

# The Census Bureau's 2011 Determinations of Coverage under Section 203 of the Voting Rights Act Mandating Bilingual Voting Assistance

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## INTRODUCTION

On October 13, 2011, the Director of the United States Census Bureau issued a notice of determination identifying the jurisdictions that are covered by the minority language assistance provisions of Section 203 of the Voting Rights Act (“VRA” or “Act”).<sup>1</sup> Section 203 is a temporary provision of the Act that helps non-English speaking voting-age U.S. citizens overcome language barriers to political participation by requiring covered jurisdictions to provide bilingual written materials and oral language assistance.<sup>2</sup> The provision applies to four language groups: Alaska Natives, American Indians, Asian Americans, and persons of Spanish Heritage,<sup>3</sup> as well as the distinct languages and dialects within each of those groups.<sup>4</sup> Language assistance must be provided for voting

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The author prepared a separate client alert containing map graphs that depict some of the coverage trends discussed in this Article. *See* Lewis, Brisbois, Bisgaard & Smith LLP, Election Law Compliance News Alert: Census Director Identifies Jurisdictions that Must Provide Language Assistance under Section 203 of the Voting Rights Act (Oct. 2011), *available at* [http://www.lbbslaw.com/uploadedFiles/Election%20Law%20News%20Alert\(4\).pdf](http://www.lbbslaw.com/uploadedFiles/Election%20Law%20News%20Alert(4).pdf) (last visited Aug. 5, 2012).

1. *See* Voting Rights Act Amendments of 1992, Determinations Under Section 203, 76 Fed. Reg. 63602 (Oct. 13, 2011) (to be codified at 28 C.F.R. pt. 55) [hereinafter 2011 Determinations].

2. *See* 42 U.S.C. § 1973aa-1a. In 2006, Congress reauthorized Section 203 for 25 years. *See* Fannie Lou Hamer, Rosa Parks, Coretta Scott King Cesar E. Chavez, Barbara C. Jordan, William C. Velasquez, and Dr. Hector P. Garcia Voting Rights Reauthorization and Amendments Act of 2006 § 8, Pub L. No. 109-246 § 7, 120 Stat. 581 (2006) [hereinafter VRARA]. Section 203 will expire on August 5, 2032 unless Congress renews it. *See* 42 U.S.C. § 1973aa-1a(b)(1).

3. *See* 42 U.S.C. §§ 1973(c)(3), 1973aa-1a(e).

4. *See* 121 CONG. REC. H4716 (daily ed. June 2, 1975) (statement of Rep. Edwards); S. REP. NO.

activities in every type of public election.<sup>5</sup>

The 2011 Determinations are significant for several reasons. They are the first Section 203 determinations made by the Bureau since July 2002.<sup>6</sup> They also mark the Bureau's initial implementation of the Voting Rights Act Reauthorization Act of 2006 ("VRARA"), which made two changes to the process for coverage under Section 203. Under the VRARA, the Bureau is now required to make determinations using the 2010 American Community Survey census data or comparable census data.<sup>7</sup> The American Community Survey (ACS) provides long-form type information every year instead of once in ten years, which had previously been used to identify covered jurisdictions.<sup>8</sup> The VRARA further mandated that Section 203 coverage determinations be made in 5-year increments, replacing the Census Bureau's previous practice of issuing coverage determinations every ten years using the decennial census data.<sup>9</sup> Finally, the 2011 Determinations was in effect for the 2012 Presidential Election, securing language assistance for millions of non-English speaking voting-age citizens in the covered jurisdictions.<sup>10</sup>

In the months leading up to the release of the 2011 Determinations, Congressman Mike Coffman (R, CO) introduced legislation to repeal Section 203.<sup>11</sup> He argued, "since proficiency is already a requirement for U.S. citizenship, forcing cash-strapped local governments to provide ballots in a language other than English makes no sense at all."<sup>12</sup> His arguments echo other misstatements of fact and law that opponents of Section 203 have asserted.<sup>13</sup> Moreover, Congressman Coffman introduced his legislation in an apparent effort to preemptively remove Spanish language

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94-295 at 24 n.14, reprinted in 1975 U.S.C.C.A.N. 790-91 n.14 (quoting Letter from Meyer Zitter, Chief, Population Division, Bureau of the Census, to House Judiciary Committee, Apr. 29, 1975).

5. See 28 C.F.R. § 55.10.

6. See Voting Rights Act Amendments of 1992, Determinations Under Section 203, 67 Fed. Reg. 48,871 (July 26, 2002) [hereinafter 2002 Determinations].

7. VRARA § 8, Pub L. No. 109-246 § 8, 120 Stat. 581.

8. U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY: A HANDBOOK FOR STATE AND LOCAL OFFICIALS 1 (2004). Because the American Community Survey is part of the census, responding to it is required by law. *Id.* at 2.

