


TAKE THREE: THE BALLOT

Vote Aquí

Rosina Lozano 

Literate English speakers in the United States have always had the benefit of holding a ballot in a language they understand. Yet there is an often overlooked history of states protecting non-English-speaking voters and the illiterate. Consider New Mexico, where elections in many counties and even the territorial legislature itself operated in Spanish for decades after the Treaty of Guadalupe Hidalgo made the former Mexican citizens who remained on the land citizens of the United States in 1848.¹ The political strength of Spanish speakers in New Mexico resulted in the election of Spanish-surnamed governors, state legislators, and many other elected officials, including the nation's first Mexican American U.S. senator, Octaviano Larrazolo.²

In the nineteenth century, many states encouraged greater voter participation through literacy and language aid.³ New York offered sample ballots and instruction cards in 1892 in “other languages as the officer or officers charged with providing them shall deem necessary.”⁴ In 1891, Colorado state law decreed: “When any voter ... shall also make oath that he cannot speak and understand when spoken, the English language ... interpreters may assist such persons ... in making up their ballots.”⁵ In New Mexico, where a larger illiterate and Spanish-speaking population resided, ballots were printed with party-specific emblems to assist voters.⁶ This extension of the ballot to the illiterate and non-English speakers corresponded with higher voter participation than subsequent elections in the twentieth century.⁷

Ballots since then have become increasingly inscrutable due to changes to the election system itself. The secret ballot became standard in the 1880s, meaning voters cast their votes in private voting booths, which could make it harder for illiterate or non-English-speaking voters. The Progressive Era also encouraged citizen-created initiatives and referendums, which required voters to obtain at times a post-graduate level of education to understand the (often poorly written) proposed legislation.⁸ Meanwhile, as voter responsibility increased, millions of immigrants entered the United States—many of whom naturalized prior to an English-language requirement or without sufficient English-language skills to understand the ballot.

¹For more on the long history of Spanish-language governance and political use, see Rosina Lozano, *An American Language: The History of Spanish in the United States* (Oakland, CA, 2018).

²Indigenous peoples did not receive the same language rights or access to the ballot. Danna R. Jackson, “Eighty Years of Indian Voting: A Call to Protect Indian Voting Rights,” *Montana Law Review* 65, no. 2 (2004): 269–88, here 273.

³For example: MN Laws 50 (1893); SD Sess. Laws 163 (1891); MT. Laws 141 (1897); UT Laws 197 (1897).

⁴NY Laws 1628 (1892).

⁵CO Sess. Laws 160 (1891).

⁶“Governor’s Message,” *Santa Fe New Mexican*, Jan. 19, 1903, supplement, 1–2, here 2.

⁷Mark Lawrence Kornbluh, *Why America Stopped Voting: The Decline of Participatory Democracy and the Emergence of Modern American Politics* (New York, 2000), 11, 27–33, 12–5.

⁸One ballot measure in Colorado was coded at a grade level of 23.9. Shauna Reilly and Sean Richey, “Ballot Question Readability and Roll-Off: The Impact of Language Complexity,” *Political Research Quarterly* 64, no. 1 (2011): 59–67, here 62.

After World War I, amid growing support for immigration restriction and other nativist activism, most states passed laws that elevated the status of English in society and government at the expense of non-English-speaking citizens. In 1923, for example, Illinois made the “American language” the official language of its state, because legislators felt that “the name of the language of a country has a powerful psychological influence upon the minds of the people in stimulating and preserving national solidarity.”⁹ The pronouncement followed the passage of numerous laws that mandated the use of the English language in as far-flung places such as elementary schools, on bedding information, in the names of corporations, and in public records. Efforts to Americanize citizens of Illinois and other states created a hostile environment for voters requiring information in another language.¹⁰ Ad hoc and uncertain local aid became the main recourse for voters who could not understand the English language until the push for more extensive language voting rights became a major goal of civil rights organizations.

