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Panel 4: Providing Language Assistance on a Budget

U.S. Election Assistance Commission
Language Access for Voters Summit 2017

Overview

- Legal standards on cost
- Cost studies
- Costs of non-compliance
- A few words on start-up costs
- Tips on reducing costs

Legal standards on cost

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

Section 203(b)(1), 52 U.S.C. § 10503 (b)(1)

- *“Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language....”*

Section 203(c), 52 U.S.C. § 10503(c)

Legal standards on cost

*“[T]he quoted language should be **broadly construed to apply to all stages of the electoral process**, from voter registration through activities related to conducting elections, 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.”*

28 C.F.R. § 55.15

Legal standards on cost

“These sections state that whenever a jurisdiction subject to their terms ‘provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in English.’”

28 C.F.R. § 55.3

Legal standards on cost

*“The terms ‘vote’ or ‘voting’ shall include **all action necessary to make a vote effective** in any primary, special, or general election, including, but not limited to, registration, listing ... or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.”*

Section 14(c)(1), 52 U.S.C. § 10301(c)(1)

Legal standards on cost

“The term ‘voting materials’ means registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots.”

Section 203(b)(3)(A), 52 U.S.C. § 10503(b)(3)(A)

Legal standards on cost

Good faith is no defense to a Section 203 violation:

“Because a federal claim based on a denial of voting rights has no deep common law roots, there is no well-defined common law defense of good faith to such a claim.”

Chinese for Affirmative Action v. Leguennec,
580 F.2d 1006, 1008-09 (9th Cir. 1978)

Legal standards on cost

Summary of VRA's Requirements

- Section 203 focuses on the ends, not the means or cost for compliance
- Effectiveness is the polar star for measuring compliance
- Adopts a bottom-up standard: is the assistance effective for the *voter*

Legal standards on cost

Summary of VRA's Requirements

- Language assistance in Section 203 is broadly defined
- It is mandatory in covered jurisdictions
- There is no excuse for not complying because of the cost of doing so

Legal standards on cost

“Targeting” and cost-effective language assistance

- Not included in the statute, but recognized in the legislative history and DOJ’s regulations
- A covered jurisdiction may provide language materials and assistance “only to the language minority citizens and not to every voter in the jurisdiction.” S. Rep. 94-295, at 39 (1975)

Legal standards on cost

“Targeting” and cost-effective language assistance

- DOJ’s regulations: “...a targeting system will normally fulfill the Act’s minority language requirements if it is designed and implemented in such a way that language minority group members who need minority language materials and assistance receive them.” 28 C.F.R. § 55.17.
- DOJ’s coverage notice letters have explained that Section 203 “does not require that information in minority languages be provided to people who have no need for it.” 2002 Notice Letter.

Cost Studies: 1986 GAO Study

- Estimated that 18 states covered in whole or in part incurred no additional costs to provide language assistance to voters
- Of 295 responding jurisdictions that provided written translations, the average cost was 7.6 percent of total election expenditures
- Of 259 responding jurisdictions that provided oral language assistance:
 - 205 reported no cost at all
 - 39 reported an average cost of 2.9 percent of election expenditures

Cost Studies: 1997 GAO Study

- Reported data from 26 states and 292 covered jurisdictions
- Of 28 jurisdictions providing complete cost data, language assistance accounted for 4.9 percent of total election costs
 - Bilingual written materials averaged 3.8 percent of total election costs
 - Oral language assistance averaged 1.1 percent of total election costs
- Nearly all covered jurisdictions reported incurring little or no additional costs for providing oral language assistance
- LA County, which had five covered languages, reported costs of only 3.6 percent of its total election budget

