



Northern
California



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October 20, 2022

Sent via e-mail

Olivia Hale, Registrar of Voters
44 North San Joaquin Street
Third Floor, Suite 350
Stockton, CA 95202
registrar@sjgov.org

Re: Section 203 Compliance for the November 2022 General Election

Dear Registrar Olivia Hale:

On May 17, 2022, we sent a letter to your office reminding you of your obligations under Section 203 of the federal Voting Rights Act (VRA), 52 U.S.C. § 10503, to provide available election-related materials in Spanish. We also flagged Section 203 deficiencies with your elections website. For your reference, we have attached the May 2022 letter as Exhibit A. To date, your office has not made key election materials on your website available in Spanish even though San Joaquin County has already begun early voting and sent out Vote-by-Mail (VBM) ballots. This is not only disservice to limited English proficient (“LEP”) voters in San Joaquin County but is also contrary to federal law. We again urge you to immediately correct these deficiencies ahead of the November 8, 2022 election to ensure that no additional important election dates (e.g., close of registration) pass without access to adequate translations.

Continued Deficiencies

Section 203 requires that any election material provided to voters in English, including material provided on the county election website or via mail by county election officials, should also be provided in the county’s Section 203 language.¹ The Department of Justice (DOJ) has interpreted the language requirements of Section 203 to “apply to all stages of the electoral process...including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the

¹ Department of Justice, Civil Rights Division, *About Language Minority Voting Rights* (last updated Jan. 4, 2022), <https://bit.ly/3EPzzGu> (noting that, when investigating language minority cases, the DOJ looks at website information and other election information provided in English “to determine whether that same information is being made available to each language minority community”); County Clerk/Registrar of Voters (CC/ROV) Memorandum #21204 (Dec. 10, 2021), <https://bit.ly/3MbDmjI> (directing election officials to review DOJ guidance on Section 203).

American Civil Liberties Union Foundation of Northern California

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deadline for voter registration, the time, places and subject matters of elections, and the absentee voting processes.”²

Our team again reviewed your county’s election website and found that critical election information available in English continues to be unavailable in Spanish.³ Although there is a Google Translate tool on the English website to translate the website into Spanish, the tool does not work.⁴ This means that *all* the important election information available to English speakers is unavailable in Spanish-speaking voters. Even if the translation tool worked, there are documents that are still only available in English. For example, the following English PDFs are not provided in Spanish:

- Polling Places and Election Officers Publication⁵
- Local Measures⁶
- Application for a Replacement Ballot⁷
- Candidate Guide⁸
- Measure Calendar⁹
- Candidate Workshops Flyer¹⁰
- Contest/Candidate List¹¹

We request that your office or the administrator of your county’s election website immediately correct these deficiencies to comply with Section 203. We also request that you notify us when you have made these corrections and again reiterate the urgency of these changes in light of important upcoming election dates.

² 28 C.F.R. § 55.15.

³ See Registrar of Voters, County of San Joaquin, <https://www.sjgov.org/department/rov/home> (last accessed October 20, 2022).

⁴ County of San Joaquin Registrar of Voters, <https://bit.ly/3yIvD9q> (last accessed October 20, 2022).

⁵ Polling Places and Election Officers Publication, https://www.sjgov.org/docs/default-source/registrar-of-voters-documents/current-election/podr014_publication4beba807-36dd-40f1-bba2-a4f663c1e89c.pdf?sfvrsn=aaff06b_8 (last accessed October 20, 2022).

⁶ Local Measures, San Joaquin County Registrar of Voters, <https://www.sjgov.org/docs/default-source/registrar-of-voters-documents/current-election/local-measures.pdf> (last accessed October 20, 2022).

⁷ Application for a Replacement Ballot, San Joaquin County Registrar of Voters, https://www.sjgov.org/docs/default-source/registrar-of-voters-documents/current-election/ballot-applications/ballot-application.pdf?sfvrsn=c8fa0161_13 (last accessed October 20, 2022)

⁸ San Joaquin County Candidate Guide, https://www.sjgov.org/docs/default-source/registrar-of-voters-documents/candidates/candidate_guide_2022_11_08.pdf (last accessed October 20, 2022).

