

## Verifying Implementation of Language Provisions in the Voting Rights Act

Michael Jones-Correa, Cornell University  
Israel Waismel-Manor, University of Haifa

### Contact:

Michael Jones-Correa  
Associate Professor of Government  
Cornell University  
White Hall  
Ithaca, NY 14853

[mj64@cornell.edu](mailto:mj64@cornell.edu)

Israel Waismel-Manor, PhD  
School of Political Science  
University of Haifa

[wisrael@poli.haifa.ac.il](mailto:wisrael@poli.haifa.ac.il)

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## **Verifying Implementation of Language Provisions in the Voting Rights Act**

### **Abstract:**

This is a study of the implementation of Section 203 of the Voting Rights Act (VRA). Given the centrality of the Voting Rights Act for the incorporation of ethnic and racial minorities into American electoral politics, we know remarkably little of how Section 203 has been implemented, or of the effects of its implementation.

To verify implementation of the provisions of Section 203 of the Voting Rights Act, field researchers conducted site visits with county clerks or registrars in 63 Section 203 covered counties in 15 states and 28 non-covered counties in 3 states. These site visits determined the availability of voter registration and voting materials in Section 203 covered languages, the presence of other materials (posters, etc.) in covered languages, and access to staff speaking Section 203 covered languages.

The findings indicated significant non-compliance with Section 203 provisions. Focusing on Spanish-language materials (all 63 of the covered counties in our sample were required under section 203 to provide materials for Spanish-language minorities), we found that in practice:

- 1) Only one in three of the 63 covered counties could offer, upon request, registration materials in Spanish.
- 2) 80 percent claimed to have Spanish-speaking personnel on staff for non-English speaking registrants; however, these personnel were not necessarily always present.
- 3) Levels of compliance ranged widely across states, with states in the Northeast (Connecticut, Massachusetts, New Jersey and Rhode Island) and the Midwest (Kansas) generally having lower compliance rates, and larger states with significant Latino populations (California, Florida and Texas) having among the highest compliance rates.

Earlier analyses (Jones-Correa 2005; Jones-Correa and Ramakrishnan 2004) have indicated that Section 203 coverage has a significant effect on registration and voting rates of language minorities residing in those counties. The findings here suggest that this effect is present even though Section 203 compliance is very uneven, and therefore that the effects found in earlier research would be even greater if Section 203 compliance were universal. Greater emphasis needs to be placed on verification of the voting and registration standards set under the law.

### **The Implementation of Section 203 of the Voting Rights Act: A Proposal**

Given the centrality of the Voting Rights Act for the incorporation of ethnic and racial minorities into American electoral politics, we know remarkably little of how Section 203 of the Act, which has direct implications for Asian and Latino registration and voting, has actually been implemented, or of the effects of its implementation. To verify implementation of the provisions of Section 203 of the Voting Rights Act, field researchers conducted site visits with county clerks or registrars in 63 Section 203 covered counties in 15 states and 28 non-covered counties in 3 states. These site visits determined the availability of voter registration and voting materials in Section 203 covered languages, the presence of other materials (posters, etc.) in covered languages, and access to staff speaking Section 203 covered languages.

#### **Section 203 of the Voting Rights Act**

When the Voting Rights Act was first passed, its primary focus were African-Americans in the South. Initially, the act was designed to facilitate voter enfranchisement--registration and voting--but very quickly the enforcement of the act shifted to the mechanisms of representation (drawing districts for representation, for example) under section 5 of the Act.

Latinos, Asians and Indians were not covered under the original Voting Rights Act in 1965, but the act was extended to include these groups in 1975 under section 203e, and sections 4f4. Coverage under the act for these groups, though, was not as members of racial/ethnic categories, but as 'linguistic minorities.' The justification for coverage was that language restrictions in voter materials and ballots were operating in much the same way as, say, poll taxes or literacy tests to keep linguistic minorities from the polls.

