



**Testimony of Michelle Romero, Claiming Our Democracy Director, The Greenlining Institute
Before the National Commission on Voting Rights – California Hearing
Panel III: Language Access**

January 30, 2014

Commissioners Dolores Huerta, Kathay Feng, Alice Huffman, and Cruz Reynoso,

Thank you for inviting me to testify before you today. It is my honor to be able to shine light on two areas of our democracy where we need to better serve and empower limited-English communities to participate.

Just 50 years ago, before the Voting Rights Act was passed in 1965, discrimination and intimidation tactics such as poll taxes and literacy tests were widely used to prevent voters of color from participating in the democratic process. Here in California, literacy tests were specifically used to discourage Chinese and other foreign-born citizens from voting. Today, we are fortunate to have certain protections, such as access to bilingual poll workers and translated voting materials, which when properly implemented help enable limited-English proficient (LEP)¹ citizens to participate. Yet there is more that can and should be done to ensure these communities can participate meaningfully.

Each year, the Greenlining Institute’s Claiming Our Democracy Program convenes a series of community focus groups across the state to learn more about how voters of color interact with voting material, make decisions on ballot measures, and experience our democracy. We use this information to inform policymakers and our own advocacy to improve our democracy by ensuring voters of color can participate. From these community sessions, we have identified two modern day “literacy tests” that continue to prevent many from effectively participating in our democracy.

Voter information materials

The first example is our voter information guide. The state’s voter information guide is the single piece of information that every voter receives. Yet, when we held focus groups on the issue, we quickly learned that voters across the spectrum, both limited in English and fluent in

¹ LEP = limited-English proficient (people that self-reported they do not speak English “very well”)

English, struggle to understand the “legalese” that is provided as information. Voters most often referred to the voter guide as “too complex” or “confusing” making voting feel like an exam. Many voters with limited-English proficiency also complained that the translated material did not make sense.

When we ran a Flesh-Kincaid reading grade level analysis on various sections of the English voter guide, we found that over the past five state election cycles, several sections would require above a 12th grade reading level to understand. The most extreme example was a part of the voter guide that scored at a 16th grade reading level. No wonder those with college degrees are more likely to vote than those without. Additionally, the more difficult the text is in English, the greater chance that word-for-word translations are poor as well. Language access isn’t just about translating material from one language to another, it is about ensuring the audience can understand the content. To this end, language access must also include policies to provide material in “plain language” that is readily understood and relevant to our diverse voters.

Plain language is a studied concept that encourages use of active vs. passive voice, shorter words compared to words with many syllables, and many other best practices for readability.

The plain language movement in the United States government began in the 1970s when President Nixon ordered the Federal Register to be written in “layman’s terms.” Then in 1998, President Clinton issued orders to require federal employees to write regulations in plain language. Most recently in 2010, President Obama signed the *Plain Writing Act* to “promote clear government communications that the public can understand and use.” The Act applies to federal agencies and requires plain language training for agency staff. These are some examples of our government’s recognition that plain, accessible information matters and yet no such policies exist to govern our voting information materials. We ought to have a law that would ensure voting material is actually clear, concise, and voter-friendly.

Language assistance in the ballot initiative process

The second place where we see an example of a modern day literacy test is in the initiative process. The ballot initiative system plays an important role in setting policy in California. Established in 1911, the initiative system was a way to give to the people the power to make and unmake their own state laws, and to hold their government accountable. However, our English-only initiative petitions fail to provide this opportunity to the millions of eligible voters in California’s who are limited-English proficient.

Between 1990 and 2010, California’s limited-English population grew 56% to a total of 6.9 million residents. At least 2.6 million limited-English residents in California are eligible voters, making up approximately 11% of our total citizen voting age population.²

² U.S. Census. American Community Survey, 2009-2011 3-Year Estimates. Table B1006.

Voter registration among Asians and Latinos has also grown. Asian American voter registration increased 51% between 2000 and 2008, and Latino voter registration increased 70% during the same period.³ Yet, we know voter turnout among these groups continues to lag behind that of other groups.

By failing to provide language accessible initiative petitions, many voters are left out of the process of determining what initiatives qualify for the ballot, including 46.5% of California's naturalized citizens who are LEP. LEP voters are also at risk of manipulation by paid signature gatherers who may speak the voter's language but misstate the details of a petition, since the voter has no way to verify that the gatherer's statements are true and accurate. Meanwhile, proponents lack the tools necessary to engage these voters meaningfully to help qualify initiatives that would benefit or be supported by this group of voters. This part of our democracy can be compared to "white primaries."

White primaries excluded blacks from voting in primary elections even after they had gained the right to vote, by engaging in "selective inclusivity" where only whites were included. States got away with this by legally considering the general election as the only state-held election and giving political parties control of the decision-making process within the party primary. At first the courts accepted this rationale and upheld white primaries. It took some time for the issue to gain traction, but eventually it did and the courts finally struck down the practice.