9. Prior to the enactment of the VRARA, Section 203 did not mandate how frequently the Director of the Census was required to make coverage determinations. See *Doi v. Bell*, 449 F. Supp. 267, 272 (D. Haw. 1978). The Director retains the discretion to make more frequent coverage determinations, as long as new determinations are made at least every five years after 2011. See 42 U.S.C. § 1973aa-1a(b)(2).

10. Language assistance must be provided as soon as a jurisdiction is covered by Section 203. See *Chinese for Affirmative Action v. Leguennec*, 580 F.2d 1006-08 (9th Cir. 1978), cert. denied, 439 U.S. 1129 (1979).

11. See Nancy Lofholm, *Colorado Congressman Wants Ballots Printed Only in English*, DENVER POST, Aug. 18, 2011.

12. *Id.*

13. See JAMES THOMAS TUCKER, THE BATTLE OVER BILINGUAL BALLOTS: LANGUAGE MINORITIES AND POLITICAL ACCESS UNDER THE VOTING RIGHTS ACT (Burlington Vt., Ashgate Publishing 2009) 205-31.

coverage that was expected to be added in sixteen more Colorado counties.<sup>14</sup> The state actually saw a substantial decrease in the number of covered jurisdictions, losing 70 percent of the ten counties covered in the 2002 Determinations.<sup>15</sup> Congressman Hoffman's legislation is not the first, and likely will not be the last, attempt to repeal the VRA's language assistance provisions. Since 1981, legislation to repeal Section 203 has been introduced in every Congress, with the most serious challenge coming when the House passed an English-only bill in 1996 that died in the Senate.<sup>16</sup>

This article defends the importance of Section 203 in making political participation more accessible for language minority voters. It first summarizes Section 203's requirements for covered jurisdictions and explains how the Census Bureau determines covered languages. It then provides an overview of the jurisdictions identified for coverage under the 2011 Determinations, including a discussion of notable coverage areas and trends compared with previous determinations. It concludes by examining how the 2011 Determinations will make political participation more accessible for language minority voters and, in particular, voters who speak Asian languages. Asian Americans are often overlooked by politicians despite being the fastest growing minority group in the U.S.<sup>17</sup>

#### I. LANGUAGE ASSISTANCE REQUIREMENTS UNDER THE VRA

Jurisdictions covered by Section 203 generally must ensure that all "voting materials" they provide in English are also provided to voters in the languages of all groups or sub-groups that triggered Section 203 coverage.<sup>18</sup> "Voting materials" include: voter registration materials, voting notices providing information about opportunities to register, registration deadlines, polling places, absentee voting, voting materials provided by mail, all election forms, polling place activities and materials, instructions, publicity, ballots, and other materials or information relating to the electoral process.<sup>19</sup> Written materials may not have to be provided to groups whose languages historically are unwritten.<sup>20</sup>

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14. See Lofholm, *supra* note 11.

15. Compare 2011 Determinations, *supra* note 1, at 63604, with 2002 Determinations, *supra* note 6.

16. See TUCKER, *supra* note 13, at xiii-xiv.

17. See Vishaka N. Desai, *The Mythical Rise of Asian Americans*, THE AUSTRALIAN (July 27, 2012), <http://www.theaustralian.com.au/news/world/the-mythical-rise-of-asian-americans/story-e6frg6ux-1226436010614>

18. See 42 U.S.C. § 1973aa-1a(b)(1). An extended discussion of what jurisdictions must do to comply with Section 203 is provided in TUCKER, *supra* note 13, at 90-105, 261-89.

19. See 42 U.S.C. § 1973aa-1a(c); 28 C.F.R. §§ 55.15, 55.18.

20. See 42 U.S.C. § 1973aa-1a(c). For languages found to be "historically unwritten," federal courts have required that written translations be provided to poll workers in the covered language to ensure oral translations are complete, clear, and accurate reflections of the information provided to voters in English. See TUCKER, *supra* note 13, at 284-86 (summarizing rulings in *Nick v. City of Bethel*,

Jurisdictions covered by Section 203 also must provide oral language assistance.<sup>21</sup> Oral language assistance includes “announcements, publicity, and assistance” when such assistance is needed to allow the language group triggering coverage to participate effectively in elections.<sup>22</sup> Oral language assistance must be available to language minorities “who cannot effectively read either English” or the covered minority language.<sup>23</sup> Covered jurisdictions are also required to provide bilingual poll workers or “helpers” to language minority voters at polling places on Election Day.<sup>24</sup> Jurisdictions must be proactive in recruiting bilingual poll workers to ensure oral language assistance is available.<sup>25</sup> If they fail to do so, they also may violate Section 2 of the VRA,<sup>26</sup> which prohibits discriminatory poll official appointment policies or practices.<sup>27</sup>