Section 203 of the act mandated the provision of translated voting materials in covered areas. Covered areas were counties in which 5 percent of the 1970 citizen population was

a 'linguistic minority' and in which fewer than 50 percent of registered citizens turned out to vote in the 1972 presidential elections. The definition of covered areas was broadened in 1982 and then again in 1990 to include counties where the citizen population of 'linguistic minorities' was 10,000 people or more.

Section 4f4 of the Voting Rights Act brought linguistic minorities under the umbrella of coverage under section 5 of the Act, the portion of the Act relating to concerns about the mechanisms of representation. This is how Latinos and Asians have been included in discussions about 'majority-minority' districts. However, coverage under this portion of the act is frozen; that is, coverage reflects Latino/Asian participation in 1972, but hasn't been changed since.

The critical significance of section 203, particularly as amended, is that unlike other parts of the VRA (like section 5 or 4f4), *coverage is updated* every ten years according to updated counts from the decennial census. Because of this, this is the portion of the act that most reflects changing demographic realities. It's also the case that, unlike the application of the VRA under sections 5 or 4f4, section 203 is really the only remaining portion of the VRA that still focuses on individual voters' access to the polls rather than representation more broadly (again, the drawing of districts).

Within a short period after its passage, the emphasis in the enforcement of the Voting Rights Act quickly shifted from the enfranchisement of individual voters to questions of representation, and, in particular, to a debate on the desirability and effectiveness of majority-minority districts (Grofman and Davidson 1992; Swain 1993; Lublin 1997; Canon 1999). With this shift in emphasis, both scholars and policy makers have lost sight of the effect of the Act on registration and voting. For instance, in Grofman and Davidson's collection of essays on the controversies surrounding the Voting Rights Act (Grofman and Davidson 1992), none is focused on enfranchisement. This is true as well of their later collection evaluating the impact of the Act on the South. Of thirteen chapters, all but one focuses on minority voter dilution and representation (Davidson and

Grofman 1994). Enfranchisement under the Voting Rights Act has not been controversial, and being uncontroversial, has become invisible.

This shift in attention away from enfranchisement might not be so problematic if the Voting Rights Act were applicable only to African-Americans. However, in 1975 Congress extended the Act to apply to certain linguistic minority groups—Asian Americans, Hispanics and American Indians. These groups continue to have lower rates of registration and voting than the population as a whole. In the 2000 presidential election, 55 percent of the total voting age population (111 million people), turned out to vote. However, as a proportion of the voting age population, only 25 percent of Asian and Pacific Islanders voted, while 28 percent of the Latino voting age population voted. This is compared to 60 percent of voting age Anglos,<sup>1</sup> and 54 percent of voting age blacks (Jamieson et al. 2001).<sup>2</sup> These differences in turnout among racial and ethnic groups have persisted over the last thirty-odd years.

The key points worth emphasizing here are that Section 203 continues the Act's original emphasis on voter enfranchisement and that, unlike other sections of the Voting Rights Act, has provisions to ensure that its coverage is updated every ten years, after each decennial census.

### **What Section 203 Sets Out To Do**

Section 203 was implemented because, as the statute indicates, Congress believed that “through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process.”

To end these practices, Section 203 indicates that “Whenever any State or political subdivision [covered by the section] provides registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process,

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<sup>1</sup> Meaning ‘non-Hispanic whites’

<sup>2</sup> Data for the American Indian and Alaska Native population are not included in the November 2000 CPS Voter Supplement reports because of their small sample size (Jamieson et al. 2001: 3)

including ballots, it shall provide them in the language of the applicable minority group as well as in the English language.” This means that all information that is provided in English at registrars and polling places must be provided in the minority language as well. This covers 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, and assistance is also required to be available in person, by staff speaking the covered languages.

The Act targeted specific language minority groups that Congress identified as having borne the brunt of particular linguistic barriers to the vote. The covered language groups were Spanish, Asian, Native American and Alaskan native. In some covered jurisdictions only one of these groups is present, in a few there are four or more (see T1: Number of jurisdictions covered under Section 203).

T1: Number of jurisdictions covered under Section 203, by number of languages covered.