English-only signature processes are like white primaries. They selectively include the citizens who will decide what issues will go on the ballot. Like primaries, in which candidates get nominated to move forward in the decision-making process, the signature phase of the initiative process is where voters nominate what issues move to the ballot. Not allowing some groups of voters to be part of this decision-making based on their ability to speak English, undermines the rights they have to inform the decisions that affect their lives.

Our electoral process does not begin on Election Day; it begins much sooner. When it comes to initiatives, the electoral process begins with the signature gathering process, whereby voters can "nominate" policies to place on the ballot for voter approval or rejection the way we nominate candidates in a primary election.

California's limited-English proficient communities are highly concentrated in counties critical to qualifying ballot measures. For instance, Los Angeles County, where every single initiative that has ever qualified is circulated, has the largest community of limited-English citizens (about 1 million). Other counties in the San Francisco Bay Area and the Inland Empire are also hot spots of initiative activity and are home to large communities of limited-English citizens. (See Table 1 and Table 2 on pages 7 and 8).

³ Asian American Center for Advancing Justice (2013). *A Community of Contrasts*. Available at http://advancingjustice-la.org/system/files/Communities_of_Contrast_California_2013.pdf

Table 1. Top 10 Counties by *Number* of Limited-English Proficient (LEP) Eligible Voters⁴

Rank	County	Total CVAP	Total LEP CVAP	LEP Share of Total CVAP
1	Los Angeles County	5,691,739	966,559	17.0%
2	Orange County	1,855,568	239,896	12.9%
3	San Diego County	2,026,532	184,462	9.1%
4	Santa Clara County	1,068,326	159,007	14.9%
5	San Bernardino County	1,220,091	121,491	10.0%
6	Riverside County	1,323,838	118,326	8.9%
7	Alameda County	963,416	117,267	12.2%
8	San Francisco County	594,178	109,198	18.4%
9	Sacramento County	936,263	73,875	7.9%
10	San Mateo County	456,007	58,227	12.8%

Table 2. Top 10 Counties by LEP *Share* of the Eligible Voter Population

Rank	County	Total CVAP	Total LEP CVAP	LEP Share of Total CVAP
1	Imperial County	92,859	18,730	20.2%
2	San Francisco County	594,178	109,198	18.4%
3	Los Angeles County	5,691,739	966,559	17.0%
4	Santa Clara County	1,068,326	159,007	14.9%
5	Orange County	1,855,568	239,896	12.9%
6	San Mateo County	456,007	58,227	12.8%
7	Alameda County	963,416	117,267	12.2%

⁴ Chart data based on American Community Survey 2009-2011 3-Year Estimates.

8	Merced County	137,923	15,809	11.5%
9	San Joaquin County	406,781	44,606	11.0%
10	San Benito County	32,837	3,543	10.8%

The Federal Voting Rights Act, which outlawed discriminatory practices in voting, already protects limited-English proficient voters by providing various forms of language assistance. In California, this includes translating voting materials into as many as nine languages: Spanish, Chinese, Japanese, Korean, Vietnamese, Tagalog, Hindi, Khmer, and Thai.

Unfortunately, there is some confusion as to how the Federal Voting Rights Act’s language assistance provisions should be applied to initiative, referendum, and recall materials. In *Padilla v. Lever*,⁵ the courts decided a case that involved MALDEF and a local recall petition to remove a Latino elected school board member in Orange County. MALDEF argued that an English-only recall petition violated the language access protections of the Federal Voting Rights Act and prevented the elected official’s Spanish-speaking constituency from weighing in. In that case, the court acknowledged the merits of MALDEF’s arguments, but determined that the scope of the Federal Voting Rights Act provisions were limited to “voting materials” provided by the government, which they did not find to include recall petition materials. A primary reason for this is that recall petition materials are solely prepared and produced by the proponents. On the other hand, initiative title and summaries are prepared and produced by the State, even if the petitions themselves are later formatted and produced by the proponents. This lack of clarity in the law needs to be addressed to ensure that language barriers do not hinder our communities from participating.

We need policymakers to pass legislation to fill the gap left in current law and bring some consistency to our democracy, as it relates to language access. A remedy could be brought at the state level or at the federal level to cover the 24 states that have an initiative process.

BEYOND CALIFORNIA

In 2010, the highest concentrations of LEP individuals were found in the six traditional immigrant-destination states, half of which also have an initiative process: California (6.9 million), Florida (2.1 million), and Illinois (1.2 million).⁶

Other states, such as Nevada and Arkansas, however, had even larger growth rates of LEP communities over the past 10 years.⁷ In both Nevada and Arkansas, states with an initiative

⁵ See *Padilla v. Lever* at <http://caselaw.findlaw.com/us-9th-circuit/1435659.html>

⁶ Migration Policy Institute (December 2011). LEP Data Brief: Limited English proficient individuals in the United States: Number, share, growth, and linguistic diversity.

⁷ Migration Policy Institute. Page 5.

process, the LEP population more than tripled in the past decade. It's time our voting rights protections extend beyond Election Day to include this vital part of our democracy.

Thank you for your time in considering both of these issues and for the space provided here to discuss solutions.