The VRA has other language assistance provisions, which are unaffected by the latest Section 203 determinations. Section 4(f)(4) of the Act, a temporary provision that applies to jurisdictions where voters have experienced more serious forms of language discrimination, requires compliance with Section 203 and the administrative preclearance requirements under Section 5.<sup>28</sup> Coverage under Section 4(f)(4) is unaffected by the 2011 Determinations.<sup>29</sup> Two permanent provisions of the VRA, Section 2<sup>30</sup> and Section 4(e),<sup>31</sup> likewise apply independently of Section 203 and are unaffected by the Director’s latest language assistance determinations. Section 208 of the VRA, another permanent provision of the Act, supplements the language assistance provisions by protecting *any*

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case no. 3:07-cv-0098-TMB (D. Alaska filed June 2007)); *Apache County v. United States*, Civil Action No. 77-1515, mem. op. (D.D.C. June 12, 1980) (three-judge court).

21. See generally 42 U.S.C. § 1973aa-1a(b)(3)(A) (defining “voting materials” as including “assistance”).

22. 28 C.F.R. § 55.20(a).

23. *Id.* at § 55.20(b).

24. *Id.* at § 55.20(c).

25. See U.S. COMM’N ON CIVIL RTS., A CITIZEN’S GUIDE TO UNDERSTANDING THE VOTING RIGHTS ACT 16 (1984). The jurisdiction also should confirm that “bilingual” poll workers actually are bilingual and also are able to read and write in both languages, if applicable. See *id.* For more discussion, see TUCKER, *supra* note 13, at 102-05.

26. 42 U.S.C. § 1973.

27. See *Harris v. Graddick*, 593 F. Supp. 128, 132 (M.D. Ala. 1984). The absence of minority language poll officials may discourage language minorities from voting because they do not feel welcome at polling places, particularly if they have been mistreated at the polls in the past or no language assistance is available for them in the present. See *id.* at 131-32; U.S. COMM’N ON CIVIL RTS., THE VOTING RIGHTS ACT: UNFULFILLED GOALS 79-80 (1981).

28. See 42 U.S.C. § 1973b(f)(4); 28 C.F.R. § 55.8(b) (1976).

29. 2011 Determinations, *supra* note 1, at 63602.

30. 42 U.S.C. § 1973. Section 2, the VRA’s permanent non-discrimination provision applies nationwide and has been used to secure language assistance for voters who are denied equal voting opportunities by English-only election procedures. See TUCKER, *supra* note 13, at 43-45.

31. 42 U.S.C. § 1973b(e). Section 4(e) is a nationwide provision that requires Spanish-speaking Puerto Rican voters be provided with voting materials and assistance in their native language. See TUCKER, *supra* note 13, at 27-42.

voter who needs assistance at the polls.<sup>32</sup>

## II. THE CENSUS BUREAU'S SECTION 203 COVERAGE DETERMINATIONS

A jurisdiction is covered under Section 203 if the Director of the Census determines two criteria are met.<sup>33</sup> First, a population threshold, or “trigger,” must be met. Within a political subdivision of a state, limited-English proficient (LEP) voting age citizens in a single language group<sup>34</sup> must either: (a) number more than 10,000 (“10,000 Person Trigger”); (b) comprise more than five percent of all voting age citizens (“Five Percent Trigger”); or (c) comprise more than five percent of all American Indians or Alaskan Native voting age citizens of a single language group residing on an Indian reservation (“Reservation Trigger”).<sup>35</sup> A state may only be covered for a language using the Five Percent Trigger.<sup>36</sup> A person is LEP if he or she is “unable to speak or understand English adequately enough to participate in the electoral process.”<sup>37</sup> Second, the illiteracy rate of the language minority voting age citizens meeting the population threshold must exceed the national illiteracy rate.<sup>38</sup> “Illiteracy” means “the failure to complete the 5th primary grade,”<sup>39</sup> and was adopted to conform to the Census definition of that term.<sup>40</sup> The 2011 Determinations were calculated using a national illiteracy rate for voting age citizens of 1.16 percent,<sup>41</sup> a

32. See generally 42 U.S.C. § 1973aa-6 (“Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.”).

33. There is a separate formula for coverage under Section 4(f)(4) of the VRA. Under Section 4(f)(4), a jurisdiction is covered if by November 1, 1972: (1) over five percent of voting age citizens were members of a single language group; (2) the jurisdiction used English-only election materials; and (3) less than fifty percent of voting age citizens were registered to vote or fewer than fifty percent voted in the 1972 Presidential election. See 42 U.S.C. § 1973b(b).

34. A single language group does “not permit subgroups of languages to be aggregated together to trigger coverage for the entire language group. TUCKER, *supra* note 13, at 82.

