secretary of State (2021) (report for Orange County) with The 2021 Section 203 Public Use Dataset, U.S. Census Bureau (Dec. 8, 2021), <https://www.census.gov/data/datasets/2021/dec/rdo/section-203-determinations.html>.

²¹ Compare 2021 Limited English Special Tabulation County Reports, Secretary of State (2021) (report for Sacramento County) with The 2021 Section 203 Public Use Dataset, U.S. Census Bureau (Dec. 8, 2021), <https://www.census.gov/data/datasets/2021/dec/rdo/section-203-determinations.html>.

The elimination of coverage is far-reaching. Under the Secretary of State's CC/ROV No. 21221, voters in twenty-nine counties who previously benefited from language assistance under Section 14201 now have no coverage.²² Sacramento County, for example, previously provided language assistance in eleven languages covered under Section 14201: Hmong, Korean, Panjabi, Filipino, Vietnamese, Hindi, Japanese, Laotian, Mien, Telugu, and Urdu.²³ Under CC/ROV No. 21221, the coverage collapsed to zero languages.²⁴ Another fifteen counties experienced dramatic coverage reductions under the new determinations.²⁵ San Joaquin County, for example, previously provided language assistance in nine languages: Chinese, Cambodian/Khmer, Panjabi, Filipino, Vietnamese, Hindi, Hmong, Laotian, and Urdu.²⁶ Under CC/ROV No. 21221, the coverage is now limited to only Chinese and Vietnamese.²⁷ San Diego County too experienced a massive rollback of language assistance. The county previously provided assistance in Arabic, Korean, Japanese, and Laotian and is now limited to Korean and Japanese.²⁸

Such drastic reductions in language coverage will impact whether LEP voters can cast an effective ballot and exercise their right to vote. After all, language assistance increases turnout for LEP voters.²⁹ These increases can be dramatic. For example, after the federal government required San Diego County to improve its language assistance efforts, voter registration rates among Latinx and Filipino Americans increased by more than twenty percent.³⁰ Vietnamese American registrations rose by forty percent after San Diego County voluntarily added Vietnamese to its list of languages for assistance.³¹ It is therefore critical to expand rather than eliminate language assistance for LEP voters.

3. The Secretary of State should use her discretionary authority to designate all languages listed in the May 2020 CC/ROV so that LEP voters have access to language assistance during the June 2022 election.

The Secretary of State may designate additional covered languages when petitioned by interested citizens or organizations. Specifically, Section 14201(b)(1) requires the Secretary of State to provide elections materials in other languages "if interested citizens or organizations provide the Secretary of State with information that gives the Secretary of State sufficient reason to believe a need for the furnishing of facsimile ballots . . . and ballot instructions [exists]." While your office works to supplement the

²² The following counties previously benefited from language coverage under Section 14201 but have no coverage under CC/ROV No. 21221: Alameda, Amador, Calaveras, Contra Costa, Del Norte, El Dorado, Fresno, Humboldt, Inyo, Kern, Kings, Lake, Madera, Mariposa, Merced, Modoc, Napa, Plumas, Sacramento, San Mateo, Santa Clara, Shasta, Sierra, Sonoma, Stanislaus, Tulare, Tuolumne, Ventura, and Yolo. *Compare* CC/ROV No. 20096 at 7-11 with CC/ROV No. 21221 at 4-6.

²³ CC/ROV No. 20096 at 9.

²⁴ CC/ROV No. 21221 at 5.

²⁵ The following counties experienced drastic reductions in language coverage under CC/ROV No. 21221: Butte, Los Angeles, Monterey, Orange, Placer, Riverside, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, Santa Barbara, Solano, Sutter, and Yuba. *Compare* CC/ROV No. 20096 at 7-11 with CC/ROV No. 21221 at 4-6.

²⁶ CC/ROV No. 20096 at 10.

²⁷ CC/ROV No. 21221 at 6.

²⁸ *Compare* CC/ROV No. 20096 at 9 with CC/ROV No. 21221 at 5-6.

²⁹ See, e.g., Daniel J. Hopkins, *Translating into Votes: The Electoral Impacts of Spanish-Language Ballots*, 55.4 Am. J. of Pol. Sci. 814, 822 (2011), <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1540-5907.2011.00534.x>; see also *Hearing on Voting in America: The Potential for Voter ID Laws, Proof-of-citizenship Laws, and Lack of Multi-lingual Support to Interfere with Free and Fair Access to the Ballot Before the Committee on House Administration*, 117th Cong. 9 (2021) (testimony of Dr. Matt Barreto), <https://latino.ucla.edu/wp-content/uploads/2021/06/UCLA-LPPI-Dr-Matt-Barreto-US-Congressional-Testimony-May-24-2021.pdf>.

³⁰ J. Mijin Cha and Liz Kennedy, *Millions to the Polls: Practical Policies to Fulfill the Freedom to Vote for all Americans*, *Demos* 63 (2014), <https://www.demos.org/sites/default/files/publications/Millions%20to%20the%20Polls.pdf>.

³¹ *Id.*

incomplete determinations outlined in CC/ROV No. 21221, we request that you use this discretionary authority to designate previously covered languages, as reflected in CC/ROV No. 20096, issued on May 21, 2020. Just as CC/ROV No. 21221 “encourage[s] counties to work with their community groups to determine if a need exists for any of the previously covered languages,” so too should your office take immediate action to meet the language assistance needs of LEP voters before the June 2022 election. This action is necessary given the statute’s purpose that efforts be made “on a *statewide basis* to minimize obstacles” to LEP voters. § 14201(h) (emphasis added).