⁹ Measure Calendar, San Joaquin County Registrar of Voters, https://www.sjgov.org/docs/default-source/registrar-of-voters-documents/upcoming-election-documents/measure-calendar_2022-general-election.pdf (last accessed October 20, 2022).

¹⁰ Candidate Workshops Flyer, San Joaquin County, https://www.sjgov.org/docs/default-source/registrar-of-voters-documents/upcoming-election-documents/workshop-flyer_gen_2022.pdf (last accessed October 20, 2022).

¹¹ Contest/Candidate List, San Joaquin County, <https://www.sjgov.org/docs/default-source/registrar-of-voters-documents/current-election/candidate-information/candidate-roster.pdf> (last accessed October 20, 2022).

Best Practices for Translating Election Materials

Accuracy of election information is of utmost importance, and we urge your office to avoid relying on software such as Google Translate to translate election materials. This includes avoiding the use of Google Translate widget to translate the County's election website. The U.S. Election Assistance Commission (EAC) recommends that translators have plain language, linguistic, and cultural expertise to support the review of translations for accuracy and dialectical nuances.¹² Using automatic electronic translations for election websites, however, means that the information will likely be error-filled because these services and web widgets are not designed to parse nuance.¹³ For this reason, the EAC notes that “[h]uman translation is of much higher quality than electronic translation software,”¹⁴ and even Google Translate's disclaimer states that “no automated translation is perfect nor is it intended to replace human translators.”¹⁵ Please confirm with us that your office will not be relying solely on Google Translate to translate your website into Spanish.

* * *

¹² U.S. Election Assistance Commission, *Language Accessibility* at 5 (April 2019), <https://bit.ly/3838X8k> [hereinafter “EAC on Language Accessibility”].

¹³ See, e.g., Yeganeh Torbati, *Google Says Google Translate Can't Replace Human Translators. Immigration Officials Have Used it to Vet Refugees*, PROPUBLICA, Sept. 26, 2019, <https://bit.ly/3869ari>.

¹⁴ EAC on Language Accessibility, *supra* note 12 at 5.

¹⁵ Google, *Attribution Requirements*, <https://bit.ly/3vKrO0a>.

Letter Regarding Section 203

October 20, 2022

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The November 2022 general election is only a few weeks away. Eligible voters in your county are looking to your office for the information they need to participate meaningfully in the election. We urge you to update your website and provide all election materials sent via mail in Spanish. Without these resources, LEP voters will not have equal access to crucial and accurate information such as important registration deadlines, different voting options, ballot drop off information, voting locations, and how to vote by mail.

We understand the pressures your office faces in the weeks leading up to the election. We look forward to a response by October 27, 2022.

Sincerely,



Brandee Calagui
Democracy & Civic Engagement Program
Legal Policy Assistant
ACLU Foundation of Northern California



Julia Marks
Staff Attorney and Program Manager,
Voting Rights
Asian Americans Advancing Justice –
Asian Law Caucus



Allison Lim
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EXHIBIT A



Northern
California

May 18, 2022



Sent via e-mail

Heather Ditty, Registrar of Voters
44 North San Joaquin Street
Third Floor, Suite 350
Stockton, CA 95202
registrar@sjgov.org

Re: Language Access Compliance for the June 2022 Primary

Dear Registrar Ditty:

Under Section 203 of the federal Voting Rights Act (VRA), 52 U.S.C. § 10503, your county must provide all election-related materials in Spanish. We reviewed your election website and identified that the website is not available in Spanish. We urge that you immediately correct this deficiency and request that all election materials you send by mail be in English and in Spanish. We have also identified missing translated information required by the California elections code, section 13400, and request that you post the required translations.