35. See 42 U.S.C. § 1973aa-1a(b)(2)(A)(i); see U.S. Census Bureau, *Statistical Modeling Methodology for the Voting Rights Act Section 203 Language Assistance Determinations* 10-11 (Dec. 2011) [hereinafter “Statistical Modeling”], available at [http://www.census.gov/rdo/data/voting\\_rights\\_determination\\_file.html](http://www.census.gov/rdo/data/voting_rights_determination_file.html) (click on the link marked “Download the October 13<sup>th</sup>, 2011 public use data” then open “StatisticalModelingMethodology.pdf” (last visited Aug 5, 2012) (describing the statistical formulas used for political subdivisions of states and American Indian Area & Alaska Native Area Level Coverage).

36. See 42 U.S.C. § 1973aa-1a(b)(2)(A)(i)(II)-(III); TUCKER, *supra* note 13, at 78; see also *Statistical Modeling*, *supra* note 35, at 8, 10 (describing the statistical formula used for statewide coverage using the Five Percent Trigger).

37. 42 U.S.C. § 1973aa-1a(b)(3)(B).

38. See 42 U.S.C. § 1973aa-1a(b)(2)(A)(ii).

39. 42 U.S.C. § 1973aa-1a(b)(3)(E). See also *Statistical Modeling*, *supra* note 35, at 8 (“A person is said to be illiterate if the person has less than a fifth grade education.”).

40. See 121 CONG. REC. H4719 (daily ed. June 2, 1975) (statement of Rep. Edwards).

41. See U.S. Census Bureau, *How the Law Prescribes the Determination of Covered Areas under the Language Minority Provisions of Section 203 of the Voting Rights Act* (Oct. 2011) (flowchart),

decrease from the 1.35 percent used in the 2002 Determinations.<sup>42</sup>

### III. THE SCOPE OF THE 2011 DETERMINATIONS AND THE IMPACT ON ASIAN AMERICANS

The most recent Section 203 determinations are instructive, both in terms of how the coverage formula operates in practice, and in its coverage of jurisdictions and language groups. As a result of the 2011 Determinations, a total of 248 political subdivisions nationwide are now covered by Section 203, 48 fewer than in 2002.<sup>43</sup> Although the number of political subdivisions only represent 3.1 percent of the 2920 counties and 4972 minor civil divisions that the Census Bureau defines as political subdivisions in the United States,<sup>44</sup> they encompass a disproportionately large number of voters, including some of the nation's most populous urban areas. According to the Census Bureau, there are approximately 65.6 million voting-age U.S. citizens in the covered jurisdictions, nearly one-third of the total U.S. citizen voting-age population.<sup>45</sup> Among that population, 5,578,600 are LEP voting-age U.S. citizens who speak a language that is covered in their jurisdiction.<sup>46</sup> This is a 38.6 percent increase from the 4,026,381 LEP voting-age U.S. citizens covered under the 2002 Determinations.<sup>47</sup>

Thirteen states now have fewer covered political subdivisions than in 2002; likewise, 13 states now have more covered political subdivisions.<sup>48</sup> The total number of states covered in whole or in part by Section 203 decreased from 30 to 26 under the 2011 Determinations.<sup>49</sup> Three states now are covered in their entirety by Section 203 (California, Florida, and Texas for Spanish), in addition to two states required to provide language assistance statewide because of Section 4(f)(4) coverage (Alaska for Alaska

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available at <http://www.census.gov/rdo/pdf/PrescribedFlowFor203Determinations.pdf> (last visited Aug. 5, 2012); Statistical Modeling, *supra* note 35, at 35.

42. See TUCKER, *supra* note 13, at 130, 351.

43. See 2011 Determinations, *supra* note 1, at 63602-63607.

44. U.S. Census Bureau, *Press Release: Census Bureau Releases 2011 Determinations of Political Jurisdictions Subject to Minority Language Assistance Provisions of Section 203 of the Voting Rights Act* (Oct. 12, 2011), available at <http://2010.census.gov/news/releases/operations/cb11-cn189.html> (last visited Aug. 5, 2012).

45. See *id.*

46. See U.S. Census Bureau, Publicly Released Data Files for the 2011 Section 203 Determinations (Dec. 2011), available at [http://www.census.gov/rdo/data/voting\\_rights\\_determination\\_file.html](http://www.census.gov/rdo/data/voting_rights_determination_file.html) (click on tab marked "Download the October 13, 2011 public use data," open the folder Section203\_Data\_Files.zip, and then open file labeled as "sect203\_Determined\_Areas\_Only.csv") (last visited Aug. 5, 2012) [hereinafter 2011 Determinations Data Files].

47. Compare *id.* with TUCKER, *supra* note 13, at 126 (summarizing census data for the 2002 Determinations).

48. Compare 2011 Determinations, *supra* note 1, with 2002 Determinations, *supra* note 6.

49. *Id.*; see also TUCKER, *supra* note 13, at 113-33, 351-70 (summarizing census data for the 2002 Determinations).