Cost Studies: 2005 Arizona State University Study

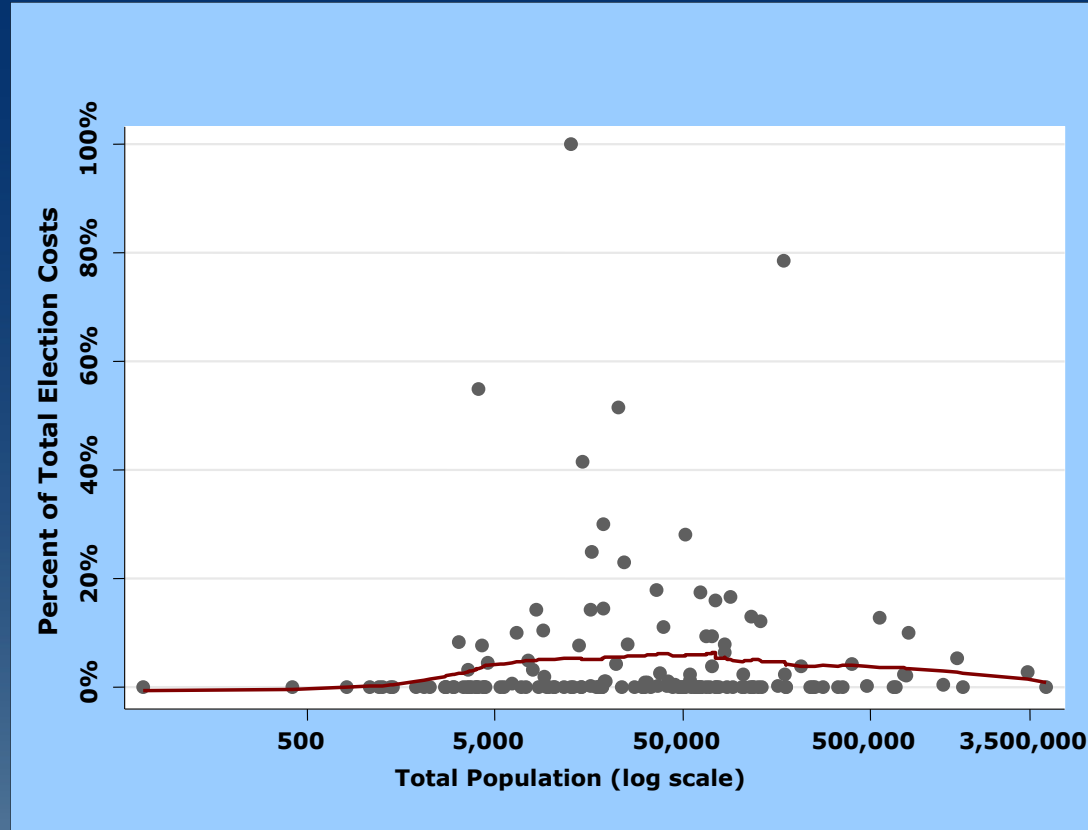
- Respondents included 411 jurisdictions in 31 states covered by Section 203
- Majority of respondents reported no additional costs for either oral or written language assistance
 - 59.1 percent of respondents reporting oral language assistance expenses said they incurred no extra costs attributable to oral language assistance
 - 54.2 percent of respondents reporting written assistance expenses said they incurred no extra costs attributable to written language assistance
- 39.5 percent of jurisdictions reporting complete cost data incurred no extra costs for both oral and written language assistance

Cost Studies: 2005 Arizona State University Study

- Among jurisdictions reporting that they incurred some costs:
 - Oral language assistance averaged 1.5 percent of total election expenses
 - Written translations averaged 3.0 percent of total election expenses
- Jurisdictions reporting language assistance for telephone inquiries reported that assistance averaged 0.6 percent of their total election costs, with 74 percent reporting no added costs
- Responding jurisdictions with Alaska Native and American Indian voters were most likely to report the lowest costs