Background

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 6.43 million limited-English proficient (LEP) individuals over the age of five.¹ The 2020 Census also shows sharply growing numbers of Latine and Asian American residents in California—a growth that accounts for nearly all of the state’s population gains.² These two populations are the least likely to vote and the most likely to have limited-English proficiency.³ While there are several reasons and obstacles contributing to lower turnout at the polls of Latine and Asian American voters, lack of language assistance is a significant factor.

To address the needs of LEP residents and facilitate voting, Section 203 states that a jurisdiction subject to the section is required to provide “registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots . . . in the language of the applicable minority group as well as in the English language.”⁴ Information provided in English must be available in the minority language “so that all citizens will have an effective opportunity to register, learn the details of the elections, and cast a free and effective ballot.”⁵

¹ 2020 5-year American Community Survey data.

² 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://bit.ly/3rApffP>.

³ Asian Americans Advancing Justice – California, *Voices of Democracy: The State of Language Access in California’s November 2016 Elections* at 9 (2017), <https://bit.ly/3w2S461>.

⁴ 52 U.S.C. § 10503(c).

⁵ Department of Justice, Civil Rights Division, *About Language Minority Voting Rights* (last updated Jan. 4, 2022), <https://bit.ly/3EPzzGu> [hereinafter “DOJ on Language Minority Rights”] (section on legal requirements).

California state law requires counties to provide limited language assistance for additional languages.⁶ The languages covered under state law in San Joaquin are Chinese, Khmer, Ilocano, Tagalog, Hindi, Hmong, Laotian, Punjabi, Urdu, and Vietnamese.

Providing California voters with language assistance is especially critical in an era experiencing an all-out assault on voting rights. 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. Your office can help by ensuring that all election materials are accessible to both English proficient and LEP voters.

Website Requirements

Section 203 requires that any election material provided to voters in English, including material provided on the county election website or via mail by county election officials, should also be provided in the county's Section 203 language.⁷ The Department of Justice (DOJ) has interpreted the language requirements of Section 203 to "apply to all stages of the electoral process . . . including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process."⁸

Our team reviewed your county's election website and found that, although there is a Google Translate tool at the bottom of the English website to translate the website into Spanish, the tool does not work.⁹ This means that *all* the important election information available to English speakers is unavailable in Spanish-speaking voters.

We request that your office or the administrator of your county's election website immediately correct this deficiency in order to comply with Section 203. We also request that you notify us when you have made this correction. People are increasingly relying on election websites for election-related information: from finding their polling location to voter registration information. To ensure that LEP voters also have access to critical election information, your office must provide the information in Spanish.

California language access requirements also mandate certain translations be posted on the county elections website. Under Elections Code 13400(a), a county elections officer "shall provide instructions to vote by mail voters . . . on the county elections Internet Web site on how to request a facsimile copy of a ballot, in all languages that the county is required to provide facsimile copies of the ballots." Our team reviewed your county's website and were unable to locate these translated instructions. **We request that your office or the administrator of your county's election website immediately correct this deficiency in order to comply with Section 13400.**

⁶ Cal. Elec. Code §§ 14201 (requiring facsimile ballots at polling locations), 13400 (requiring counties to mail voters facsimile ballots when requested and to post information on their website and in the voter information guide), 12303 (requiring counties to provide bilingual poll workers).

⁷ DOJ on Language Minority Rights, *supra* note 5 (noting that, when investigating language minority cases, the DOJ looks at website information and other election information provided in English "to determine whether that same information is being made available to each language minority community"); County Clerk/Registrar of Voters (CC/ROV) Memorandum #21204 (Dec. 10, 2021), <https://bit.ly/3MbDmjI> (directing election officials to review DOJ guidance on Section 203).

⁸ 28 C.F.R. § 55.15.

⁹ County of San Joaquin Registrar of Voters, <https://bit.ly/3yIvD9q> (last accessed May 17, 2022).