Natives and Arizona for Spanish Heritage).<sup>50</sup> Florida is covered statewide for Spanish for the first time.<sup>51</sup> New Mexico, which was covered statewide for Spanish under the 2002 Determinations, no longer is.<sup>52</sup> Seven states previously covered in part by Section 203 in 2002, Idaho, Louisiana, Montana, North Dakota, Oklahoma, Oregon, and South Dakota, are no longer covered.<sup>53</sup> Coverage under Section 203 has been extended to political subdivisions of two states that were not covered under the 2002 Determinations, Virginia and Wisconsin, which now each have one jurisdiction covered for Spanish.<sup>54</sup> Both states were covered under pre-2002 determinations.<sup>55</sup>

Several jurisdictions are covered for multiple languages.<sup>56</sup> As a result of the 2011 Determinations, thirty-seven covered political subdivisions have to provide assistance in more than one language: twenty-four in two languages; seven in three languages; five in four languages; and one, Los Angeles County, California, in eight languages.<sup>57</sup> The number of political subdivisions covered for more than one language has decreased from 2002, when there were 48 such jurisdictions.<sup>58</sup> Los Angeles County previously had been required to provide language assistance in Spanish, Chinese, Filipino, Japanese, Korean, and Vietnamese.<sup>59</sup> It is now also covered for Asian Indian and Cambodian.<sup>60</sup>

The changes in Asian language coverage demonstrate the importance of regularly updating Section 203 coverage. Asian language assistance experienced the greatest percentage increase in the 2011 Determinations, both in terms of covered jurisdictions and the number of covered LEP voters who speak an Asian language.<sup>61</sup> Overall, Asian language coverage has increased from the sixteen political subdivisions in seven states covered

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50. 2011 Determinations, *supra* note 1; 28 C.F.R. pt. 55, app. Texas also is covered statewide under Section 4(f)(4) for Spanish Heritage. *See id.*

51. *See* 2011 Determinations, *supra* note 1, at 63604; TUCKER, *supra* note 13, at 336 (summarizing all of the previous Section 203 determinations for Florida).

52. *See* 2011 Determinations, *supra* note 1, at 63606; TUCKER, *supra* note 13, at 340 (summarizing all of the previous Section 203 determinations for Florida). New Mexico was also covered statewide for American Indian languages and Spanish in the Section 203 determinations issued in 1975. *See id.*

53. *Compare* 2011 Determinations, *supra* note 1, with 2002 Determinations, *supra* note 6.

54. *Compare* 2011 Determinations, *supra* note 1, with 2002 Determinations, *supra* note 6.

55. *See* TUCKER, *supra* note 13, at 93, 113, 119, 347.

56. *See* TUCKER, *supra* note 13, at 115; *see also id.* at 331-49 (summarizing all of the pre-2011 Section 203 coverage determinations).

57. *See* 2011 Determinations, *supra* note 1.

58. *See* TUCKER, *supra* note 13, at 115. In the 2002 Determinations, 48 political subdivisions had to provide assistance in more than one language including: 31 in two languages; 14 in three languages; two in four languages; and one, Los Angeles County, in six languages. *Id.* at 115.

59. *See* TUCKER, *supra* note 13, at 115, 334.

60. *See* 2011 Determinations, *supra* note 1, at 63603. The terms "Asian Indian" and "Filipino" are not language groups. The Census and this article uses these terms for a variety of languages spoken in India, and the Philippines, respectively.

61. *Compare* 2011 Determinations, *supra* note 1, with 2002 Determinations, *supra* note 6.

in 2002, up to twenty-two political subdivisions in eleven states under the 2011 Determinations.<sup>62</sup> This includes coverage of Asian Indian, Bangladeshi and Cambodian for the first time.<sup>63</sup> Jurisdictions covered for one or more Asian languages comprise 8.9 percent of all jurisdictions covered by Section 203.<sup>64</sup> Chinese language assistance must now be provided in a total of sixteen political subdivisions in California, Hawaii, Illinois, Massachusetts, New York, Texas, and Washington.<sup>65</sup> Filipino language assistance is required in nine political subdivisions in Alaska, California, Hawaii, and Nevada.<sup>66</sup> Vietnamese language assistance must be provided in seven counties in California, Texas, and Washington.<sup>67</sup> Korean language assistance is mandated in four counties in California, New Jersey, and New York.<sup>68</sup> Asian Indian language assistance must be offered for the first time in three political subdivisions of California, Illinois, and New York.<sup>69</sup> Asian Bangladeshi must be provided for the first time in Hamtramck, Michigan.<sup>70</sup> Finally, Cambodian must be provided in Los Angeles County, California.<sup>71</sup>

Notable areas covered for Asian languages for the first time include the Aleutians East Borough and Aleutians West Census Area of Alaska for Filipino, the city of Quincy in Massachusetts for Chinese, Clark County (Las Vegas) in Nevada for Filipino, and Bergen County in New Jersey for Korean.<sup>72</sup> Harris County, Texas, which was first covered for Vietnamese in the 2002 Determinations, now is also covered for Chinese.<sup>73</sup> Cook County in Illinois and King County in Washington, which were initially covered for Chinese under the 2002 Determinations, now are also covered for Asian Indian and Vietnamese, respectively.<sup>74</sup> Queens County, New York, which

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62. Compare 2011 Determinations, *supra* note 1, with 2002 Determinations, *supra* note 6.