Cost Studies: 2005 Arizona State University Study

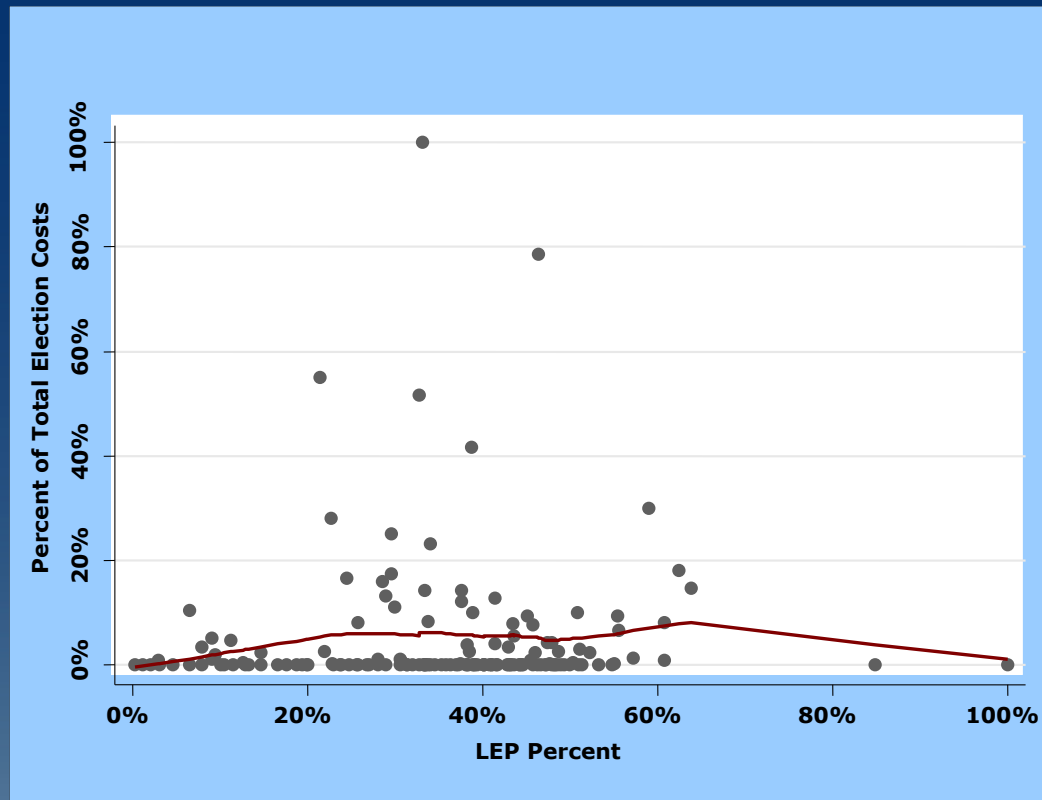
Figure 6.3: Cost of Oral Language Assistance, by Population of Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question G-2a and 2000 Census, Summary Tape File 1.

