

NATIVE VOTE ELECTION PROTECTION



**PATTY FERGUSON-BOHNEE
INDIAN LEGAL CLINIC
SECTION 203 OF THE VRA
(INCLUDES SOME NAVRC SLIDES)**

THE VOTING RIGHTS ACT

- **Section 2:** General non-discrimination provision of the VRA
- **Section 5:** Preclearance, retrogression
 - Coverage Formula overturned in *Shelby County v. Holder* (2013)
- **Section 201:** Prohibits use of “tests or devices” as a prerequisite to registration or voting
- **Section 203:** In many areas, language assistance and translations must be provided to Native voters in their Native language
- **Section 208:** Voter assistance requirements

WHAT DOES SECTION 203 COVERAGE MEAN?

The basic prohibition:

“Before August 6, 2032, no covered State or political subdivision shall provide voting materials only in the English language.”

52 U.S.C. § 10503

SECTION 203 COVERAGE FORMULA

- **Population requirements meet one of three population “triggers”:**
 - **Five Percent Trigger:** More than 5% citizen voting age population (CVAP) in the jurisdiction are members of a single language minority group and are limited-English proficient (LEP); OR
 - **10,000 Person Trigger:** More than 10,000 CVAP in the jurisdiction are members of a single language minority group and are LEP; OR
 - **Reservation Trigger:** In political subdivisions containing any part of an Indian Reservation, more than 5% of the CVAP of the Indian Reservation or Alaska Native village are members of single language minority group and are LEP – most Native languages are covered under the Reservation Trigger

AND

- **The LEP population meets the illiteracy “trigger”:** The illiteracy rate of the LEP CVAP triggering coverage exceeds the national average (1.16% in 2011 determinations).

OCTOBER 11, 2013

SECTION 203 DETERMINATIONS

County	Language	Reservation Trigger
Apache	Navajo	Navajo Nation
	Pueblo	Zuni Reservation and Off-Reservation Trust Land
Coconino	Yuma	Havasupai Reservation
	Hopi	Hopi Reservation
	Yuma	Hualapai Reservation
	Navajo	Navajo Nation
Maricopa	Tohono O'Odham	Tohono O'Odham Nation Reservation
Mohave	Yuma	Hualapai Indian Reservation
Navajo	Hopi	Hopi Reservation
	Navajo	Navajo Reservation
Pima	Yaqui	Pascua Pueblo Yaqui Reservation
	Tohono O'Odham	Tohono O'Odham Nation Reservation
Pinal	Tohono O'Odham	Tohono O'Odham Nation Reservation
Yavapai	Yuma	Hualapai Indian Reservation
Yuma	Yuma	Cocopah Reservation

REASONS WHY COUNTIES DID NOT FULLY COMPLY WITH SECTION 203

- Counties were told the Tribe did not need voting assistance.
 - County election department did not specify who provided that response, nor specified the department of the Tribe with which they spoke.
- There were too few speakers of the language and considered it a “dying language”.
- The county stated tribal members have, “completely integrated into the adjacent white populations”.
- County officials stated that the tribal members responded by saying that the language is a dying language.

DECEMBER 5, 2016

SECTION 203 DETERMINATIONS

County	Language	Reservation Trigger
Apache	Navajo	Navajo Nation
Coconino	Navajo	Navajo Nation
Gila	Apache	San Carlos Reservation
Graham	Apache	San Carlos Reservation
Navajo	Navajo	Navajo Nation
Pinal	Apache	San Carlos Reservation

ASSISTANCE UNDER SECTION 203: PART 1

Oral language assistance must be available for every stage of the elections process:

- ✓ Voter registration
- ✓ Absentee ballots
- ✓ Polling place publicity
- ✓ Instructions
- ✓ Telephone assistance for persons calling the elections office
- ✓ Assistance at the polls
- ✓ Any other information provided to voters

ASSISTANCE UNDER SECTION 203: PART 2

Ways of making bilingual assistance available:

- ✓ Bilingual workers in election office
- ✓ Bilingual poll workers
- ✓ Volunteers
- ✓ Hired interpreters
- ✓ Language recordings
- ✓ Voter brings person of their choice to provide assistance

TRANSLATIONS REQUIRED UNDER SECTION 203: PART 1

- ✓ Voter registration materials
- ✓ Voting notices
- ✓ Voting materials provided by mail
- ✓ All election forms
- ✓ Polling place activities and materials
- ✓ Instructions
- ✓ Publicity
- ✓ Ballots
- ✓ Any other materials or information relating to the electoral process
- ✓ Assistance

TRANSLATIONS REQUIRED UNDER SECTION 203: PART 2

- Election officials must ensure that the information is translated accurately
- Translated materials need to be distributed to the voters who need them
- ALL voting materials and information provided in English also must be provided in the minority language