1 language	253
2 languages	29
3 languages	12
4 languages	3
5 languages	1
Total:	298 jurisdictions

As of 2002, Section 203 of the Voting Rights Act covers 298 jurisdictions (see M1: All counties covered under Section 203).

[insert M1: All counties covered under Section 203]

The single most widely covered language under Section 203 is Spanish. 219 of the 298 covered jurisdictions require the provision of Spanish-language registration and election-

related materials (see T2: Section 203 jurisdictions covering Spanish linguistic minorities).

T2: Section 203 jurisdictions covering  
Spanish linguistic minorities, by state

Texas:	104
California:	25
New Mexico:	21
Colorado:	8
Florida:	8
Connecticut:	7
Massachusetts:	7
New Jersey:	7
New York:	7
Arizona:	6
Kansas:	6
Washington:	3
Illinois:	2
Oklahoma:	2
Rhode Island:	2
Maryland:	1
Nebraska:	1
Nevada:	1
Pennsylvania:	1
Alaska:	0
Hawaii:	0
Idaho:	0
Louisiana:	0
Mississippi:	0
Montana:	0
North Dakota:	0
Oregon:	0
South Dakota:	0
Utah:	0

These 219 jurisdictions (which aside from Hawaii, also include all jurisdictions with Asian language coverage as well) in 19 states are the focus of this study (see M2: All counties covering Spanish language minorities under Section 203).

[insert M2: All counties covering Spanish language minorities under Section 203]

### **Studying the Effects, and the Implementation, of Section 203**

There has been virtually no scholarly study of the Voting Rights Act and its impact on Latinos and Asian Americans. In much of the literature there is only a glancing reference to the Voting Rights Act and its impact on Asian and Latino electoral participation, and often these references dismiss the importance of the Act altogether.<sup>3</sup> For example, in her discussion (Thernstrom 1987, ch. 3) Abigail Thernstrom cast doubt on the need for an extension of the Act to cover Hispanics, arguing that the (albeit scanty) pre-1975 literature on Hispanic political participation (Weeks 1930; Grebler et al. 1970; McCloskey and Merrill 1973) indicated that they were already active and well represented. Though they reach very different conclusions, de la Garza and De Sipio concur in most respects with Thernstrom's analysis. In their view, early studies of Latino participation "strongly indicate that prior to the [Voting Rights Act] Mexican-Americans were not excluded from the Texas and Los Angeles electorates (de la Garza and DeSipio 1997: 86). Furthermore, "[d]espite the protections of the [Act], Latino registration and voting rates have not increased significantly since 1975" (de la Garza and DeSipio 1997: 87). Finally, they note, if one of the most concrete provisions of the amended Voting Rights Act was the provision of voting materials for linguistic minorities, evidence from the 1989 Latino National Political Survey indicated that very few Latinos were taking advantage of the availability of Spanish-language voting materials (de la Garza and DeSipio 1997: 95). As it currently stands, the importance of the Act for Latino electoral participation, they conclude, is mostly symbolic, particularly for the native-born (de la Garza and DeSipio 1997:114; see also de la Garza 2004). Ramakrishnan's analysis of the language provisions of the Voting Rights Act concludes that the Act's language provisions are significant, but only for native-born Latinos but not newly-naturalized citizens, whether Latino or Asian (Ramakrishnan 2002).<sup>4</sup>

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<sup>3</sup> However, see Pantoja et al. 2001; and there is a considerable literature on Latino *representation* as a result of the VRA: see for example Tolbert and Hero 2001; Lublin 1997.

<sup>4</sup> Ramakrishnan's study, like the one here, uses the Census' Current Population Survey to analyze the effects of Voting Rights Act's language provisions. However, he uses a combined sample drawn from congressional and presidential elections (elections which have very different dynamics) and adds county-level demographic data as contextual variables, reducing his sample by at least a third (due to Census restrictions on county identifiers). The combination of these differences in approach leads to quite different results from those presented here.