Cost Studies: 2005 Arizona State University Study

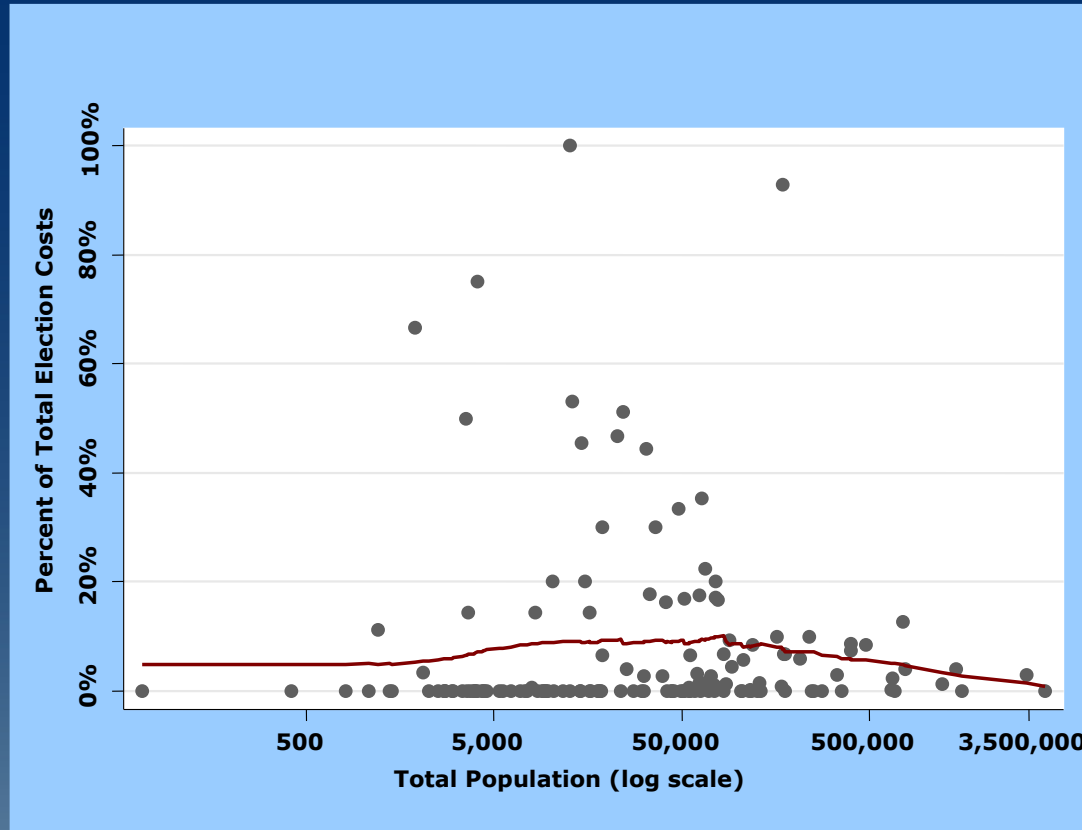
Figure 6.4: Cost of Oral Language Assistance, by Limited English proficient (LEP) Percent of Covered Languages in Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question G-2a and 2000 Census, Summary Tape File 3.

Cost Studies: 2005 Arizona State University Study

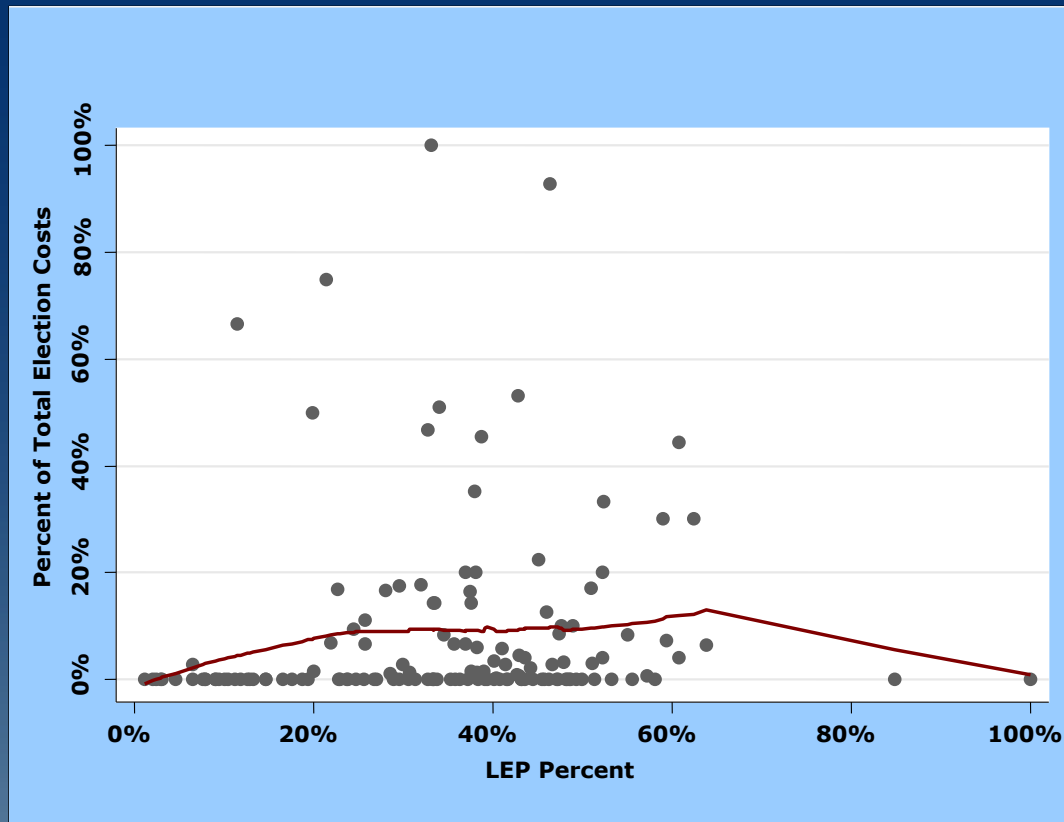
Figure 6.6: Cost of Bilingual Written Materials, by Population of Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question G-2b and 2000 Census, Summary Tape File 1.