Ballots began to change once again following legal action and congressional lobbying by Spanish-speaking organizations in the 1970s. A series of court cases argued for access to the ballot for those who could not speak English and for the translation of registration and election materials mostly into the Spanish language. In *Castro v. State* (1970), the California Supreme Court struck down English-language proficiency as a constitutional registration requirement, yet also ruled that bilingual election materials were not necessary due to the “translations of ballot provisions and electoral commentary afforded by the Spanish news media.”¹¹ In *Rosa Torres v. Alice Sachs* (1974), United States District Judge Charles E. Stewart Jr. of the United States District Court Southern District of New York determined that “past practices and procedures deprive plaintiffs of their full rights” and that the absence of Spanish-language ballots operated analogously to literacy tests, which were outlawed nationwide in the 1970 Voting Rights Act.¹² While important, these early cases only prohibited English-only registration and ballots in certain states or cities in the Northeast, California, and Texas.¹³

Nationwide federal protections for “language minorities”—defined by Congress as including Spanish speakers, Asian Americans, Native Americans, and Alaska Natives—emerged for the first time under the 1975 extension of the Voting Rights Act (VRA). Section 203 required communities to offer bilingual ballots and election materials if 5 percent of their voting-age population stemmed from a single minority language group and that population had a lower education attainment level than English-speaking voters. It is impossible to determine how many people Section 203 covered, since the 15 percent sample question in the 1970 census on language only asked about “mother tongue” and not about subsequent English-language acquisition.¹⁴ George Korbel, the Assistant Regional Attorney for the Equal Employment Opportunity Commission, estimated that one-third of the over 2 million Mexican Americans in Texas could not speak, read, or write in the English language, which suggests that Section 203 supported hundreds of thousands of voters.¹⁵ This expansion was a victory

⁹IL Laws 7 (1923).

¹⁰Illinois had a longer history of paying for translations that included paying to have the governor’s message printed in German, French, and Scandinavian in 1869. That same year, Illinois gave Peoria and Pekin the right to have permits printed in German. IL Laws 412, 723 (1869); IL Laws, v.II 176 (1869).

¹¹85 Cal. Rptr. 20, 33-4, quoted in Tom Reston to David S. Tatel, memorandum, Dec. 15, 1974, p. 8, folder 8, box 240, Mexican American Legal Defense and Educational Fund Records, 1967-1983 (M673), Department of Special Collections, Stanford University Libraries, Stanford, CA (hereafter MALDEF).

¹²United States District Court Southern District of New York, Opinion and Order 73 Civ. 3921, July 25, 1974, 5-6.

¹³James Thomas Tucker, *The Battle over Bilingual Ballots: Language Minorities and Political Access under the Voting Rights Act* (Burlington, VT, 2009), 27-52.

¹⁴*Extension of the Voting Rights Act: Hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary*, 94th Cong. 24-25, Pt. I (1975) (hereafter *Extension of the VRA*), 78.

¹⁵*Extension of the VRA*, 360-1.

for the two major Spanish-speaking groups who had lobbied for its inclusion, Puerto Ricans and Mexican Americans.

Petra Díaz, a Puerto Rican committee woman with the County Democratic Party in New York City, explained the challenges she and others had faced before federally mandated balloting for non-English speakers. In Puerto Rico, high numbers of citizens voted—just over 84 percent of eligible voters, for example, in 1972.¹⁶ But when they migrated to the mainland, as Díaz put it, Spanish speakers “didn’t know how to vote and where to go.” “Bilingual ballots are the best thing that could have happened,” she declared.¹⁷ The VRA expansion allowed Puerto Ricans to resume their voting practices on the mainland. Mexican Americans also had a high voting potential and benefited from the expansion. In 1970 they made up at least 18 percent of the population in California, Texas, and Arizona but had voter registration levels below 50 percent—the trigger percentage for African Americans to receive the full support of the VRA.¹⁸

Language support encouraged more of the Spanish-speaking community to vote, even if not all required the services. A 1980 poll found that of 749 Mexican American voters in California and Texas, 23 percent said they used Spanish-language materials when voting and over one-third said they would be less likely to vote if there was no Spanish-language ballot.¹⁹ Bilingual ballots symbolized the federal government’s increasing interest in the demands of the Spanish-speaking population. And when many communities objected to the oversight and cost of creating bilingual ballots and election materials, the federally funded Bilingual Election Services strove to eliminate this opposition by providing guidelines for how to identify language minority populations and offering strategies for minimizing costs.²⁰ By 1982, California Congressman Paul “Pete” McCloskey concluded, “It can no longer be argued that the cost is excessive for the bilingual ballot,” even though he opposed their continuation.²¹