63. Compare 2011 Determinations, *supra* note 1, with TUCKER, *supra* note 13, at 331-70 (summarizing all previous coverage determinations).

64. See 2011 Determinations, *supra* note 1.

65. See *id.*

66. See *id.*

67. See *id.*

68. See *id.*

69. Compare 2011 Determinations, *supra* note 1, with TUCKER, *supra* note 13, at 333-49 (summarizing all of the pre-2011 determinations, including an identification of the languages covered in each jurisdiction).

70. *Id.*

71. See 2011 Determinations, *supra* note 1.

72. See U.S. Census Bureau, Summary and comparison tables of the October 13th, 2011 Section 203 determinations (look under the tab marked "Newly Covered Jurisdictions"), available at [http://www.census.gov/rdo/data/voting\\_rights\\_determination\\_file.html](http://www.census.gov/rdo/data/voting_rights_determination_file.html) (last visited Aug. 5, 2012) [hereinafter Newly Covered Jurisdictions].

73. See 2011 Determinations, *supra* note 1, at 63606; TUCKER, *supra* note 13, at 345 (summarizing all of the pre-2011 determinations in Harris County, Texas, including an identification of the covered languages).

74. See 2011 Determinations, *supra* note 1, at 63604, 63607; TUCKER, *supra* note 13, at 337, 347 (summarizing all of the pre-2011 determinations in Cook County, Illinois and in King County, Washington, including an identification of the covered languages).

has been covered for Chinese since 1992 and for Korean since 2002, added coverage for Asian Indian.<sup>75</sup> Several counties in California that have been covered for Asian languages also saw an increase in the number of covered Asian languages.<sup>76</sup>

Section 203's triggering formulas ensure coverage of political subdivisions where LEP language minorities have been victims of discrimination. At least two areas newly covered for Asian languages were the location of pre-2011 enforcement activities. In 2000, the United States secured relief for Arabic and Bengali voters in Hamtramck, Michigan, following widespread discrimination in the November 1999 election.<sup>77</sup> Similarly, in 2005, the United States secured relief for LEP Chinese-speaking and Vietnamese-speaking voters in Boston.<sup>78</sup> Due to the 2011 Determinations, Quincy, which is part of Metropolitan Boston, became covered for Chinese.<sup>79</sup>

According to the 2010 Census, 4,030,110 voting-age U.S. citizens of Asian descent live in political subdivisions covered under Section 203 for an Asian language, an increase of nearly 54 percent from the approximately 2.6 million who lived in jurisdictions covered for an Asian language under the 2002 Determinations.<sup>80</sup> Of those approximately 4 million Asian American voters, roughly one-quarter (1,083,755) are LEP in an Asian language that triggered coverage of their political subdivision.<sup>81</sup> Approximately 19.4 percent of all LEP voting-age U.S. citizens whose language is covered under Section 203 in their jurisdiction, speak an Asian language.<sup>82</sup> Under the 2002 Determinations, LEP voters who speak an Asian language accounted for 16.7 percent of all covered voting-age U.S. citizens.<sup>83</sup> The 2011 Determinations resulted in the following coverage of LEP voters who speak Asian languages, with their identified percentage of

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75. See 2011 Determinations, *supra* note 1, at 63605; TUCKER, *supra* note 13, at 341 (summarizing all of the pre-2011 determinations in Queens County, New York, including an identification of the covered languages).

76. Compare 2011 Determinations, *supra* note 1, at 63603-04, with TUCKER, *supra* note 13, at 334-35 (summarizing all of the pre-2011 determinations in California, including an identification of the covered languages).

77. See TUCKER, *supra* note 13, at 64; Jocelyn Friedrichs Benson, *Expanding the Language Protections of the Voting Rights Act to Additional Communities*, in TUCKER, *supra* note 13, at 301.

78. See TUCKER, *supra* note 13, at 99-102; Terry Ao, *Impact of Section 203 on Asian American Voters*, in TUCKER, *supra* note 13, at 297; Glenn D. Magpantay, *Asian Americans and Barriers to Voting*, in TUCKER, *supra* note 13, at 311; John Tanner, *Federal Enforcement of the Language Assistance Provisions*, in TUCKER, *supra* note 13, at 317.