Cost Studies: 2005 Arizona State University Study

Figure 6.7: Cost of Bilingual Written Materials, by Limited English proficient (LEP) Percent of Covered Languages in Responding Jurisdictions.



Source: 2005 ASU/BHC Survey of Minority Language Assistance Practices in Public Elections, Question G-2b and 2000 Census, Summary Tape File 3.

Cost Studies

Data trends noted in these cost studies

- Where costs were incurred, they were consistent between the three studies
- Many jurisdictions reported minimizing costs by targeting
- Less populated jurisdictions were more likely to attribute most (and in some cases all) of their election costs to language assistance
- Some jurisdictions are unable to identify the costs (if any) for providing language assistance because they do not track such costs in their budgets

Costs of non-compliance

- LEP voters are prevented from exercising their fundamental right to vote
- Litigation costs – examples from Alaska:
 - *Nick* litigation: At least \$1 million in plaintiffs' attorneys' fees and costs and at least \$700,000 incurred by State
 - *Toyukak* litigation: Over \$2 million in plaintiffs' attorneys' fees and costs
- Bad press
- Remedial costs from non-compliance significantly higher

A few words on start-up costs

- Jurisdictions may incur some start-up costs when they either first become covered or they first begin to comply with Section 203:
 - Updating policies and procedures
 - Recruitment and training costs
 - Hiring new personnel
 - Translation services
 - Printing services
- Most (and sometimes all) start-up costs can be substantially reduced by effective long-term planning before the jurisdiction becomes covered

Tips on reducing costs

Step One of Targeting: Identify location of voting-age LEP citizens

- Use Census data
 - Starting point may be the Census determination data
 - May be necessary to request a special tabulation
 - Use Census data showing where ethnic and language minorities live, even if LEP data is not available
 - Note some limits on Census data:
 - LEP data not available at the geographical level you need it
 - Data may be stale, especially in places with emerging LEP populations – and the more time that elapses after the determinations are made
 - LEP voters tend to have higher rates of being undercounted
 - Data may be suppressed because of privacy concerns

Tips on reducing costs

Step One of Targeting: Identify location of voting-age LEP citizens

- Use voter registration lists if data on race, ethnicity or surname analysis is available
 - There can be difficulty doing surname Spanish analysis where both Latino and Filipino populations are present
 - Registration data can be of limited value if there are large numbers of unregistered LEP voting-age citizens
- Ask precinct officials who may be familiar with LEP population
 - Keep track of language spoken/used by voters
 - Beware that precinct officials may downplay the need for language assistance
 - Also may not identify places where large numbers of unregistered LEP voting-age citizens reside