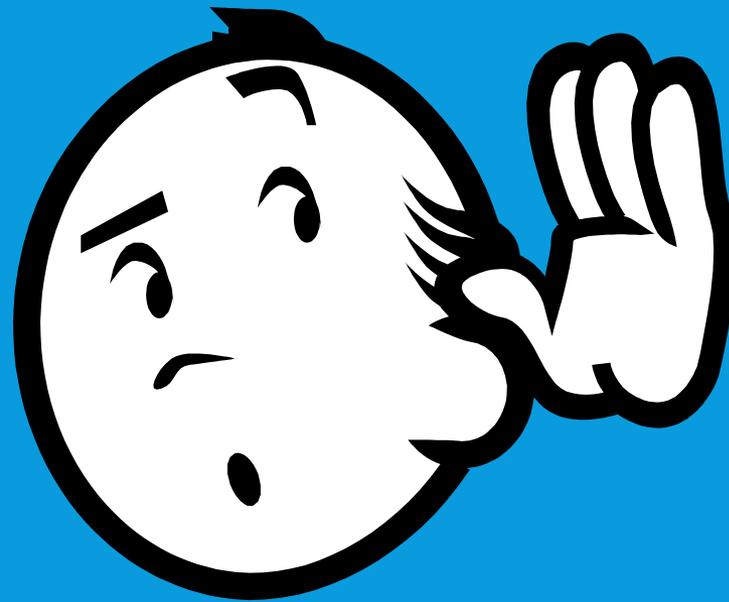
OUTREACH AND PUBLICITY UNDER SECTION 203

- ✓ Display of signs informing voters they have a right to information in their Native language
- ✓ Public Service Announcements in Native language through radio, television, and cable outlets
- ✓ Direct contact with Native voters and other community outreach
- ✓ Pre-election information is essential

EXAMPLES OF SECTION 203 VIOLATIONS

- ✓ No translations of pre-election information provided to Native voters
- ✓ Failing to provide a sufficient number of poll workers who are bilingual and literate in English and the Native language
- ✓ Inaccurate or incomplete translations
- ✓ Native voters are given less information about the voting process than non-Native voters
- ✓ Denying Native voters the right to assistance in their Native language at every step of the registration and voting process
- ✓ Prohibiting a Native voter from bringing into the polling place a marked up sample ballot in their Native language