79. See 2011 Determinations, *supra* note 1, at 63604.

80. See U.S. Census Bureau, Summary and comparison tables of the October 13th, 2011 Section 203 determinations (look under the tab marked "Covered CVAP Totals"), available at [http://www.census.gov/rdo/data/voting\\_rights\\_determination\\_file.html](http://www.census.gov/rdo/data/voting_rights_determination_file.html) (last visited Aug. 5, 2012) [hereinafter 2011 Determinations CVAP Totals].

81. See 2011 Determinations Data Files, *supra* note 46.

82. See *id.*

83. See TUCKER, *supra* note 13, at 126.

all covered LEP Asian language voters and the percentage change from the 2002 Determinations:<sup>84</sup>

Language	Number of Covered LEP Voters	% of All Covered LEP Asian Voters	% Increase From 2002 Determinations
Asian-Indian	40,355	3.7	N/A
Bangladeshi	Unavailable	Unavailable	N/A
Cambodian	10,140	0.9	N/A
Chinese	543,165	50.1	50
Filipino	134,595	12.4	43.2
Japanese	24,070	2.2	- 8.8
Korean	107,510	9.9	61.8
Vietnamese	223,920	20.7	80.1

As the table depicts, the number of LEP voting-age U.S. citizens covered for Chinese and Filipino increased by nearly 50 percent compared to the 2002 Determinations, with even greater increases for Korean and Vietnamese-speaking voters.<sup>85</sup> Asian-Indian, Bangladeshi, and Cambodian LEP voters were covered for the first time.<sup>86</sup> Only Japanese experienced a decrease in the number of covered LEP voting-age U.S. citizens, falling by nearly nine percent.<sup>87</sup> Nevertheless, Japanese continues to be covered in the jurisdictions where it was covered under the 2002 Determinations: Los Angeles County, California, and Honolulu County, Hawaii.<sup>88</sup>

The 2011 Determinations also emphasize the continuing importance of the 10,000 Person Trigger to Asian language coverage. That trigger was added in 1992 to cover “highly populated metropolitan areas” where “many language minority citizens in need of assistance are not covered because they do not make up a large enough percentage of the local population to trigger coverage.”<sup>89</sup> The following table illustrates that despite the large number of U.S. voting-age citizens who speak an Asian language covered in their jurisdiction, the average LEP rate for those language minorities

84. See 2011 Determinations Data Files, *supra* note 46.

85. Compare 2011 Determinations Data Files, *supra* note 46, with TUCKER, *supra* note 13, at 124, 369-70 (identifying the total number of LEP voting-age U.S. citizens who spoke covered Asian languages).

86. Compare 2011 Determinations, *supra* note 1, with TUCKER, *supra* note 13, at 333-49 (summarizing all of the pre-2011 determinations, including an identification of the languages covered in each jurisdiction).

87. Compare 2011 Determinations Data Files, *supra* note 46, with TUCKER, *supra* note 13, at 124, 369-70 (identifying the total number of LEP voting-age U.S. citizens who spoke covered Asian languages).

88. Compare 2011 Determinations, *supra* note 1, with 2002 Determinations, *supra* note 6.

89. S. REP. NO. 102-315 at 16 (1992); see also TUCKER, *supra* note 13, at 86-87 (discussing the 1992 amendments to the Section 203 coverage formulas).

falls far short of coverage under the Five Percent Trigger.<sup>90</sup>

Language	Number of Covered Jurisdictions	Average Number of LEP Voters who Speak the Covered Language	Average LEP % of Citizen Voting Age Population	Average Illiteracy Rate Among Covered LEP Voters
Asian-Indian	3	13,452	0.4	4.3
Bangladeshi	1	Unavailable	Unavailable	Unavailable
Cambodian	1	10,140	0.2	10.5
Chinese	16	33,948	2.2	9.9
Filipino	9	14,955	1.2	4.9
Japanese	2	12,035	0.4	3.5
Korean	4	26,878	1.2	2.7
Vietnamese	7	31,989	1.5	8.9

The table further depicts that, contrary to the myth of the so-called “model minority,”<sup>91</sup> many LEP voting-age U.S. citizens who speak a covered Asian language continue to experience the barriers posed by educational discrimination in this country.<sup>92</sup> Even the group of LEP voters with the lowest illiteracy rate, Korean-speaking voting-age U.S. citizens, experiences an illiteracy rate 2.3 times higher than the national illiteracy rate.<sup>93</sup> Chinese-speaking LEP voters, the largest Asian language group in the U.S., have one of the highest illiteracy rates of all Asian language voters.<sup>94</sup> Other language groups from Southeastern Asia, including Cambodian and Vietnamese voters, also tend to have very low levels of educational attainment.<sup>95</sup>

Lastly, the table shows how the 2011 Determinations reaffirmed the 1992 congressional finding that a numerically based trigger was needed to cover Asian languages in populous urban counties.<sup>96</sup> Without the 10,000 Person Trigger, only six jurisdictions would have been covered under the Five Percent Trigger.<sup>97</sup> The number of Asian voters who need language

90. See 2011 Determinations Data Files, *supra* note 46.

91. See generally ANGELO N. ANCHETA, RACE, RIGHTS AND THE ASIAN AMERICAN EXPERIENCE 13-15, 33-34, 130, 153-55, 160-62 (2000) (debunking the “model minority” myth).