Your office already made mandatory and discretionary determinations of need in CC/ROV No. 20096 and you have recognized that the drop in coverage in CC/ROV No. 21221 was caused by “stricter Census Privacy Disclosure Rules.”³² For this reason, CC/ROV No. 21221 strongly encourages counties to not rely on the new, incomplete determinations and instead “consider the needs of their communities before eliminating languages that were previously covered.”³³ The methodology section, too, recognizes the limitations of the special tabulation, flagging that the tabulation only included twenty languages even though the Bureau had identified 120 before applying additional restrictions.³⁴ All evidence within the CC/ROV points to a continued need for coverage, and absent evidence to the contrary, your office should not withdraw coverage.

Other data show that the need for language assistance has increased when compared to 2017. Thus the 2017 special tabulation data is a good, albeit incomplete, indicator of existing language needs. As already noted, Latinx and Asian American communities—the two communities that are most likely to have limited-English proficiency³⁵—account for nearly all of California’s population growth this past decade.³⁶ Federal data confirm this trend. The Census Bureau recently released language determinations under Section 203 and reported a 22.3% increase in the total national covered population when compared with the 2016 covered population.³⁷ For California, these numbers have increased for Spanish and Asian languages. Between 2016 to 2021, Section 203 data show that the Latinx citizen voting age LEP population increased by 137,415, the Chinese citizen voting age LEP population increased by 31,975, and the Vietnamese citizen voting age LEP population increased by almost 20,000.³⁸

A failure to act on a statewide basis means that there will be inconsistent processes for discretionary designations from one county to another. Some counties like Santa Clara and San Mateo have confirmed that they will continue to offer assistance in the languages they covered during the 2021 recall election at least through the June primary.³⁹ Other counties, however, have expressed to us that they cannot secure

³² CC/ROV No. 21221 at 2.

³³ *Id.*

³⁴ *Id.* at 8 (page 2 of the methodology).

³⁵ Asian Americans Advancing Justice – California, *Voices of Democracy: The State of Language Access in California’s November 2016 Elections* at 9 (2017), https://www.advancingjustice-alc.org/wp-content/uploads/2017/05/05042017_AJ_State_of_Language_Report_DIGITAL_FINAL.pdf.

³⁶ Andrea Briseño and Phillip Reese, *California Latino Population Grew in the Last Decade While Number of Whites Fell, Census Shows*, THE SACRAMENTO BEE (Aug. 24, 2021), <https://www.sacbee.com/news/politics-government/capitol-alert/article253446644.html>.

³⁷ Press Release: Census Bureau Releases 2021 Determinations for Section 203 of the Voting Rights Act, U.S. Census Bureau (Dec. 8, 2021), <https://www.census.gov/newsroom/press-releases/2021/section-203-voting-rights-act.html>.

³⁸ Compare The 2016 Section 203 Public Use Dataset, U.S. Census Bureau (Jul. 25, 2017), <https://www.census.gov/data/datasets/2016/dec/rdo/section-203-determinations.html> with The 2021 Section 203 Public Use Dataset, U.S. Census Bureau (Dec. 8, 2021), <https://www.census.gov/data/datasets/2021/dec/rdo/section-203-determinations.html>.

³⁹ These comments were made, respectively, during the January 18, 2022 Santa Clara County Language Accessibility Advisory Committee (“LAAC”) meeting and during the January 19, 2022 San Mateo County Voter Education and Outreach Advisory Committee meeting.

funding from their board of supervisors for language assistance during the 2020 general election without a mandate from your office. This means, as is often the case where there are no uniform statewide standards, that whether an LEP voter is able to meaningfully access the ballot box will depend not on need but on whether they are lucky enough to live in a county that is willing to extend discretionary coverage. Immediate statewide action is not only consistent with state law (*see* § 14201(h)), but it is also necessary to ensure that elections officials can adequately plan and secure necessary funds to, among other things, put together education and outreach materials, have election materials translated, and recruit bilingual workers.

* * *

Given the continuing need for language assistance, it is imperative that you immediately use your discretionary authority to extend the effectiveness of CC/ROV No. 20096. This exercise of authority will ensure that counties provide Section 14201 services to LEP voters this year in all mandatory and discretionary languages and corresponding precincts that were covered during the 2020 general election and the 2021 recall election.

We also request that you convene stakeholders to collaboratively work with you to come up with a plan to continue critical language assistance coverage. This convening should include experts on Census and voter file data, experts on other potential data sources, such as the Department of Finance, voting rights advocates, and representatives from impacted language minority communities. The undersigned organizations respectfully request a meeting with you and your staff during the weeks of February 21 or 28 to start what we hope will be an ongoing dialogue and to learn more about the causes behind the most recent language determinations.

We are excited to work together to expand language assistance for all LEP voters in California. Please do not hesitate to contact us with any questions. Thank you for your consideration and we look forward to your response.

Sincerely,



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Legislative Attorney
ACLU California Action



Ramla Sahid
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Letter Regarding 14201 Designations

February 11, 2022

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cc:

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Reina Miller, Elections Division, California Secretary of State
California Language Accessibility Advisory Committee, California Secretary of State
California Association of Clerks and Election Officials
Hon. Isaac Bryan, Chair of the Assembly Committee on Elections
Hon. Steven M. Glazer, Chair of Senate Committee on Elections and Const. Amendments