However, Jones-Correa (2005) and Jones-Correa and Ramakrishnan (2004), have written pieces addressing the overall impact of Section 203 on the registration and voting rates of covered language minorities at the individual, municipal, and county levels. However, this work assumes that counties covered under the VRA are in fact faithful to the letter and spirit of the law, an assumption which an earlier GAO study (United States General Accounting Office, 1997) indicates cannot be taken for granted. The question raised in this study here, therefore, is how have covered jurisdictions under Section 203 of the VRA actually implemented the law?

### **Data Collection**

The primary data for this project are on-the-spot checks of the registration and voting materials and assistance provided by county registrars and clerks' offices in Section 203 covered jurisdictions. These on-site visits were conducted by Cornell University undergraduates in the spring and summer of 2005.<sup>5</sup> Data were collected for 91 counties: 63 counties across 15 states covered under Section 203 of the Voting Rights Act, and 28 non-covered counties in three states (see M3: All counties included in the study, with control counties in red).

[insert M3: All counties included in the study]

The goal of the data collection was to visit sites in as many of the covered states and jurisdictions as possible, to test for variance in compliance across states. In addition, data on jurisdictions not covered by Section 203 was gathered in three states (Texas, New Mexico and Colorado) to see if there were significant differences in access to registration and voting for linguistic minorities in covered and non-covered jurisdictions.

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<sup>5</sup> The fieldwork was sponsored by the Russell Sage Foundation and the College of Arts and Science at Cornell University, to whom we extend many thanks.

Staff at clerks' and registrars' offices in the covered jurisdictions were asked for registration forms in the covered language(s) and for any additional voting or election related materials in the covered language(s). In addition, staff were questioned as to the presence of staff capable of speaking the language(s) covered under Section 203 (in the case of the jurisdictions covered in this study, these were Spanish or Asian languages—Chinese, Korean, Filipino and Tagalog).

### **The Data**

The data presented here include two measures of compliance with Section 203: the availability of registration materials in covered languages, and the presence of personnel capable of handling requests in covered languages. Under Section 203 of the Voting Rights Act, both materials and personnel to aid in registration and elections should be available upon the request of prospective voters.

#### *Registration Materials*

Table T3 presents the findings for the availability of registration materials in the covered languages, by state. The table has columns for state, counties in the study, and compliance. The study covered 15 states, listed in the states column. The county column indicates the number of counties visited in each state. The compliance column is a measure of '0' to '1', where '1' indicates every jurisdiction in the state provided the materials required under Section 203, and a '0' indicated that none had.

Note that only three states had perfect compliance with this requirement under Section 203: Illinois, Nevada and Washington. This may not indicate anything in particular about these states: all three of these states have only one or two counties covered by Section 203. States with greater numbers of jurisdictions covered under section 203 fared less well, although here there was much greater variance.

## T3: Compliance in the Provision of Registration Materials, by State

Materials	Counties	
	In the Study	Compliance
Arizona	5	0.00
California	7	0.71
Colorado	7	0.00
Connecticut	6	0.00
Florida	7	0.57
Illinois	2	1.00
Kansas	6	0.00
Massachusetts	1	0.00
New Jersey	3	0.33
New Mexico	8	0.25
Nevada	1	1.00
New York	3	0.00
Rhode Island	2	0.00
Texas	4	0.75
Washington	1	1.00
Total/		
Average	63	0.30

Three quarters of California and Texas' covered counties surveyed had the appropriate materials on hand, as did 57 percent of Florida covered counties. However, none of the covered jurisdictions in Arizona, Colorado, Connecticut, or Kansas had registration materials in covered languages available, as did only 25 percent of New Mexico's eight covered counties visited in the course of the study.

In all, seven of the 15 states had no registration materials in the covered languages required by the Voting Rights Act (in addition to Arizona, Colorado, Connecticut and

Kansas, Massachusetts, New York, Rhode Island and Washington did not have these materials on hand). Notwithstanding that the visits were conducted ‘off-cycle’—that is, not in an election season—the average rate of compliance across the jurisdictions the study surveyed was only .30. Only thirty percent of the counties visited in the study had materials in the covered languages required under Section 203.