92. See TUCKER, *supra* note 13, at 127-28; ANCHETA *supra* note 91, at 104-05, 109-12.

93. See *id.*; see *supra* note 46 and accompanying text (identifying the national illiteracy rate as 1.16 percent under the 2011 Determinations).

94. See *id.*

95. See *id.*

96. See TUCKER, *supra* note 13, at 86-87.

97. Coverage would have been provided in: Hamtramck, Michigan for Bangladeshi; San

assistance is tremendous; excluding San Francisco County, which is separately covered under the Five Percent Trigger, 92.5 percent of all LEP voting-age U.S. citizens covered for an Asian language live in a jurisdiction covered as a result of the 10,000 Person Trigger.<sup>98</sup> The 37 jurisdictions covered for Asian languages had the highest average number of voting-age citizens who were LEP in the covered language among all four principal language groups, with an average of 28,228.<sup>99</sup> Nearly 40 percent of jurisdictions covered for Asian languages had more than 20,000 voting-age citizens who were LEP in the language triggering coverage.<sup>100</sup>

On the other hand, even if all of the nearly 1.1 million LEP Asian-language voters are aggregated together (which the VRA does not permit<sup>101</sup>), they would still comprise less than four percent of the 26.9 million voting-age U.S. citizens in the covered jurisdictions.<sup>102</sup> The low percentage masks the widespread need for language assistance in jurisdictions covered for Asian languages. For example, in Los Angeles County, California, none of the seven covered Asian language groups had LEP voting-age citizen percentages that exceeded 2.3 percent of the county's voting-age U.S. citizen population.<sup>103</sup> At the same time, there were over 300,000 LEP Asian voting-age U.S. citizens in the county, including: 128,080 Chinese-speaking voting-age U.S. citizens; 59,240 Korean-speaking voting-age U.S. citizens; 44,900 Filipino-speaking voting-age U.S. citizens; 35,610 Vietnamese-speaking voting-age U.S. citizens; 13,155 Japanese-speaking voting-age U.S. citizens; 10,205 Asian Indian-speaking voting-age U.S. citizens; and 10,140 Cambodian-speaking voting-age U.S. citizens.<sup>104</sup>

The large population of urban centers such as Los Angeles County in California, Harris County (Houston) in Texas, Cook County (Chicago) in Illinois, and Queens County (New York City) in New York, prevented nearly all groups of Asian voting-age U.S. citizens who are LEP from meeting the Five Percent Trigger, despite the presence of tens of thousands of voters who need language assistance.<sup>105</sup> San Francisco County, California was the singular exception to that pattern.<sup>106</sup> Plainly, the 10,000 Person Trigger has been critical to extending Section 203 coverage to provide language assistance to LEP Asian American voters who need it.

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Francisco County, California and Quincy, Massachusetts, for Chinese; and the Aleutians East Borough in Alaska, the Aleutians West Census Area in Alaska, and Maui County, Hawaii, for Filipino. See 2011 Determinations Data Files, *supra* note 46.

98. *See id.*

99. *See id.*

100. *See id.*

101. *See supra* note 34 and accompanying text; TUCKER, *supra* note 13, at 82-83.

102. *See* 2011 Determinations Data Files, *supra* note 46.

103. *See id.*

104. *See id.*

105. *See id.*

106. *See id.*

## CONCLUSION

Section 203 has been an important tool in the arsenal to combat educational and voting discrimination against language minorities.<sup>107</sup> As the 2011 Determinations demonstrate, Section 203 has been effective because it is adaptive in securing coverage where it is most needed; namely, in locales where English continues to pose a barrier for language minority U.S. citizens who suffer from both past discrimination and the present effects of that discrimination. Language assistance in voting makes a difference. After jurisdictions have begun complying with Section 203, voter registration and turnout among language minorities has skyrocketed.<sup>108</sup> Greater political participation translates directly into increased representation at every level of government.<sup>109</sup> All Americans benefit as a result. Removing the barriers that language poses in the electoral process ensures that our Nation is enriched with a representative government that for far too long has been an illusion for millions of LEP voting-age U.S. citizens. The 2011 Determinations, and future coverage determinations that will be in five-year increments, will remain critical to ensuring that language minorities can exercise their fundamental right to vote.

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107. *See generally* TUCKER, *supra* note 13 (describing in detail how the VRA's language assistance provisions have been used to combat discrimination against language minority voters).

108. *See id.* at 229-31.

109. *See id.*