Election Materials via Mail

The language requirements of Section 203 also apply to materials provided by mail.¹⁰ The best way to comply with Section 203 requirements is to mail all registered voters materials in both English and Spanish. However, when materials “provided by mail . . . generally to residents or registered voters are not all provided in the applicable minority language” the DOJ “will consider whether an effective targeting system has been developed” to determine Section 203 compliance.¹¹ “For example, a separate mailing of materials in the minority language to persons who are likely to need them or to residents of neighborhoods in which such a need is likely to exist, supplemented by a notice of the availability of minority language materials in the general mailing (in English and in the applicable minority language) and by other publicity regarding the availability of such materials may be sufficient.”¹²

As your office prepares and starts to mail out election-information materials, please keep in mind these critical language requirements. **Specifically, we ask that any election information and mailers sent by the County to registered voters be sent in both English and Spanish.**

Best Practices for Translating Election Materials

Accuracy of election information is of utmost importance, and we urge your office to avoid relying on software such as Google Translate to translate election materials. This includes avoiding the use of the Google Translate widget to translate the County’s election website. The U.S. Election Assistance Commission (EAC) recommends that translators have plain language, linguistic, and cultural expertise to support the review of translations for accuracy and dialectical nuances.¹³ Using automatic electronic translations for election websites, however, means that the information will likely be error-filled because these services and web widgets are not designed to parse nuance.¹⁴ For this reason, the EAC notes that “[h]uman translation is of much higher quality than electronic translation software,”¹⁵ and even Google Translate’s disclaimer states that “no automated translation is perfect nor is it intended to replace human translators.”¹⁶ Please confirm with us that your office will not be relying solely on Google Translate to translate your website into Spanish or your facsimile ballot instructions into languages covered under state law.

Multilingual information on the county elections website should be easy to locate and access. We recommend that buttons for translations be in-language and prominently located at the top right of every English page.¹⁷ We observed that your translation button is at the bottom of your website. Please confirm with us that your office will move the translation button to a more prominent location.

* * *

¹⁰ DOJ, Civil Rights Division, *Language Minority Citizens: Section 203 of the Voting Rights Act*, <https://bit.ly/3Mxz4TN> (requiring that mailed materials such as sample ballots, voter information pamphlets, and absentee ballots be translated to Section 203 languages).

¹¹ 28 C.F.R. § 55.18(a).

¹² *Id.*; see also Complaint, *United States v. San Diego Cnty.*, No. 04CV1273JEG (S.D. Cal. June 23, 2004) (citing as a Section 203 violation San Diego’s failure “to translate into Spanish and Tagalog certain election-related information, including but not limited to information contained in legal notices publicizing elections and materials available to the general public on the Internet website of the Registrar of Voters.”)

¹³ U.S. Election Assistance Commission, *Language Accessibility* at 5 (April 2019), <https://bit.ly/3838X8k> [hereinafter “EAC on Language Accessibility”].

¹⁴ See, e.g., Yeganeh Torbati, *Google Says Google Translate Can’t Replace Human Translators. Immigration Officials Have Used it to Vet Refugees*, PROPUBLICA, Sept. 26, 2019, <https://bit.ly/3869ari>.

¹⁵ EAC on Language Accessibility, *supra* note 13 at 5.

¹⁶ Google, *Attribution Requirements*, <https://bit.ly/3vKrO0a>.

¹⁷ See, e.g., U.S. General Services Administration, *Digital.gov, Top 10 Best Practices for Multilingual Websites*, <https://digital.gov/resources/top-10-best-practices-for-multilingual-websites/>.

The June 2022 primary is only a few weeks away. Eligible voters in your county are looking to your office for the information they need to participate meaningfully in the election. We urge you to update your website and provide all election materials sent via mail in Spanish. Without these resources, LEP voters will not have equal access to crucial and accurate information such as important registration deadlines, different voting options, ballot drop off information, voting locations, and how to vote by mail.

We understand the pressures your office faces in the weeks leading up to the election. We look forward to a response by May 27, 2022.

Sincerely,



Angélica Salceda
Democracy and Civic Engagement, Director
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Julia Marks
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