### *Personnel*

Table T4 presents the findings for the availability of personnel capable of providing assistance in the covered languages, by state.

Table T4: Compliance in the Provision of Personnel Capable of Providing Assistance in Section 203 Covered Language(s), by State

Personnel	Counties	
State	In the Study	Compliance
Arizona	5	1.00
California	7	0.86
Colorado	7	0.86
Connecticut	6	0.83
Florida	7	0.86
Illinois	2	1.00
Kansas	6	0.50
Massachusetts	1	0.00
New Jersey	3	0.67
New Mexico	8	0.75
Nevada	1	1.00
New York	3	0.60
Rhode Island	2	0.50
Texas	4	1.00
Washington	1	1.00
<b>Total/Average</b>	<b>63</b>	<b>0.79</b>

As in Table T3, this table has columns for state, counties in the study, and compliance. Again, the first column is a list of states included in the study, and the county column indicates the number of counties visited in each state. The compliance column is a

measure of ‘0’ to ‘1’, where ‘1’ indicates every jurisdiction in the state providing the assistance in covered languages required under Section 203, and a ‘0’ indicated that none had.

Five states had perfect compliance with this provision of Section 203 of the Voting Rights Act: Arizona, Illinois, Nevada, Texas and Washington. Note that only one state, Massachusetts, had ‘0’ compliance; the majority of covered jurisdictions surveyed met this provision of the Act. 79 percent of the counties surveyed claiming to have staff that could provide assistance in Spanish, for instance.

The inclusion of the word ‘claimed’ is not accidental. While our data aren’t completely reliable in this respect, in at least some cases it seems staff indicated there assistance could be provided in the covered language(s), even though the staff people speaking that language or languages may not have been present.

### *Materials and Personnel*

Table T5 presents the findings for the availability of personnel capable of providing assistance in the covered languages, by state. Like Tables T3 and T4, this table has columns for state, counties in the study, and compliance. Again, the first column is a list of states included in the study, and the county column indicates the number of counties visited in each state. The compliance column is a measure of ‘0’ to ‘2’, where ‘2’ indicates every jurisdiction in the state provided both material and assistance in the covered languages required under Section 203, and a ‘0’ indicated that the counties provided neither.

Table T5 is a compilation of the data presented in Tables T3 and T4. What’s clear from this compiled data is that few covered jurisdictions are fully in compliance with Section 203. Of the states with jurisdictions surveyed in the study, only Illinois, Nevada and Washington were fully in compliance. The picture that emerges, overall, is of partial

compliance across the covered jurisdictions—reflected by the composite score of 1.10 out of 2 for compliance, or just 55 percent.

Table T5: Compliance in both the Provision of Materials and Personnel in Section 203 Covered Language(s), by State

Materials and Personnel		
State	Counties In the Study	Compliance
Arizona	5	1.00
California	7	1.57
Colorado	7	1.00
Connecticut	6	0.83
Florida	7	1.50
Illinois	2	2.00
Kansas	6	0.50
Massachusetts	1	0.00
New Jersey	3	1.00
New Mexico	8	1.00
Nevada	1	2.00
New York	3	0.66
Rhode Island	2	1.00
Texas	4	1.75
Washington	1	2.00
<b>Total/Average</b>	<b>63</b>	<b>1.10</b>

### *Maps of the Findings*

Graphic representations of levels of compliance with Section 203 across the surveyed jurisdictions are displayed in the maps M4, M5 and M6.

[M4 All counties in the study (including controls) by level of compliance]

[M5 Counties in the study by level of compliance; Northeast and Midwest]

[M6 Counties in the study by level of compliance: Southwest]

Note that these maps include both the 63 covered counties surveyed, and the 28 non-covered counties visited.

*Non-Covered Counties*

Interestingly the data indicate that coverage of materials and personnel for linguistic minorities in our control group of non-covered counties is not ‘0’. For the purposes of comparison tables for the provision of materials and personnel are presented below.