Bilingual ballots nevertheless were not a catch-all measure to ensure participation and end discrimination. Vilma Martínez, President and General Counsel of the Mexican American Legal Defense and Education Fund (MALDEF), believed bilingual election materials allowed Spanish-speaking citizens to “beg[i]n to enter the mainstream of American political life, not without obstacles, but with the protective shield of the Voting Rights Act.” But, she added, bilingual provisions still did not address “the extent of the voting discrimination we face.”²² Voting discrimination against language minorities included cases of egregious discrimination, such as police and local officials intimidating voters and adverse economic ramifications for running for office or voting, but they also consisted of policies like gerrymandering, creating fewer polling stations in certain communities, and purging registered voters as ways of diminishing their voting power.

¹⁶*Extension of VRA*, “Who Votes,” 783–6; *Extension of the VRA*, “Estadística Electoral Sobre Las Elecciones Generales,” 772.

¹⁷PRLDEF, *Commencing Another Decade of Challenge*, Annual Report, 1982, p. 6, folder 2, box 6 reel 4, The Puerto Rican Legal Defense and Education Fund Papers [microform edition].

¹⁸Honorable J. Stanley Pottinger, memorandum, RE: Applicability of Voting Rights Act of 1965 to Texas and Other Areas of the U.S. Southwest Having Large Concentrations of Spanish-Speaking Voters, Jan. 22, 1975, p. 4–5, folder 2, box 125, MALDEF.

¹⁹MALDEF News Release, “MALDEF’s president testifies at Senate Voting Rights Act Hearing,” Jan. 27, 1982, p. 2, folder 3, box 99, MALDEF.

²⁰University of New Mexico, Department of Linguistics, Voting Rights Project, *Bilingual Election Services*, v. 1 *A Handbook of Ideas for Local Election Officials*, (Washington, DC, 1979), 3.

²¹U.S. Congress, Senate, Committee on the Judiciary, *Extension of the Voting Rights Act: Hearings Before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary*, vol. 1, 97th Cong., Session 1, 1982, 307.

²²“MALDEF’s President Testifies at Senate Voting Rights Act Hearing,” Jan. 27, 1982, p. 1, folder 3, box 99, MALDEF.

In addition, language minority designation only aided those voters who were literate in their native language. Wilbur Atcitty, executive administrator to Navajo Tribal Councilman Peter MacDonald, exposed “the ignorance about us and our culture on the part of those who make and enforce our country’s laws.” He opposed bilingual written ballots as meaningless for his Navajo community, since few Navajo could read the language, and suggested instead “that voting officials be Navajos who are trained in the applicable election law.” Atcitty encouraged the “use of non-word symbols and pictures” for instructions—something not addressed in the VRA.²³

Are ballots meant to be legible and easy to access in a democracy? Or should the voting process be purposefully made difficult in an effort to prevent fraud and exclude certain segments of the voter population?²⁴ This debate over the nature of ballot use continues to divide the nation. And the federal inclusion of certain language minorities in 1975 may have been a partial victory for those who wished to include all, but over 5.5 million voters with limited English remain uncovered.²⁵ The United States is one of just eight nations in the world without an official language, and its citizens have always spoken different languages. Yet the policies in place for access to the ballots have often been exclusionary to non-English speakers, and longstanding language minorities have required mobilization to gain access to the ballot and make the voting process more inclusive.

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²³Bill Donovan, “‘Special Solution’ Needed for Navajo Voting,” *Gallup Independent*, Sept. 30, 1975, 1–38, here 1.

²⁴For more on debates over access to the ballot, see Ari Berman, *Give Us the Ballot: The Modern Struggle for Voting Rights in America* (New York, 2015).

²⁵Richard Salame, “Vote Aquí? Limited-English-Proficiency Voters Could Help Determine Congress,” *The Nation*, Nov. 5, 2018, <https://www.thenation.com/article/limited-english-voters-investigation-election/> (accessed Sept. 18, 2019).