LANGUAGE ASSISTANCE: WHAT YOU SHOULD LISTEN FOR

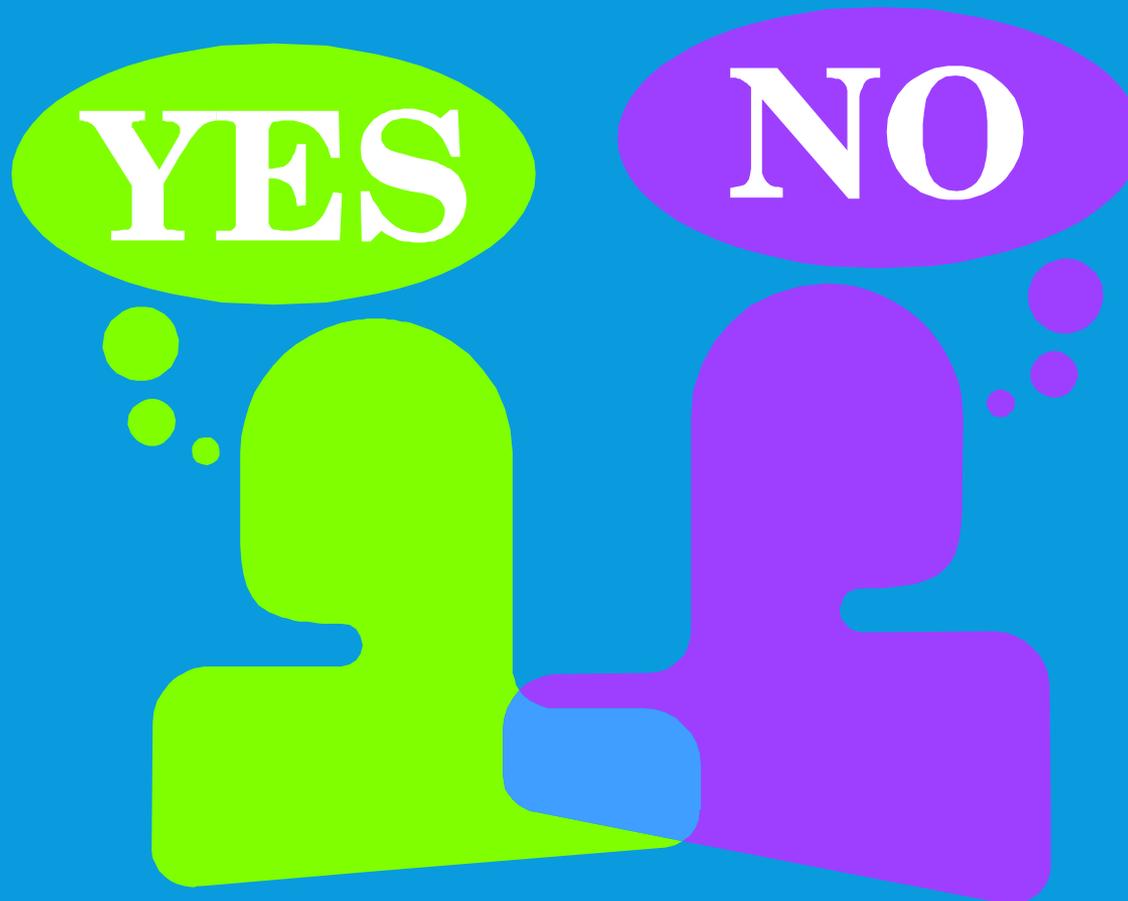


1. RADIO ANNOUNCEMENTS

- Did you hear any radio announcements made about the election in the Native language?
- Did the announcement tell you:
 - Voter registration deadline
 - When the election was being held
 - Polling place hours
 - Offices on the ballot
 - Help is available to voters in their language
 - How to contact the elections office



2. DID ELECTIONS OFFICIALS ASK YOUR TRIBE ABOUT GIVING VOTING INFORMATION IN A NATIVE LANGUAGE?



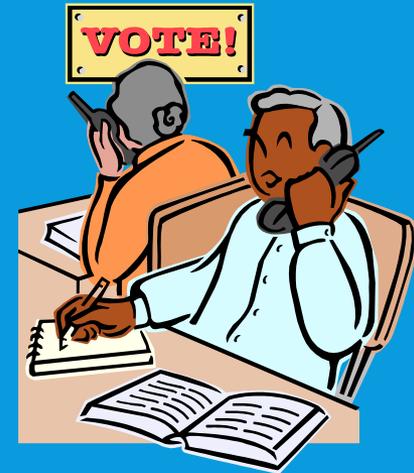
1. WHAT TO LOOK FOR WHEN YOU VOTE: SIGNS AND FORMS



- Sign telling you that help is available in the Native language
- Written sample ballot in the Native language that you can understand
- Voter registration forms
- How to contact the elections office toll-free in your Native language

2. WHAT TO LOOK FOR WHEN YOU VOTE: TELEPHONE

- Is there a telephone available for the poll workers to use if they have a problem?
- Is the telephone available for voters to call the State?
- Did the poll workers use the telephone to call the elections office?



3. WHAT TO LOOK FOR WHEN YOU VOTE: NATIVE LANGUAGE TRANSLATOR

- Is there at least one poll worker or translator who speaks and reads English and the Native language fluently?
- Does the translator ask if voters need help in the Native language, or does the translator just offer help to voters in the Native language?
- Does the translator understand all of the forms and the ballot, or did the elections office not help them out enough?

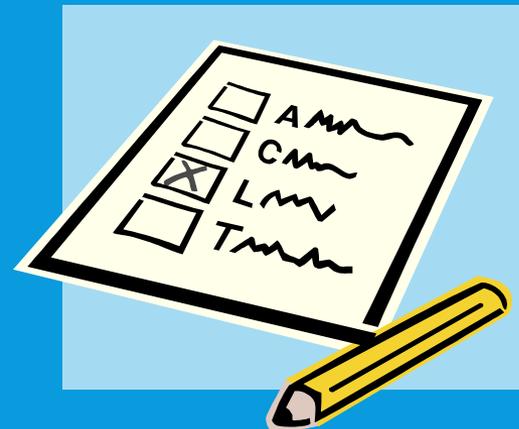
4. WHAT TO LOOK FOR: HELP FOR VOTERS WHO NEED IT

- Are voters allowed to get help from anyone they want?
- Can voters get help inside the booth?
- Are voters able to get help in their Native language?
- Are voters or the person helping them allowed to use:
 - A sample ballot
 - Audio recordings
 - Other translations into Native language
- Were poll workers told they couldn't do any of this?



DID NATIVE VOTERS GET THE HELP THEY NEED?

- Did voters who speak only the Native language understand everything on the ballot and how to vote?
- What do elections officials need to do to make things better for Native voters who don't speak or read English?
- If federal observers are present, Native voters can report their voting experience to the observers.



EXAMPLES OF SECTION 208 VIOLATIONS

- ✓ Requiring Native voters to receive all help from poll workers
- ✓ Prohibiting a child who is bilingual in English and the Native language from providing help because the child is not old enough to vote
- ✓ Denying multiple Native voters from receiving help from the same person who is their person of choice
- ✓ Preventing the person providing help from going into the voting booth with the Native voter
- ✓ Prohibiting the person helping from providing a translation in the Native language because the poll worker does not understand that language