Tips on reducing costs

Step One of Targeting: Identify location of voting-age LEP citizens

- Ask language minority community organizations and leaders where the LEP voting-age citizens are located
 - AAJC
 - Alaska Federation of Natives
 - Intertribal councils and tribal representatives
 - Mi Familia Vota
 - National Council of La Raza
 - NALEO
- Survey churches, schools, and organizations frequented by LEP population

Tips on reducing costs

Step Two of Targeting: Identify LEP voters in the targeted areas

- Ask new voters their language preference when they register
- Ask existing voters by sending them a postcard in English and the covered languages asking that they identify their preferred language
- Ask voters to identify their preferred language when they vote

Tips on reducing costs

Step Three of Targeting: Materials and assistance where needed

- Mailings of bilingual materials can be directed at those who need them or have requested them
 - Need to publicize availability of language materials
 - Post general notice of language materials in all materials sent in English (include that notice in the covered language(s) in a way that highlights them)
- Bilingual poll workers are only required at precincts with LEP voters
 - The number of bilingual poll workers will depend on the number of LEP voters
 - More LEP voters = more bilingual poll workers; if lines or waiting times are lengthened, then you need to have more bilingual poll workers
 - Note this method is commonly used in consent decrees
 - If there are few or no LEP voters, a toll-free number should be advertised in the covered language to inform voters how to get telephonic assistance in their language

Tips on reducing costs

Use of trained bilingual poll workers reduces costs

- Jurisdictions already are required to have poll workers – why not recruit and train bilingual poll workers to get double bang for your buck?
- In many cases, bilingual poll workers are paid the same as other poll workers
 - State or local law may require same pay regardless of role
 - But note that you may want to pay bilingual poll workers at a slightly higher rate or for additional training they must attend as an incentive in recruiting them
- Stand-by bilingual poll workers can be rapidly deployed to where they are needed

Tips on reducing costs

Use of bilingual government officials

- If the jurisdiction already has bilingual personnel on staff in other government offices, they should be encouraged to serve as bilingual poll workers
- Relieve them of their regular duties on election day so they are free to work as bilingual poll workers
- Typically, these officials already are used to providing customer service to the community, so it's a great fit

Tips on reducing costs

Use of volunteers and student translators

- Use of unpaid volunteers *may be permissible* if language minority voters have an equal opportunity to work in paid positions as election officials
- High school students often provide excellent cost-effective resources
 - Even if they are not eligible to register to vote themselves, they can provide language assistance if supervised by election officials (note that Section 208 of the VRA has no age requirements)
 - Offers an excellent way for them to get involved early, making them prime candidates for bilingual poll worker recruitment when they are eligible to vote
 - Can be used to complete community service or academic requirements at many schools

Tips on reducing costs

- Language recordings may be used as cost-effective way of providing language assistance
- Updated voting machines and software often allow machines to support multiple languages
- Recordings may not be appropriate for lengthy translations or as a substitute for hands-on translators who can answer questions and provide personal assistance

Tips on reducing costs

- Community translation panels or language committees may be available to provide cost-effective translations or feedback on translations before they are used
- In many jurisdictions with a single covered language, written translations of ballots are provided on the opposite side to reduce costs
- Targeted language assistance can ensure that voters get the written materials in their chosen language and reduce the cost of printing unused materials (in both English and the covered language)

Tips on reducing costs

- Conduct post-election assessments to determine ways that language assistance can be targeted more effectively and cost-efficiently
 - Review precinct level data
 - Provide voters with a comment card in their polling place or early voting location to provide feedback
 - Conduct telephonic surveys as follow-up with voters in their covered languages
 - Send out postcards asking voters to give feedback on the availability and quality of language assistance
 - Ask community-based organizations
 - Ask poll workers
- Cost-effective language assistance is a fluid, not a static, process

Contact information



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Questions?