Table T6: Provision in Non-Covered Counties of Materials in Section 203 Covered Language(s), by State

Materials		
State	Counties in the Study	Compliance
TX Average	23	0.13
CO Average	2	0.00
NM Average	3	0.33
<b>Total/Average</b>	<b>28</b>	<b>0.14</b>

Table T7: Provision in Non-Covered Counties of Personnel Capable of Providing Assistance in Section 203 Covered Language(s), by State

Personnel		
State	Counties in the Study	Compliance
TX Average	23	0.52
CO Average	2	0.50
NM Average	3	1.00
<b>Total/Average</b>	<b>28</b>	<b>0.57</b>

As with the covered counties, provision of assistance (in these states, in Spanish) is more common than the provision of translated registration materials. The majority of non-covered counties visited in these three states claimed to have Spanish-speaking personnel. These are also three states with high percentages of Latino residents, so perhaps this finding isn’t so surprising; nonetheless, the fact remains that even non-covered counties in these three states seem to have staff assistance on hand for non-English speaking registrants. The picture is less sanguine for the provision of registration materials. Only 14 percent of the non-covered counties visited offered translated registration materials. Nonetheless, these data indicate that even non-covered counties in states that have other covered jurisdictions offer some materials and services for non-English speaking citizens;

this suggests that there are some salutary ‘spill-over’ effects of section 203 of the Voting Rights Act. It should be noted that despite whatever ‘spill-over’ effects exist that the difference between covered and non-covered counties in the provision of materials and services in languages other than English is still significant.

### **Next Steps**

The next step in this study will be the analysis of these data in conjunction with voter registration data using either the November 2004 Census Current Population Survey or individual level registration and voting data from Voter Contact Services (VCS).<sup>6</sup> In addition the authors expect to analyze additional fieldwork data not presented in this initial paper. We expect that as this vein of research continues that the results of will mirror that of previous studies by Jones-Correa and Ramakrishnan: that is, that covered jurisdictions under Section 203 of the VRA will have significantly greater registration and turnout for linguistic minorities than non-covered areas. However, the research is also expected to indicate that there is variation in Section 203 compliance, and that counties that actually comply with Section 203 will have higher registration and voting rates by linguistic minorities than those that comply in part or not at all; and that there are likely to be some significant differences in voter registration and turnout depending on the location and kinds of materials being offered by state and county agencies.

The authors also collected data on services and materials provided at county department of motor vehicle offices. These data will be analyzed both with respect to the Voting Rights Act and the 2003 Help America Vote Act.

The fieldwork also included data on other materials present but not required at county clerks and registrars’ offices (posters in languages other than English, etc.) The authors will test whether counties and jurisdictions that go ‘beyond the law’, that is, that provide

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<sup>6</sup> VCS has allowed the Jones-Correa access to their data in the past (Jones-Correa and Ramakrishnan 2004). <http://www.vcsnet.com/>

services beyond that required by Section 203 see higher registration rates for non-English speaking citizens than those that do not.

## **Conclusions**

The preliminary findings of this study suggest that there is significant non-compliance across covered counties with Section 203 provisions, in the areas of both the provision of materials for linguistic minorities, and the availability of staff assistance in languages other than English. To sum up:

- 1) only one in three of the 63 covered counties surveyed in the study could offer, upon request, registration materials in other languages as required under the law.
- 2) 80 percent of covered counties in the study indicated they had Spanish-speaking personnel on hand.
- 3) Levels of compliance ranged widely across states, with states in the Northeast (Connecticut, Massachusetts, New Jersey and Rhode Island) and the Midwest (Kansas) generally having lower compliance rates, and larger states with significant Latino populations (California, Florida and Texas) having among the highest compliance rates.

Earlier analyses (Jones-Correa 2005; Jones-Correa and Ramakrishnan 2004) have indicated that Section 203 coverage has a significant effect on registration and voting rates of language minorities residing in those counties. The findings here suggest that this effect is present even though Section 203 compliance is very uneven, and therefore that the effects found in earlier research would be even greater if Section 203 compliance were universal. Greater emphasis needs to be placed on verification of the voting and registration standards set under the law.

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